

**BALANCING RESTORATIVE AND RETRIBUTIVE JUSTICE IN POST INTERNAL
ARMED CONFLICT: A CASE OF ACHOLI SUB REGION IN UGANDA**

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**In Partial Fulfillment of the Requirements for the
Degree of Master of Law (Public International Law)**

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OCTOBER, 2012

DECLARATION

I, Nuwagira Adoniya hereby declare that this thesis is my original work which has never been submitted to any University or any other Institution for an academic award. Where the work of other people has been quoted due acknowledgment has been made.


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NUWAGIRA ADONIYA

20/10/2012
.....

Date

APPROVAL SHEET

This thesis entitled "**Balancing Restorative and Retributive Justice in Post Internal Armed Conflict: A Case of Acholi Sub Region in Uganda**" prepared and submitted by Adoniya Nuwagira in partial fulfillment of the requirements of the Degree of Master of Laws in Public International Law has been examined and approved by the panel on oral examination with a grade of PASSED.

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DEDICATION

This work is dedicated to God, my mother, late father, wife and my children; David, Rebecca, Isaac, Sarah and Abraham who missed a lot of my guidance and care during the course of the study.

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TABLE OF CONTENTS

Preliminary	Page
DECLARATION	i
APPROVAL	ii
APPROVAL SHEET	iii
DEDICATION	iv
ACKNOWLEDGEMENT	v
TABLE OF CONTENTS	vi
LIST OF ACRONYMS	x
LIST OF NATIONAL LEGISLATIONS	xii
LIST OF INTERNATIONAL LEGISLATIONS	xiii
LIST OF CASES	xiv
ABSTRACT	xv

CHAPTER ONE	Page
THE INTRODUCTION	1
1.1 Background of the Study	1
1.2 Statement of the Problem	8
1.3 Purpose of the Study	9
1.4 Research Objectives	9
1.5 Research Questions	9
1.6 Hypothesis	9
1.7 Scope of the Study	10
1.7.1 Content Scope	10
1.7.2 Theoretical Scope	10
1.7.3 Time Scope	10
1.7.4 Geographical Scope	10
1.8 Significance of the Study	11

1.9	Operational Definition of Key Terms	11
1.9.1	Restorative Justice	12
1.9.2	Retributive Justice	12
1.9.3	Security	13
1.9.4	Justice	13
1.9.5	Peace	13
1.9.6	Human Rights	13
1.9.7	Armed Conflict	14
1.9.8	Rebel	14
CHAPTER TWO		15
LITERATURE REVIEW		15
2.0	Introduction	15
2.1	Conceptualizing Retributive and Restorative Justice in Post Conflict Situations	15
2.2	Justice and Human Rights Concerns in Post Conflict Situations	20
2.3	Human Rights	22
2.4	The Role of Peace Making, Enforcement and Building in Balancing Restorative and Retributive Justice	28
CHAPTER THREE		31
RESEARCH METHODOLOGY		31
3.0	Introduction	31
3.1	Research Design	31
3.2	Data Collection	32

3.3	Secondary Data	32
3.4	Documentary Review	32
3.5	Ethical Consideration	32
3.6	Limitations of the Study	33
CHAPTER FOUR		35
DATA COLLECTION, ANALYSIS, AND PRESENTATION		35
4.0	Legal Framework for Justice Concerns	35
4.1	Introduction	35
4.2	Domestic Legal Framework	36
4.3	Status of Victims of violence under the Criminal Justice	43
4.4	Amnesty Act, 2000	47
4.5	The extent of Human Rights abuse during the Internal Armed Conflict in Northern Uganda	51
4.6	Discussions with the Victims	52
4.6.1	Willful Killing of Civilians	52
4.6.2	Torture and other Mistreatment	55
4.6.3	Mutilations	56
4.6.4	Rape	58
4.6.5	Abductions	58
4.7	Administration of Balancing Retributive and Restorative Justice in Northern Uganda	60
4.7.1	Alternative Justice Mechanisms	60
4.7.2	Formal Justice Mechanism	61
4.7.3	Security Council Request (Article 16)	63
4.7.4	Prosecutorial Discretion (Article 53)	64
4.8	Traditional/Informal Justice Mechanisms	66
4.8.1	Truth and Reconciliation Commissions	73
4.8.2	Truth Commissions as Mechanisms of Balancing Restorative and Retributive Justice for Victims of the Armed Conflict	76

4.8.3	Reparation	82
4.8.4	Conclusion	88
CHAPTER FIVE		90
SUMMARY, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS		90
5.0	Introduction	90
5.1	Summary of Findings	90
5.2	Conclusions	92
5.3	Recommendations	94
	References	101
	Books	101
	Reports and Articles	102
APPENDICES		
	Appendix 1: Informed Consent	107
	Appendix II: Transmittal Letter for the Respondents	108
	Appendix III: Clearance from Ethical Committee	109
	Appendix IV: Interview Guide	110
	The Map of Uganda Showing Acholi Sub Region	113

LIST OF ACRONYMS

AJM	Alternative Justice Mechanism
CAR	Central African Republic
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
FIDH	International Federation of Human Rights
HSM	Holy Spirit Movement
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
IDPs	Internally Displaced Peoples camps
LDU	Local Defence Unit
LRA	Lord Resistance Army
NRA	National Resistance Army
NRM	National Resistance Movement
OTP	Office of the Prosecutor
PF3	Police Form 3
PRD	Peace Recovery and Development Plan for Northern Uganda
RLP	Refugee Law Project
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UN	United Nations
UNCEDAW	UN Convention on the Elimination of all forms of Discrimination against Women
UNICEF	United Nations Children's Fund
UNLA	Uganda National Liberation Army

UPA	Uganda People's Army
UPDA	Uganda People's Defence Army
UPDF	Uganda Peoples Defense Force
WFP	World Food Program
WNBF	Western Nile Bank Front

LIST OF NATIONAL LEGISLATIONS

The Constitution of the Republic of Uganda, 1995

The Penal Code Act Cap 120

The Uganda Peoples Defense Forces Act 2005

The International Criminal Court Act, 2010

The Uganda Human Rights Commissions Cap 24

The Amnesty Act 2000

The Refugee Act 2006

LIST OF INTERNATIONAL LEGISLATION

The Universal Declaration of Human Rights 1948

The ICC- Rome Statute 1998

The International Covenant on Civil and Political Rights 1966

The International Labour Organisation (ILO) 1946

Convention on the Rights of Children

Africa (Bangul) Chater on Human and People's Rights

The Geneva Convention, 1949

Convention on Elimination of All forms of Discrimination Against Women (CEDAW)

Protocol on Prevention and Suppression of Sexual violence against Women and Children

LIST OF CASES

The *Case of Republic v Manual Ishwerlal Purohit case* No 1949)9 EACA58

The *Case of Mama v Republic case* No (1970) EA370

The *Queen v Clotworthy* 1998, p. 12,

The *Prosecutor V Joseph Kony, Otti, Okot odiambo and Dominic Ongwen* case No.ICC-02/04-01/05, Decision on the prosecutor's Application for unsealing of the warrants of Arrest, 4-27(Oct.13, 2005).

The *Prosecutor V Joseph Kony, Vicent Otti Okot Odhiambo, Dominic Ongwen.* Decision on the admissibility of the case under Article19 (1) of the Statute dated 10 March 2009" (ICC-02/04-01/05-379),

Prosecutor V. Kallon, Case No. SCSL-2003-07-PT, (16june 2003); *Prosecutor V. Kamara, Case* No.SCLS-20003-10-PT(16 JUNE2003

The *Case of Rodriguez v Uruguay* Communication No. 322/1988

ABSTRACT

The study examined balancing restorative and retributive justice in the post internal armed conflict in Acholi sub region in Northern Uganda. The study utilised a case study design relying mainly on desk/library research for acquiring secondary data. This was augmented by face to face interviews of key respondents, observation and focused group discussions that were handy in enlisting primary data about the research problem.

The findings of the study revealed that issues of personal security, inadequate social protection, injustices and human rights violations remain a concern of the population in Northern Uganda as people resettle in their homes. The study further established gross human rights violation committed by the LRA rebels. The identified human rights violations include rape, killing, mutilation, child soldier, abduction, sexual violence, torture and loss of property in Northern Uganda.

The study also examined the administration of justice in Northern Uganda and established that justice in Northern Uganda needs both legal and non legal interventions. Much as the criminal justice process is vital for holding perpetrators accountable for their crimes, it does not adequately address the complex needs of victims of the armed conflict in Northern Uganda and their perpetrators who are currently living in the same localities in the post-armed conflict situation. The recommendations were made in line with the findings of the study.

CHAPTER ONE

THE INTRODUCTION

1.1 Background of the study

Uganda has experienced a spiral of armed conflict since it attained independence in 1962. One of the most recent armed conflicts was one that engulfed the Northern part of the country since 1986 up to the time when the Lord Resistance Army rebels fled to Democratic Republic of Congo (DRC) in 2005, and later to Central African Republic (CAR) around 2008¹. The armed conflict in Northern Uganda was initially rooted in a popular rebellion against the National Resistance Movement (NRM) government led by Yoweri Museveni the current President of Uganda.

In January 1986, National Resistance Movement (NRM) through its armed wing, the National Resistance Army (NRA) led by Yoweri Museveni, overthrew the government of Uganda that was headed by President Tito Okello. The overthrow of the government was after a five year guerrilla armed conflict in the jungles of Luwero Triangle in central and some parts of western Uganda.² The regime of Tito Okello, a person originating from the Northern part of Uganda was dominated by Uganda National Liberation Army (UNLA) soldiers who were largely from Acholi and other Nilotic-speaking tribes from Northern part of the country.

The over throw of the Uganda government by NRA which was dominated by tribes from Southern Uganda was perceived as an ethnic armed conflict. NRA was created by Museveni together with other commanders and political leaders who were largely from the central and western Uganda Bantu speaking tribes and some exiled Rwandan Tutsis. Once in power, NRM was confronted with resistance from the remnants of the

¹ Mutaizibwa Emma The Observer, Monday April 9-10 2012 vol.7 PLRA Reacts to Kony Video.

² Uganda 1986-2011: NRM 25 years Politics, Policies and Personalities.

vanquished UNLA and many insurgent groups being formed mainly from Northern Uganda Nilotic-speaking tribes.³

Onyango Obbo argues that the origin of the Kony armed conflict was a culmination of the divide and rule politics the British colonialists introduced in Uganda. The British created a myth that Northerners were warrior tribes more suited for army and police duties while Southerners were frail, more sophisticated and better suited for clerical, bureaucratic and more intellectually demanding tasks. Onyango further observed that the British failed to foresee a situation where the Northerners would use their domination of the military to educate their people, become sophisticated and take over the intellectual jobs.⁴

Lomo and Hovil reveal that the British applied divide and rule in Uganda and divided Uganda into four functional regions. The South was identified as an agricultural base with tribes categorized as peaceful communities. People from the North were described as having certain inherent traits that made them brutal and martial which made them unsuitable to rational political administration and economic governance. People from Northern Uganda also believed that the Southerners were milk drinking, banana eating weaklings who could not stand up to hold guns and face the northerners in an armed conflict or battle.⁵

When the NRA led by Museveni started guerilla armed conflict in 1981 against the Uganda government, the President of Uganda then, H.E. Obote underestimated the NRA rebels' capacity to topple his government due to the perception that NRA rebels were weaklings from Southern Uganda. When NRA later overthrew the government of

³ Uganda 1986-2011: NRM 25 years Politics, Policies and Personalities.

⁴ Onyango Obbo, C. (2012); Kony :The real story. The East African Magazine, March 26 – April 1, 2012.

⁵ Zachary Lomo and Lucy Hovil (2004) *Behind the Violence: Causes, Consequences and the Search for Solutions in Northern Uganda*. Refugee Law Project During, February 2004, Working Paper. No.11.

⁵ Onyango Obbo, C. (2012); Kony :The real story" in the East African Magazine, March 26 – April 1, 2012.

Uganda in 1986, majority of former soldiers from Northern Uganda were shocked and humiliated.⁶

The defeated soldiers were determined to fight but needed somebody to organise and command them. Alice Lakwena who was distant cousin of Joseph Kony tried to unite former soldiers to fight the NRA/NRM government led by Museveni but her force was defeated before she fled to Kenya in exile. Most of the rebel groups that were formed at that time were defeated one after another by NRA which was later renamed Uganda Peoples Defense Force (UPDF). The Lord Resistance Army (LRA) led by Joseph Kony insurgency is the only one that still pose some threat in Northern Uganda against the NRM government since all the others were defeated.⁷

The defeated insurgencies in Uganda include those of the Uganda People's Democratic Army (UPDA) of Brigadier Odong Latek, the Uganda People's Army (UPA) lead by Peter Otai, the Holy Spirit Movement I (HSM I) of Severino Lukoya, the Holy Spirit Movement II (HSM II) of Alice Lakwena and the Western Nile Bank Front (WNBF) of Juma Oris among others.⁸ The armed conflict between the LRA and Uganda Peoples Defence Forces (UPDF) has been going on to date. At the beginning of the armed conflict LRA rebels claimed that they were fighting for the Acholi people. The LRA rebels later lost popularity when they started abducting people, especially Acholis, from Northern Uganda and ordering them to commit atrocities against their families and communities.⁹ The atrocities, brutality and apparent lack of political agenda made LRA unpopular among civilians in Northern Uganda.

⁶ Onyango Obbo, C. (2012); Kony :The real story" in the East African Magazine, March 26 – April 1,2012.

⁷ Kasaija Phillip Apuuli (2005). Amnesty and International Law: The Case of the Lord's Resistance Army Insurgents in Northern Uganda.

⁸ Kasaija Phillip Apuuli (2005). Amnesty and International Law: The Case of the Lord's Resistance Army Insurgents in Northern Uganda.

⁹ Tamara Enomoto (2011). Revival of Tradition in the era of Global Therapeutic Governance: The Case of International Criminal Court Intervention in the Situation in Northern Uganda.

However, unlike other rebel groups LRA staged the longest armed conflict with the government of Uganda. This could partly be attributed to the support people in northern Uganda initially accorded to LRA rebels.¹⁰

The steps taken by the government of Uganda in peace building in the northern Uganda interalia, included, round table negotiation, giving amnesty to the rebels, conducting regular combat operations to defeat the rebels, collecting people in Internally Displaced Peoples camps (IDPs) to ensure their security and requesting the International Criminal Court (ICC) to prosecute commanders of the LRA who committed the most heinous crimes during the rebellion. The Uganda government sought the services of ICC because the actual activities of the ICC are regarded as part of the international commitment to end the culture of impunity, establish the rule of law, prevent future atrocities, and build peace in the conflict ridden areas.¹¹

However, before investigations by ICC could start, controversy ensued as to whether Acholi traditional justice system or the ICC would be more appropriate to handle the crimes committed by LRA in Acholi sub-region. In the course of the debate on the matter, it was widely argued that Acholi traditional justice is restorative, while ICC justice is retributive.¹² Most often, Acholi traditional justice has been described as restorative based on forgiveness and reconciliation offered by the tradition.¹³ It was against that background that it was recommended to the United Nations (UN) and international community to take robust action to encourage the government of Uganda to negotiate with the LRA.¹⁴

¹⁰ Lomo Zachary and Hovil Lucy (2004) '*Behind the Violence: Causes, Consequences and the Search for Solutions in Northern Uganda*' Refugee Law Project (RLP) during February 2004 as Working Paper No.11.

¹¹ Tamara Enomoto (2011) Revival of Tradition in the Era of Global Therapeutic Governance: The Case of ICC Intervention in the Situation in Northern Uganda.

¹² Jean-Louis Roy (2004). Bridging Human Rights and Security.

¹³ Blumenson, (2006) Civil Society Organisations for Peace in Northern Uganda.

¹⁴ Rasmusson, E.K.(2006). Only Peace can Restore the Confidence of the Displaced.

Whereas some people especially those who were sympathetic to the LRA cause wanted negotiations between LRA and government of Uganda, the ICC moved ahead and announced its investigations into the situation in Northern Uganda in January 2004. The ICC launched a formal investigation in July 2004 resulting into issuance of international arrest warrants for the five senior members of the LRA in July 2005.

On 14th October 2005, ICC Chief Prosecutor, Luis Moreno Ocampo, unleashed the warrants of the five leaders of the LRA, which had been issued by Pre-Trial Chamber II of the ICC on 8th July 2005. Those indicted were LRA leader Joseph Kony, his deputy Vincent Otti, and commanders Raska Lukwiya, Okot Odhiambo and Dominic Ongwen.¹⁵ The internal armed conflict was transformed by Joseph Kony's LRA into a brutally violent armed conflict in which civilians were the main victims. More than 1.4 million people were displaced, and tens of thousands more were killed, raped or abducted.¹⁶ At first glance, the persistence of the LRA over such a long period is incomprehensible. The majority of the force is made up of kidnapped children fighting but held against their will. It is worth noting that forced recruitment of children for use in an armed conflict is against the Law, both International Human Rights law and International Humanitarian law.¹⁷

In 2003, the conflict spread significantly East into the Teso and Lango sub regions.¹⁸ It is observed that wherever LRA operated civilians' human rights were violated by the rebels. The armed conflict in Northern Uganda generated a lot of human suffering among the people in the region. The conditions within IDPs remained unsafe and life was a daily struggle for survival. The continued encampment with limitations on freedom of movement violated human rights of those who were living in the camps.

¹⁵ Kasaija Phillip Apuuli (2005) Amnesty and International Law: The case of the Lord's Resistance Army insurgents in Northern Uganda.

¹⁶ Lomo Zachary and Lucy Hovil Socio-Legal Research on the Extent to Which Refugees Enjoy Their Socio-Legal Rights in Uganda.

¹⁷ Worst Forms of Child Labour Convention, 1999. (No.182). Article 3(a).

¹⁸ Lomo Zachary and Hovil Lucy. Socio-Legal Research on the Extent to Which Refugees.

Women and girls remained especially at risk, with chronically high levels of sexual and gender based violence reported.¹⁹ This shows clear signs of human rights abuse against the people who were living in camps.

LRA commanders forced abducted children to kill their friends or family members in front of other abductees. The act instilled fear into the abductees and discouraged them from escaping back to their homes. The killings forced a total break with the past as those involved in the killings were less likely to return to a community where they murdered and tortured people.²⁰

Atrocities against civilians spread fear through the population, this was a guerrilla warfare tactic that denies intelligence to the government and leaves the rebels free to loot. A single vicious killing can force hundreds of people to flee from their homes in a particular area leaving behind their planted crops and numerous possessions for easy looting.²¹ The LRA tactics of attacking the civil population resulted in villages being abandoned by their inhabitants. By the end of 2004, an estimated 1.6 million people were living in IDP camps in Northern Uganda. The United Nations Children's Fund (UNICEF) estimated that in one year of 2003; about 8,500 children were abducted by LRA rebels.²²

Magelah observed that the people in Northern Uganda continue to have mixed feelings about achieving justice in the post armed conflict period in the region. While the arrest of Ceasar Acellam one of the LRA commanders on 12th May 2012 made some Ugandans to celebrate, other Ugandans questioned whether the victims of the two decade long war that affected Northern Uganda, parts of Southern Sudan, Democratic Republic of

¹⁹ Report on Update on the Implementation of the Recommendations made by the UN Secretary-General's Representative on Internally Displaced Persons in Uganda.

²⁰ Els De Temmerman (2009; p 10): Aboke Girls; Children Abducted in Northern Uganda.

²¹ Zachary Lomo *et al* (2004). Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda. Refugee Law Project Working Paper No. 11.

²² Human Rights Watch, (2003).

Congo and Central African Republic will ever see justice. Magelah further noted that in Uganda the debate for access to justice by victims of LRA-UPDF internal armed conflict has two categories of people. One category is made up of people who are pro International Criminal Court indictment of LRA leaders. This group includes those demanding for trial of all LRA commanders in ICC and in local courts in Uganda.

This is the category that believes that justice will be achieved through retributive justice mechanism.

There is also a group of people who are opposed to ICC and are Pro restorative justice systems mainly through the traditional systems and amnesty.²³ Critics of trying LRA leaders in courts of law have argued that criminal trials do not promote reconciliation and are retributive yet the community needs to reconcile and move on. On the other hand restorative justice such as traditional systems of justice for example **Mato put and kayo cuk**, among the Acholi and Langi in northern Uganda generally promote reconciliation within a particular tribe, which may not be viewed as justice across borders. Magelah further observed that people in Uganda were further divided as to whether Acellam should be given amnesty or be tried in courts of law.²⁴

Balancing the application of restorative justice and retributive justice in Acholi sub-region in Northern Uganda has been a challenge. There have been some arguments that the interests of victims to peace and security outweigh the need to prosecute. To make matters worse, the interests of the victims are also divided with some favouring peace via amnesty while others demand justice through prosecution and others calling for amnesty followed by prosecution of the leaders. Some scholars further argue that alternative justice mechanism (AJM) must not cover those responsible for crimes of genocide, war crimes and crimes against humanity.²⁵

²³ Magelah Peter G (2012) Captured LRA Commander and Politics of Amnesty in Uganda.

²⁴ Magelah Peter G (2012) Captured LRA Commander and Politics of Amnesty in Uganda.

²⁵ Linda, M.K. (2008) The False Dichotomy of Peace Versus Justice and the International Criminal Court. *Hague Justice Journal Judiciaire De La Haye*. Vol. 3, No 1.

1.2 Statement of the Problem

Whereas effort has been made to ensure justice in Northern Uganda, the fairness of the procedures and administering of punishment and indemnity seems to undermine permanent peace and security in the region. While the government of Uganda has been granting amnesty to rebels who eventually return to communities to enjoy descent life; the families and communities, who lost property, relatives and who were forced into Internally Displaced People (IDP) camps for some years because of the rebels are left in grief. They are rarely consulted in the process of administering justice to armed conflict criminals. This leaves emotional and psychological perceptions of injustice that may catalyze attacks on ex-rebels living among communities leading to undermining peaceful living in post conflict societies.

Various surveys carried out reveal that, efforts by Government, NGOs and the International community to enhance sustainable security, peace, justice, respect and enjoyment of basic human rights for the people living in this area have remained wanting.²⁶ The reason why this has remained so has hardly been analyzed. If the status quo remains, opportunities that would have otherwise been available for achieving sustainable peace and equitable social development in the region might become foreclosed. This in the long run may set back the peace process itself that was brought about after heavy sacrifices.

Whereas there is general consensus amongst scholars that security without justice and human rights remains only symbolic peace; there is little agreement as to development of the affected community. Currently, Northern Uganda is not experiencing any armed conflict after LRA rebels were repulsed by UPDF and fled to Democratic Republic of Congo (DRC) and later to the Central African Republic. Despite this, issues of personal security, inadequate social protection, unresolved injustices and human rights violations

²⁶ Carlson, Cindy (2004) Review of Health Services Delivery in Uganda-General Country experience and Northern Uganda.

remain a concern of the general population as people resettle in their homes. This situation jeopardizes and problematizes the effort taken to balance restorative and retributive justice in the post conflict Northern Uganda.

1.3 Purpose of the Study

The purpose of the study is to provide a balanced view on what form of justice can be used as a model to restore peace in a country formerly torn by internal armed conflict.

1.4 Research Objectives

To assess the extent of human rights abuse during the internal armed conflict in northern Uganda.

To examine administration of restorative and retributive justice in the post internal armed conflict in Northern Uganda.

To recommend appropriate policies for balancing restorative and retributive justice in order to have a peaceful post armed internal conflict in northern Uganda.

1.5 Research Questions

What was the extent of human rights abuse during the internal armed conflict in northern Uganda?

How is restorative and retributive justice administered in the post internal armed conflict in Northern Uganda?

What are the policies of balancing restorative and retributive justice in order to have a peaceful post internal armed conflict Northern Uganda?

1.6 Hypothesis

There is no significant relationship between restorative justice and retributive justice in Northern Uganda.

1.7 Scope of the Study

1.7.1 Content Scope

This study focuses on the balancing of restorative justice and retributive justice in northern Uganda and the related literature to support the research topic.

1.7.2 Theoretical Scope

The study was underpinned by Theories of Restorative Justice by Charles Barton. Barton asserted that there are four most relevant and compelling theoretical explanations that included; reversal of moral disengagement, social and moral development, emotional and moral psychological healing and re-integrative shaming.²⁷

1.7.3 Time Scope

The time scope of this research covers the post armed conflict period in the Acholi sub-region, Northern Uganda. It also delves into a brief history of the armed conflict which was limited to the year 1986 when some rebels started their fight against the government of Uganda under the NRM. This period covers the armed conflict and resettlement period in which issues of security, justice, peace and human rights have been of great concern to the region. The study was conducted from November 2011 to May 2012.

1.7.4 Geographical Scope

Research was conducted in Northern Uganda where the LRA conflict took place. The area considered for this study was the Acholi sub region in Northern Uganda which is made of seven districts of Gulu, Kitgum, Lamwo, Nwoya, Pader, Amur and Agago. The area was considered because most of the atrocities by LRA rebels were committed in this region. It is within this region that balancing of restorative and retributive justice

²⁷ Barton, Charles (2000) Theories of Restorative Justice Empowerment.

must be balanced if those who committed the atrocities are to live side by side with those who were directly affected by LRA armed conflict in the region.

1.8 Significance of the Study

The findings of this study will help government of Uganda and civil society organisations in designing better policies of balancing Restorative and Retributive justice in the post armed conflict Northern Uganda.

The lessons learnt from the study may benefit the public particularly the government of Uganda which is currently focusing on the social economic development in Northern Uganda in the post armed era.

The study will help the researcher to get in-depth insight on issues relating to balancing of Restorative justice and Retributive justice in Northern Uganda.

The research will boost the documentary literature of Kampala International University library and other libraries on issues of Restorative and Retributive justice.

Lessons learnt from the study will benefit the community to understand issues regarding balancing Restorative and Retributive justice in the post armed conflict Northern Uganda.

The future researchers will use the findings of the study as a reference to their subsequent researches.

1.9 Operational Definition of Key Terms

For the purpose of this study, some terms were described in the paragraphs below.

1.9.1 Restorative Justice

It is a process where all the stakeholders affected by an injustice have an opportunity to discuss how they were affected by the injustice and they decide what should be done to repair the harm. In a restorative justice process, the people who were affected by a crime take an active role in addressing that crime.²⁸ Therefore, Restorative justice is a method of bringing together all stakeholders after consequences of injustice with the aim to put them right.²⁹ Restorative Justice processes mainly apply to those offenders who have admitted an offence which implies that it deals with the penalty phase of the criminal process for the admitted offenders not the fact-finding phase.³⁰

1.9.2 Retributive Justice

Retributive justice is a legal principal which dictates that punishment for a crime is acceptable as long as it is a proportionate response to the crime committed. Retributive justice is often associated with the old biblical concept of an eye for an eye, a tooth for a tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise and similar ideas regarding punishment.³¹ Retributive justice system often employs imprisonment, loss of property and in some cases loss of life in an effort to see that someone who commits a crime is punished in a way that is proportionate to the crime that was committed. The sense of proportion, however, varies greatly depending on the society. In most respects, retributive justice often seeks to punish a person for a crime in a way that is seen as compensatory for the crime and intended to deter potential offenders.

²⁸ Braithwaite John (2004) Restorative Justice and De-Professionalization.

²⁹ Braithwaite John (2002) Restorative Justice and Responsive Regulation.

³⁰ Kathleen Daly (2001) Restorative Justice: The Real Story.

³¹ Bible; Exodus 21, Verse 24-25.

1.9.3 Security

Security is a form of protection against danger, damage, loss and crime. Security can be achieved through elimination of threats among other methods.³² This includes but is not limited to the elimination of either the asset or the threat.

1.9.4 Justice

Justice to exist involves maximization of liberty, equality for all before the law, fair equality of opportunities and the elimination of all inequalities of opportunity based on position, birth or wealth.³³

1.9.5 Peace

Peace is a state of harmony characterized by the lack of violent conflict. Peace can be measured through absence of hostility, the existence of healthy interpersonal or international relationships, prosperity in matters of social and economic welfare, the establishment of equality and a working political order that serves the true interests of all.³⁴ Peacetime is not only the absence of armed conflict but also the presence of cultural and economic understanding and unity.

1.9.6 Human Rights

Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being. Human rights are conceived as universal and egalitarian. These rights may exist as natural rights or as legal rights, in both national and international law.³⁵ Human Rights are universal, indivisible and interdependent things which form the foundation of human existence and coexistence³⁶. The Conference in Vienna on human rights resolved that, Human

³² United Nations study (1986).

³³ John Rawls (1972) Theory of Justice.

³⁴ Pennsylvania, (2002) Definition of Peace.

³⁵ Sepúlveda *et al.* (2004).

³⁶ Kofi, Annana (2002) Human Rights. A Compilation of International Instruments. Volume, 1.

Rights and fundamental freedoms are the birth rights of all human beings and their protection and promotion is the first responsibility of Governments.³⁷

1.9.7 Armed Conflict

Armed conflict is defined as an organized, armed, and often a prolonged conflict that is carried on between states, nations, or other parties typified by extreme aggression, social disruption, and usually high mortality.³⁸ An armed conflict should be looked at as an actual widespread conflict between political communities and a form of political violence. The state of absence of armed conflict and other forms of violence is usually referred to as peace.

1.9.8 Rebel

Rebels are persons who stand up for their own personal opinions despite what anyone else says.³⁹ A true rebel stands up for what they believe is right, not against what is right. It is all about being an individual and refusing to follow a crowd that forces you to think the same way they do even if it means becoming an outcast to society. True rebels know who they are and do not compromise their individuality or personal opinion for anyone

³⁷ World Conference on Human Rights in Vienna on 25 June 1993.

³⁸ American Heritage Dictionary.

³⁹ Urban Dictionary.

CHAPTER TWO

LITERATURE REVIEW

2.0 INTRODUCTION

The purpose of this chapter was to review related literature to the question of balancing restorative and retributive justice. The literature was reviewed in line with the study objectives as stated in this part. The reviewed literature highlights what other scholars have contributed on issues of Restorative and Retributive justice. Whereas some studies have been carried out in this area and attempts to analyze the relationship between the concepts made, there is a marked absence of works which go into details on how it should be done in post conflict societies in Uganda.

2.1 Conceptualizing Retributive and Restorative Justice in Post conflict Situations

Retributive justice essentially refers to the repair of justice through unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process.⁴⁰ Retributive justice is a form of evidence-based justice that seeks to pursue and punish individuals that are understood to have breached either national or international law and legal conventions.⁴¹ It is aimed at persecuting human rights abuses in order to establish democracy.⁴² At the same time it involves putting in place independent courts and initiating prosecutions immediately. Failure to do so invites international pressure to prosecute individuals that were involved in perpetrating atrocities. The establishment of international courts, such as the International Criminal Court (ICC) represents an

⁴⁰ Wenzel, M., Okimoto T. G., Feather N. T. & Platow, M. J. (2007) Retributive and Restorative Justice.

⁴¹ Sweta Madhuri Kannan (2011) How Should Post-Conflict Societies Balance their Demand for Truth and Justice?

⁴² Charles Villa-Vicencio (2006). Transitional justice, restoration and prosecution; Handbook of Restorative Justice: A global perspective, p. 387.

alternative channel for prosecution, if national courts are seen to have failed to deal appropriately with the issues.⁴³

The process of retributive justice differentiates between victims in order to find appropriate punishments for the offenders. However, the processes try to rationalize grief and personal loss in a manner that might not be appropriate. For example women who suffered rape and sexual abuse or those who lost their loved ones during the conflict may find it difficult to appreciate the situation. This is in line with Brandon who stated that there is nothing that could compensate for the pain of losing a loved one.⁴⁴

This is in line with Wenzel, *et al* who state that whatever the exact nature of the transgression, the victims are not only deprived of something that is considered due to them in terms of their life, property, respect, to mention a few, but also an agreed on rule, law, or norm is violated. Therefore, even when it is possible to give back to victims what they have lost and undo the harm done to them, there remains the fact that a rule-violation occurred. The transgression itself, if intentional and blameworthy, is an injustice that victims and observers usually feel needs to be dealt with, beyond restitution of the victim's losses.⁴⁵

Many researchers who include Darley 2002; Feather 1999; Tyler *et al.* 1997; Vidmar 2000), observe that in Western societies, the primary means of dealing with the injustice implied in a transgression is punishment. Courts impose punishment on offenders; once a punishment is imposed, justice is often considered done. According to this notion, an offender, having violated rules or laws, deserves to be punished. For

⁴³ Darry Robinson (2003) Serving the Interests of Justice; Amnesties, Commissions and International Criminal Court, European Journal of Law. Vol. 14, No. 3.

⁴⁴ Brandon, Hamber & Richard Wilson (2002) Symbolic Closure Through Memory, Reparation and Revenge.
in Post-onflict Societies: Journal of Human Rights. Vol.1, No. 1

⁴⁵ Wenzel, M., Okimoto T.G., Feather N.T. & Platow, M.J. (2007) Retributive and Restorative Justice.

justice to be re-established, the offender has to be punished in proportion to the severity of the wrongdoing. According to this belief, people usually feel that justice demands the offender to be punished, beyond a possible restitution or compensation to the victim.⁴⁶ The punishment is considered necessary and sufficient for the restitution of justice. The punishment can be imposed unilaterally, where the offender does not have to agree to it, nor show repentance or remorse about his/her actions.⁴⁷

This is further emphasised by Carlsmith *et al.* (2002, p. 284) who stated that justice restoration aims at re-establishing some moral order and sense of justice. The perpetrator of injustice deserves to be punished in proportion to the past harm he or she committed. It is important to note that the punishment or the suffering and humiliation it inflicts on the offender, restores the justice. The offender having violated accepted rules deserves to be punished.⁴⁸ This is in line with Wenzel, *et al* who stated that Retributive justice is the reestablishment of justice through unilateral imposition of punishment on the offender consistent with what is believed the offender deserves. A unilateral punishment means that offenders have to endure suffering against their will. The imposition of punishment for purposes of justice means that offenders are made powerless and the suffering means that their status is lowered. The punishment can be unilateral where the offender need not be persuaded by the punishment and need not show any remorse.⁴⁹

The problem with the criminal justice system is that it is only interested in punishing the wrongdoers and yet punishment does not work. The foremost considerations of criminal justice system are the public interest in safety, deterrence, rehabilitation, correction of offenders, and the integrity of the criminal justice system in terms of

⁴⁶ Darley, J.M., & Pittman, T. S. (2003). The Psychology of Compensatory and Retributive Justice. *Personality and Social Psychology Review*.

⁴⁷ Wenzel, M., Okimoto T. G., Feather N. T. & Platow, M. J. (2007) Retributive and Restorative Justice.

⁴⁸ Carlsmith, K. M., Darley, J. M., & Robinson, P. H. (2002). Why do we punish? Deterrence and Just Deserts as Motives for Punishment. *Journal of Personality & Social Psychology*, 83, 284–299.

⁴⁹ Wenzel, M., Okimoto T. G., Feather N. T. & Platow, M. J. (2007) Retributive and Restorative Justice.

consistency with established precedents, and the general principle that, insofar as it is possible, like cases should be treated alike.⁵⁰ In the case of **The Queen v Clotworthy**, it was stated that a wider dimension must come into the sentencing exercise than simply the position between victim and offender. The public interest in consistency, integrity of the criminal justice system and deterrence of others are factors of major importance.⁵¹

In contrast to retributive justice, restorative justice seeks to implement a broader, more inclusive approach. It encourages the offender to take responsibility for the deed, while giving courage to the victims to voice their needs. In broader terms, restorative justice aims at institutionalizing peaceful approaches to solving issues of truth and justice, such as finding non-violent mechanisms of how to deal with violations of human rights. The Truth and reconciliation Commission initiated in Post apartheid South Africa is a clear example of how a restorative justice system should work.⁵²

However, showing no remorse for the crimes or maintaining innocence can be a highly provocative act leading to the disputation of some of these commissions, particularly when they recommend amnesty to some individuals or groups. Thus, from a victim's perspective, usually looks as counterproductive to the efforts towards bringing justice to the victims as perpetrators are seen as being almost rewarded for their deeds. The proponents of amnesties argue that these are necessary for the creation of a new social and political order based on human rights principles. The emphasis here lies in the creation of standards that are equal and inclusive. Amnesty can be understood as a reconciliatory mechanism that seeks to forgive and include offenders in the new social order.⁵³

⁵⁰ Charles Barton (2000) Empowerment and Retribution in Criminal and Restorative Justice.

⁵¹ The Queen v Clotworthy 1998, p. 12.

⁵² David Mendeloff (2004) Truth-Seeking, Truth-Telling and Post-Conflict Peace-Building: 'International Studies Review, Vol. 6, No.3.

⁵³ Roberta Bacic(2002) Dealing With the Past:Chile – Human Rights and Human Wrongs, Race and Class.

Robinson asserts that restorative processes include a wide variety of mechanisms that include sentencing circles and victim-offender remediation that can be quite valuable in bringing victims and offenders together. The processes can provide offenders with better understanding of the real impact of their offenses. The processes further provide something that nothing else in the traditional criminal justice can provide.⁵⁴ Braithwaite as quoted by Wenzel stated that, in practice restorative justice means the affected parties are directly involved in the justice process. In a deliberative interaction they are given voice to vent their feelings, present their side of the story and ideally come to an agreement about the hurt the offense caused, the offender's responsibility and what can be done to restore a sense of justice.

Such measures can include direct compensation to the victim, compensation to the wider community, as well as meaningful punishments to the offender that benefit the victim and the community. It is worth noting that whereas punishment can be, and often is, part of restorative justice practices, it is not central. Crucial for proper restorative justice is a process of deliberation that places emphasis on healing rather than punishing: healing the victim and undoing the hurt; healing the offender by rebuilding his or her moral and social selves; healing communities and mending social relationships.⁵⁵ (J. Braithwaite **1998, 2002**).

The strength of restorative justice intervention does not lie in the rejection of punitiveness but the empowerment of communities who are best placed to address both the causes and the consequences of the unacceptable behaviour in question.⁵⁶

⁵⁴ Robinson, H. Paul (2006) Restorative Processes and Doing Justice; University of St. Thomas Law Journal, Vol.3.

⁵⁵ Wenzel, M., Okimoto, T. G., Feather N. T. & Platow, M. J. (2007) Retributive and Restorative Justice.

⁵⁶ Charles Barton (2000) Empowerment and Retribution in Criminal and Restorative Justice.

This is in line with Umbreit who stated that justice requires some punishment although it does not have to be severe but has to be something that causes the offenders to know they did something wrong and they have to pay for that.⁵⁷

This is supported by Braithwaite and Strang (2001) who asserted that restorative justice involves punishment of the offender although it promotes more constructive punishments as alternatives to mere infliction of suffering on the offender such as incarceration.⁵⁸ Ames looked at Restorative justice as a more holistic approach to justice that encompasses the victim, offender and the community as opposed to retributive justice system. Restorative justice requires systems in which the offender, victim and community to all play an important role. Ames further asserted that Restorative practices which involve the victim, offender and community, have different applications including victim-offender meetings for less serious crime, the serious and violent crimes require dialogue, circle processes and community accountability boards.⁵⁹

Restorative justice is a more rehabilitative criminal treatment model and is regarded by advocates as a social movement with principles that support ethical treatment across government and community systems. Restorative justice proponents suggest that all individuals affected by a crime have an opportunity to heal, which in turn creates safer communities and more positive outcomes for both victims and offenders.⁶⁰

2.2 Justice and Human Rights Concerns in Post Conflict Situations Justice

Theoretically, Nagel Thomas asserted that people do not live in a just world. The concept of justices includes governing the justification and the conduct of war and

⁵⁷ Umbreit, M.S.(1989) Crime Victims Seeking Fairness not Revenge: Towards Restorative Justice.

⁵⁸ Braithwaite, J., & Strang, H. (2001). Restorative Justice and Civil Society. Cambridge. Cambridge University Press.

⁵⁹ Jessica Ames, (2007) Restorative Justice: Including Victims, Offenders and Communities in Criminal Justice Dialogue.

⁶⁰ Zehr, H. (2002).The Little Book of Restorative Justice. Intercourse, PA: Good Books.

standards that define the most basic human rights.⁶¹ Thomas Hobbes, formulated the issue of justice and sovereignty. He observed that actual justice cannot be achieved except within a sovereign state.⁶² Hobbes further observed that justices as part of relations among human beings requires government as enabling conditions. Therefore the government of Uganda had to fight LRA in order to maintain its state sovereignty if sustainable justice was to be achieved.

William Ferree, looked at justice as whatever is done in association with others to restructure institutions and laws to advance the perfection of every person and family affected by that institution. How well we advance Social Justice in turn can be measured for each institution in terms of that institution's success in elevating the dignity, status, power, and well-being of every participating person and family. The wider the gap in opportunities and power between those at the top and those at the bottom, the greater is our personal responsibility to engage in acts of Social Justice. We can only close that opportunity and power gap by restructuring the institutions in which we work and live, reforming the laws which shape our social interactions.⁶³

Ferree further states that, Social Justice in turn can be measured for each institution in terms of that institution's success in elevating the dignity, status, power, and well-being of every participating person and family. Ferree, makes it clear that it is unnecessary even wrong and perhaps sin full to do nothing and wait for the state to take action and correct the flaws in the common good.⁶⁴ Aristotle, legal justice is carried out by the state in enacting law, then people confirm by simply obeying the law.⁶⁵

⁶¹ Nagel Thomas (2004) The Problem of Global Justices. Lecture Delivered at Yale Law School, UK.

⁶² Thomas Hobbes (1588-1679) The Theory of Justice.

⁶³ Rev. Williams J. Ferree (1997) Introduction to Social Justice, Centre for Economic and Social Justice, Arlington.

⁶⁴ Ferree J. Williams (1997) Introduction to Social Justice, Centre for Economic and Social Justice, Arlington.

⁶⁵ Aristotle Philosophy of Justice.

The trend of events of ICC and courts in Uganda, indicate that that to achieve complete justice in northern Uganda still has a long way to go. Gwayaka stated that those suspected of crimes committed by LRA will only be charged if government exempts them from Amnesty or suspends the operation of the Amnesty Act. Gwayaka further observed that members of the UPDF were likely not to be investigated by the ICC or the local Courts. Unless legal and policy reforms are made to address the above, neither the ICC nor local courts in Uganda will deliver justice to victims of the LRA armed conflict.⁶⁶

2.3 Human Rights

Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. Human rights are conceived as universal or applicable everywhere and egalitarian in other words they should be the same for everyone. These rights may exist as natural rights or as legal rights, in both national and international law.⁶⁷ The doctrine of human rights continues to provoke considerable skepticism and debates about the content, nature and justifications of human rights. The question of what is meant by a right is itself controversial and a subject of continued philosophical debate.

Antonio asserted that war crimes involve violation of human rights.⁶⁸ LRA in Northern Uganda committed numerous atrocities which qualify the LRA rebels especially the commanders to be charged in the ICC for violating International Humanitarian Law. The Universal Declaration of Human Rights (UDHR) gives the details of those rights. Article 3 of the UDHR states that, everyone has a right to life, liberty and security of a person.⁶⁹ Many people in northern Uganda were denied the above mentioned rights for many years by LRA rebels. Article 9 of the UDHR states, that no one shall be subjected

⁶⁶ Gwayaka Magelah Peter (2012) No justice in Northern Uganda without Reforms.

⁶⁷ Sepúlveda *et al.* (2004) Interschool Honors Program in International Security Studies: Center for International Security and Cooperation, Stanford University.

⁶⁸ Antonio Cassese, (2003).

⁶⁹ Article 3 of the Universal Declaration of Human Rights, 1945.

to arbitrary arrest, detention or exile.⁷⁰ The LRA violated this Article by forcefully abducting people from Northern Uganda and recruiting them into rebel activities.

The African Charter on Human and People's Rights further clarifies on the issues of human rights. Article 5 of the African Charter on Human and People's Rights states that; "every individual shall have a right to respect of the dignity inherent in human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, in human or degrading punishment and treatment shall be prohibited". LRA rebels also violated the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 4 of this Convention condemns acts of torture. LRA rebels subjected the people of Northern Uganda to torture and inhuman treatment. Documentary evidence compiled by The Refugee Law Project (RLP) reveals a lot of acts of human rights violation in Northern Uganda especially by the LRA rebels.⁷¹

Some of the major human rights violations committed by the LRA are discussed below. The LRA committed severe atrocities against the people of Northern Uganda ranging from abduction, mutilation, murder and rape among others. However, certain incidents stand out from among the thousands of all those committed because of their magnitude and severity. For example Lomo *et al*/ revealed that the rebel commanders would force children to kill fellow children who would be caught trying to escape.⁷²

Opit and Pabbo IDP camps were some of the IDPs that were attacked and civilians killed. In Opit, the rebels attacked the Catholic Church killing five people and torching some 50 huts. Pabbo camp, which was located 40 kms from Gulu Municipality with a population of 50,000 people, was attacked six times in the month of June 2003 resulting in the death of 20 and abduction of 15 people.

⁷⁰ Ibid Article 9.

⁷¹ Lomo *et al*/ (2004) Refugee Law Project Working Paper No. 11. Behind the Violence: Causes, Consequencies and the Search for Solutions to the war in Northern Uganda.

⁷² Lomo *et al*/ (2004) Refugee Law Project Working Paper No. 11. Behind the Violence: Causes, Consequencies and the Search for Solutions to the War in Northern Uganda.

The brutality of LRA can further be expressed by what one called Obita Godfrey passed through. When the LRA rebels seized a 17-year old youth, Godfrey Obita, working as a Local Defence Unit (LDU) soldier, they cut off his ears, lips and fingers and stuffed them into an envelope and put it in his pocket. The rebels instructed him to take the envelope with a message addressed to the Acholi people warning them not to co-operate with the government.⁷³

The Human Rights and Peace Centre Report of October 30, 2003 reveal more violations of peoples' rights in Northern Uganda. In the Atiak Massacres in April 1995, the LRA under the command of Vincent Otti attacked Atiak in Gulu district and in a fierce battle with the UPDF 240 people were killed, most of whom were children and women who were unable to flee fast enough. In another incident on March 8 1996, a civilian convoy of over 20 vehicles with a military escorts travelling west on the Karuma-Pakwach road was ambushed. Between 50 and 110 civilians were killed by LRA rebels after the UPDF escorts had been overcome. Some were executed; others were killed after they refused to exit their buses and explosives were thrown inside.⁷⁴

The acts of LRA rebels were against international laws and human rights. Aboke girl's abductions on 10th, October 1996 was another incident where LRA broke into St. Mary's College Aboke in Apac District and abducted 139 secondary school girls between 13 and 16 years of age. Deputy Headmistress of the college, Sister Rachele Fassera followed the rebels in the bush and managed to convince them to release 109 out of 139 of the girls.⁷⁵ The situation in northern Uganda has steadily improved as a result of government armed forces increased pressure on the LRA which led them to flee to DRC and later to CAR where they are also committing atrocities.

⁷³ Human Rights and Peace Centre (HURIPEC) (2003); *The Hidden War: The Forgotten People: War in Acholi Land and its Ramifications for Peace and Security in Uganda*.

⁷⁴ Human Rights and Peace Centre (HURIPEC) (2003); *The Hidden War: The Forgotten People: War in Acholi Land and its Ramifications for Peace and Security in Uganda*.

⁷⁵ Els De Temmerman (2009) *Aboke Girls; Children Abducted in Northern Uganda*.

At the moment thousands of IDPs have returned to their villages with high hopes peace shall prevail again in Northern Uganda.

It should be understood that human rights include civil, political, social, economic and cultural rights. The issue is no longer merely the limit of the state's coercive power vis-à-vis the individual, but also includes the state's responsibility for the realization of all human rights. These include the responsibility to bridge human rights and security; the responsibility for education and health; the responsibility for creating the conditions for international development and the responsibility for keeping peace and security. But governments do not bear this responsibility alone. All organs of society, including human rights defenders, must assume their share of responsibility as well.

Additional Protocols of 1977 to the Geneva Conventions of 1949, Article 48 states that: "in order to ensure respect for and protection of the civilian and civilian object, the parties to the conflicts shall at all times distinguished between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives". This was expected to apply to the armed conflict in the Northern Uganda between UPDF and LRA where the two warring parties were expected to respect civilians and civilian objects.⁷⁶ Unfortunately this was never the case during the Northern Uganda internal armed conflict.

Afako observed that UPDF soldiers frequently failed to protect civilians from LRA rebel attacks and were often themselves accused of violent conduct against the IDPs.⁷⁷ Lomo also revealed that IDPs in Northern Uganda were created by government as a military strategy designed to deny the rebels manpower and other resources. However, the UPDF failed to protect the camps effectively and the LRA rebels continued

⁷⁶ Additional Protocols of 1977 to the Geneva Conventions of 1949 article 48, 51 of the Convention.

⁷⁷ Afako (2003) Pursuing Peace in Northern Uganda: Lessons from Peace Initiatives, Report. Commissioned by Civil Society Organisations for Peace in Northern Uganda (CSOPNU), Kampala.

to attack the camps. The LRA was reported to have attacked 16 of the existing 35 IDP camps in Gulu, Kitgum and Pader between June and September 2002.⁷⁸

Convention on the Rights of the Child (CRC), Article 37 states that: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment".⁷⁹

The situation in Northern Uganda has been contrary to the CRC, because the rebels abducted children, sexually harassed many, forced them into LRA ranks where they were forced to kill people from their own community areas.

The ending of overt violence via a peace agreement or military victory does not mean the achievement of peace. Rather, the ending of violence or a post-conflict situation provides a new set of opportunities that can be grasped or thrown away by stakeholders including the International community, concerned Governments and NGOs. It is worth noting that all insurgents that were fought in Uganda committed rape, murder, torture, property destruction, people displacement which led to suffering of people living in areas of the internal armed conflict. A case in point is the Luwero triangle situation where both NRA and UNLA government forces are both accused of committing atrocities in Luwero between 1980 and 1985.⁸⁰ However, the atrocities committed by LRA in Northern Uganda were so great that they compelled the government of Uganda to call upon the International Community to give a hand in arresting LRA commanders.

The steps taken by the government of Uganda in peace building in the northern Uganda among others included, round table negotiation, giving amnesty to the rebels, conducting regular combat operations to defeat the rebels, collecting people in Internally Displaced Peoples camps (IDPs) to ensure their security was guaranteed and taking the case to International Criminal Court (ICC). The Uganda government wanted

⁷⁸ Lomo *et al* (2004) Refugee Law Project Working Paper No. 11. Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda.

⁷⁹ Article 37 of the Convention on Rights of the Child, 1989.

⁸⁰ Zachary Lomo and Lucy Hovil (2004) '*Behind the Violence: Causes, Consequences and the Search for Solutions in Northern Uganda*' Refugee Law Project (RLP) February 2004 Working Paper No.11.

the services of ICC because the actual activities of the ICC are regarded as part of the international commitment to end the culture of impunity, establish the rule of law, prevent future atrocities, and build peace in the conflict ridden areas.⁸¹

However, before investigations by ICC could start, controversy ensued as to whether Acholi Traditional Justice system or the ICC would be more appropriate to handle the crimes committed by LRA in Acholi sub-region. In the course of the debate on the matter, it was widely stated that Acholi traditional justice is restorative, while ICC justice is retributive.⁸² Most often, Acholi traditional justice has been described as restorative justice based on forgiveness and reconciliation offered by the tradition.⁸³ It was against that background that it was recommended to the United Nations (UN) and international community to take robust action to encourage the government of Uganda to negotiate with the LRA.⁸⁴

In post conflict, there is an interest in human security enhancement. During conflict, there is always breakdown of the social infrastructure and justice and law and order. The police system is likely to have become more corrupt and prison system could have collapsed. The armed forces may also have played a negative role like arresting civilians, intimidating the judges and taking over the role of the police. More often than not a large number of armed civilians, militias and uncollected arms remain a source of insecurity even after a conflict has been formally ended. Above all, the population remains highly traumatized, with little trust in the government or the legal system, a situation that may lead to impunity and lack of accountability.

⁸¹ Tamara Enomoto (2011) Revival of Tradition in the Era of Global Therapeutic Governance: The Case of International Criminal Court Intervention in the situation in Northern Uganda.

⁸² Jean-Louis Roy (2004). Bridging Human Rights and Security.

⁸³ Blumenson, (2006) Civil Society Organisations for Peace in Northern Uganda.

⁸⁴ Rasmusson, E.K. (2006). Only Peace can Restore the Confidence of the Displaced.

2.4 The Role of Peace Making, Enforcement and Building in Balancing Restorative and Retributive Justice

To achieve balanced restorative and retributive justice calls for the process of peace building and conflict transformation. This entails multi-track Diplomacy in practice. Peacemaking, enforcement and building are concerned with three major areas namely; conflict transformation/enforcement, peace building and multi-track diplomacy.

Peace Enforcement

Louise Diamond and John McDonald asserted that the concept of peace enforcement refers to conflict transformation using enforcement mechanisms of peace keeping, military intervention and peace monitoring. It is a process of moving from conflict-habituated system to peace systems.⁸⁵ Therefore, there is need to take a concerted effort including peace enforcement in order to stabilize justice patterns in a process of settlement after armed conflict in Northern Uganda.

Peace –Building

The term conflict transformation describes the outcome but it does not describe peace building. According to Boutros Boutros Ghali former UN Secretary General, peace building, in his 1992 agenda for peace refers to an undertaking ranging from preventive diplomacy, to peace making, to peace keeping and finally to post conflict peace building. Peace building means creating the tangible and intangible conditions to enable a conflict habituated system to become a peace system. Peace-building can be done, therefore, before, during or after violence erupts. To build peace, one must have a viable infrastructure or foundation on which to build it, thus the activities of peace building are about creating infrastructures.

⁸⁵ Louise Diamond and John McDonald (1991). Multi-Track Diplomacy.

There are three distinct types of peace building activities, all of which are necessary to achieving conflict transformation namely political peace building, structural peace building and social peace building. Political peace building represents the outermost super structure and is about agreements dealing with political arrangements that provide the overall context for understanding the relationships of the various parties and their resources. It deals with building a legal regime that can address the political needs.

Structural peace building deals with creating structures or systems of behaviour, institutions, concerted actions that support the implementation of a peace culture. It is about building an economic, military and community infrastructure that provides concrete and realistic avenues for meaningful peace. Activities of structural peace building include economic development programs, strengthening democracy, good governance and supporting the creation of indigenous NGOs which support peace. Social peace building seeks to build the human infrastructure that can support the political agreements and societal institutions. This is in line with Okumu-Alya who stated that conflict resolution and peace building should be handled constructively in order to enhance good human relations. He further observed that it is important that the needs, aspirations and wishes of the war-affected population should be taken into consideration. To solve the problems caused by war in Northern Uganda requires addressing regional disparities, disadvantages and marginalization.⁸⁶

Peace Making

Peacemaking involves many key players including but not limited to the international community, sympathisers and the conflicting parties to achieve peace through negotiations, mediations, reconciliation, and using good offices among others.

⁸⁶ Okumu-Alya Fabius; The Regional Dimensions of the war in Northern Uganda.

It is concerned with multi-track diplomacy between officials and government actions to resolve conflict and unofficial efforts by non-governmental professionals to resolve conflicts within and between states. The actors seek to make peace through religion activism, research, training, education and involvement of the affected community.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 INTRODUCTION

This section presents the methodology that was used in conducting the study. It covers the research design, methods of data collection, data collection instruments, data analysis, presentation and limitations of the study.

3.1 Research Design

Case study research design was used because it provides much more detailed information than other methods and designs. A case study also allows the researcher to collect data using multiple methods like surveys, interviews, documentary review and observation among others to provide the complete story.⁸⁷ Kenneth Harling asserted that a case study is a holistic inquiry that investigates a current phenomenon within its natural setting.⁸⁸

At the same time the research was mainly desk research. Paul Hague and Conor Wilcock observed that desk research refers to secondary data which can be collected without fieldwork.⁸⁹ The main sources of data for this study include published reports, statistics and other sources of information that did not involve field surveys which included searching libraries and the internet although some interviews were also carried out with experts. The Press was also found to be one of the sources of data for the study since many atrocities by LRA were covered by the Local news papers and other

⁸⁷ Palena Neale, Shyam Thapa & Carolyn Boyce (2006); Preparing a Case Study: A Guide for Designing and Conducting A case Study for Evaluation Input.

⁸⁸ Kenneth Harling (2002), Case Studies: Their Future Role in Agricultural and Resource Economics: Paper presented at the learning workshop, held at the annual meeting of the American Agricultural Economics Association; Long Beach, California, July 27, 2002.

⁸⁹ Paul Hague and Conor Wilcock; How to get Information for Next to Nothing. Available on <http://www.b2binternational.com/publications/white-papers/desk-research/>

media houses. The study involved the collection and review of relevant documentation on Restorative justice and Retributive justice in post internal armed conflict in Uganda and other countries. The data collected was stored, organised, analysed and presented in a descriptive form.

3.2 Data Collection

Data was collected using both primary and secondary techniques of data collection. The primary techniques of data collection included face to face interviews, telephone interviews, observation and focus group discussions.

3.3 Secondary Data

The secondary data was gathered using qualitative techniques of data collection. The researcher collected data from, text books, the internet, libraries, reports from government and non-government agencies and handled Court cases.

3.4 Documentary review

During the documentary review, the researcher made a study by carefully looking at written documents and visual information from different libraries and other sources. The literature was reviewed in line with the objectives of the study. The documentary review gave direction of what other researchers had discovered or observed in the same field of study.

3.5 Ethical Consideration

It is important to observe ethical consideration to avoid causing harm to the respondents. Ethical Standards of the American Educational Research Association (AERA) stated that "It is of paramount importance that educational researchers respect

the rights, privacy, dignity, and sensitivities of their research populations and also the integrity of the institutions within which the research occurs".⁹⁰

During the process of data collection, confirmation was given to the respondents by the researcher who assured the respondents that the reason for the research was for academic purpose only.

3.6 Limitations of the Study

Some respondents were reluctant to give information concerning their experience. However, the researcher tried as much as possible and explained to those respondents that the purpose of the study was for academic purposes. The explanation by the researcher made the respondents free and lastly the respondents gave the required information.

Since not many studies had been conducted in the area of balancing restorative and retributive justice in Uganda, the researcher found it difficult to access information specific to Uganda on the topic under study. However, the researcher tried as much as possible to visit libraries around Kampala and surf the internet to ensure that he got enough information about the topic.

Lack of enough resources especially finances led to some delay in data collection. However, the researcher was compelled to acquire a bank loan that enabled him to travel and carry out the study effectively.

There was some difficulty in getting some respondents for the face to face interview. That problem was overcome by telephone interview where some respondents were contacted and they gave the required data.

⁹⁰ Ethical Standards of the American Educational Research Association (AERA).

Due to limited time, lack of enough funds and other resources the researcher limited the study to Acholi sub-Region in Northern Uganda. In the ideal situation the study should have extended to areas where LRA rebels have been operating like; Southern Sudan, Democratic Republic of Congo and Central African Republic.

CHAPTER FOUR

DATA COLLECTION, ANALYSIS, AND PRESENTATION

4.0 LEGAL FRAMEWORK FOR JUSTICE CONCERNS IN THE POST INTERNAL ARMED CONFLICT IN NORTHERN UGANDA

4.1 Introduction

It was observed by Linda that modern conflicts are increasingly intra-state struggles, rather than state versus state wars. Even when violence spills over borders, guerrilla and terror tactics often predominate. Civilians become direct victims of terror and atrocities or indirect victims of displacement and deprivation. Rebel militias use hit and run tactics and attacks against civilians to undermine the dominant power rather than attempt to hold territory. Linda further states that a military solution to such conflicts is unlikely. To make matters more complicated, when the armed conflict ends with a peace deal, leaders of rebel groups who are also international criminals end up on a negotiating table rather than in the dock of a Criminal Court. Although it seems that the immediate need for peace will often outweigh calls for justice, the International Criminal Court can further both goals in certain circumstances.⁹¹

The long-running conflict in Uganda illustrates the problem and potential solution. A vicious rebel group, the Lord's Resistance Army, has been terrorizing civilians in Uganda for decades. Its favorite tactics included abducting children and turning the girls into sex slaves and the boys into drug-addled child soldiers. Abductees were forced to mutilate, maim, rape, and kill under threat of death. Over a million people were displaced into overcrowded, squalid camps where they were still vulnerable to attacks because of insufficient protection by the government, whose forces were also at times

⁹¹ For an extensive discussion of these issues in the context of Northern Uganda, see Linda M. Keller, *Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms*; 23CONN.J.INT'LL.(forthcoming Spring 2008).

accused of human rights abuse of civilians whom they were expected to protect. The L RA rebels during the Juba Peace talks were willing to put down their arms and end the atrocities but the price for signing a peace deal included immunity from the charges made against their leaders by the International Criminal Court (ICC).⁹² The Prosecutor of the ICC pointed out such demands by LRA amounted to blackmail and extortion. The Prosecutor asserted that the international community could justifiably reject trading peace for impunity, thereby leaving the people of Northern Uganda once again subject to war crimes and crimes against humanity in promoting some measure of justice.

4.2 Domestic Legal Framework

Uganda is a common law country with a dualist system and an adversarial criminal justice system. It has ratified a number of international treaties that prohibits violence and discrimination against women. These included the UN International Covenant on Civil and Political Rights, the African Charter on Human and People's Right, the UN Convention against Torture and other Cruel, Inhuman and Degrading treatment or Punishment, the UN convention on the rights of the child and the UN Convention on the Elimination of all forms of Discrimination against Women (UNCEDAW). These international treaties require Uganda to adopt measures that protect women from discrimination or violence. However, a number of these instruments have not been internalized; but since some of them, contain principles of Customary International law they are automatically applicable without the need of a law incorporating them.

The UNCEDAW committee in its general recommendation 19 stated that:

The definition of discrimination includes gender-based violence. This is, violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or

⁹² Tim Allen (2006) Trial Justice: The International Criminal Court and The Lord's Resistance Army.

sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.⁹³

The CEDAW Committee also stressed that states are required

*"To take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private actors; [and to] ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence, give adequate protection to all women, and respect their integrity and dignity."*⁹⁴

It is worth noting that the guide lines put down by CEDAW were violated by LRA with impunity.

The Universal Declaration of Human Rights (UDHR) gives details of rights. Article 3 of the UDHR states that, everyone has a right to life, liberty and security of a person.⁹⁵ Many people in Northern Uganda were denied the above mentioned rights for many years by LRA rebels. Article 4 of the UDHR; states that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." The LRA rebels violated this article when the abducted girls and women and started using them as sex slaves. Article 5 of the UDHR, further states that; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The LRA rebels did not observe article 5, since they were constantly subjecting their victims to torture and inhuman treatment.

Article 9 of the UDHR states, that no one shall be subjected to arbitrary arrest, detention or exile.⁹⁶ The LRA violated this Article by forcefully abducting people from Northern Uganda and recruiting them into rebel activities.

⁹³ General recommendation 19 of the CEDAW committee, Un Doc A/47/38 at 1 (1993) paragraph 6.

⁹⁴ Ibid paragraph 24.

⁹⁵ Article 3 of the Universal Declaration of Human Rights, 1945.

⁹⁶ Ibid Article 9.

The African Charter on Human and People's Rights further clarifies on the issues of human rights. Article 5 of the African Charter on Human and People's Rights states that; "every individual shall have a right to respect of the dignity inherent in human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, in human or degrading punishment and treatment shall be prohibited". LRA rebels also violated the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 4 of the Convention condemns acts of torture. LRA rebels subjected their victims from Northern Uganda to torture and inhuman treatment. Documentary evidence compiled by The Refugee Law Project (RLP) reveals a lot of acts of rape, child soldier, abduction and displacement cases which constitute human rights violation in Northern Uganda especially by the LRA rebels.⁹⁷

The Constitution of the Republic of Uganda, 1995 contains a number of provisions that protect the rights of women. Article 33 (1) stipulates that "women shall be accorded full and equal dignity of the person with men' Article 33(2) further requires the state to "provide the facilities and opportunities necessary to enhance the welfare of the women to enable them to realize their full potential and advancement." Article 33 (6) of the Constitution outlaws all "cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status."

The children and women from Northern Uganda who were subjected to sexual violence were deprived of the aforementioned rights as guaranteed in the Constitution of Uganda and the various international human rights treaties that Uganda ratified. The norms prohibiting rape and other forms of sexual violence against women can be found in the Penal Code of Uganda Cap 120 Laws of Uganda. These provisions criminalize rape, indecent assault, elopement, defilement and incest. According to Section 123 of the Penal Code rape is defined as indicated below;

⁹⁷ Lomo *et al*/ (2004) Refugee Law Project Working Paper No. 11. Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda.

"Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape."

Section 124 prescribes the death penalty as a punishment for a person convicted of rape.⁹⁸

In order to secure a conviction for rape, the state, needs to prove that the accused man had carnal knowledge of the complainant using his penis, without her consent or her consent was vitiated by the circumstances mentioned in Section 123 of the Penal Code Act. It is important to note that the penetration recognized here is vaginal penetration and not anal or oral. Furthermore penetration by use of objects such as weapons, sticks, guns, etc. are not covered and would not amount to rape. Marital rape is not covered by the provision as well. This means that the sexual acts committed against women during the armed conflict which involved penetration by use of objects cannot be prosecuted under the current legal provisions on rape, hence denying justice to a significant number of victims of sexual violence.

Section 129 of the Penal Code Act also prohibits defilement. The section provides that;

Any person who unlawfully has sexual intercourse with a girl under the age of eighteen years commits an offence and is liable to suffer death. Any person who attempts to have unlawful sexual intercourse with a girl under the age of eighteen years commits an offence and is liable to imprisonment for eighteen years, with or without corporal punishment."

The LRA rebels abducted many young girls below the age of eighteen years who they later defiled. Some of the girls later escaped but the majority of the abducted girls are

⁹⁸ The Penal Code Act, Cap 120 Laws of Uganda.

still with LRA as fighters, wives of the commanders and others are being used as sex slaves.

The Law in Uganda about rape and defilement is very clear and the punishment is known to be death for anyone who commits those offences. Therefore, those who committed the above mentioned crimes during the armed conflict should be tried and punished using the retributive approach to justice. However, some people especially those who hail from Acholi sub-region of Northern Uganda are divided on the method to use which will satisfy all stake holders. Some people advocate for trying the offenders in the government official courts that follow retributive approach to justice. Other people reject this approach and prefer the local courts known as **Mato Put and Kayo cuk** which follow restorative approach to justice where reconciliation of offenders and victims together with their families.

There are a number of sexual crimes that are prohibited by the Rome Statute of the International Criminal Court, which are also prohibited by the Penal Code of Uganda. It is worth noting that Uganda is among the countries that ratified the ICC Statute.⁹⁹ The above mentioned crimes include; sexual slavery, forced prostitution and forced pregnancies. Uganda established International Crimes Division of the High Court of Uganda which seeks to domesticate the provisions of the Statute of the International Criminal Court.¹⁰⁰ The Court has jurisdiction to try perpetrators of a number of forms of violence which are also in the Penal Code. The victims may be granted the remedy under the domestic laws. However, some of the prohibitions of these forms of violence have become part of Customary International law, which makes them automatically applicable without the need of a domesticating law but it would take a proactive judge to do so.

⁹⁹ Ratified the Rome Statute of the ICC on June 14 2002.

¹⁰⁰ See the 2010 establishment of the International Crimes Division of the High Court of Uganda.

The Government of Uganda, recognizing the numerous inadequacies that would hinder it from effectively prosecuting the crimes committed by the LRA combatants relied on Article 14 of the Rome Statute of the ICC¹⁰¹ to become the first state party to refer a case against the belligerents to the ICC in 2003.¹⁰² In July 2004 the Office of The Prosecutor of the ICC commenced investigations against the top commanders of the LRA. In July the ICC issued warrants of arrest against the top commanders of the LRA. The warrants, which were unsealed in October of the same year, contained 33 counts of War Crimes and Crimes against humanity.¹⁰³ The referrals made by the Government of Uganda were perceived by some people as more of a strategic move by the government of Uganda to protect officers of the UPDF from being investigated for committing crimes against humanity and war crimes rather than a gesture of genuine interest to have the LRA combatants prosecuted.¹⁰⁴

The Government of Uganda under the June 2007 Juba Agreement on Accountability and Reconciliation, resolved to establish a Special Division of the High Court commonly known as the War Crimes Division of the High Court which is charged with holding trials for the perpetrators of gross human rights violations, during the armed conflict. In a report to the ICC on the status of the execution of the arrest warrants against Kony, the Government of Uganda stated that:

"The Special Division of the High Court is not meant to supplant the work of the International Criminal Court and accordingly those individuals who were

¹⁰¹ Article 14 of the Rome Statute of the International Criminal Court, 2002.

¹⁰² Situation in Uganda, The Prosecutor V Joseph Kony, Otti, Okot odiambo and Dominic Ongwen Case No. ICC-02/04-01/05, Decision on the Prosecutor's Application for unsealing of the warrants of Arrest, 4-27(Oct.13, 2005).

¹⁰³ Situation in Uganda ;ICC-01/05 President of Uganda refers situation Concerning The Lord's Resistance Army (LRA) To the ICC ICC-20040129-44.

¹⁰⁴ Lomo *et al*/(2004) Refugee Law Project Working Paper No. 11. Behind the Violence: Causes, Consequencies and the Search for Solutions to the War in Northern Uganda.

indicted by the International Criminal Court will have to be brought before the Special Division of the High Court for trial”¹⁰⁵

The establishment of the Special Division of the High Court would enable the Government of Uganda to raise an admissibility challenge under Article 19 of the ICC Statute. However the Pretrial Chamber of the ICC in its ruling in an admissibility challenge brought under Article 19 of the Court by the defense counsels ruled that:

*“Pending the adoption of all relevant texts and the implementation of all practical steps, the scenario against which the admissibility of the case has to be determined remains therefore the same as at the time of the issuance of the warrants, that is one of total inaction on the part of the relevant national authorities; accordingly, there is no reason for the Chamber to review the positive determination of the admissibility of the case made at that stage”*¹⁰⁶

The decision of the Pre-trial Chamber was confirmed by the Appeal chamber of the ICC.¹⁰⁷

The International Criminal Court Act, 2010 was enacted to assist in handling crimes similar to those that were being committed by LRA rebels. The purpose of the ICC Act, 2010 is to make provisions in Uganda’s law for both punishment of the International crimes of genocide, crimes against humanity, war crimes and crimes of aggression. The ICC Act, 2010 also allows the ICC to conduct proceedings in Uganda.¹⁰⁸

¹⁰⁵ Annexure to the Agreement on Accountability and Reconciliation; February 2008.Clause 7.

¹⁰⁶ The Prosecutor V Joseph Kony, Vicent Otti Okot Odhiambo, Dominic Ongwen .Decision on the admissibility of the case under Article19(1) of the Statute dated 10 march 2009” (ICC-02/04-01/05-379).

¹⁰⁷ The Prosecutor V Joseph Kony, Vicent Otti, Okot Odhiambo,Dominic Ongwen judgment on the Appeal of the Defence against the “Decision on the admissibility of the Case under Article19(1) of the Statute” of 10 March 2009.

¹⁰⁸ Section 2 of the International Criminal Court Act,2010.

4.3 Status of Victims of Violence under the Criminal Justice System of Uganda and their Rights as Protected by Universal Declaration of Human Rights (UDHR).

In Uganda's Criminal Justice system, all criminal prosecutions are initiated by the Director of Public Prosecution on behalf of the state. Victims are referred to as complainants and serve as prosecution witnesses. They have a limited role in the prosecution and their interests are wholly vested in the prosecutor.

There are a number of procedural and evidentiary requirements which are unfavorable to victims. Some of those procedural and evidentiary requirements during the trial make some victims of violence to be re-victimized. For example in the prosecution of sexual violence cases, the law requires the corroboration of evidence provided by the victim of sexual violence. This corroboration may take the form of a medical report and witness testimony.

In the case of **Republic v Manual Ishwerlal Purohit**¹⁰⁹ the Court described corroboration as:

"The independent testimony which affects the accused by connecting or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it."

The justification for corroborated evidence was elaborated in the case of **Mama v Republic** where Mwendwa CJ and Madan JA noted that:

"It has been said again and again that in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. It is dangerous because human experience has shown that girls and women sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons and sometimes for no reason at all".¹¹⁰

¹⁰⁹ (1949)9 EACA58.

¹¹⁰ (1970)EA370.

Due to the condition of secrecy in which rape and other forms of violence are committed it is nearly impossible to obtain witnesses to testify in corroboration. A medical report by a government is also considered to be corroborating evidence by the courts. A woman who was raped or girl who was defiled is required to report the crime to the police and also obtain Police form 3 (PF3) which later serves as a medical report once it is completed by a government doctor upon carrying out a medical examination. Due to the stigma that comes with being raped or defiled many victims do not report the crime as soon as possible. As a result most of the crucial evidence required to prove rape is destroyed.

The examination of the victims' sexual history and moral character, as relevant and admissible evidence by the Court, also deters many victims of sexual violence from seeking justice from the Courts. A number of rape victims have been subjected to the most disturbing and humiliating cross examination in court under this provision. Section 154 (d) of the Evidence Act of Uganda provides that "The credibility of a victim of sexual violence may be impeached by the accused by showing that the victim was generally of a moral character." Ironically the moral character and sexual history of the accused is not relevant at all. As a matter of fact the only time the character of the accused is examined by the court is when he adduces evidence to show that he is of a good character.¹¹¹

Another challenge faced by many victims of sexual violence is the insensitivity, and incompetence of the police when dealing with victims of sexual violence which has discouraged many victims from reporting cases of sexual violence. Most of the police officers have cultural prejudices towards women and these prejudices affect the way they deal with victims of sexual violence. In most cases they do not take the victim seriously, and may refuse to register the complaint. In a number of occasions they accuse the victims of having enticed the accused or having not resisted the abuse.

¹¹¹ Section 50 of the Evidence Act Cap 6 Laws of Uganda.

They also inquire as to what the victim was dressed at the time and how she conducted herself.¹¹² This is an invasion of the victims' privacy and has the effect of undermining her dignity. In cases where they do record the complaint they are at times bribed into not carrying out investigations effectively and they most often end up releasing the suspect.

A number of victims have stated that they have been ridiculed and insulted by police officers. In some instances the absence of female police officers to whom the victims can comfortably narrate their ordeal, deters many victims from lodging complaints.¹¹³ The courts, which are predominantly occupied by men, are also less sensitive towards how traumatic it is for many victims of sexual violence to relive the incident of sexual violence they were subjected to. Most rape trials in Uganda are known to place the victim in a position of proving that she was not responsible for her victimization. They tend to inquire about the victims sexual history, moral background and what she was wearing at the time she was sexually assaulted.

The police are most often not bothered about the cultural backgrounds of most of the victims, which make it a taboo for them to describe their sexual experience in graphic details. Hereunder is an example of how the courts in Uganda can be totally insensitive to the trauma experienced by victims of sexual violence. One of the Ugandan dailies reported that "A woman called Regina Awor was raped by one Stephen Apia. Awor sought justice in the Uganda High Court. At the trial, Awor described what happened to her as: "He made me his wife and worked on me." The prosecutor wanted her to be more explicit, to provide a detailed account of what had the accused done to her. However the court was filled to the brim with strangers and Awor being too traumatized was unable to graphically describe what

¹¹² Amnesty International, Uganda Doubly traumatized: Lack of access to justice for female victims of sexual and gender based violence in Uganda; 30th November 2007 AFR/59/005/2007.

¹¹³ Amnesty International, 'Uganda Doubly traumatized. Lack of access to justice for female victims of Sexual violence and gender based violence in Uganda.' 30th November 2007 AFR/59/005/2007.

she had experienced which was necessary, if the prosecutor was to prove the essential ingredients of rape that involve penis-vaginal penetration and lack of consent beyond any reason of doubt.

In his decision acquitting, the accused Justice Lugayizi described the testimony of the victim as "vague and meaningless." He further noted that: "The complainant has only herself to blame for the fact that this case collapsed. She stubbornly refused to say exactly what took place inside the hut of the accused, on the day in issue."¹¹⁴ The other challenge faced by victims is the fact that the Judiciary does not have adequate funds to facilitate the holding of regular criminal sessions to deal with case backlog.

According a report by Amnesty International the numbers of criminal sessions held in a year are determined by the availability of funds.¹¹⁵ Northern Uganda, has one high court based in Gulu responsible for five districts. The High Court has a single judge. During the criminal sessions, victims are required to travel hundreds of kilometers to get to Gulu to give testimonies in support of their cases. The cost of transportation and accommodation alone deters many of the victims from attending the court sessions. As a result the cases end up getting dismissed due to insufficient evidence to prove the case. At the same time the criminal justice system does not have protective measures in place for witnesses and victims. Most of the proceedings are conducted in public where witnesses are not offered protection from victimization by the accused or the family members of the accused after they have testified against them.

¹¹⁴ The New vision September 17th 2007.

¹¹⁵ Amnesty International, 'Uganda Doubly Traumatized. Lack of Access to Justice for Female Victims of Sexual Violence and Gender Based Violence in Uganda, '30th November 2007 AFR /59/005/2007

4.4 Amnesty Act, 2000

In 2000, The Government of Uganda in a bid to end the 20 year war and prepare for the reconciliation process between the people of Northern Uganda and the LRA combatants enacted the Amnesty Act. According to the preamble of the act, the objective of the Act is: "To provide for an Amnesty for Ugandans involved in acts of a warlike nature in various parts of the country and for other connected purposes".

Amnesty is defined in the Act as: "Pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State."¹¹⁶ According Section 3 of the Amnesty Act, any combatant who reports to the nearest police or army barracks and renounces, abandons his or her involvement in the armed conflict; and surrenders the weapons in his or her possession shall be issued with an Amnesty certificate. Section 3 (2) further provides that;

*"where a reporter is a person charged with or is under lawful detention in relation to any offence mentioned in Section 3, the reporter shall also be deemed to be granted the Amnesty if the reporter declares to a prison officer or to a judge or magistrate before whom he or she is being tried that he or she has renounced the activity referred to in Section 3; and declares his or her intention to apply for the Amnesty under this Act."*¹¹⁷

Ex combatants who are granted Amnesty are provided with resettlement assistance and are assisted by the Amnesty commission in their reintegration with their societies. The Amnesty provided for in the above provisions is a blanket Amnesty. It is extended to all combatants irrespective of their age, rank and gravity of the crimes they committed. It covers all the war crimes and crimes against humanity committed by the combatants during the armed conflict. It is reported that over 15, 000 combatants have so far received Amnesty from the government and have been resettled. A number of them are living in the same communities as their victims.¹¹⁸

¹¹⁶ Article 2, of the Amnesty Act Cap 294 Laws of Uganda.

¹¹⁷ Ibid Section 3 (2).

¹¹⁸ Refugee Law Project, Working Paper No15, Whose Justice: Perceptions Of Uganda's Amnesty Act

The granting of Amnesty is widely perceived as a form of restorative justice and is in consonance with the traditional justice mechanisms, which foster reconciliation and in contrast with criminal prosecutions which are retributive in nature.¹¹⁹ Some scholars have argued that criminal prosecutions prolong conflicts and that more flexible restorative measures might be more appropriate in situations involving mass atrocities with thousands of perpetrators.¹²⁰

The National Amnesty granted by the government of Uganda to the combatants has been widely criticized by a number of scholars who consider it to foster impunity. Richard Decker argued that the granting of amnesty to perpetrators undermines the rule of law and reduces of justice to the victims. Other scholars argue that it is inconsistent with Uganda's obligations under International law¹²¹. It contravenes a number of international provisions that grant victims of gross human rights violations the right to an effective remedy. In the case of **Rodriguez v Uruguay** the Human Rights Committee concluded that the granting of Amnesty by governments to individuals who violate the human rights of others is a violation by the state, of its obligation to provide victims with an effective remedy. The committee further stated that Amnesty laws; "Effectively excludes in a number of cases the possibility of investigation into past human rights abuses and thereby prevents the state party from discharging its responsibility to provide effective remedies to the victims of those abuses.

2000: The Potential For Conflict Resolution And Long –Term Reconciliation, '7-8 2005 Available At [Http://Www.Refugeelawproject .Or/Papers/Working Papers/R15.PDF](http://www.Refugeelawproject.org/Papers/Working%20Papers/R15.PDF).

¹¹⁹ Ibid.

¹²⁰ Moy. H. The International Criminal Court's Arrest Warrants and Uganda's Lord's Resistance Army. The debate over Amnesty and Complementarity, '19 Harvard Human Rights Journal (2006)267-273 At 272.

¹²¹ Pay Akhavan, ' Developments at the International Criminal Court : The Lord's Resistance Army, Case of Uganda's Submission of the State Referral to the International Criminal Court. '99 AM.J. Int'l Lpg 409(200 5). Also see Kasaija Phillip Apuuli Amnesty and International law: The Case of the Lord's Resistance Army insurgents in Northern Uganda, available on www. Accord.

In the case of **Prosecutor v Kamara and Prosecutor v Kallon**¹²² the defendants lodged an appeal before the Appeals Chamber of the Special Court for Sierra Leone, in which they challenged the jurisdiction of the Special Court to try them for crimes they committed, on the ground that they had been granted amnesty by the government of Sierra Leone under the Lome Agreement.¹²³ The Chamber noted that:

*"Whether to prosecute the perpetrators of rebellion for their act of rebellion and challenge to the constituted authority of the state as a matter of internal law is for the state authority to decide there is no rule against rebellion in international law the state concerned may decide to prosecute the combatants, it may decide to pardon them generally or partially, conditionally or unconditionally. It is where, and in this case because, the conduct of the participants in the armed conflict is alleged to amount to international crime that the question arises whether the state has the same choice to dispense with the prosecution of the alleged offenders, does this conclusively bar prosecution for the alleged commission of grave crimes against humanity in an international tribunal or for that matter by any other state claiming universal jurisdiction to prosecute".*¹²⁴

The Appeals Chamber of the Special Court for Sierra Leone concluded that; "The grant of amnesty or pardon is undoubtedly an exercise of sovereign power which, essentially, is closely linked, as far as crime is concerned, to the criminal jurisdiction of the state exercising such sovereign power. Where jurisdiction is universal, a state cannot deprive another state of its jurisdiction to prosecute the offender by the grant of amnesty". It is for this reason unrealistic to regard as universally effective the grant of amnesty by a state in regard to grave international crimes in which there exists universal jurisdiction. A state cannot bring into oblivion and forgetfulness a crime, such as a crime against international law, which other states are entitled to keep alive and remember. ¹²⁵

¹²² Prosecutor V. Kallon, case No. SCSL-2003-07-PT, (16june 2003); Prosecutor V. Kamara, case No.SCLS-20003-10-PT(16 JUNE2003

¹²³ Communication No. 322/1988

¹²⁴ *Ibid* paragraph 20.

¹²⁵ *Ibd* paragraph 67.

The above decision of the Appeals Chamber of the Special Court of Sierra Leone if applied it would imply that the principle of universal jurisdiction renders the amnesties granted to ex combatants nugatory, and cannot protect them from criminal prosecution for committing war crimes and crimes against humanity. On the other hand, some have found it problematic to have combatants who were abducted as children and forced to serve as child soldiers or wives of the LRA rebels, prosecuted for international crimes. These combatants are perceived as victims in their own right.¹²⁶

It is therefore preferable to only prosecute and hold accountable the top commanders of the LRA who were responsible for the recruitment of child soldiers and perpetration of crimes against humanity.¹²⁷ In 2006 the Amendment to the Amnesty Act granted powers to the Minister of Internal Affairs the mandate to declare a combatant leader ineligible for Amnesty.¹²⁸ It is believed that this provision was aimed at excluding the top LRA combatant leaders from being eligible for Amnesty.

The failure by Kony to sign the peace agreement and the resumed rebel attacks indicated that the leaders of the LRA did not genuinely seek peace and therefore abandoning justice for the sake of peace was not a reasonable venture in Uganda. Richard Dicker rightly argued that; "Turning a blind eye to justice only undercuts durable peace."¹²⁹ He gave the example of Sierra Leone where amnesty was granted to Foday Sankoh the leader of the Revolutionary United Front, after the signing of the Lome Peace Agreement. Sankoh was even rewarded with the control of a government commission. However shortly after, he resumed his attacks against the government. The amnesty had given him time to remobilize, get more troops and weapons.¹³⁰

¹²⁶ Payam Akhavan, 'Developments at the International Criminal Court: The Lords Resistance Army case: Uganda's Submission of the first state referral to the International Criminal Court, '99Am J,Int'l.L.pg 409(2005)409-10.

¹²⁷ *Ibid*

¹²⁸ *Ibid*

¹²⁹ Richard Dicker, 'When Peace Talks Undermine Justice. The International Herald Tribunal, July 2008.

¹³⁰ Richard Dicker, 'When Peace Talks Undermine Justice. The International Herald Tribunal, July 2008.

The same applied to Uganda; Joseph Kony indicated his willingness to participate in peace talks and to sign the peace agreement in exchange for amnesty. He even convinced the Ugandan government to request the UN Security Council to lift the ICC warrants against him. However on the day of signing the peace accord he did not show up. The time frame of the negotiations of the peace agreement had given him time to regroup and obtain weapons. It is important to note that during the negotiations his emissaries received funds to facilitate their participation in the peace talks in Juba. Additionally, victims of crimes committed by the combatants upon learning of that crimes committed against them and their relatives have been pardoned may resort to violence in the pursuit for justice that the state and international law has denied them.

4.5 The Extent of Human Rights Abuse during the Internal Armed Conflict in Northern Uganda.

Northern Uganda faced one of the worst humanitarian crises in the world because of the extensive and prolonged displacement of a very high proportion of its inhabitants into large camps where the conditions were poor. The displacement was due to widespread human rights abuses by LRA although some people also blame UPDF in some cases. Under International Humanitarian Law, the armed conflict in Northern Uganda is categorized as an internal armed conflict. Therefore applicable laws include Article 3 Common to the four Geneva Conventions of 1949,¹³¹ the Second Additional Protocol of 1977 to the Geneva Conventions,¹³² and Customary International Humanitarian law among others. International Humanitarian Law, which applies to both government forces and rebel groups, prohibits direct or indiscriminate attacks against civilians and civilian property, and requires the observance of human rights of all

¹³¹ Four Geneva Conventions of 1949. Uganda ratified the 1949 Geneva Conventions in 1964.

¹³² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977. Uganda ratified Protocol II in 1991. Protocol II prohibits among other things, murder, torture and other cruel treatment, rape, acts of terrorism and pillage.

persons in custody, the civilians and other people not party to the conflict but are living in the conflict area.

The Ugandan government is also bound by International and Regional Human Rights law such as found in the International Covenant on Civil and Political Rights¹³³ and the African Charter on Human and Peoples' Rights.¹³⁴ Human rights law places a burden on states not only to prevent abuses by government officials and personnel but also to prosecute those responsible for serious violations. The Ugandan Constitution and other laws recognize human rights.

4.6 Discussions with the victims

Although LRA rebels made a few attacks on UPDF detachments the main targets of the rebels were mainly civilians in Northern Uganda. The LRA was responsible for years of willful killings, beatings, large-scale abductions, forced recruitment of adults and children. Other crimes committed by LRA rebels included sexual violence against girls, large-scale looting and destruction of civilian property. The rebels caused destruction of the economy in Northern Uganda and the resultant impoverishment of its inhabitants.

4.6.1 Willful killing of civilians

The LRA committed mass killing of civilians in northern Uganda, kept the population and its own combatants mostly forcibly recruited children in a constant state of terror. In March 2005, seven civilians were beaten to death with hoes in Adjumani where the rebels attacked Dzaipi trading center.¹³⁵ In May, ten civilians were killed in a raid near Koch Goma camp in Gulu district.¹³⁶ In July, the LRA killed fourteen civilians in an

¹³³ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 UN GAOR Supp.(No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Uganda ratified the ICCPR in 1995.

¹³⁴ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

¹³⁵ Emmy Allio and Justin Moro, "LRA kills seven in Adjumani," New Vision, Kampala, March 11, 2005. The Adjumani district is northwest of Gulu district on the right bank of the Nile, and also borders Sudan.

¹³⁶ Daniel Wallis, "Rebels kill 19 in northern Uganda as attacks worsen," Reuters, Kampala, May 6, 2005.

ambush on a pickup in Kitgum district; several of them were burned inside the vehicle.¹³⁷

The LRA abducted children and adults to serve as soldiers, and girls to serve as sex slaves to its commanders and brutalized all abductees to deter their escape. Those abducted persons who attempted to escape would be killed while others are seeing to act as an example to other abductees. One woman, abducted by the LRA on August 9, 2004 told Human Rights Watch how a girl, a fellow abductee, tried to escape. When she was captured the rebels "beat her until she died. They used traditional tools used to make sculpture to beat her, they hit her on her neck, her hands and her legs until she died."¹³⁸

Some LRA killings appear to be the result of simple annoyance and the LRA attitude of heartless disregard for human life. The LRA abducted a group of women going to fetch water on February 24, 2005. According to several eyewitnesses interviewed by Human Rights Watch, one of the women had a baby with her who was crying. "The five LRA fighters told the woman they wanted the baby, they were going to kill it. After some minutes the woman threw the baby down and ran. The rebels grabbed the woman and beat her to death with a gun. When the woman was killed one rebel got a stick and pierced it through the child's head. The child was two weeks old".¹³⁹

The LRA does would not hesitate to execute those who do not obey the rebel commanders' orders to perform certain tasks, even if the person was physically incapable of carrying out the task. One woman described how the rebels beat to death one Malone Okwir, a man of about sixty years old after throwing down the large load of food he was carrying on his back. "He was unable to transport it further than the three

¹³⁷ Uganda: LRA kills 14 in northern weekend ambush," IRIN, Kampala, July 11, 2005, <http://www.irinnews.org/report.asp?Report>.

¹³⁸ Human Rights Watch interview with victim, Paicor camp, Gulu, February 27, 2005.

¹³⁹ Human Rights Watch interview with victims, Kitgum, March 3, 2005.

miles he had already traveled, so they beat him to death with a hoe and cut him with a panga."¹⁴⁰

It was further revealed that Local officials were commonly targeted by the LRA rebels. A relative of one of the Local Councilor two (LC2) official narrated how the local official was killed while performing his official duties.

*"Okello Saul was killed on May 20, 2004. He was going from Paicho camp to Cwero to supervise the building of the hospital. On his way back he was ambushed by the LRA. He was on his motorcycle. And they shot him dead. He was shot with eight bullets. Then they burned his motorcycle and took his belongings."*¹⁴¹

It is worth noting that several LRA deliberate killings were committed under duress by abductees, often children. One twelve-year-old boy who was interviewed by Human Rights Watch revealed that he killed a civilian by beating him with a stick. This occurred one week after the youngster was roused from his sleep and abducted by the LRA in June 2004 at a village outside the camp. At first he refused the order to kill the civilian but the LRA abductors beat him until he agreed. He escaped two months later.¹⁴²

A similar case involving a twenty-four-year-old farmer took place in 2003. The farmer witnessed and under duress participated in the deliberate killings of nine civilians during the two months he was held by the LRA.¹⁴³ In some cases people were killed or left for dead, because the LRA fighters simply wanted to rob them of their property. A case in point is of one thirty eight year old man who was on his bicycle in January 2005, when he saw five LRA fighters coming towards him on the road; he threw down his bicycle and ran. They pursued him and shot him through the cheek from a distance of less than two meters. He lost consciousness and when he gained consciousness hours later

¹⁴⁰ Human Rights Watch interview, eyewitness, Agoro camp, Kitgum, March 3, 2005.

¹⁴¹ Human Rights Watch interview, relative of victim, Paicho camp, February 27, 2005.

¹⁴² Human Rights Watch interview, boy, Agoro camp, Kitgum, March 3, 2005.

¹⁴³ Human Rights Watch interview with abductee, Agoro camp, Kitgum, March 3, 2005.

he found they had stolen his bicycle and the clothes he was wearing. He was later hospitalized for three weeks.¹⁴⁴

4.6.2 Torture and Other Mistreatment

Civilians in northern Uganda suffered gross abuse of their human rights at the hands of the LRA. The LRA used to beat and mistreat civilians as a part of a campaign intended to instill terror in the population. LRA severely punished anyone who did not do what the rebels demanded, even if that person lacked the physical capacity to comply. One woman was abducted by a group of LRA rebels who were interested in surrendering to the UPDF. The commander of the rebels asked her to ensure that the soldiers would not attack them if they went to surrender, then when she failed to comply sufficiently, they beat her to unconscious levels and left her for dead. According to the woman;

*"When I tried to answer the questions the rebels got four young boys to go and get sticks. They returned with many sticks. Some were tied in a bundle. They began to beat me seriously. I tried to cry and reached a position where I kept quiet. They beat me on the head and the leg. I don't know what happened I was unconscious. While they beat me they told me I would be beaten to death because I was tricking them. They said, "You women like to make false statements in order that we release you. When they left me I was unaware. It was dark. I tried to wake up. I looked around and didn't see rebels. I couldn't walk. I was very thirsty, very hungry and very very weak. I started to crawl following the way back. I crawled looking for water at the river. I crawled into the water and got water. I tried to cry but I couldn't. When I came out of the water I tried to walk with grass as a support. I was dizzy, fell down, rested a bit. I began to crawl and heard vehicles. I tried to crawl in their direction and came abruptly to the road. The road was too hard to crawl on and I fell to the roadside. I met a man coming from Namkara and he took me to Kitgum Matidi, to the barracks. The Intelligence officer took a brief statement then they took me to the hospital."*¹⁴⁵

Another woman described her temporary abduction in January 2004 by a unit of the LRA under the command of Lagony Otti. She was pregnant at the time, and had gone

¹⁴⁴ Human Rights Watch interview with victim, Agoro camp, Kitgum, March 3, 2005.

¹⁴⁵ Human Rights Watch interview with victim, Kitgum Matidi camp, Kitgum, March 5, 2005.

with a group of ten women to harvest their fields. The rebels intercepted the women, and beat through Saturday and Sunday. One of them narrated that; "The rebels kept hitting my chest and waist with the butt of a gun while at the same time using tree branches to hit me. I was beaten until I was unconscious. I do not know how they set me free I was rescued by friends."¹⁴⁶

A nineteen-year-old woman said that she lived in fear of the LRA. In 2003, her father and two brothers were abducted from their camp and beaten to death with sticks by the LRA the same day. Her sister was abducted one week later by the LRA and killed that same day. She revealed that she stopped going to school after the death of her father because there was no one to pay her the school fees.¹⁴⁷ One woman revealed that in December 2004 she went with another woman to her garden five miles from the camp, where seven LRA fighters found them at 10 a.m. The rebels ordered them to go with them to the bush. They beat them stripped them naked and ordered to go back home. Whereas they did not rape them, the punishment was bad enough and inhuman.¹⁴⁸

Other attacks by LRA rebels on civilians seemed motivated by the need for supplies following cutbacks by the Sudanese government. One farmer narrated that on his way back from harvesting simsim with his wife in Pipei parish near Agoro camp on September 5, 2004, they encountered rebels who beat them using sticks. When the couple dropped their bundles of simsim and ran the rebels never followed them.¹⁴⁹

4.6.3 Mutilations

The LRA first started mutilating civilians in the early 1990s as a response to the government's attempts to form local militias in northern Uganda. Victims' hands, feet,

¹⁴⁶ Human Rights Watch interview with victim, Paicor camp, Gulu, February 27, 2005.

¹⁴⁷ Human Rights Watch interview with victim, Pabbo camp, Gulu, February 25, 2005.

¹⁴⁸ Human Rights Watch interview with victim, Pabbo camp, Gulu, February 25, 2005.

¹⁴⁹ Human Rights Watch interview with victim, Agoro camp, Kitgum, March 3, 2005.

noses, ears, lips and breasts were cut off, often as punishment, causing widespread panic amongst the population. These brutal tactics worked effectively in promoting fear among the population which deterred cooperation between the population and government forces. The victims of mutilations revealed that LRA rebels would tell them that they were symbolically cutting off offending parts, like the ears that hear and the lips that kiss and help in talking.¹⁵⁰

The LRA rebels at times used mutilations to show the population those government statements were untrue. Therefore the LRA would disprove those government statements by carrying out acts of mutilation. For example on February 17, 2005 President Museveni stated that following the surrender of Sam Kolo one of the LRA peace negotiators, the military conflict in Northern Uganda was finished since remaining fugitive commanders could not fight.¹⁵¹

A few days after the Presidents statement, eleven women were abducted by the LRA near Ngomoromo, Kitgum. One of the women was beaten to death with her baby because the baby was making too much noise. The other women were herded into an abandoned hut, made to strip naked and then mutilated.¹⁵² One woman who was among the victims told Human Rights Watch; After discussing with his colleagues one of the rebel entered the hut and started chopping off lips. When he was cutting off the lips he ordered the women not to make any noise otherwise they would be killed. The women we told that their lips had to be cut because they were in love with the UPDF soldiers at Ngomoromo barracks.¹⁵³

On March 20, 2005, thirty women who had gone out to collect firewood were attacked by the LRA in Agoro sub-county, Kitgum. The rebels cut the lips and ears off one

¹⁵⁰ Human Rights Watch interview, caregiver, Gulu, February 26, 2005.

¹⁵¹ Frank Nyakairu, "Guns forced Kolo out, says Museveni," *The Monitor*, Kampala, February 18, 2005.

¹⁵² Frank Nyakairu, "Guns forced Kolo out, says Museveni," *The Monitor*, Kampala, February 18, 2005.

¹⁵³ Human Rights Watch interview with eight female victims, Kitgum Hospital, March 2, 2005.

woman and the breasts off another. Then the rebels abducted others among the group of thirty women and left the disfigured victims to find their way home. On May 24, 2004 one man's four children were abducted by the LRA and his finger was cut off as punishment for farming. He said:

*"It was at eight in the night. A group of LRA came to my house. I was living there with my wife and children. The rebels looted my household. They beat me with pangas on my back and rear three times. They burned all our huts. Then they put my hand down. They cut off my finger with a panga. The rebel who cut off my finger was a young boy in his early teens. Then they left with my children."*¹⁵⁴

4.6.4 Rape In general, LRA rebels committed rape and defilement against abducted women and girls. It is worth noting that rape in LRA camps was done in an organised manner. A woman told Human Rights Watch how she was abducted with her sister in January 2004 by a group of rebels near Agoro camp in Kitgum. They were taken to a rebel encampment and distributed to the top commanders who raped them during the night.¹⁵⁵ The narration reveals that the crimes of rape and defilement were sanctioned by LRA leadership. This was further supported by one community leader who told Human Rights Watch that Kony picks some of the abducted women and then shares the rest among the other rebel commanders.¹⁵⁶

4.6.5 Abductions

UNICEF estimated more than 20,000 children to have been abducted during the LRA internal armed conflict in Northern Uganda. The level of abductions surged after the LRA returned from Sudan following the UPDF Operation Iron Fist inside Sudan starting in mid-2002.¹⁵⁷ The LRA often engaged in large-scale attacks on IDP camps and villages where they abducted people. At other times, those involved in farming would be

¹⁵⁴ Human Rights Watch interview, Robert B, Paicor camp, Gulu, February 27, 2005.

¹⁵⁵ Human Rights Watch interview with victim, Kitgum Matidi camp, Kitgum, March 5, 2005.

¹⁵⁶ Human Rights Watch interview & Human Rights Watch Report, Vol. 15, No. 7(A), March 2003.

¹⁵⁷ OCHA, Humanitarian Update Uganda, February 2005, Volume VII, Issue II, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/DDAD-6AKPMP?Open>.

abducted in small groups and others taken as individuals whenever they would find them going to their gardens to collect food to complement the small emergency food rations. After abduction, the LRA forcefully and brutally indoctrinates children and adults alike and incorporates them into its ranks. Families were torn apart because of the abductions. For example on May 24, 2004, four children in one family were abducted on the same night, only two managed to escape while the other two are either dead or still with the rebels.¹⁵⁸

A pregnant woman who was interviewed by Human Rights Watch described how rebels assaulted her, robbed her of her food, demanded money, and then abducted her twelve-year-old daughter. She said:

*"In July 2004, I was sleeping at our house in the village, behind the trading center. The rebels came at 10 p.m. There were nine rebels. My husband was away and I was pregnant with my child. They asked me for money. I said there was no money and they hit my chest with their guns. Then they just left me in the house but they took my eldest daughter. The child moved with them for some time. They got attacked by the government soldiers and she was rescued. She was twelve years old. Then she came back home."*¹⁵⁹

The LRA forced the abducted children and adults to commit atrocities as part of the indoctrination process. Children especially are intimidated and brutalized to such an extent that they are frightened to return home. Extreme violence has been one of the ways for the LRA to psychologically remove the abductees from their previous, normal life at home. One abductee from Agoro camp, aged twelve, narrated to Human Rights Watch how, after he was abducted on July 21, 2004, he was beaten until he agreed to kill a civilian with a stick.¹⁶⁰ It is worth noting that the rebels at times, used to abduct adults from Northern Uganda to use them to transport stolen goods to the LRA camps. One woman's experience illustrated that abductions were targeting different intentions

¹⁵⁸ Human Rights Watch interview with Robert B from Paicor camp, Gulu, February 27, 2005.

¹⁵⁹ Human Rights Watch interview, Winnie P, Agoro camp, Kitgum, March 3, 2005.

¹⁶⁰ Human Rights Watch interview, former LRA child soldier, Agoro camp, Kitgum, March 3, 2005. He escaped the first opportunity he got, less than two months after his capture.

which included permanent abduction for military recruitment, marriage and temporary abduction as porters. She and her five fellow abductees were forced to carry baggages. When they reached their destination, the pregnant and weak ones were released but the young and strong remained. Two girls Scovia Akello aged fifteen and her friend of the same age remained. The short-term porter abductees transport stolen food and other property. The abductees are beaten into submission and forced to carry heavy loads for hours. Those that tire on the journey are beaten severely or even killed.¹⁶¹

4.7 Administration of Balancing Retributive and Restorative Justice in Northern Uganda

Most Post conflict states are often faced with the challenge of administration in identifying the most suitable mechanism of transitional justice to address the gross human rights violations that were committed during the conflict. The transitional justice mechanism that would be ideal is one that holds perpetrators accountable, renders justice to victims while at the same time maintaining the fragile social cohesion and harmony current in place.

4.7.1 Alternative Justice Mechanisms

Alternative Justice Mechanisms that were applied included the traditional / indigenous mechanisms of justice in Uganda, Truth Commissions and reparations as alternative mechanisms of accountability and justice. The focus was put on the above alternative mechanisms of justice because they were recognized under the Juba Agreement. The major objectives of Alternative Justice Mechanisms were accountability and reconciliation to be applied in Northern Uganda. It is worth noting that the transitional justice mechanism was to supplement the formal justice mechanisms of accountability.

¹⁶¹ Human Rights Watch interview with victim, Paicor camp, Gulu, February 27, 2005.

The accountability mechanisms usually range from truth commissions, reparations, traditional confession and reintegration rituals.¹⁶²

4.7.2 Formal Justice Mechanism

Linda M. Keller observed that modern conflicts are increasingly intra-state struggles, rather than state versus state wars. Even when violence spills over borders, guerrilla and terror tactics often predominate. Civilians become direct victims of terror and atrocities or indirect victims of displacement and deprivation. Rebel militias use hit and run tactics and attacks against civilians to undermine the dominant power rather than attempt to hold territory. This is in line with what LRA has been doing in Northern Uganda. LRA rebels have been battling with the Uganda government forces since 1986 to date but the rebels do not have any territory they claim to be controlling.

It is observed that when peace talks are involved as a conflict resolution mechanism, leaders of rebel groups who are also international criminals end up gaining a seat at the negotiating table rather than in the dock of a criminal court to answer charges brought against them. Although it seems that the immediate need for peace will often outweigh calls for justice, the International Criminal Court can further both goals in certain circumstances.¹⁶³

The long-running conflict in Uganda illustrates the problem and potential solution. A vicious rebel group, the Lord's Resistance Army, has been terrorizing civilians in Uganda for decades. Its favorite tactics include abducting children and turning the girls into sex slaves and the boys into drug-addled child soldiers. Abductees are forced to mutilate, maim, rape, and kill under penalty of death in case they failed to execute the given

¹⁶² Eric Blumenson "The Challenge of a Global Standard of Justice : Peace Pluralism and Punishment at the International Criminal Court; Columbia .Journal of Transitional Law, Vol.44,2006.

¹⁶³ For an extensive discussion of these issues in the context of Northern Uganda, see Linda M. Keller, *Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms*, 23 CONN. J. INT'L L. (forthcoming Spring 2008).

orders. Over a million people were displaced into overcrowded, squalid camps where they were vulnerable to attacks by LRA rebels because of insufficient protection by the government forces.

The LRA rebels were willing to put down their arms and sign a peace deal on condition that the charges made against their leaders by the International Criminal Court (ICC) were waived off.¹⁶⁴ As the Prosecutor of the ICC points out in the above quote, such demands amount to blackmail and extortion. The Prosecutor of the ICC observed with concerned that; "can the international community justifiably reject trading peace for impunity, thereby leaving the people of Northern Uganda once again subject to war crimes and crimes against humanity? The Prosecutor's statement clearly shows that the international community does not necessarily face an either-or proposition. It can accept a peace deal while promoting some measure of justice, in other words it was bent more on retributive justice than on restorative justice.

As observed by Tim Allen, at first glance there seems to be unavoidable conflict between peace and justice but in reality this is a false dichotomy. There is a way to achieve both peace and some form of justice for victims like those in Uganda. International criminal prosecution, via tribunals such as the ICC, is not the only means to achieve justice. It is worth noting that even commentators, who recognize that peace and justice can coexist, get divided on the proper form of mechanisms to achieve the desired peace and justice. The proposed solution invokes International Treaty law, International Human Rights, Customary norms, Transitional justice paradigms and criminal justice theory. The peace versus justice debate is most evident in the competing imperatives of retributive and restorative justice. Pure retributivism require the prosecution of all those culpable for international crimes. On the other hand restorative justice focuses on victims' needs, root causes of the conflict, and the reintegration of fighters into society. But neither approach will suffice on its own. The

¹⁶⁴ Tim Allen, Trial Justice: The International Criminal Court and The Lord's Resistance Army (2006).

OTP report revealed that the ICC should attempt to harmonize retributive and restorative justice principles in Northern Uganda.¹⁶⁵

4.7.3 Security Council Request (Article 16)

First, a state that wishes to gain international recognition for a peace deal that replaces ICC prosecution with negotiated AJM may seek an Article 16 deferral. Under the Rome Statute, the Security Council can request that the Court refrain from, or suspend, an investigation or prosecution for twelve months.¹⁶⁶ This request is renewable. It must be acted on by the Council in a resolution adopted under Chapter VII of the Charter of the United Nations¹⁶⁷ for example action with Respect to Threat to the Peace, Breaches of Peace and Acts of Aggression.¹⁶⁸ Dugard indicated that it is hard, if not impossible, to contemplate a situation in which refusal to recognize a national amnesty could constitute a threat to international peace.¹⁶⁹ Others, however, have argued that the deferral is a viable means to allow alternatives to ICC prosecution.¹⁷⁰

Under Article 16 of Rome Statute deferral might be improper where it effectively endorses a breach of a state duty to prosecute International crimes. But while there

¹⁶⁵ OTP, Report on the Activities Performed in June 2003-June 2006 (Sept. 12, 2006), at http://www.icc-cpi.int/library/organs/otp/OTP_3-year-report-20060914_English.

¹⁶⁶ Rome Statute, *supra* note 2, Art. 16 provides: "No investigation or prosecution may be commenced or proceeded under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

¹⁶⁷ Rome Statute, *supra* note 2, Art. 16.

¹⁶⁸ UN Charter, Ch. VII

¹⁶⁹ Dugard, *supra* note 9, at 701-02; see also Stahn, Complementarity, *supra* note 21, at 717 (Article 16 deferral unlikely).

¹⁷⁰ Yasmin Naqvi (2003), Amnesty for war Crimes, Red Cross 592 (Vol. 85, No. 851, Sept. 2003). The inclusion of article acknowledges that prosecution might be threat; Robinson, *supra* note 10, at 481 concluding Security Council might request deferral where "delicate non-prosecutorial truth and reconciliation process is underway"); Jennifer Llewellyn in her "A Comment on the Complementarity Jurisdiction of the International Criminal Court", argued that state wishing to use truth commission process instead of prosecution could ask Security Council to temporarily mitigate threat of ICC prosecution.

appears to be a duty to prosecute certain crimes under Treaty law, a broader duty based on Customary law is questionable. Treaties such as the Genocide Convention, the Geneva Conventions, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) provide for a duty to prosecute certain crimes.¹⁷¹

According to Dugard state parties cannot grant amnesty for genocide, grave breaches or torture without violating the respective Treaty.¹⁷² The scope of duty under these Treaties does not encompass all International crimes as it excludes war crimes in internal armed conflicts and torture by non state actors.¹⁷³ For example, the ICC arrest warrants issued against LRA leaders do not charge genocide or grave breaches, but rather war crimes in internal armed conflict and crimes against humanity that are predicated on cruel or inhuman treatment.¹⁷⁴ Uganda ratified, and has a duty to prosecute under, the Geneva Conventions,¹⁷⁵ the Genocide Convention, and the Torture Convention.¹⁷⁶ Under Treaty law, Uganda has a duty to prosecute some of the crimes charged by the ICC, but not all. Nonetheless, Uganda has a duty to prosecute all the charged crimes under Customary International law.

4.7.4 Prosecutorial Discretion (Article 53)

According to many commentators, prosecutorial discretion is the most plausible avenue to accommodate negotiated AJM, such as Amnesty and or Truth Commissions.¹⁷⁷ Under Article 53, the OTP can exercise discretion at the investigative or prosecution stage. First, it can decline to initiate an investigation in the interests of justice even if there is

¹⁷¹ Dugard, *supra* note 9, at 696.

¹⁷² *Ibid.* 697.

¹⁷³ Charles P. Trumbull IV, Giving Amnesties A second Chance.

¹⁷⁴ ICC, Arrest warrants at http://www.icc-cpi.int/cases/UGD/c0105/c0105_docAll1.html.

¹⁷⁵ See ICRC database, Uganda – Ratifications at <http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=UG>.

¹⁷⁶ UN Treaty Ratifications at <http://www.bayefsky.com/docs.php/area/ratif/state/179>.

¹⁷⁷ Dugard, *supra* note 9, at 702.

a reasonable basis on the law and facts, and the case is admissible.¹⁷⁸ Secondly, it can decline to prosecute in the interests of justice after investigating a situation.¹⁷⁹

Under Article 53(1), the OTP first must find a reasonable basis to proceed with an investigation.¹⁸⁰ The OTP must consider whether: (a) there is a reasonable basis for the existence of a crime(s) within the jurisdiction of the court; (b) the case is admissible under Article 17; and (c) taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.¹⁸¹

In the context of negotiated AJM in the aftermath of a brutal conflict, it is likely there would be a reasonable basis to investigate crimes of genocide, war crimes, or crimes against humanity. Article 53(b) refers to the Article 17 admissibility determination, which as already discussed above is unlikely to apply in most negotiated AJM situations.

As a result, the remaining interest of justice provision is most likely to be the focus of an OTP evaluation of negotiated AJM.¹⁸² The Prosecutor stated that calls to use his discretion for short term political goals are inconsistent with the Rome Statute,¹⁸³ indicating that the current OTP is unlikely to use Article 53(1) to defer to non prosecutorial AJM for those most responsible for international crimes. In fact, the OTP rejected claims that prosecution of leaders of the LRA would not be in the interests of justice for the people of Northern Uganda.¹⁸⁴

¹⁷⁸ Rome Statute, supra note 2, Art. 53(1).

¹⁷⁹ *Ibid.* Article 53 (2).

¹⁸⁰ ICC Press Release; Prosecutor of the International Criminal Court Opens an Investigation into Northern Uganda (July 29, 2004), available at <http://www.icc-cpi.int/press/pressreleases.html>.

¹⁸¹ Rome Statute, supra note 2, Art. 53 (1).

¹⁸² Allen, supra note 4, at 93, 176.

¹⁸³ ICC OTP Address by Luis Moreno-Ocampo, Nuremberg, 24/25 June 2007, Building a future on peace and justice.

¹⁸⁴ Allen, supra note 4, at 116-117 observed that ICC investigation brought LRA to peace negotiations; Seizing the Opportunity for Peace (Africa Report No. 124, April 26, 2007).

4.8 Traditional/Informal Justice Mechanisms

A number of post conflict states such as Rwanda, Sierra Leone, Mozambique and Uganda have opted for the indigenous mechanism of accountability as a preferred transitional justice mechanism¹⁸⁵. After the devastation caused by the Genocide, Rwanda resorted to the indigenous mechanism of justice known as Gacaca as a transitional justice mechanism, to render justice to victims. The Gacaca system has been widely acclaimed for holding thousands of perpetrators of genocide accountable.¹⁸⁶ The Gacaca courts were established in 2001 by the Government of Rwanda to hold perpetrators of genocide and crimes against humanity accountable and to ease the burden on the struggling judicial system and it successfully completed its work in 2012.¹⁸⁷ The Gacaca courts conducted hearings at the village level where members of the court would sit on grass and listen and consider cases brought to them.¹⁸⁸ During the hearings most of the perpetrators confessed and sought forgiveness from the victims. Being restorative in nature, the Gacaca process reconciled victims and perpetrators.¹⁸⁹

The competence and capability of traditional justice mechanisms in providing justice to victims of sexual violence, child soldier, torture and displacement is yet to be established given the fact that they do not have experience in handling such cases, which have always fallen under the realm of the formal criminal justice system. One of the biggest criticisms of the traditional justice mechanisms is that they are predicated on cultures and practices which are discriminatory and denigrating to women and as a

¹⁸⁵ Luc Huyse, Tradition-based approaches in peacemaking, Transitional Justice and Reconciliation Policies. Published in Traditional justice and reconciliation after conflict: Learning from African experiences IDEA2008.

¹⁸⁶ *Ibid.*

¹⁸⁷ Aschabas William, Post Genocide Rwanda :A spectrum of Options; Phil Clark and Zachary D Kaufman, "After Genocide: Transitional Justice in Post Conflict Reconstruction and Reconciliation in Rwanda and Beyond.

¹⁸⁸ The Juba Peace Agreement on Accountability and Reconciliation. June 2007 Article 2.

¹⁸⁹ *Ibid* pg 223.

result they reinforce cultural stereotypes that are prejudicial to the rights of women.¹⁹⁰ These traditional justice mechanisms have been developed and implemented with little or no regard to the special and complex needs of women victims and have been tailored to maintain the gender hierarchies in a patriarchal society.¹⁹¹ As a result, the victimization of women is in most cases trivialized and women are not usually given an opportunity to share their experiences as victims.

In Northern Uganda, in balancing restorative and retributive justice, the traditional justice mechanisms which include *Cub Kwor, Mato Oput, Kayo Cuk, Ailuc and Tonu ci Koka* comprise a central part of the framework for accountability.¹⁹² The application of the traditional mechanisms of justice enjoy grass root support and have been promoted by the local leaders and elders as the most suitable mechanism of accountability because they are in conformity with the community's idea of justice.¹⁹³ Additionally, the complexities involved in the formal justice mechanisms and their institutional problems, like corruption and inefficiency, have also contributed to the victim's of torture, rape, and sexual violence and child soldiers as committed by LRA to preference for the traditional mechanisms. The basic premises of the traditional justice mechanism include trust, voluntaries, truth telling, compensation and restoration¹⁹⁴. These indigenous justice mechanisms are considered to be restorative in nature and contribute significantly to the restoration of the social cohesion in the communities devastated by, the armed conflict, by reconciling the victims and perpetrators. The

¹⁹⁰ Rama Mani, *Beyond Retribution Seeking Justice in the Shadows of war*; Oxford Polity Press, 2002.

¹⁹¹ Fionnuala Ni Aolain, Michael Hamilton, *Gender and the Rule of Law in Transitional Societies*; Minnesota Journal of International Law summer 2009.

¹⁹² The Juba Peace Agreement on Accountability and Reconciliation. June 2007 Article 3.1.

¹⁹³ Fionnuala Ni Aolain, and Micheal Hamilton, *Gender and the Rule of law in Trannisiotional societies*. Minnesota Journal of International Law summer 2009.

¹⁹⁴ Ojera Latigo James, *Northern Uganda: Tradition-based practices in the Acholi region*, IDEA, 2008, Published in *Traditional Justice and Reconciliation after conflict, Learning from African Experiences* IDEA 2008.

traditional justice mechanisms in Northern Uganda are conducted at the community level by a council of elders who are perceived as guardians of the society.¹⁹⁵

They involve several processes which include mediation, confession by the perpetrators, solicitation of forgiveness from victims, reconciliation, payment of compensation, and finally the reintegration of both the victim and the perpetrator into the community.¹⁹⁶

The most prominent and widely used traditional justice mechanism is "Mato Oput" which is performed regularly in the Acholi community in Northern Uganda. Mato Oput is the traditional ritual of, drinking of the bitter root from a common cup. With the aim of cleansing the perpetrator and reconciling him/her with the victims that he/she abused¹⁹⁷. Mato Oput promotes reconciliation and forgiveness.¹⁹⁸ According to Latigo,

Mato Oput is:

*"Predicated on full acceptance of one's responsibility for the crime that has been committed or the breaking of a taboo. In its practice, redemption is possible, but only through this voluntary admission of wrongdoing, the acceptance of responsibility."*¹⁹⁹

Many of the Acholi elders²⁰⁰ emphasized that forgiveness in Acholi culture is the bedrock for reconciliation and the reintegration of perpetrators and victims. Mato Oput is therefore tailored to foster forgiveness and reconciliation. The Mato Oput is processed as indicated below;

"When a crime is committed against humanity with impunity, the accused or perpetrator must be the first witness against himself or herself. He/she must stand outside the 'Gate of the Village' and tell the people his/her name and names of his/her parents and uncle. He/she also talks about the crime he/she committed and why he/she committed it the way he/she did."

¹⁹⁵ *Ibid.*

¹⁹⁶ Refugee Law Project, Working Paper 17, Peace First Justice later, '2005 see also Mr. Onyango John Francis .The International Criminal Court and its role in the Northern War Conflict Paralleled to the Acholi Traditional Techniques of Conflict Management (Mato Oput)UICC2007.

¹⁹⁷ Liu Institute for Global Issues, Restoring Relationships in Acholi land : Traditional Approaches to Justice and Reconciliation, September, 2005.

¹⁹⁸ James Ojera Latigo, Northern Uganda: Tradition-Based Practices in the Acholi Region.

¹⁹⁹ *Ibid.*

²⁰⁰ Ochola, B. The Acholi Traditional justice is not enough for Kony; Sunday Vision, 27 August 2006.

*After his/her testimony, the elders of the Village immediately take collective responsibility on his/her behalf. After the confession and the culprit's community taking collective responsibility, the elders then perform the rituals of the self-confessed culprit. Their public apologies are also subjected to acceptance by religious leaders as witnesses. Thereupon, the two parties are required to 'bend spears' and formally declare an end to hostilities. They are be required to drink juice from the roots of the Mato oput tree as a form of cleansing."*²⁰¹

The use of indigenous justice mechanisms as a method of accountability has been supported by a number of scholars who argue against what they refer to as the "homogeneity of justice"²⁰² which requires every method of justice to resemble the criminal justice process which is retributive punished. Mark Drumbi argued against "fundamentalist pursuit of criminal justice" because it prevents the consideration and application of alternatives methods of justice and in most cases goes against the identified goal of transitional justice, which is to facilitate healing, reconciliation and reintegration.²⁰³ What is preferred is a more pluralistic approach to justice, which would incorporate all the alternative forms of justice, such as the traditional justice mechanisms and truth commission.

Adam Branch asserted that the decision, on the one hand, to seek justice through punishment or on the other, to forgo punishment in favor of justice through reconciliation, is a decision that must be made by the concrete community that will have to live with the consequences of the decision.²⁰⁴ The former secretary General of the United Nations Kofi Annan is quoted as having stated that:

²⁰¹ *Ibid.*

²⁰² Drumbi, A. Mark; *Atrocity, Punishment and International Law*, Cambridge University Press.,2007 pg 5.

²⁰³ *Ibid.*

²⁰⁴ Adam Branch ,*'International Justice : The International Criminal Court Northern Uganda,'* Dissent Magazine summer 2004, pg 5.

*"Due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition."*²⁰⁵

In that regard, the traditional justice mechanisms in Northern Uganda have a key role to play in holding perpetrators accountable and offering justice to victims. Most women should be given a good environment to participate in the traditional justice process in their capacities as wives, mothers or sisters of the victim but not as victims.²⁰⁶ It is important to note that the Juba Agreement on Accountability; called upon the traditional justice institutions to adopt a gender sensitive approach when dispensing justice²⁰⁷. The agreement also called for the recognition of the special needs of women and girls and required that measures were to be adopted to address those needs. It also required that special measures were to be adopted to protect the dignity and privacy of women, in order to encourage them to participate effectively and shield them from stigmatization. Finally, it emphasized the need to have the experiences of women and children documented and taken into account.²⁰⁸

However, the above provision required enforcement if the government had the political will to do so. It required continuous monitoring by government and civil society organizations to ensure that the gender concerns were taken into consideration and human rights were enforced in the operations of the traditional justice institutions. Experience in Uganda showed that there was a gap between law and practice. Much as the Ugandan Constitution contains a number of provisions that prohibit discrimination and outlaw cultural practices that are

²⁰⁵ UN security council: Report of the Secretary- General on the rule of law and transitional justice in conflict and post-conflict societies, 2004.

²⁰⁶ *Ibid.*

²⁰⁷ The Juba Agreement on Accountability and Reconciliation between the Government of Uganda and the Lords Resistance movements .June 2007 Clause 10.

²⁰⁸ Article 33 of the Constitution of the Republic of Uganda, 1995.

detrimental to women, those cultures and traditions are still practiced and reinforced in many parts of the country.

In most cultures in Uganda female sexuality is shrouded in taboos and is not considered to be part of public discourse. Women who talk about their sexuality or report being raped is often branded as women of loose morals. Consequently, many victims of sexual violence are reluctant to seek redress from the cultural institutions, which are predominantly male. Experience in other post conflict states such as in Sierra Leone and South Africa indicate that women are more comfortable testifying before women panel or in cases where the panel is mixed, the female member of the panel is the only one permitted to question the victim.²⁰⁹

The most prominent challenge facing the application of traditional justice mechanisms is that they are not well documented. Having not been practiced for a considerable period of time, it is likely that few elders might remember the exact procedures to be complied with when performing the rituals. The war displaced a number of the elders forcing them to migrate to other areas hence weakening the availability of those who are knowledgeable in the customary practices.²¹⁰

According to the Rome Statute of the ICC, jurisdiction to try crimes against humanity can only be deferred to national justice mechanisms, if it is shown that they are capable of effectively dealing with the grave violations and are not

²⁰⁹ Beth Gold Blattand & Sheila Meintjes, Gender and the Truth and Reconciliation Commission, a submission to the South Africa Truth and Reconciliation Commission. May 2006.

²¹⁰ Scott Worden (2008), The justice Dilemma in Uganda, USIPS Peace Briefing.

trying to shield perpetrators. Many critics have observed the traditional justice mechanisms are incapable of offering sufficient accountability for mass atrocities.²¹¹ They argue that the traditional justice methods were tailored to deal less serious crimes such as theft; while grave offences such as rape, murder and mutilations were always deferred to the formal criminal justice system.²¹² A Ugandan Judge, Justice Dan Nsereko of the International Criminal Court, noted that "Traditional justice system, locally known as mato- oput, cannot be applied to suspects of crimes against humanity. Crimes against humanity, genocide, aggression against other states and war crimes are internationally condemned and cannot be tried by traditional courts but by the ICC."²¹³

Compensation is a key element in most traditional justice mechanisms, perpetrators are expected to compensate their victims. However, the conflict having decimated most of the livestock and property makes it impossible for the perpetrator to compensate their victims.²¹⁴ Cecil Rose²¹⁵ argued that the capacity of the victims in Northern Uganda to forgive their perpetrators as required by the Mato Oput system may be overestimated and could result in a covered up deep hatred within the victimized community that could result in another civil war.²¹⁶

A survey conducted by some NGOs' indicated that a number of victims they interviewed preferred to have the perpetrators punished by the formal criminal

²¹¹ The Rome Statute of the ICC. Article 17.

²¹² Kasajja Philip Apuuli (2008), Looking beyond amnesty and traditional justice and reconciliation mechanisms in Northern Uganda .A proposal for Truth telling and reparations.

²¹³ Josephine Maseruka (2009), Traditional Justice not Applicable to war Suspects. The New Vision June 30th2009 [http:// www.new vision .co.ug/D/8/13/686419](http://www.newvision.co.ug/D/8/13/686419).

²¹⁴ *Ibid*.

²¹⁵ Cecil Rose, Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanism in northern Uganda: A proposal for Truth Telling and Reparations 28 B.C Third world L.J 345.

²¹⁶ *Ibid* : A proposal for truth telling and Reparations 28 B.C Third world L.J 345.

justice system. The traditional justice mechanisms place an onerous burden on victims to forgive the perpetrators, and yet some of the victims may not be willing to forgive the perpetrators. Victims who do not forgive are perceived as obstacles to peace. This leaves most victims with no option but to forgive.²¹⁷

4.8.1 Truth and Reconciliation Commissions

Truth and Reconciliation Commissions were identified, by a number of post conflict societies, as alternative methods of justice in which past injustices were dealt with. The United Nations High commissioner for human rights defined truth commissions as an "official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years." A truth commission was defined as "an official body, often created by a national government, to investigate, document, and report upon human rights abuses within a country over a specified period of time."²¹⁸ The most prominent truth commissions in Africa have been the South African Truth and Reconciliation Commission, which was established 1995 to deal with the atrocities that had been committed during the forty five years of apartheid.²¹⁹ Its mandate included investigation, granting of amnesty, seizing of property and subpoenaing of witnesses.²²⁰

The second most popular truth commission in Africa is the Sierra Leone Truth and Reconciliation Commission, which was established following the Lome Peace Agreement of 1999, to address the atrocities that were committed during the Sierra Leonean civil war. The Truth Commission had a similar mandate like its South African predecessor.²²¹ Truth commissions have been preferred due to the numerous roles attached to them

²¹⁷ Phuong Pham *et al* (2005). *Forgotten Voices a Population Based Survey on Attitudes about peace and Justice in Northern Uganda*.

²¹⁸ Diane Orentlicher & Addendum (2005); *The Report of the Independent expert to update the set of principles to combat impunity*, UN Doc. E/CN .4/2005/102/Add .18 February.

²¹⁹ Ruti G. Teitel (2003); *Transitional Justice Genealogy*, Harvard Human Rights Journal.

²²⁰ Hayner B. Priscilla, (2001) *Unspeakable Truths: Confronting State Terror and Atrocity*.

²²¹ *Ibid* 40.

which included inter alia; fostering national reconciliation, ending impunity and preventing future reoccurrence of atrocities.²²² They were also preferred due to their "ability to offer a broader historical perspective, rather than mere judgments in isolated cases".²²³

Imbebeau argued that although the truth telling process is painful for many victims and survivors, the recording of the history of the atrocities and violations, enables the people to remember the atrocities that took place and prevent them from reoccurring.²²⁴ Hayner argued that the truth telling process is cathartic for many survivors and victims who are given the opportunity to tell their stories in an environment that does not have strict and rigid evidentiary requirements as a court of law²²⁵. The truth telling process enables perpetrators to own up to their actions and seek the forgiveness of victims. The Truth commissions also help in identifying the perpetrators of crimes during the conflict while at the same time vindicating the experience of victims and survivors.²²⁶

The Attorney General of Sierra Leone upon the enactment of the TRC legislation stated that:

*"Far from being fault finding and punitive, it [the TRC] is to serve as the most legitimate and credible forum for victims to reclaim their self worth and a channel for the perpetrators of atrocities to expiate their guilt and chasten their consciences. The process has been likened to a national catharsis involving truth telling, respectful listening and above all compensation for victims in deserving cases"*²²⁷

²²² William Aschabas, (2004) A synergistic relationship :The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone.

²²³ *Supra* note 41.

²²⁴ Martin Imbebeau, Initial Truth Establishment. In William Schabas *et al*/Truth Commissions and Courts Kluwer Academic Publishers 2004.

²²⁵ *Supra* note 41.

²²⁶ William A schabaset al, Truth Commissions and Courts, Kluwer Academic Publisher, 2004, pg4.

²²⁷ *Ibid*.

Uganda has had two Truth commissions, which unfortunately did not succeed in their mission. The first was established in 1974 by the then dictator Idi Amin, to investigate the numerous disappearances of citizens which occurred after he assumed power.²²⁸ The commission was as a result of pressure mounted on the Amin government by the international community, to investigate the numerous disappearances.²²⁹ The commission had the discretion to compel witnesses to testify and order various organs of government to produce evidence. However since the establishment of the commission was a charade, the TRC' report, which held the intelligence organs responsible for 308 disappearances, was not and disappearances continued at a grander scale.²³⁰

The second Truth commission was established in 1986 after the Guerrilla movement of President Museveni took power. The mandate of the commission was to investigate grave human rights violations that took place from 1962, when Uganda attained its independence, to 1986 when the Museveni government took power.²³¹ Unfortunately, like its predecessor, the government did not have the political will to ensure that the commission executed its mandate effectively. The commission lacked institutional capacity to deal with the sizeable number of complaints it received and had few competent people to execute its mandate, since most of the educated elites of Uganda had flown into exile. It was always faced with financial problems which would prevent it from holding sessions for long periods of time. As a result after 5 years of its existence, the TRC came to an end and its ninety page report was not widely published and victims were not compensated. The government responded by establishing a Human

²²⁸ Established by a Presidential Legal Notice Under the Commission of Inquires Act of 1974.

²²⁹ Hayner B Priscilla, (2001) *Unspeakable Truths: Confronting Truths: Confronting state Terror and Atrocity*.

²³⁰ Cecil Rose, *Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda*.

²³¹ *Supra*.

Rights Commission to address the human rights violations in the country.²³² The two TRC's failed because of lack of commitment and genuine interest on the part of government to implement their recommendations.

The National Reconciliation bill provides for the establishment of a Truth forum.²³³ However, the bill has faced stiff opposition from the current government because the Truth forum it proposes to establish would have the jurisdiction to investigate gross human rights violations that occurred from 1962, when Uganda got its independence, to date. This would mean the current regime would be held accountable for atrocities it committed during the guerrilla war that brought it in power.²³⁴ It is important to note that although the Truth forum would not have the jurisdiction to grant amnesty, under Clause 12 of the National Reconciliation Bill it, may refer to the Amnesty Commission, perpetrators or witnesses for a determination of their entitlement to amnesty.

4.8.2 Truth Commissions as Mechanisms of Balancing Restorative and Retributive Justice for Victims of the Armed Conflict

Some of the Truth Commissions that have existed so far have documented few cases of sexual violence, torture and displacement.²³⁵ Most of them have not fully addressed issues of gender, particularly the gender dimensions of the conflict.²³⁶ It is argued that the relegation of women to secondary citizens by society tends to devalue their experiences as victims of gross human rights violations. This accounts for why there were few women who reported cases of sexual violence for the case of the South

²³² Constitution of the Republic of Uganda, 1995. Article 52.

²³³ Cecil Rose, Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda.

²³⁴ Jackee Budesta Batanda (2009), The role of Civil Society in Advocating for Transitional Justice in Uganda; Institute for Justice and Reconciliation.

²³⁵ Hayner, B. Priscilla, (2001) Unspeakable Truths: Confronting State Terror and Atrocity.

²³⁶ Vasuki Nesiah, *et al* (2006). Truth Commissions and Gender: Principles, Policies and Procedures, International Center for Transitional Justice.

African TRC.²³⁷ Many women have been indoctrinated into believing that their experiences are less significant compared to the experiences of their male relatives and friends.²³⁸ They find it easier to testify in their capacities as mothers or wives of victims and not as victims themselves.²³⁹ The Truth Commission for South Africa is said to have documented very few cases of sexual violence and as a result its report did not reflect the scale at which sexual violence was perpetrated during the apartheid era.²⁴⁰ Statistics indicate that of the 8000 recorded testimonies of human rights violations, only 300 of these dealt with sexual assault of which only 80 related to women and of the 80 only 17 were of rape.²⁴¹ This figure is said to under represent the number of women who had been subjected to political and sexual violence. The underreporting of rape and other forms of sexual violence is due to the cultural norms and social stigma that many rape victims are subjected to.²⁴²

Sex is considered to be a private matter and women who publicly report being violent sexual experience publicly are most often stigmatized. Many victims of sexual violence in South Africa felt embarrassed and were uncomfortable while giving testimony of sexual abuse at public hearing or have their abuse published in the report. Meintjes Sheila described violence against women in South Africa as one of the hidden stories of our past because there were very few brave women who could narrate the sexual violence they suffered, to the Truth and Reconciliation Commission.²⁴³

²³⁷ Beth Goldblatt & Sheila Meintjes; South African Women Demand the Truth.

²³⁸ Keli Muddell; Capturing Women's Experiences of Conflict: Transitional Justice In Sierra Leone; Michigan state Journal of International Law.

²³⁹ Meredith Turshen & Clotilde Twagiramariya(1998) . What women do in Wartime (London: Zed Books)

²⁴⁰ Beth Goldblatt & Sheila Meintjes (1997); Dealing with the Aftermath: Sexual Violence and the Truth and Reconciliation Commission; Agenda, No 36, No to Violence.

²⁴¹ *Ibid.*

²⁴² Hayner B priscilla, Unspeakable truths .Confronting state terror and atrocity, Routldge 2001.

²⁴³ Beth Goldblatt & Sheila Meintjes (1997) Dealing with the Aftermath: Sexual Violence and the Truth and Reconciliation Commission' Agenda, No.36, No to Violence.

The failure of victims of rape and sexual violence to give testimony before the truth commission of South Africa compelled the civil society organizations to demand for an environment that is conducive for victims of rape and other forms of rape and sexual violence to share their experiences.²⁴⁴ The TRC accepted the requests and held three women-only hearings in which women recorded their testimony of rape torture, murder abduction and sexual violence. During the Sierra Leonean Truth Commission on the other hand, learning from the experiences of the South African TRC, took several measures to ensure victims of sexual violence documented their experiences.²⁴⁵ The measures included gender trainings for commissioners who did not have previous experience in dealing with victims of sexual violence, to make them sensitive to the needs of such victims.

Taking a leaf from its South African predecessor, the Sierra Leonean TRC held three women only sessions. They also recorded the testimony of victims of sexual violence in camera. Furthermore only female commissioners questioned victims. The TRC also collaborated with Non-governmental organizations to ensure that victims of sexual violence were provided with the necessary support and were encouraged to testify before the TRC. In its final report the Sierra Leonean Truth Commission included a separate section which gave a detailed account of the gender crimes committed during the armed conflict and also gave recommendations on the necessary measures that need to be taken to protect the victims.²⁴⁶

Despite the failure of the past Truth Commissions, in Uganda, it is a belief that the establishment of a Truth Commission would facilitate reconciliation in Northern Uganda. The truth commission would complement the formal courts. This would be similar to the accountability process in Sierra Leone where a special court and a Truth Commission

²⁴⁴ *Ibid.*

²⁴⁵ Binaifer Nowrejee, Making The Invisible War Crime Visible : Post –Conflict Justice for Sierra Leone’s Rape Victims , Havard Human Rights journal, 2005.

²⁴⁶ *Ibid.*

addressed the crimes committed during the conflict simultaneously. Given the staggering number of perpetrators and the limited resources that the formal courts have access too, the Truth Commission would ease the burden of the formal courts.

The documentation and recording of witness and victim testimonies would help in identifying those responsible for the gross human rights violations in Northern Uganda and their motivation for doing.²⁴⁷ A Truth Commission would also bring to light the various atrocities that were committed during the armed conflict. The granting of amnesty to perpetrators of gross human rights violations without having them publicly confess and seek the forgiveness of victims, before a truth commission or any other body with a similar mandate, has been considered to be "burying the past instead of illuminating it."²⁴⁸ This is likely to sabotage any chance of reconciliation within the community and especially the victimized population, who are likely to harbor animosity against the perpetrators and might eventually seek vengeance against them resulting in another civil war.²⁴⁹ A Truth Commission in Northern Uganda would also contribute to justice and accountability by presenting a platform where experiences of victims are validated. It would also contribute in identifying the institutional shortcomings and the necessary reforms. The report of the commission would catalogue the sequence of events that led to the atrocities and how the atrocities happened. This would enable the authorities to identify the causes of conflict and consequently how to prevent future reoccurrence.

A Truth Commission would also serve as a platform for many victims to testify and speak about their experiences. As already used in South Africa, Sierra Leonean and Rwanda as part of a healing process for many victims, who need to narrate their

²⁴⁷Cecil Rose, 'Looking Beyond Amnesties and Traditional Justice and Reconciliation Mechanism in Northern Uganda .A proposal for Truth Telling and Reparations.

²⁴⁸ *Ibid.*

²⁴⁹ Refugee Law project Working Paper No.15, 'Whose justice? Perceptions of the Uganda Amnesty Act, the potential for conflict resolution' 2005.

experiences and have them acknowledged formally by the society. According to Aryeh Neier, "Acknowledgement implies that the state admitted its misdeeds and recognized that it was wrong." This contributes to healing the wounds of victims and enables them reclaim their dignity.²⁵⁰ The TRC would also give the Victimized populations an opportunity to know the truth about the conflict and what led to their victimisation. Principle 2 of the updated Set of principles to combat impunity by states provides that;

*"Every people have the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the Recurrence of violations"*²⁵¹

Furthermore, the Basic principles on the right to a remedy and reparation provide that:

*"Victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of International Human Rights law and serious violations of International Humanitarian law and to learn the truth in regard to these violations"*²⁵²

The South African and Sierra Leonean Truth Commissions were exemplary in serving this purpose however; they also raised debates as to whose truth was actually documented. The nature of truth was determined by a number of factors which included; the scope and flexibility of its mandate. Hayner asserted that a picture of the truth would immerge if a commission has a flexible mandate".²⁵³ A broad and flexible mandate for a Truth Commission would enable it document human rights violations that

²⁵⁰ Aryeh Neier (1990) what should be done about the guilty? New York Review of Books ,February 1 1990,34.

²⁵¹ Hayner Priscilla (2001), Unspeakable Truths: Confronting State Terror and Atrocity.

²⁵² Diana Orentlicher (2005),Report of the Independent expert to update the set of principles to combat impunity, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add. 18 February 2005.

²⁵³ UN General Assembly Resolution 60/147 of 16 December 2005; Principle 24 about basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious Violations of International Humanitarian Law.

were not envisaged by the legislation establishing and granting jurisdiction to the commission. A narrow and limited mandate prevented the commission from receiving testimony of victims who were victims of human rights violations not covered by the mandate of the commission. Mahmood Mamdani, criticized the inability of the South African Truth commission to document some of the apartheid practices and described the report produced by the South African Truth commission as "compromised truth."²⁵⁴

If a Truth Commission is established in Northern Uganda, special regard should be paid to its composition. The composition of the commission would determine the nature of truth that would emerge. For instance a commission that is comprised of men only would not be able to examine truth through a gendered lens which is necessary for the encouragement of victims of sexual abuse and other forms of gender based violence to testify and deal with the testimony of such victims.²⁵⁵

The establishment of the Truth Commission (Mato oput) system would also need to have a flexible mandate and should adopt a victim centered approach which would enable it record testimony from victims, who have been subjected to all forms of rape, killing, abduction, mutilation, displacement, child soldiers and sexual violence. This would be provided in the instrument defining the Truth Commission's mandate.

It should also adopt some of the best practices from the Sierra Leonean Truth Commission. This includes providing gender training for the commissioners to enable them adopt a gender sensitive approach when dealing with cases of rape and other forms of sexual violence. The testimony of victims needs to be recorded in camera, to encourage victims who would like to remain anonymous, due to fear of stigmatization,

²⁵⁴ Mahmood Mamdani (1996), *Reconciliation Without Justice* South African Review.

²⁵⁵ Hayner Priscilla (2001) *Unspeakable Truths: Confronting State Terror and Atrocity*.

the opportunity to testify. This could include having female commissioners question victims and record their testimonies. The Truth commission could hold women only sessions which, as has been evidenced in Sierra Leone and South Africa, are safe spaces for testifying without fear of being stigmatized by the patriarchal societies. The commissioners could also encourage women who come to testify on behalf of other victims to talk about the various forms of abuse, if any, they have been subjected to.²⁵⁶

The instrument granting and defining the jurisdiction of the TRC needs to recognize sexual violence as a specific violation rather than consider it as being covered by the broad definition of gross human rights violation.²⁵⁷ This would prevent the TRC from being blind to rape and other forms of sexual abuse experienced by women. The South African TRC acknowledged that: "The definition of gross human rights violation adopted by the commission resulted in blindness to the types of abuse predominantly experienced by women."²⁵⁸ This could be avoided by specifically providing for and defining the various forms of sexual violence in the instrument establishing and granting jurisdiction to the TRC. The Truth Commission in collaboration with NGO's needed to publicize its activities through various media channels such as Television and radios. This is aimed at informing victims of their rights, the procedures involved and the various protective measures in place. This would encourage victims to testify before the commission.

4.8.3 Reparation

Many victims of human rights abuses in Northern Uganda experienced and some continue to experience physical and emotional anguish, psychological trauma and are

²⁵⁶ Beth Golblatt & Sheila Meintjes (1996); Gender, the Truth and Reconciliation Commission, A submission to the truth and Reconciliation Commission.

²⁵⁷ Hayner Priscilla (2001) , Unspeakable truths. Confronting State Terror and Atrocity.

²⁵⁸ *Ibid.*

stigmatized by their communities.²⁵⁹ In an interview with Amnesty international a victim of sexual violence stated that;

"Even though I am back to the community and my life is normal, I still hallucinate and dream a lot about what happened. I dream about my forced marriage and the people I was made to kill and others who were killed during our time with the LRA. Because of my experience, I sometimes find myself shouting uncontrollably".²⁶⁰

In addition vital community infrastructure such as schools, health centers police stations and roads were destroyed during the war. According to a survey conducted by the International Centre for Transitional Justice, a significant number of the victims interviewed recommended that reparations should be made to the victimized communities.²⁶¹ While some preferred monetary compensation, the majority preferred the rebuilding of their villages and basic infrastructure.²⁶²

The Juba Agreement on Accountability and Reconciliation signed between the LRA and the Government of Uganda in June 2007, and an Annexure signed in February 2008 imposed an obligation on government to establish a reparations scheme for Victims.²⁶³ In 2007 the government put in place the Peace Recovery and Development Plan for Northern Uganda (PRDP).²⁶⁴ The PRDP's objective is to rebuild the war torn districts. It also seeks to strengthen the law enforcement agencies and the judiciary.

²⁵⁹ Cecile Rose (2008) Looking beyond amnesty and traditional justice and reconciliation mechanisms in Northern Uganda. A proposal for Truth Telling and Reparations, 28BCThrid world L.J345 2008.

²⁶⁰ Amnesty International, Left to their own Devices .The continued sufferings of victims of the conflicts in Northern Uganda.

²⁶¹ Phuongpham *et al.*, Forgotten Voices ; A population –based survey on attitudes about peace and justice in Northern Uganda. Available at <http://www.ictj.org/images/content/q/2/127.pdf>.

²⁶² *Ibid.*

²⁶³ Annex to June Agreement (between the Government of Uganda and LRA) on Accountability and Reconciliation.

²⁶⁴ Peace Recovery and Development plan for Northern Uganda, 2007-2010.

The award of reparations to victims is considered to be important in order to achieve justice to victims.²⁶⁵ The United Nations' Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Human Rights Violations, requires states to make available to victims adequate, effective and prompt reparation for harm suffered.²⁶⁶

According to the Basic Principles of Justice and Guidelines to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law of 2000 (Basic Principles), Reparations include restitution, compensation and rehabilitations as well as other forms of remedy.²⁶⁷ The Basic principles further provide that "Restitution should whenever possible restore the victims to the original situation before the gross violation of international human rights or serious violations of international humanitarian law occurred. Restitution includes as appropriate: restoration of liberty, enjoyments of human rights, identity, family life, and citizenship, return to one's place of residence restoration of employment and the return of property."²⁶⁸

The Basic principles also stipulate that:

"Compensation should be provided for any economically assessable damage as appropriate and proportionate to the gravity of the violation and the circumstances of each case resulting from gross violations of International Human Rights law and serious violations of International Humanitarian law such as Physical harm or mental harm; lost opportunities including employment education and social benefits; material damages and loss of earnings including the loss of earning potential moral damage; costs required for legal or expert assistance, medicine and medical services and

²⁶⁵ Anne-Mare de Brouwer, supranational criminal prosecution of sexual violence : The ICC and practice of the ICTY and ICTR pg 384.

²⁶⁶ General Assembly Resolution 60/147 of 16 December 2005; Basic principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious Violations of International Humanitarian Law.

²⁶⁷ Basic principles of justice and guidelines to a remedy and reparation for victims of violations of international human rights and Humanitarian law of 2000 Principle 19.

²⁶⁸ The basic principles of justice and guidelines to a remedy and reparation for victims of violations International human rights and humanitarian law of 2000 Principle 19.

*psychological services for rehabilitation should include medical psychological care as well as legal and social services.*²⁶⁹

Although the reparations awarded to victims may not be of significant value, the symbolism attached to them is of vital importance. Ann Marie Debrower asserted that victims of sexual violence need special and separate attention when it comes to reparations.²⁷⁰ She further argued that;

*"In addition to the devastating physical psychological social and economic consequences women and girls generally face, they often contract sexually transmitted diseases including HIV AIDS. They face unwanted pregnancies, and health complications resulting from botched abortions and suffer sexual mutilation and other injuries such as fistula and injuries to reproductive organs. The unavailability of proper health care and counseling during and in the aftermath of mass sexual violence has left many women to deal with their traumas alone as a consequence those women continue to suffer."*²⁷¹

This is further empathized by Cecily Rose who observed stated that the reparations should be capable of restoring the victims to their condition prior to their victimization.

Cecily Rose stated that;

"Reparations could encompass an expansive definition, including restitution (the restoration of the victim to the original situation before the violations occurred), compensation (for economically assessable damage), rehabilitation (medical and psychological care and legal and social services), and satisfaction and guarantees of non-repetition (to acknowledge the violations and prevent their recurrence)." ²⁷²

The Juba peace agreement on accountability and reconciliation provided for the award of reparations to victims. It stipulated that "Reparations included a range of measures

²⁶⁹ The basic principles of justice and guidelines to a remedy and reparation for violations of international human rights and Humanitarian law of 2000 Principles 20 and 21.

²⁷⁰ Anne-Marie de Brouwer (2005), Supranational criminal prosecution of sexual violence: The ICC and the practice of the ICTY and ICTR.

²⁷¹ *Ibid.* pg 385.

²⁷² Cecil Rose, Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda.

such as: rehabilitation; restitution; compensation; guarantees of non-recurrence and other symbolic measures such as apologies, memorials and commemorations. It was agreed that priority was to be given to members of vulnerable groups."²⁷³

The agreement also provided that reparations be made by perpetrators as part of penalties and sanctions in accountability proceedings.²⁷⁴ It was important to note that the war left both perpetrators and victims in a worsened economic condition. This made it impossible for the perpetrators to pay reparations to the victims as required under the Juba agreement. Furthermore, compensation by perpetrators was also impossible to effect given that the victims who did not know the exact identities of their perpetrators and the perpetrators did not know the exact identities of their victims²⁷⁵. The only viable alternative required by perpetrators was to provide symbolic compensation to the victimized communities. This included performance of community service, such as building village schools, making roads, and most important of all talking about their experience, what motivated them to commit the atrocities and how they can be prevented.²⁷⁶

Much as some victims indicated preference for financial compensation,²⁷⁷ the Government was also incapable of providing compensation to victims due to the staggering number of victims against the limited resources available. Any monetary compensation scheme put in place was likely to affect the finances of the country. Furthermore, no amount of monetary compensation would adequately cover the terrible

²⁷³ The Juba Agreement on Accountability and Reconciliation between the Government of Uganda and the Lords Resistance Movement.

²⁷⁴ The Juba Agreement on Accountability and Reconciliation between the Government of Uganda and the Lords Resistance Movement June 2007 Clause 9.3.

²⁷⁵ Refugee Law Project Working paper No 17, Peace first Justice later, Traditional justice in Northern Uganda, July 2005.

²⁷⁶ Refugee law project, working paper No 17 peace first Justice later, Traditional Justice in Northern Uganda, July 2005.

²⁷⁷ Phuong Pham *et al.* Forgotten Voices: A population-Survey on Attitude About peace and Justice in Northern Uganda, 16-17 (2005), Int'l Ctr. For Transitional Justice, Available At [Http://lctj.org/Images/Content/1/2/127](http://lctj.org/Images/Content/1/2/127).

experiences that victims, especially those of sexual abuse, have been subjected to. Attaching a monetary value that was insignificant to their experience would amount to diminishing their experience hence subjecting them to further victimization. Brandon Hamber observed that;

*"The process of healing does not occur through the delivery of an object like a pension or a monument but through the process that takes place around the object. It is how the individual processes the meaning of reparations that is critical."*²⁷⁸

The government needed to resort to offering symbolic reparations as was done in South Africa. The symbolic compensation could take the form of improved infrastructure, easy access to social amenities such as schools and hospitals. It could also entail subsidized and where possible free education, free housing, free health care and counseling services for victims and children born as a result of rape.²⁷⁹ Health care was of significant importance especially for victims of sexual violence who as a result were infected with sexually transmitted diseases like HIV/AIDS, or developed complications as a result of absence of proper maternal care in the bush where they were forcefully impregnated.

The government could put in place training to equip the victims with the necessary skills to make them competitive in the job market. The education curriculum could be reformed to incorporate a deep analysis of the consequences of torture, mutilation, forced recruitment into LRA ranks, and sexual violence. The curriculum could be tailored to contain an acknowledgment of the experiences of victims and what could be done to prevent the reoccurrence of such atrocities. Due to the stigma attached to victims, very few organizations and companies were willing to employ them in order to address the problem.

²⁷⁸ Brandon Hamber (1997), *Repairing the Irreparable*, CSV, Johannesburg.

²⁷⁹ Cecily Rose, *Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda*.

Therefore the government could give incentives to organizations and companies to employ victims. The governments could set aside a special day to commemorate the experiences of victims whereby all victims are encouraged to assemble and talk about their experiences and how they have overcome their past and what additional measures need to be adopted by the government to improve their lives. Through the prioritization of social service delivery to victims, the state would be providing symbolic compensation which would have a lasting positive impact for the victims.

4.8.4 Conclusion

The Current state of the criminal justice system in Uganda poses a number of challenges in balancing restorative and retributive justice to the LRA victims who have suffered violence who approach it for justice. Some of those challenges include the obsolete criminal laws and evidentiary requirements, which are too technical and traumatizing to many victims.

Balancing restorative and retributive justice in Northern Uganda for LRA victims can be achieved domestically if the necessary legal and institutional reforms are put in place. The domestication of the ICC Statute as part of the law in Uganda is one of the ways of ensuring that there are adequate laws to cover the crimes committed during the armed conflict. There is also a need for institutional reform to ensure that the members of the administration of justice institutions such as the police, prosecutors and judges are sensitive to the peculiar needs of victims of sexual violence and have the necessary expertise and skills to conduct effective investigations and prosecutions of perpetrators of war crimes and crimes against humanity.

In this regard, balancing restorative and retributive justice needs the trials to be fair and credible and the penalties imposed should be adequate and should reflect the gravity of the crimes committed. Therefore, it is preferable to prosecute those greatly

responsible for committing the most serious crimes, while those low level perpetrators should be held accountable by the traditional justice mechanisms or truth commissions.

The importance of traditional justice institutions in offering accountability for crimes committed while at the same time reconciling and reintegrating victims into their communities cannot be over emphasized. As mentioned above the restorative nature of these mechanisms is important in the peace building and reconciliation process of the post conflict societies. However, for this mechanism to remain relevant in the global justice discourse, they need to be engendered and should incorporate human rights principles in their operations. In this system, the element of formal judicial application of ICC should not be ignored in the process of retributive justice mechanism.

A truth commission is also an important transitional justice mechanism. It offers a more favorable environment for victims to testify about the atrocities compared to the restricting and at times hostile environment of the Courts. As observed in this chapter the truth telling process is cathartic for many victims who feel vindicated after they narrate about their ordeal and have the perpetrator confess. Their history recording feature is also important for communities in transition. However, for the truth commission to achieve its objective there should not be predetermined truths, as the case was in South Africa, where victims were advised to give a certain set of facts which did not necessarily reflect what they witnessed or how they were affected.

Reparations are an important feature in the rehabilitation and reintegration process of victims. The non monetary reparations which consist of schools, psycho-social support centers, health centers and building of roads contribute to the rebuilding of the of the post conflict communities.

CHAPTER FIVE

SUMMARY, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter summarizes the main findings, conclusions and recommendations derived from the arguments in the foregoing chapters. They all point to the need for a victim centered approach when addressing the issues of justice for victims in Northern Uganda. There is also need for a holistic and comprehensive view of justice that goes beyond criminal prosecution but also encompasses other forms of restorative justice such as traditional justice mechanisms, Truth and Reconciliation Commissions, Reparations schemes and guarantees of non repetition.

5.1 Summary of Findings

The protracted conflict in Uganda illustrates the problem and potential solution. A vicious rebel group, the Lord's Resistance Army, has been terrorizing civilians in Northern Uganda for two decades. Its favorite tactics included abducting children. The girls were turned into sex slaves and the boys into child soldiers. Abductees were forced to mutilate, maim, rape, and kill under threat of death. Over a million people were displaced into overcrowded, squalid camps. Even then, they remained vulnerable to attacks because of insufficient protection by the government, whose forces were also at times accused of human rights abuse of civilians whom they were expected to protect.

The LRA rebels during the Juba Peace talks were willing to put down their arms and end the atrocities but the price for signing a peace deal included immunity from the charges made against their leaders by the International Criminal Court (ICC).²⁸⁰

²⁸⁰ Tim Allen(2006) Trial Justice: The International Criminal Court and LRA.

The Prosecutor of the ICC pointed out that such demand by LRA amounted to blackmail and extortion. The Prosecutor asserted that the international community could not justifiably trade peace for impunity. According to the Prosecutor, the rebels' demands amounted to leaving the people of Northern Uganda once again subject to war crimes and crimes against humanity in an attempt to promote justice.

Balancing restorative and retributive justice in Northern Uganda can be achieved domestically if the necessary legal and institutional reforms are put in place. The domestication of the International Criminal Court Statute as part of the laws in Uganda is one of the ways of ensuring that there are adequate laws to cover the crimes committed during the armed conflict. The study established that there is need for institutional reform to ensure that the institutions responsible for the administration of justice such as the police, prosecutors and judges are sensitive to the peculiar needs of victims like those of sexual violence.

The research further established that there was need for the criminal investigators and prosecutors to be equipped with necessary expertise and skills to conduct effective investigations and prosecutions of perpetrators of war crimes and crimes against humanity. It was found out that formal justice mechanism generated mixed feelings among the Acholi community. Instead the Acholi community proposed the informal traditional methods like Mato puto, as a method of administering justice for LRA victims as a measure to peace building in Northern Uganda.

5.2 Conclusions

The study was specifically carried out in the Acholi sub region in Northern Uganda which is made of seven districts of Gulu, Kitgum, Lamwo, Mwoya, Pader, Amur and Agago. The area was considered because most of the atrocities by LRA rebels in Uganda were committed in this region. Uganda has experienced a spiral of armed conflicts since it attained independence in 1962. However, the most recent armed conflict was one that engulfed the Northern part of the country since 1986 up to the time when the Lord Resistance Army rebels fled to Democratic Republic of Congo (DRC) in 2005 and later to Central African Republic (CAR) around 2008.²⁸¹ The conflict in Northern Uganda was initially rooted in a popular rebellion against the National Resistance Movement (NRM) government led by President Yoweri Museveni.

Despite the ejection of the LRA to DRC and CAR, the study revealed that issues of personal security, inadequate social protection, unresolved injustices and human rights violations remain a concern of the general population as people resettle in their homes. This situation undermines the effort taken to balance restorative and retributive justice in the post armed conflict Northern Uganda.

The Current state of the criminal justice system in Uganda faces a number of challenges in balancing restorative and retributive justice to the LRA victims. Some of the challenges include some obsolete criminal laws and evidential requirements, which are too technical and traumatizing to many victims. For example proving beyond reasonable that a victim was raped is so traumatizing that many women prefer not take such cases to court.

²⁸¹ Mutaizibwa Emma (2012); The Observer, Monday April 9-10 Vol.7 PLRA Reacts to Kony Video.

The study indicated that balancing restorative and retributive justice in Northern Uganda for LRA victims can be achieved if necessary legal and institutional reforms are put in place. The domestication of the ICC Statute as part of the law in Uganda is one of the ways of ensuring that there are adequate laws to cover the crimes committed during the armed conflict. There is also a need for institutional reform to ensure that the members in the administration of justice institutions such as the police, prosecutors and judges are sensitive to the peculiar needs of victims of sexual violence. They should have the necessary expertise and skills to conduct effective investigations and prosecutions of perpetrators of war crimes and crimes against humanity.

In this regard, balancing restorative and retributive justice needs the trials to be fair and credible. The penalties imposed should be adequate and reflect the gravity of the crimes committed. Therefore, it is preferable to prosecute those greatly responsible for committing the most serious crimes, while those low level perpetrators are held accountable by the traditional justice mechanisms or truth commissions.

The study revealed that retributive justice essentially is to repair justice through unilateral imposition of punishment, whereas restorative justice is aimed at the repair of justice through reaffirming a shared value-consensus in a bilateral process.²⁸² Retributive justice is a form of evidence-based justice that seeks to pursue and punish individuals that are understood to have breached national law, international law and legal conventions.²⁸³ It is aimed at persecuting human rights abuses in order to establish democracy.

²⁸² Wenzel, M., Okimoto T. G., Feather N. T. & Platow, M. J. (2007) Retributive and Restorative Justice

²⁸³ Sweta Madhuri Kannan (2011) How Should Post-Conflict Societies Balance their Demand for Truth and Justice?

The findings established massive violations of human rights by the LRA rebels such as rape, killing, mutilation, Child soldier, abduction, sexual violence, torture and loss of property in Northern Uganda. The study further indicated that justice in Northern Uganda needs to be taken beyond the courtroom and include a number of non legal interventions. Much as the criminal justice process is vital for holding perpetrators accountable and offering retribution to victims, it does not adequately address the complex needs of victims in the post armed conflict situations. Like all other crimes committed during conflict, rape, torture and abduction among others have various implications for victims. The study indicated that justice for victims involved a broad spectrum of interventions, which comprise of retributive justice in the form of criminal prosecutions of perpetrators and restorative justice consisting of truth telling process through either Truth Commissions or traditional justice mechanisms and reparation schemes.

The study revealed that there was inadequate access to social services such as psycho social support centres, hospitals and schools. The study further established that there is need for facilitating community dialogue and awareness campaigns aimed at stopping future abuses of torture, rape, child soldiers and mutilation. It is important to reiterate that both legal and non legal interventions need to be guided by the interests of the victims who should participate in all the processes if justice is to be achieved.

The study further revealed that peace building was required in Northern Uganda to assist the communities that were affected by armed conflict.

5.3 Recommendations

The government of Uganda in collaboration with civil society organizations, need to develop and create awareness, through public education and community dialogue about

the need to end and prevent sexual violence against women. Those awareness campaigns should highlight the rights of victims of LRA rebels and also guide them on how to access justice.

There is need to facilitate the reintegration of victims of sexual violence into their communities. Reintegration should be at various levels, starting with acceptance back into their families and subsequently into the larger community. This also entails protecting victims from abuse and stigmatization through community awareness programs to prevent community members from shaming and shying away from victims who were raped or sexually abused.²⁸⁴ Reintegration can also be facilitated through community mediations conducted by the elders to facilitate the acceptance of the victims back into the community.²⁸⁵

The study revealed that the ICC is not capable of offering justice to all victims of the conflict given the various institutional shortcomings mentioned above. Therefore, there is need for the International Criminal Court to establish an outreach programme that would provide information to victims and witnesses about the mandate of the court and the limitations of that mandate. Victims need to know that the Court may not be able to meet their expectations given the system of complementarity that governs the operations of the ICC.²⁸⁶

The *Rationae Temporis* of the court, restricts jurisdiction to crimes that were committed since 2002 and not before.²⁸⁷ The prosecutorial strategy of the office of the Prosecutor

²⁸⁴ *Ibid.*

²⁸⁵ Benaifer Nowrojee (2005); Making the Invisible war Crime Visible; Post Conflict Justice for Sierra Leone's rape victims; Harvard Human Rights Law Journal Vol. 18.

²⁸⁶ Naomi Cahn, Beyond Retribution and Impunity, Responding to war Crimes of Sexual Violence.

²⁸⁷ Jackee Budesta Batanda, The Role of Civil Society in Advocating for Transitional Justice in Uganda,

which focuses on prosecuting those responsible for committing the most serious crimes and who bear the greatest responsibility may not heal the wounds of the victims.²⁸⁸ Therefore it is recommended to apply both restorative and retributive means of achieving justice for the victims of the internal armed conflict in Northern Uganda. Currently out of the thousands of perpetrators of human rights violations in Northern Uganda only five including Kony Joseph have been indicted.²⁸⁹ The bulk of the perpetrators of grave human rights violations were left to be held accountable by the national justice mechanisms. It is important that victims are made aware of the limited mandate of the International Criminal Court and should instead focus on seeking accountability and redress through the national mechanisms.

It is also recommended that prosecutorial policy be maintained where all the rebel commanders who ordered the committing of the gravest crimes are expected to be prosecuted by the International Criminal Court. The aim of this recommendation is to send a message of deterrence to future perpetrators of human rights abuses. The middle level perpetrators should be prosecuted by the International Criminal Division of the High Court of Uganda. The Lower level perpetrators especially child rebel soldiers should be held accountable through the traditional justice mechanisms.

The study showed that victims of human rights abuses were so many that, the formal justice mechanisms need to be complemented by the informal justice mechanisms if all cases are to be addressed. Given the large numbers of perpetrators, these mechanisms would ease the burden on the formal courts by holding low ranking perpetrators accountable. Since the informal justice mechanisms are also restorative in nature they are likely to foster reconciliation within the communities as was done in the Gachacha doctrine in Rwanda.

Institute for Justice and Reconciliation.

²⁸⁸ Naomi Cahn, *Beyond Retribution and Impunity: Responding to war Crimes of Sexual Violence*.

²⁸⁹ *Ibid.*

The study also highlighted the institutional deficiencies of the national courts and Law enforcement agencies. It was therefore, recommended that the institutional capacities of the law enforcement agencies and the judiciary need to be strengthened and made more gender sensitive for them to be responsive and sensitive to the rights and interests of victims of rape. That could be done through training. There is a need to improve the integrity of the law enforcement agencies and judiciary by adopting measures that prevent abuse and making them more accountable to the public. This can be done by ensuring the independence of the courts from political interference and putting in place a system that enables members of the public to report without fear cases of corruption committed by some errant police officers, prosecutors, magistrates and judges. The judges should change their approach to justice and be more sensitive to the rights and interests of witnesses and victims of human rights abuses. For example handling the corroboration requirements in the rape cases should be handled with some empathy in order to protect the privacy of victims and yet encourage many victims to seek redress.

The government of Uganda needs to expedite the implementation of the Peace, Recovery and Development Plan for Northern Uganda (PRDP) which came into effect in 2007. One of its goals is to consolidate peace and security and to lay foundation for recovery and development in Northern Uganda. The government of Uganda should also embark on comprehensive peace building activities namely; political peace building, structural peace building and social peace building which are necessary in achieving conflict transformation.

The Government of Uganda needs to comply with its obligation under the Great Lakes Protocol on the Prevention and Suppression of Sexual violence against women and

children. The protocol calls upon member states to provide legal assistance to women and girls who are victims and survivors of rape as well as other acts of sexual violence and exploitation. The Protocol also calls upon member states to comply with UN Security Council Resolution which provides for the respect and promotion of the rights of women and children during armed conflict.²⁹⁰ Similarly the Government of Uganda ratified and incorporated the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which contains a number of progressive provisions aimed at protecting the rights and improving the status of women in Africa.

The traditional justice institution need to put in place to guarantee that victims and witnesses who participate in the process are not subjected to retribution from the perpetrators.²⁹¹ The processes should not be used by perpetrators to diminish guilt, trivialize the violence or shift the blame to the victims.²⁹² The traditional justice mechanisms should not, in the name of obtaining a consensus pressure victim to accept an outcome they are not comfortable with. The interests of the victims should be taken into account when a decision to accept a perpetrators confession and apology is made. Ultimately, the decision to forgive should be vested in the victim. Victims who seek redress from the traditional justice mechanisms should not be barred from recovering damages and compensation from perpetrators, by filing civil suits in the formal courts.²⁹³

²⁹⁰ The Rome Statute of the International Criminal Court.

²⁹¹ Preamble Protococal on the Prevention and Suppression of Sexual Violence Against Women and Children ;November 2006; Article 67 of the Declaration on Peace, Security , Democracy and Development in Great Lakes Region adopted on 20 November 2006.

²⁹²The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, Article 14.

²⁹³ Kathleen Daly & Julie Stubbs (2006), Feminist Engagement with Restorative Justice.

It is recommended that to address the issues of justice in Northern Uganda requires to resolve issues of historical imbalance between Northern and Southern Uganda that started at the formation of Uganda under the British rule.

As already mentioned, truth telling processes play an important role in the reconciliation and healing process. If established, a Truth Commission will provide platform for uncovering the truth about the atrocities that were committed during the armed conflict in Northern Uganda. Truth commissions empower victims by providing them with a platform where they can confront their perpetrators and also engage in the decision making process of which appropriate punishment should be issued against the perpetrator.²⁹⁴ It is important that a Truth and Reconciliation Commission be established and the victims of the internal armed conflict in Northern Uganda be identified and involved in its establishment. The mandate of the Truth Commission should include the development of a criterion for awarding reparations to victims and granting of amnesty to some perpetrators.²⁹⁵ It is worth noting that the experience of South Africa and Sierra Leone should be used to avoid some mistakes. According to Tristan Anne Borer the South African Truth and Reconciliation Commission did not providing an enabling space for women to talk about their experiences of abuse, as a result the report did not adequately capture the abuse the women had suffered during the apartheid era."²⁹⁶

Amnesty should be granted to perpetrators who publicly confess and seek forgiveness from victims before either the Truth and Reconciliation Commission or a traditional justice mechanism. The granting of amnesty as it is currently being done in Uganda is perceived by many people a perpetuation of injustice against victims. As noted in chapter two of this thesis, given the nature of atrocities committed, there is need for a

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ Tristan Anne Borer, Gendered War and Gendered peace: truth commissions and post conflict gender violence: lessons from south Africa violence against women 2009.

comprehensive reparations scheme that meets the social economic needs of victims of violence.²⁹⁷

It is also recommended that reparations scheme should be introduced to enhance rehabilitation of the victims of the armed conflict in Northern Uganda. The scheme should be used to access free health care, training in basic skills and psycho-social support in the form of counseling among others.

There is need to allocate adequate resources to the law enforcement sectors and the judiciary to enable them to conduct effective investigations as well as conduct fair and credible trials. Increased resources will also enable law enforcement institutions to provide enough witness protection to victims and witnesses in the form of safe-houses where victims can be sheltered until they are able to return to their homes and communities.

²⁹⁷ Tristan Anne Borer(2009), Gendered War and Gendered Peace: Truth Commissions and Post Conflict Gender. : Lessons from South Africa, violence against women.

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APPENDIX I
INFORMED CONSENT

I am giving my consent to be part of the research study of Mr. Adoniya Nuwagira that will focus on **"Balancing Restorative and Retributive Justice in post internal armed conflict in Acholi Sub region in Uganda"**

I have been assured of privacy, anonymity and confidentiality and that I will be given the option to refuse participation and have the right to withdraw my participation anytime.

I have been informed that the research is voluntary and that the results will be given to me, if I ask for it.

Initials: _____

Date _____

APPENDIX II

TRANSMITTAL LETTER FOR THE RESPONDENTS

Dear Sir/ Madam,
Greetings,

I am a Master of Laws-Public International Law candidate of Kampala International University. Part of the requirement for the award is a thesis. My study is entitled **"Balancing Restorative and Retributive Justice in post internal armed conflict in Acholi Sub region in Uganda."** Within this context, may I request you to participate in this study. Any data you will provide shall be for academic purposes only and no information of such shall be disclosed to others.

Thank you very much in advance.

Yours faithfully,

Adoniya Nuwagira.

APPENDIX III
CLEARANCE FROM ETHICS COMMITTEE

Date _____

Candidate's Data

Name _____

Reg. _____

Course _____

Title of Study _____

Ethical Review Checklist

The study reviewed considered the following:

- ☐ Physical Safety of Human Subjects
- ☐ Psychological Safety
- ☐ Emotional Security
- ☐ Privacy
- ☐ Written Request for Author of Standardized Instrument
- ☐ Coding of Questionnaires/Anonymity/Confidentiality
- ☐ Permission to Conduct the Study
- ☐ Informed Consent
- ☐ Citations/Authors Recognized

Results of Ethical Review

- ☐ Approved
- ☐ Conditional (to provide the Ethics Committee with corrections)
- ☐ Disapproved/ Resubmit Proposal

Ethics Committee (Name and Signature)

Chairperson _____

Members _____

INTERVIEW GUIDE

APPENDIX IV

QUESTIONNAIRES TO LRA VICTIMS

PART ONE: DEMOGRAPHIC PROFILE OF RESPONDENTS

1. Sex of respondent

Male ☐ female ☐

2. Age of respondent in years

10-15 ☐ 15-25 ☐ 26-35 ☐ 36-45 ☐ 46 and above ☐

3. Education of respondent

Primary ☐ Secondary ☐ Tertiary ☐ University ☐

Others, specify.....

4. Occupation of respondent

Peasant farmer ☐ Commercial farmer ☐ Business person ☐

Others, specify.....

None ☐

6. Marital status of respondent

Single ☐ Married ☐ Divorced ☐

Others, specify.....

7. The tribe of the respondent.....

Part Two

What do you know about LRA activities?

.....
.....
.....

Are you former victim of LRA? Yes ☐ No ☐

If yes, what did the LRA rebels do to you?

.....
.....
.....

What is the long term effect of your experience during the time of LRA armed conflict?

.....
.....

If No, tell us about your experiences how the community was treated during LRA/UPDF in the armed conflict?

.....
.....

What were the activities that LRA rebels did to your community?

.....
.....

Part Three

What do you understand by the term justice?

.....

.....

How is justice administered in your region?

.....

.....

In your own opinion, do you think the people in your community are satisfied with the way justice is being administered?

.....

.....

Suggest what should be done to bring justice for all the victims and the entire community affected by the LRA?

.....

.....

What should be done to enable the former rebels who were given amnesty by the government of Uganda to live a normal life among the community they used to terrorize?

.....

.....

.....

Thank You

MAP OF UGANDA SHOWING ACHOLI SUB REGION

