
In the shadow of Kwoyelo's trial

The ICC and complementarity in Uganda

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Introduction

The coming into force of the International Criminal Court (ICC) opened new possibilities for the promise of a global justice institution and, with it, a new lexicon of 'complementarity'.¹ Broadly defined, 'complementarity' means that the ICC should be a court of last resort: it intervenes where a responsible state is either unwilling or unable to investigate and prosecute crimes of war, genocide and crimes against humanity committed within its jurisdiction.² In a strictly legal sense, complementarity operates as a principle of admissibility, limiting the situations and cases that may appear before the ICC.³ In practice, however, and in the name of complementarity, the ICC has become an international crimes policeman: a key player in many conflicts, post-conflicts and transitional contexts where serious international crimes are suspected, especially within Africa.

Indeed, complementarity, or 'positive' complementarity as it is often called, has been broadly interpreted to mean all manner of productive developments attributable to The Hague-based Court: catalysing judicial norms, legal trainings, local trials, outreach initiatives, legal reforms, peace agreements and even regime change.⁴ Yet the ICC and its

¹ Even though the concept of complementarity is as old as international law and international human rights systems, it was not until the ICC's establishment that the term became more commonly used. See M. El Zeidy, *The Principle of Complementarity in International Criminal Law: Origin, Development and Practice* (Leiden: Martinus Nijhoff Publishers, 2008).

² See C.M. Bassiouni, *The Statute of the International Criminal Court: A Documentary History* (Ardsey: Transnational Publishers, 1998), 793; 'Delivering on the Promise of a Fair, Effective and Independent Court', Coalition for the International Criminal Court.

³ S.M.H. Nouwen, *Complementarity in the Line of Fire* (Cambridge: Cambridge University Press, 2013).

⁴ See 'Report of the International Criminal Court to the UN General Assembly', A/60/1771, August 2005.

proponents in different situations provide little recourse or accountability where its interventions, ostensibly made in the name of impartiality, have the practical effect of condoning impunity.⁵ This may happen either indirectly or directly, when complementarity gets hijacked in the service of other objectives, or when it undermines other forms of much-needed social and political accountability.⁶

This chapter discusses problematic aspects of complementarity within the context of Uganda. Drawing upon my extensive experience working for the Refugee Law Project (RLP), a civil society organisation with a long-term presence in northern Uganda, and my role as a member of the defence team for Thomas Kwoyelo, the first defendant brought before Uganda's domestic war crimes court, I consider in this chapter some of the domestic effects of the ICC's intervention.⁷ This chapter places the ICC's intervention in the broader context of an over two-decade-long civil war between the Lord's Resistance Army (LRA) and the Ugandan government in order to consider its impact on subsequent political solutions and domestic transitional justice processes.⁸ Furthermore, by examining Uganda's first domestic war crimes trial, which has been hailed by many ICC advocates and international donors as an example of the positive impact of complementarity, the chapter explores how states and interest groups can marshal, or even hijack, international and domestic accountability processes, while in fact perpetuating other forms of impunity.⁹

The chapter ultimately argues that understanding the broader implications of the Court's work requires viewing it in relation to domestic transitional initiatives, political factors and the work of other actors in the

⁵ See, e.g., A. Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford: Oxford University Press, 2011).

⁶ See, e.g., S.M.H. Nouwen and W.G. Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan', *European Journal of International Law*, 21 (2011), 952.

⁷ The Refugee Law Project (RLP) is an outreach project of the School of Law, Makerere University, Kampala. Established in 1999, RLP has over the years grown to become the leading centre for justice and forced migrants in the region with cross-cutting interventions working with refugees, asylum seekers, internally displaced persons and conflict-affected communities in the pursuit of durable solutions, peace, justice, healing and reconciliation through research, documentation, accountability, memory and memorialisation initiatives.

⁸ See N. Waddell and P. Clark (eds.), *Courting Conflict? Justice, Peace and the ICC in Africa* (London: African Royal Society, 2008).

⁹ On the notion of 'hijacked justice', see J. Subotic, *Hijacked Justice: Dealing with the Past in the Balkans* (Ithaca, NY: Cornell University Press, 2009).

Ugandan context. In so doing, it first offers a broad historical background for understanding the ICC's impact in Uganda, including the place of amnesty in the country's approach to transitional justice and the Juba peace process. The chapter then considers the trial of Kwoyelo in greater detail, before reflecting on its broader effects on Uganda's transitional justice discourse and the influence of the ICC in that regard. My intention here is not to discredit the ICC as an institution, but rather to contribute to its development by exposing what were, in my view, mistakes the Court has made in Uganda, in the hope of influencing future investigations and prosecutorial strategies.

The ICC in Uganda

Uganda was amongst the first African countries to ratify the Rome Statute. In 2003 it also became the first country to come before the ICC when President Yoweri Museveni referred the situation concerning the LRA to the Court (later renamed the 'situation in northern Uganda'), arguing that because the LRA was operating mainly from Sudan, Uganda lacked the ability to arrest and prosecute the perpetrators, even though the state itself appeared to be able and willing. As it turned out later, there is in fact evidence that the then prosecutor, Luis Moreno-Ocampo, had earlier requested Uganda to refer the situation in the north to the Court.¹⁰ This was followed by several discussions within Uganda and with ICC officials on what such a referral would mean in practice.

Prior to the referral, a key concern to the government was the role of its soldiers in the atrocities committed, including its failure to protect children and civilians abducted by the LRA and the creation of camps for internally displaced persons as a military strategy, an act prohibited under international law.¹¹ As has been well documented, these camps almost decimated the Acholi ethnic group, from which Joseph Kony, the LRA leader, hailed, and within whose territory the war was fought longest and in its most brutal form.¹²

¹⁰ See P. Clark, 'Chasing Cases: The ICC and the Politics of State Referral in the Democratic Republic of Congo and Uganda', in C. Stahn and M. El Zeidy (eds.), *The International Criminal Court and Complementarity: From Theory to Practice* (Cambridge: Cambridge University Press, 2010).

¹¹ See 'Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda', Refugee Law Project Working Paper No. 11 (March 2004) (RLP, 'Behind the Violence').

¹² See C. Dolan, *Social Torture: The Case of Northern Uganda 1986–2006* (New York: Berghahn Books, 2009).

The circumstances of the ICC's referral resulted in political consequences bearing upon who would be investigated and subjected to arrest warrants. Even before investigations were conducted, it was clear that only a few key perpetrators would be sought by the ICC, and that state actors within Uganda may never find themselves before the Court for their own role in the atrocities that were committed.¹³

In July 2004, the ICC prosecutor launched formal investigations. The OTP soon found evidence of war crimes and crimes against humanity committed by the LRA, and in October 2005, the Court unsealed warrants of arrest against five top LRA commanders for war crimes and crimes against humanity: Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen, the latter of whom was apprehended and surrendered to the ICC in early 2015.¹⁴ During its investigations, the OTP was accused of turning a blind eye to atrocities committed by government forces.¹⁵ In fact, ICC investigators were accompanied by state agents on their missions, including operatives of the Chieftaincy of Military Intelligence, a special investigative unit of the Uganda People's Defence Force (UPDF), known for its high-handed methods of 'investigation', including torturing suspects and holding them in 'safe houses'.¹⁶

From the beginning, the Court's intervention faced opposition from victims groups, conflict-affected communities and much of Ugandan civil society, with the notable exceptions of victims directly supported by the ICC Trust Fund for Victims and NGOs funded by pro-ICC donors. The unsealing of the arrest warrants caused particular controversy as they came amidst promising peace talks between the Ugandan government and the LRA, under the mediation of the former vice president of South Sudan, Dr Riek Macher. The timing of the ICC's intervention thus drew criticism and re-ignited the long-standing 'peace versus justice' debate, as well as contention over the meaning of complementarity.¹⁷

¹³ See Nouwen and Werner, 'Doing Justice to the Political'.

¹⁴ Ongwen's confirmation of charges hearing before the ICC has been postponed until January 2016.

¹⁵ 'Ambiguous Impacts: The effects of the International Criminal Court investigations in northern Uganda', RLP Working Paper No. 22 (October 2012).

¹⁶ US Department of State Report on Uganda Human Rights Record, available at www.state.gov/documents/organization/160149.pdf.

¹⁷ See S. Oola, 'Bashir and the ICC: The Aura or Audition of International Justice in Africa', Oxford Transitional Justice Research Network Working Paper (2008) (Oola, 'Bashir and the ICC').

This debate, which centred on how to foster legal accountability for crimes without further escalating the costs of war, was unfortunately portrayed as a contest between Western conceptions of punitive justice versus African understandings of restorative justice. As an organisation, RLP sought to decry the simplistic manner in which many Western academics and practitioners were framing the issue.¹⁸ Some commentators viewed the Ugandan situation rather simplistically, as a contest between amnesty and justice, yet, such a view neglects the fact that 'justice' is a highly contextual norm; depending on how it is perceived, amnesty could in fact be the form of justice sought by conflict-affected communities in situations like northern Uganda, a conflict characterised by mass abductions, lack of civilian protection and an attendant humanitarian catastrophe.¹⁹ As the following section illustrates, the conflict between the LRA and the Ugandan government involved the commission of atrocities on both sides, whereas the ICC's intervention has, to date, furthered a narrow and one-sided interpretation of the conflict.

The LRA conflict

The LRA is a rebel group that has fought the government of President Museveni since he captured power in 1986.²⁰ Spanning twenty-nine years, the group operated largely in northern Uganda (Acholi and Lango sub-regions) until 2006, when it crossed briefly into Teso sub-region²¹ in 2003 following 'Operation Iron Fist'.²² To date, the LRA continues to abduct children and displace civilians in some parts of the Central African Republic (CAR), Democratic Republic of Congo (DRC), and occasionally South Sudan.²³ Alleged members of the LRA are

¹⁸ See M.C. Okello, 'The False Polarisation of Peace and Justice in Uganda, International Conference: Building a Future on Peace and Justice', Expert Paper Workshop 2 (Nuremberg, 25–27 June 2007).

¹⁹ See 'Peace First, Justice Later', RLP Working Paper No. 17 (2006).

²⁰ To understand the root causes and the context of the LRA insurgency and Uganda's political crisis see RLP, 'Behind the Violence'.

²¹ See 'The Day they Came: Recounting the LRA Invasion of Teso Sub-Region through Obalanga Sub-County in 2003', JRP Field Note (September 2012).

²² Launched on 18 December 2008, Operation Iron Fist was a code name to the joint surprise attacks against the LRA bases in Garamba, launched by the Uganda Peoples Defence Forces, Sudanese Peoples Liberation Army and the forces of the Democratic Republic of Congo following Joseph Kony and the LRA's refusal to sign the Final Juba Peace Agreement.

²³ See L. Cakaj, 'The Lord's Resistance Army of Today', Enough Project Report (2010).

accused of committing serious crimes including widespread abductions, mass killings, arson, forceful enslavement and mutilations.

In fighting the LRA, however, the government's counter-insurgency strategy resulted in over 1.8 million civilians being moved into squalid camps for internally displaced persons (IDPs), with barely any protection provided against the LRA's ongoing insurgency.²⁴ This has had catastrophic effects on the culture and morale of the people and created one of the world's worst humanitarian situations. Indeed, it is estimated that more people died as a result of the unbearable conditions living in IDP camps than from direct-armed violence.²⁵ For the LRA, the IDP camps became a one-stop abduction point: to replenish its fighting forces, it simply raided one of the (un)protected camps.²⁶

There is still no official inquiry or acknowledgement of the cost in terms of human lives; however, estimates are well over one million deaths and between 30,000 to 66,000 abductees, approximately half of whom were under the age of 18,²⁷ and less than half of whom have returned or been accounted for.²⁸ Moreover, the UPDF, which was mandated to protect Ugandan civilians, sometimes turned its guns on them on suspicion of collaborating with 'the enemy'.²⁹ The UPDF raided people's cattle, raped women, destroyed properties and tortured thousands during its counter-insurgency operations. Several hundreds of civilians were caught in the crossfire and many lives were lost in places like Alero, Awach, Mukura, Namukora³⁰ and Buu Coro.³¹

Conflict-affected communities therefore apportion responsibility to both the LRA and the UPDF for atrocities committed. A 2007 survey on victims' perceptions of justice and accountability following the conflict found that a majority of respondents blamed the government and demanded accountability for both the LRA and the UPDF in equal

²⁴ See Branch, *Displacing Human Rights*; RLP, 'Behind the Violence'.

²⁵ See Dolan, *Social Torture: The Case of Northern Uganda*. ²⁶ *Ibid*.

²⁷ 'The Dust Has Not Yet Settled: Victims' Views on the Right to Remedy and Reparation – A Report from the Greater North of Uganda', Uganda Human Rights Commission and United Nations Office of the High Commissioner for Human Rights (2011).

²⁸ See 'Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda', Human Rights Watch, 17:12 (September 2005).

²⁹ See 'Uganda: Army and Rebels Commit Atrocities in the North: ICC must investigate Abuses on Both Sides', Human Rights Watch (September 2005).

³⁰ See 'Occupation and Carnage: Recounting Atrocities Committed by the NRA's 35th Battalion in Namukora Sub-County in August 1986', JRP Field Notes (2014).

³¹ *Ibid*.

measure.³² The government was also accused of contributing to the length of the war, through aiding and abetting its continuation for political and economic motives. Politically, the war was important to destroy National Resistance Army/Movement (NRM)³³ opposition from the north, consolidate the government's power bases in the west and other parts of the country and destroy what Museveni called the Acholi's chauvinisms. The government further used the conflict as an excuse to bloat the army's budget and avoid scrutiny. Indeed, it received large sums of money and military support from the international community to fight the war; as a result, it had little interest in ending it.³⁴ At the height of the war, the army payrolls were filled with ghost soldiers and their salaries were diverted.³⁵

A legacy of violence

Beyond the LRA, Uganda has also endured years of conflict and gross human rights violations dating back to colonial times, pre-independence struggles and certainly the better half of the years since attaining political independence.³⁶ The country remains highly divided, with a weak sense of national identity, low solidarity amongst local constituencies, a lack of information and transparency about historical events and little accountability for past wrongdoing. Previous attempts yielded little, including two commissions of enquiries in the early 1970s and 1980s. The work of both commissions was hampered by numerous challenges, and their recommendations were seldom implemented.

Furthermore, the Ugandan state is characteristically oppressive, corrupt, nepotistic and intolerant to alternative groups and dissenting opinions.³⁷ In the past fifty years, eight different presidents have ruled

³² See 'When the War Ends: A Population Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda', Human Rights Centre and ICTJ (December 2007).

³³ The NRM is a political wing of the National Resistance Army led predominantly by Banyakole, Bakiga and Buganda politicians led by Museveni and built around removing President Obote and northerners from power.

³⁴ See 'Northern Uganda: Understanding and Solving the Conflict', International Crisis Group African Report No. 77 (April 2004).

³⁵ See O.C. Bichachi, 'From Ghost Soldiers to Ghost Investors', *The Observer*, 4 May 2012.

³⁶ See T.P. Ofcansky, *Uganda: Tarnished Pearl of Africa* (Boulder, CO: Westview Press, 1996).

³⁷ See, e.g., A.M. Tripp, *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime* (Boulder, CO: Lynne Rienner Publishers, 2010).

Uganda and the country has yet to witness a peaceful transfer of power from one to another. The legacy of these episodes of coups and associated violence is a country deeply divided along ethnic lines, in which one's ethnicity inherently defines one's access to power, sense of belonging and opportunities in life. As a result, large sections of the population feel permanently victimised and marginalised.³⁸

Sadly, however, the ongoing transitional justice debate within Uganda remains largely premised on the LRA violations and focused on 'complementing' international responses, as opposed to addressing the country's broader conflict legacies.³⁹ RLP's efforts to map and document the key transitional justice issues in Uganda from the perspective of victims and affected communities – as part of a national reconciliation and transitional justice 'audit' – documented over forty-four armed conflicts and more than 125 other violent conflicts in Uganda.⁴⁰ These conflicts have affected different parts of the country and, if they remain unaddressed, will continue to have negative impacts on the future. The majority of these grievances fall outside the jurisdiction of the ICC and cannot be addressed by courts, yet no effort is being made to address them in the current national discourse.

The RLP's National Reconciliation and Transitional Justice Audit also revealed that, when it comes to dealing with legacies of violence, 'expertise' resides in every corner of the country. This means that rather than a top-down approach, 'positive complementarity' should require international justice systems to learn from local actors and mechanisms. As

³⁸ See F. Golooba-Mutebi, 'Collapse, War and Reconstruction in Uganda: An Analytical Narrative on State-Making', Makerere Institute of Social Research Working Paper No. 27 (*Development as State-Making*) (January 2008).

³⁹ See S. Oola, 'The Coalition for Reconciliation in Uganda: Important Lessons for Proactive Civil Society Engagement in Catalysing Transitional Justice Discourse', Paper presented at the ATJRN Workshop on Advocating Justice: Civil Society and Transitional Justice in Africa (30–31 August 2010).

⁴⁰ The National Reconciliation and Transitional Justice Audit was a two-year research to document and map conflicts and their legacies from a community perspective in different parts of Uganda. It was conducted by the Refugee Law Project from 2011 to 2012 to document from a community perspective all post-independence and post-1986 conflicts in Uganda (that they were aware of) and to identify and assess what outstanding reconciliation and transitional justice needs were related to each of these conflicts. The audit also aimed to reflect on the merits of possible mechanisms and processes to address these needs. It included sixty-five focus group discussions and over eighty key informant interviews in twenty traditional districts of Uganda, equally distributed in all regions of the country. It is the most comprehensive and in-depth study of Uganda's transitional justice issues and needs; its findings will be presented in a forthcoming volume. See www.beyondjuba.org/NRTJA/index.php for more information.

Chris Dolan has observed, 'When it comes to understanding the structural underpinnings of violence, ordinary citizens are the match of international experts, and when it comes to connecting the dots between poverty, violence and the form that justice needs to take if it is to deliver sustainable peace, they readily outstrip the mainstream policy debate.'⁴¹ With complementarity in Uganda, however, it is the reverse: complementarity has been (mis)understood as copying international standards and practices and pasting them into the Ugandan context.

As a result, international 'experts' with limited in-country experience have replaced local chiefs in the 'traditional justice component' of the transitional justice policy debate. Moreover, as discussed further below, these 'experts' were appointed, seconded or compensated by pro-ICC donors to advise the Ugandan government's transitional justice processes in order to promote complementarity, a practice first developed during the peace talks in Juba, and which ultimately contributed to their failure.

The Juba peace process

In 2006, the LRA and the government again entered into peace negotiations in Juba, this time with much brighter prospects following the signing of the Comprehensive Peace Agreement in Sudan and the establishment of a semi-autonomous government in the south.⁴² With ICC arrest warrants hanging over the top leadership of the LRA, complementarity soon took centre stage in the process. Fearing that the Court's warrants might pose a major obstacle to the talks, the Acholi Religious Leaders Peace Initiative – joined by RLP, other civil society organisations, victims groups and local leaders from the war-affected sub-regions – appealed to the ICC to suspend its warrants for at least one year to facilitate the talks. The Ugandan government also requested the ICC to defer the LRA warrants to enable it to handle the matter domestically, as it saw a peace dividend resulting from the LRA's withdrawal from northern Uganda into southern Sudan's border with the DRC.⁴³

The ICC prosecutor rejected the request, however, given the importance of the cases to the Court, but also because the international attention focused on the peace process likely gave it a platform for establishing

⁴¹ See C. Dolan, 'Foreword to the Compendium of Conflicts in Uganda 1960–2012' (2015).

⁴² See 'Northern Uganda: Seizing the Opportunity for Peace', International Crisis Group Africa Report No. 124 (26 April 2007).

⁴³ See F. Ahimbisibwe and P. Jaramogi, 'Uganda to appeal to ICC for LRA leaders', *New Vision*, 30 August 2006.

its international reputation as a mechanism of 'global justice'. Seizing the opportunity, Prosecutor Moreno-Ocampo repeatedly made public statements dismissing the requests for withdrawal, and reminding the Ugandan government of its commitment to cooperation by arresting and handing over the LRA leaders.

This contemptuous attitude continued throughout the peace talks, often drawing anger from conflict-affected communities and local leaders. Many domestic actors regarded the Court as a 'peace spoiler'. Norbert Mao, the Gulu district chairman at the time, repeatedly criticised the ICC's indifference to the plights of the IDPs, and appearing at a local radio station one morning, he publicly announced the vehicle number plate of an ICC outreach vehicle in Uganda.⁴⁴ Coupled with limited outreach and knowledge of the ICC, the local communities in LRA-affected areas initially thought the Court was just a single man: Luis Moreno-Ocampo. Indeed, a story is told of how, when the ICC outreach office in Uganda went for a meeting in a remote part of Gulu (now Amuru District), an old man carrying an axe stormed the meeting asking, 'Where is this ICC man stopping our abducted children from coming home?' He was wrestled down by local authorities and security agents and calmed down after learning that the ICC was, in fact, a Court and that these were just its Uganda-based employees who were trying to educate people about its work. Such hostilities towards the Court continued throughout the peace process.

Nevertheless, the peace talks continued and all of the agreed agenda items for discussion were ultimately passed: cessation of hostilities; comprehensive solutions to the conflict; accountability and reconciliation; and permanent ceasefire and disarmament, demobilisation and reintegration. While the first two agenda items were quickly agreed upon, observers predicted that the third agenda item – accountability and reconciliation – would be the key sticking point. Many feared that the LRA would not accept any form of criminal sanctions, which was understood to be mandatory for the ICC complementarity test to be satisfied.

In fact, there was a legal amnesty in place within Uganda since 2000, which all LRA combatants were entitled to upon renouncing rebellion against the government. But a few legal experts advising the Juba process (and paid by Western governments financing the talks) were tasked with crafting a 'complementary' domestic transitional justice framework

⁴⁴ See Oola, 'Bashir and the ICC'.

acceptable to both the ICC and the LRA. To many people's surprise, the accountability and reconciliation agenda was quickly discussed and concluded, embracing a range of formal and non-formal accountability and reconciliation measures. According to Haruna Ndema, a peace delegate who represented the LRA in Juba, when the draft text of the principal agreement was presented to Kony and Otti, they both welcomed it and demanded that any domestic trial process should be credible, and should involve both LRA and government forces.⁴⁵

In the principal accountability and reconciliation agreement, both parties acknowledged for the first time that they had committed atrocities in the course of the conflict. The LRA demanded accountability and reconciliation, but the government rejected this position on the basis that the LRA was entitled to amnesty and the UPDF had its own 'accountability system' laid out in the country's domestic military code. Contrary to many predictions, this became the sticking point in Juba: whether the UPDF and other state actors should be subjected to the special accountability measures envisaged under the draft agreement.

After protracted negotiations, the parties signed the Agreement on Accountability and Reconciliation (AAR) in June 2007. It provided, in part, that, 'Formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict. Provided that, state actors shall be subjected to existing criminal justice processes and not to special justice processes under this Agreement.'⁴⁶ It also added that traditional justice principles shall constitute a central pillar in all formal and informal justice processes.⁴⁷ After the signing, both delegations embarked on a countrywide consultation to seek Ugandans' views on how to implement the AAR. The views expressed countrywide, and in particular by the affected communities, demanded comprehensive reparations, establishment of a national truth-seeking and reconciliation mechanism and, where needed, accountability by both state and non-state actors through specially established justice mechanisms.⁴⁸

When talks resumed in Juba, an implementation agreement set out a comprehensive transitional justice framework for Uganda providing for the establishment of a number of mechanisms, including a body to conduct proper truth-seeking and promote truth-telling and memorialisation;

⁴⁵ Author's interview with Haruna Ndema (Arua Town, 15 April 2014).

⁴⁶ Agreement on Accountability and Reconciliation between the Government of Uganda and the Lord's Resistance Army, signed 29 July 2007, para. 4.1.

⁴⁷ *Ibid.* ⁴⁸ Dr R. Marchar, 'Final Report of the Chief Mediator to the LRA' (2008).

a special division of the High Court of Uganda to try individuals alleged to have committed serious crimes during the conflict; and a unit for carrying out investigations and prosecutions in support of the trials and other formal proceedings. It also determined that necessary arrangements should be made for providing reparations to victims of the conflict, and it determined that traditional justice should form a central part of the AAR framework.⁴⁹

The Juba agreements thus provided a wide-ranging template for post-conflict transitional justice that was more comprehensive than subsequent initiatives. Nevertheless, the government delegates, with instruction from Kampala, rejected any attempt to subject the UPDF to accountability, including the proposed special division of the High Court. The LRA was also given the impression at the talks that, upon signing the AAR, the ICC would be persuaded to drop its charges or suspend its arrest warrants. As a result, the LRA demanded the withdrawal of the warrants before signing the Final Peace Agreement (FPA).

Ultimately, fearing a fate not unlike that of former Liberian president Charles Taylor, the LRA leaders shunned the signing ceremony and postponed it several times without appearing. Shortly thereafter, on 14 December 2008, the government of Uganda launched coordinated military strikes (dubbed Operation 'Lightning Thunder') against LRA assembly points, which it carried out with intelligence gathered during the peace talks and with the backing of some Western observers. The LRA eluded the strikes and scattered into southern Sudan and the CAR, where it continues to operate as of the time of writing.

Establishment of the War Crimes/International Crimes Division

The FPA provided that, 'A Special Division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict.'⁵⁰ The Principal Judge of Uganda's High Court accordingly (and quickly) established a War Crimes Division (later renamed the International Crimes Division or ICD) of the High Court of Uganda in July 2008. Four judges were immediately appointed to the WCD with support staff trained on international 'best practices'. Following the WCD's establishment, the

⁴⁹ The Annexure to the Agreement on Accountability and Reconciliation was signed on 19 February 2008, following extensive national consultations within Uganda.

⁵⁰ *Ibid.*

Ugandan Parliament passed – on the eve of the 2010 Kampala Conference – the International Criminal Court Act (ICC Act) to domesticate the Rome Statute, and to provide for full cooperation with the ICC.

Notably, in order to pre-empt any attempt to defer ICC proceedings, the Court's Pre-Trial Chamber sought, *proprio motu*, to determine whether the creation of the domestic war crimes court would satisfy the complementarity test. While not obliged to do so in the absence of a challenge from the Ugandan state itself, the Court ruled that the Juba framework was not yet sufficient to satisfy the Rome Statute's requirements: 'pending the adoption of *all* relevant legal texts and the implementation of *all* practical steps', the cases remained admissible.⁵¹ This decision arguably signalled to the LRA leadership that the ICC's warrants would not be dropped or suspended, and that the domestic AAR process was unlikely to involve the UPDF or other state actors.

Although the LRA did not sign the FPA, the Ugandan government made it clear that it would fulfil its commitments and proceeded to implement the Juba agreements to the fullest extent possible. In fact, shortly before the failed signing, the government established a 15-member transitional justice technical working group within the Justice, Law and Order Sector (JLOS) in order to think through the ramifications of the peace deal. The JLOS Transitional Justice Working Group (TJWG) became a coordinating forum through which international donor support, money and influence were extended in the design and implementation of the Ugandan transitional justice agenda. While initially the RLP and the International Center for Transitional Justice, two leading transitional justice voices in the country, were invited to represent civil society at the forum, they were gradually sidelined. Instead, and again in the name of complementarity, international experts and technical assistants from abroad were preferred to support JLOS.

Amnesty Act

The practice of amnesty in Uganda is deeply rooted in cultural and religious conceptions of forgiveness and reconciliation. Before the complementarity issue was introduced, forgiveness had played an important

⁵¹ Decision on the Admissibility of the Case under Article 19(1) of the Statute, Situation in Uganda, *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, ICC-02/04-01/05, Pre-Trial Chamber II, ICC, 10 March 2009; see para. 52 (emphasis added).

role in conflict resolution and the socio-political transformation of Ugandan society. After attaining independence in 1962, neither the British nor their colonial agent were held to account; they were largely 'forgiven' for their transgressions. Indeed, throughout the political turmoil that followed independence – marred as it was by violent changes of government, liberation struggles, coups and insurgencies – amnesty and forgiveness have played a central role in Uganda. Even before the LRA's insurgency, when Museveni's NRM captured power in 1986, it declared amnesty for all agents of the former regimes. In 1989, the National Resistance Council enacted an amnesty statute for all armed groups fighting the government within Uganda.

But the amnesty that emerged from the government's conflict with the LRA was unique insofar as it was the affected communities themselves, led by their religious and cultural leaders, who began to call upon the government to abandon its hard-line military approach, enact an amnesty law and negotiate with the rebels. President Museveni was initially opposed to this approach, but with international attention increasingly drawn to the worsening humanitarian situation, and with religious and cultural leaders from the Acholi mobilising victims' demonstrations, the regime conceded and tabled an amnesty bill in parliament.

The Parliament of Uganda passed the Amnesty Act in 2000. The act provided amnesty for any person or group who had been fighting the government since January 1986 and was conditional only upon their renouncing rebellion. The act was aimed at ceasing hostilities, encouraging defections and finding a peaceful resolution to the conflict. According to the Honourable Dick Nyai, a former legislator who was part of the drafting process, the act was one of the most popular enactments at the time.⁵² Initially, the Amnesty Act was only meant to last for six months, but it has been extended several times – most recently in 2012 – in light of its contributions to the peace process. Since its passage, well over 27,000 combatants from over twenty-eight different armed groups have renounced rebellion and benefitted from the process. Only about half of those amnestied were from the LRA.

With the ICC's intervention, however, the Amnesty Act soon came under scrutiny. The pro-ICC lobby in the country condemned the law without appreciating its uniqueness. Although there are clear conditions within the law that must be fulfilled before one can be granted amnesty,

⁵² Author's interview with the Hon Dick Nyai (Arua Town, 15 April 2014).

the law was demonised as promoting impunity by providing unconditional, or 'blanket', amnesty. To receive amnesty in Uganda one must renounce rebellion and not be a second-time offender. Furthermore, a 2006 amendment provided the Minister of Internal Affairs with powers to exclude certain individuals from amnesty.⁵³ The amendment, however, did not specify the criteria by which individuals may not be considered eligible for amnesty, nor did it make ineligibility a legal determination. Consequently, the power to declare an individual ineligible for amnesty remained at the political discretion of the minister and parliament.

Because of the popularity of the law, it is worth noting that the anti-amnesty debate in Uganda has, until recently, largely been academic: the anti-amnesty group could hardly face the general population, particularly in the north of the country.⁵⁴ Indeed, because of amnesty's popularity within Acholiland, most anti-amnesty consultations were conducted outside the sub-region; when Acholis were invited, representatives were carefully selected. The ICC Act also reflects this fact: even with principles that would arguably contradict some provisions of the Amnesty Act, repeal of the legislation was not even contemplated.⁵⁵ Notably, however, when the Constitutional Court halted the ICD's celebrated 'complementarity' trial of former LRA colonel Thomas Kwoyelo in 2011, pro-ICC groups did attempt to dismantle the act. The following section turns to Kwoyelo's trial.

The trial of Thomas Kwoyelo

In July 2011, Colonel Thomas Kwoyelo, a former LRA fighter and child soldier who himself had been abducted, became the first war crimes suspect to face trial before Uganda's renamed ICD.⁵⁶ Kwoyelo, forty

⁵³ See Uganda Amnesty Act 2000 as amended in 2006. Under Section 2 of the Amnesty (Amendment) Act 2006 (Uganda), a person shall not be eligible for the grant of amnesty if he or she is declared not eligible by the Minister of Internal Affairs by a statutory instrument made with the approval of Parliament.

⁵⁴ In one such consultative workshop, jointly organised by RLP, OHCHR and UN Women in Kitgum, some of the organisers were visibly embarrassed and disappointed that the participants strongly supported the continuation of the amnesty law. In another such meeting, organised by the same partners, the title and agenda for discussions were altered in the eleventh hour without informing RLP. Similar accusations were levelled against the Uganda Law Society and Avocats San Frontiers, alleging that the published version of a consultative report was doctored to reflect lawyers' opposition to the law.

⁵⁵ See International Criminal Court Act (2010).

⁵⁶ Kwoyelo was captured in March 2009 in Ukwa, a northeastern part of the DRC during a joint military operation and as part of 'Operation Lightning Thunder', which was launched in December 2008, following the failed Juba peace process.

years old at the time, pleaded not guilty to the 12 initial counts of war crimes and an additional fifty-three alternative charges (included in an amended charge sheet) that alleged kidnap with intent to murder, wilful killing, attack on civilian villages and aggravated robberies under Uganda's Penal Code Act and the Geneva Conventions.⁵⁷ No charge was brought under the ICC Act of 2010 because all the crimes Kwoyelo allegedly committed took place before that legislation came into force.

It was alleged that Kwoyelo 'committed his offences in the context of an international armed conflict that existed in northern Uganda, southern Sudan and north-eastern Democratic Republic of Congo between the LRA (with the support of and under the control of the government of Sudan), fighting against the government of the Republic of Uganda as by law established, between 1987 and 2008'.⁵⁸ According to the indictment, all attacks by the LRA – which took place in Kilak County, Amuru District, between 1987 and 2005 – were either commanded by Kwoyelo or were carried out with his full knowledge and authority. It further alleged that all property and persons were protected under the Fourth Geneva Convention and that Kwoyelo was aware of the factual circumstances that established such protected status.⁵⁹ Kwoyelo's indictment also contained allegations of murdering Alfred Bongomin, a prominent pro-government operative whose murder had previously been blamed on two senior opposition politicians from northern Uganda.⁶⁰

While Kwoyelo's trial is the closest Uganda has yet come to testing complementarity in terms of an actual criminal proceeding, it stalled from the beginning. His legal team raised several legal questions in the first instance, such as whether the armed conflict between the LRA and the government of Uganda qualified as an international armed conflict under the Geneva Conventions, about the alleged torture of war crimes suspects during investigations⁶¹ and about the criminal liability of a

⁵⁷ See JLOS Annual Report, 72.

⁵⁸ *Uganda v. Thomas Kwoyelo alias Latoni*, HCT-00-ICD-Case No. 02/10.

⁵⁹ In his defence, the lead defence counsel Caleb Alaka raised a preliminary objection on a point of law; namely that Kwoyelo, as a junior commander, is entitled to amnesty, which has been granted to his senior commanders, including Brigadier Kenneth Banya and Sam Kolo. He further maintained that charging Kwoyelo under the Geneva Convention Act contravenes the 1995 Uganda Constitution and finally that the prosecution failed to disclose evidence that exonerates or mitigates Kwoyelo's culpability to his defence.

⁶⁰ See 'Uganda: Key Opposition Politicians Arrested', Human Rights Watch (28 April 2005).

⁶¹ Kwoyelo had alleged that he was tortured and held in 'safe houses' before he was produced in court and the defence had demanded compensation for such cruel and degrading treatment.

victim-turned perpetrator.⁶² The central question however – whether Kwoyelo was entitled to amnesty, and whether the Amnesty Act itself was constitutional – effectively removed Kwoyelo's case from the ICD's jurisdiction. In fact, for all the preparation and financial commitments made to the court, the ICD only had three sessions with Kwoyelo. It never had the opportunity to hear any witnesses or to interrogate the merits of the government's accusations. It only dealt with preliminary legal objections and then a request by the defence for referral to Uganda's Constitutional Court on the question of amnesty, which the ICD granted.

In November 2011, the Constitutional Court halted Kwoyelo's trial on the grounds that it was unconstitutional.⁶³ The court ruled that Kwoyelo had applied for amnesty, which he was entitled to under the law. In a unanimous judgment, the court said that the Amnesty Act was constitutional and that Kwoyelo was entitled to its benefits. The court further held that Uganda's amnesty was unique from other amnesties given the circumstances of its enactment, and that it was not, in fact, a blanket amnesty, as it excluded state actors who committed atrocities and required applicants to renounce rebellion. The court further found that by initially refusing to grant an amnesty certificate to Kwoyelo, the Director of Public Prosecutions (DPP) had denied Kwoyelo equal treatment and protection under the law. Kwoyelo's trial was to be stopped immediately and his file returned to the ICD 'with a direction that it must cease the trial of the applicant forthwith'.⁶⁴

In response, JLOS quickly issued a public statement that was critical of the Constitutional Court's decision.⁶⁵ The DPP also issued a public statement rejecting the ruling and vowing not to implement the court's order. Key players in the transitional justice project in Uganda were disappointed, as it seemed that JLOS was undermining the very rule of law it was mandated to promote. As with all public matters where the president's official position is not known, different government officials were reluctant

⁶² See Constitutional Court of Uganda, Constitutional Petition No.036/11, 22 September 2011.

⁶³ See Constitutional Court Ruling, *Thomas Kwoyelo alias Latoni v. Uganda* (Const. Pet. No. 036 of 2011 (reference)).

⁶⁴ See 'Constitutional Court Halts Kwoyelo's Trial', RLP Court Update, available at www.refugeelawproject.org/others/kwoyelo_ruling_summary.pdf.

⁶⁵ An edited version of the press statement has since been modified in language and tone and published on JLOS website as a report. See 'Justice at Cross Roads: A Special Report on the Thomas Kwoyelo Trial', JLOS, available at www.jlos.go.ug/index.php/document-centre/news-room/archives/item/200-justice-at-cross-roads?-a-special-report-on-the-thomas-kwoyelo-trial.

to comment on the court's verdict; where they did, they issued contradicting statements with few commitments. The ICD judges, however, complied with the Constitutional Court's decision and halted Kwoyelo's trial, with the directive that he should be issued an amnesty and released.

When Kwoyelo applied for execution of the court order, the attorney general controversially filed a late appeal to the Supreme Court (a higher appellate court), challenging the Constitutional Court's decision. At the time, however, the Supreme Court had no quorum, meaning that it could not hear the appeal and that it would take another year before Kwoyelo's case could be heard. The Ugandan Supreme Court stayed the Constitutional Court's ruling in March 2012. Kwoyelo's lawyers applied to the Court of Appeal for bail, an interim remedy to safeguard his liberty as he awaited the Supreme Court's decision. He argued that since the Constitutional Court had found in his favour, he stood a better chance of prevailing at the Supreme Court, and thus was entitled to bail, pending the outcome. The Court of Appeal agreed and ordered that Kwoyelo be released on bail. Again the DPP ignored the ruling,⁶⁶ thus forcing Kwoyelo to apply to the High Court for a writ of mandamus, ordering the DPP to perform its duty as a public officer.

In a dramatic turn of events, the Supreme Court convened a special one-hour sitting (without a quorum) to hear the attorney general's request to stay the orders of the lower courts ordering Kwoyelo's release. Led by Chief Justice Benjamin Odoki⁶⁷ the court heard the appeal, which it granted without any deliberations. In October 2012, Kwoyelo petitioned the African Commission on Human and Peoples' Rights, challenging his continued detention as arbitrary and as a violation of his right to be free of arbitrary detention.⁶⁸ Meanwhile, the appeal against the Constitutional Court's decision on the Amnesty Act was heard before the Supreme Court in April 2014. One year later, in the first judicial determination of an individual's ineligibility for amnesty in Uganda, the Supreme Court overturned the Constitutional Court's decision, bringing Kwoyelo's case back before the ICD to begin again.⁶⁹

⁶⁶ See M.C. Kane, 'The Indefinite Detention of Thomas Kwoyelo', *Jurist Forum*, 18 February 2013.

⁶⁷ Controversially known within the circles as the 'chief of injustice', Justice Odoki is alleged to have been Museveni's ally within the judiciary, affecting the integrity and development of the judiciary.

⁶⁸ The commission has since seized itself of the matter, pending further determination.

⁶⁹ See Supreme Court Ruling, Constitutional Appeal No. 1 of 2012, *Uganda v. Thomas Kwoyelo*, 8 April 2015; S. Nakandha, 'Supreme Court of Uganda Rules on the Application of the Amnesty Act' (16 April 2015), www.ijmonitor.org/2015/04/supreme-court-of-uganda-rules-on-the-application-of-the-amnesty-act/.

Uganda's justice dilemmas: the 'Shadow' of the ICC and Thomas Kwoyelo

Kwoyelo's trial highlights the extent to which the discourse of justice-as-accountability has come to dominate the Ugandan context, as well as its attendant political pressures. From the beginning, the trial was characterised by international support and domestic opposition. When Kwoyelo was first captured, he was held by Ugandan military intelligence for almost six months in secret detention. He was then charged with murder in the Chief Magistrate Courts at Buganda Road and committed to the High Court. At this stage, the ICD had not been fully established; however, pro-ICC groups and several international human rights agencies were lobbying the Ugandan government and JLOS to delay his trial until the court was ready. In this sense, JLOS used the bait of Kwoyelo's custody to lobby financial support in support of the ICD.

JLOS received significant donor money in support of expediting the trial and, with it, pressure to abandon its earlier roadmap towards a more comprehensive transitional justice process. The sector secured over UGX 400 m (US\$160,000) to initiate the Kwoyelo trial alone.⁷⁰ Before its focus shifted exclusively to prosecution and its financial dividend, JLOS TJWG had set up a robust and highly inclusive technical sub-committee to study and advise the government on the development of an appropriate and comprehensive transitional justice framework for Uganda.⁷¹ The four thematic sub-committees comprised: formal criminal justice; truth-seeking; traditional justice and integrated justice committees. A number of civil society actors, including RLP, had researched and engaged victim communities and consulted widely on key issues to be addressed in such a comprehensive framework. JLOS had even conducted its own consultations around the country, the findings of which validated previous civil society reports.⁷²

Initially, there was a strong working relationship between the TJWG and civil society; at this time, Justice James Ogoola was in charge as principal judge. Indeed, the TJWG had initially agreed that the proposed civil society draft of a National Reconciliation Bill and the International Criminal Court Bill (then of 2009) would both be presented together

⁷⁰ See 'Annual Performance Report 2010/2011', JLOS, 72.

⁷¹ See 'Transitional Justice in Uganda', JLOS, available at www.jlos.go.ug/index.php/2012-09-25-13-11-16/2012-09-28-06-56-14/transitional-justice.

⁷² See 'Transitional Justice Archive', JLOS, www.jlos.go.ug/index.php/document-centre/document-centre/cat_view/10-transitional-justice.

before parliament, in order to generate a comprehensive national discussion on Uganda's justice needs. Both draft laws were discussed with JLOS and key stakeholders, including a training of parliamentarians on the laws conducted by RLP, under its Beyond Juba Project.⁷³ The National Reconciliation Bill was likewise reviewed by Justice James Ogoola and a number of JLOS officials. The bill was officially handed over to JLOS with a promise that both laws would be submitted to cabinet.

When JLOS approached its funders, however, to conduct a national consultation on the bills before their submission to cabinet, donor governments supporting JLOS – who were strongly in favour of the ICC and similar accountability efforts – made it clear that they would not fund the process if it included the National Reconciliation Bill. To them, it was important for JLOS to fast-track the ICC legislation – in part to enable Uganda to win its bid to host the ICC Review Conference in 2010⁷⁴ – and to prosecute Kwoyelo. International lawyers from an international legal consulting group were even flown in to help JLOS enact such a law, despite their lack of familiarity with Uganda's legal terrain.⁷⁵ As a result, the ICC Act that passed in 2010 was rushed through parliament with little consultation and without much-needed acknowledgment of the domestic legal reality, given the existence of the Amnesty Act. Nevertheless, pro-ICC groups and lobbyists celebrated it as a step towards complementarity.

Furthermore, to the ICC's advocates, Kwoyelo's trial was an example of putting complementarity 'into practice'. Little attention was thus paid to the politics, procedure or merits of the case. Internationally, an indictment for war crimes appears to erode the presumption of innocence, at least in the court of public opinion. Indeed, prosecutors and sometimes judges play more to public opinion and political interests than to the merits of a case, or even to the applicable law.⁷⁶ In Kwoyelo's case,

⁷³ For more information on RLP Beyond Juba Project activities, see www.beyondjuba.org.

⁷⁴ See S. Oola, 'Global Justice! The 2010 ICC Review Conference and the Future of International Justice in Africa', Beyond Intractability Project, University of Colorado-USA (February 2010).

⁷⁵ In one joint consultation organised by RLP and the Public International Law & Policy Group (PILPG) on the two bills, held at the Imperial Royale Hotel in Kampala, RLP walked out following particularly disparaging and patronising remarks made by an American lawyer hired by PILPG.

⁷⁶ This is evident in the reluctance to grant Kwoyelo such interim judicial remedies as bail, and the refusal to execute repeated court orders for his release. For a similar argument, see D. Robinson, 'The Identity Crisis of International Criminal Law', *Leiden Journal of International Law*, 21(4) (2008).

even before the case had commenced, a sitting judge within the ICD, Judge Anup Singh Choudry, issued a letter condemning the planned trial as unconstitutional and as a perversion of justice.⁷⁷ He alleged that the trial was a mere sham given that the bench had been briefed and directed on how long the trial should last, as well as on the expected verdict.

The challenge for JLOS from the beginning was institutional. As a donor organ pioneered by a consortium of donor agencies, its role was to strengthen the rule of law by coordinating actors within the 'access to justice' chain. JLOS's understanding of transitional justice was limited to prosecution, however, and many of the advisors recruited to advise JLOS had only learned of 'transitional justice' because Justice Ogoola played a key role in the establishment of the (then) WCD. (RLP's interactions with JLOS insiders during the TJWG meetings also revealed that many had little to no knowledge of the contents of the other Juba peace agreements.) As a result, to many JLOS actors, the end of Kwoyelo's trial was understood as signifying an end to transitional justice in Uganda.

From amnesty to 'accountability'

Nowhere were tensions with JLOS more acute than over the Amnesty Act, as that was the basis on which Kwoyelo's trial had been stopped. Led by JLOS – with financial and ideological backing from UN Women and the UN Office of the High Commission of Human Rights, and in coordination with several local organisations in the Lango and Teso sub-regions – Kwoyelo's proceedings thus dovetailed with the development of a new narrative against amnesty, one that presented it as unfair to 'innocent' civilian abductees as compared to those who were conscripted into the LRA. While this narrative was pushed heavily by JLOS, it reflected the donor agenda of many pro-ICC international actors.

Tensions over the act came to a head within government in early 2012, when the media reported that Jacob Oulanyah, the Deputy Speaker of Parliament, announced in Gulu that the Honourable Hilary Onok, then Minister of Internal Affairs, had extended the amnesty for another two years. This came as a shock to JLOS, and was again understood as symbolising an end to transitional justice in Uganda (rather than functioning as part of it). When JLOS read the news, it asked then Chief Justice Odoki – who was also Chair of the JLOS Leadership Committee – that Part II of the act be terminated, as a way to bring pressure on Minister Onok.

⁷⁷ 'Judge faults Ugandan war crimes court', *New Vision*, 5 July 2011.

The chief justice (who, as noted, was also the head of the Supreme Court before whom Kwoyelo's appeal was then pending) called Minister Onek and instructed him not to gazette the law he had apparently signed. According to Onek, the chief justice told him that the Amnesty Act was unconstitutional and that he and the attorney general had agreed that only those parts of the law concerning reintegration should be extended.⁷⁸ A few days later, a revised statutory instrument was gazetted, extending only part of the law and lapsing the most important provision: Part II, which provided for the grant of amnesty.

The lapsing of Part II angered many victims and leaders from the conflict-affected sub-regions in northern Uganda. Local leaders and civil society actors petitioned the Speaker of Parliament, condemning the illegal and unconstitutional manner in which the amnesty provision had been removed and demanding its reinstatement. Under the act, the decision to renew or lapse any part of the law is clearly at the discretion of the minister, not the chief justice or attorney general.⁷⁹

The Speaker referred the matter to the Defence and Internal Affairs Committee to consult with the various stakeholders and report on its conclusions and recommendations. With support from Barney Afako – a well-known human rights lawyer who had advised the Juba peace process and was himself instrumental in drafting the 2000 act – and RLP, the committee conducted extensive consultations with all key stakeholders in the conflict-afflicted sub-regions, including the UPDF and victims groups. All of the groups were strongly in favour of reinstating the law. According to the committee chairperson, only JLOS and a few international NGOs and pro-ICC donors were against the reinstatement.⁸⁰

Ultimately, in its report to the Parliament, the committee recommended immediate reinstatement of the law. This recommendation was debated and unanimously adopted. In May 2013, the full Amnesty Act was reinstated by Parliament, a move many victims groups and civil

⁷⁸ Author's interview with the Hon Felix Okot Ogong, Chairperson of the Greater North Parliamentary Forum; author's phone conversation with the Hon Hilary Onek (Kampala, 23 May 2012).

⁷⁹ See 'The Status of Amnesty in Uganda (part 2)', JLOS, available at www.jlos.go.ug/index.php/document-centre/news-room/archives/item/211-the-status-amnesty-in-ugandapart2.

⁸⁰ Author's interview with a Committee Chairperson during the CSO Consultation with Committee on Defence and Internal Affairs (Grand Imperial Hotel, Kampala, 16 April 2013). The Committee's report is available at www.parliament.go.ug/new/index.php/documents-and-reports/committee-reports/category/31-committee-on-defence-and-internal-affairs#.

society actors welcomed, and that again drew harsh criticism from JLOS and other pro-ICC partners.⁸¹ Unfortunately, those who advocated for the reinstatement of the law were branded as 'pro-impunity' groups.⁸²

Conclusion

Although the LRA is just one of several armed groups to have fought President Museveni's government, with untold legacies, the predominant focus of the ICC's complementarity 'work' in Uganda – newly visible with the recent arrest and surrender of Dominic Ongwen to The Hague – has overshadowed larger gaps in accountability and justice. The domestication of the Rome Statute may have foregrounded international crimes like genocide and war crimes, but it changed little in terms of practical commitment.⁸³ Instead, it jeopardised a prospective peace agreement in Juba, one that could have ended a generational conflict and brought both parties to account. The ICC's warrants of the top LRA leadership further placed prosecution at the top of the justice agenda for northern Uganda, whereas amnesty and a preference for traditional reconciliation rituals had previously held sway. The ICD became popular and received large sums of money, given the widespread support for domestic trials to complement the ICC.

For its part, the Ugandan government has hidden under the veil of complementarity to prosecute one side to the conflict, shy away from truth-seeking, deny immediate reparatory measures to victims and avoid acknowledgement of its responsibility and needed institutional reforms. All of this has contributed to silencing a majority of the victims of Uganda's conflicts. The ICC's intervention, in part, has enabled this one-sided focus. For instance, the ICC outreach office in Uganda continues to organise regular trainings for local officials within Uganda. The OTP also availed its investigation file to the prosecutors in Uganda, upon which they based some of their evidence against Kwoyelo.⁸⁴ The OTP equally provided information regarding the whereabouts of potential

⁸¹ At the time of writing, the Amnesty Act's reinstatement was to remain in effect through May 2015.

⁸² At one public event organised at Makerere University shortly after the law's reinstatement, a donor representative reproached RLP for 'stabbing' JLOS in the back. In another meeting in Entebbe, a JLOS staff member told an RLP colleague, 'You guys have taken TJ away from us.'

⁸³ See Oola, 'Bashir and the ICC'.

⁸⁴ In fact, one of the preliminary objections initially raised by Kwoyelo's defence attorney at the opening of the trial was that some exculpatory evidence in the original ICC investigation file had been redacted.

witnesses against Kwoyelo to Ugandan prosecutors. But even with all of this support, Kwoyelo's case raised significant questions regarding whether Uganda was ready to prosecute international crimes and whether prosecution was even appropriate.

Finally, JLOS, largely driven by financial motives, has hijacked the transitional justice efforts initiated by civil society and survivors, excluded critical civil society voices and replaced local interest groups and stakeholders with international technical advisors and experts, all in the name of complementarity. By stigmatising the amnesty law and exploiting the opportunities within the law to craft its version of 'positive' complementarity, JLOS and its allies have sparked what David Oulanyah has rightly called 'judicial instability', to the detriment of a more comprehensive transitional justice approach.⁸⁵ The ICC and its supporters have thus been deceived by their own narrow focus on prosecutions. They are celebrating a symbolic trial without substance, just as Ugandan transitional justice policies have been carefully calculated to condone state impunity, and to deny victims their opportunity to reckon with the country's past in a comprehensive manner.

⁸⁵ See D. Lumu, 'Oulanyah Warns Judiciary on Kwoyelo Case', *New Vision*, 6 November 2013.