THE GLOBAL JUSTICE ASSEMBLAGE

International Criminal Law Enforcement and the Governing of the Northern Ugandan Conflict

The Global Justice Assemblage - International Criminal Law Enforcement and the Governing of the Northern Ugandan Conflict

Cover Design: Marié Bodie
Printed by Ridderprint BV, Ridderkerk

THE GLOBAL JUSTICE ASSEMBLAGE

International Criminal Law Enforcement and the Governing of the Northern Ugandan Conflict

De Mondiale Gerechtigheids-Assemblage

Praktijken van Internationaal Strafrecht in het Noord-Oegandese Conflict

(met een samenvatting in het Nederlands)

Proefschrift

ter verkrijging van de graad van doctor aan de Universiteit Utrecht op gezag van de rector magnificus, prof.dr. G.J. van der Zwaan, ingevolge het besluit van het college voor promoties in het openbaar te verdedigen op vrijdag 11 maart 2016 des ochtends te 10.30 uur

door

Lauren Michele Gould

geboren op 17 mei 1983 te Sydney, Australië

Promotor: Prof.dr. G.E. Frerks
Copromotor: Dr. J. Demmers

Contents

ACKNOWLEDGEMENTS

As I state in the Introduction to this dissertation, doing social research involves a dialogue between ideas and evidence. I found that writing this PhD dissertation also involved a continuous dialogue between my own conditioning and assumptions about the world we live in and the sometimes very different patterns and realities that I came across while engaging in the field. With the risk of sounding cliché, this dialogue not only shaped me as an academic but also very much as a person. In my Introduction I shed light on my academic journey, here I would like to take a moment to reflect on my personal journey and those whom assisted me along the way.

First and foremost, I would like to thank all of my respondents in Uganda, who took me into their homes, invited me to outreach sessions, held lively political debates with me, shared their very personal war experiences and slowly taught me that many of the answers to my research questions could not solely be found in (northern) Uganda. They taught me that 'the field' was at times much closer to home, such as in The Hague and Brussels, and that I, as an academic, was also part of this field. This pushed me to broaden my pool of respondents to include, among others, representatives of the International Criminal Court, International Non-Governmental Organisations, and fellow academics. To them I am also very grateful for sparing their precious time to talk to me and share their ideas.

I thank my co-authors Cedric Ryngaert, Chrisje Brants and Kees Brants, who taught me a great deal about the international criminal justice regime and about the fine art of interdisciplinary collaboration.

I am indebted to the Conflict Studies family. Thank you Georg Frerks for creating a PhD position and for your support and guidance along the way. Jolle Demmers, I am forever grateful for the endless feedback sessions. You were always able to bring structure to my analysis and lift it to a higher theoretical level. You helped me to develop my own critical voice, something I now try to pass on to my own MA students. I thank Luuk Slooter, who started as a fellow student and progressed to become a colleague, very valuable friend, and now paranymph. I could not imagine what this journey would have been like without you. Thank you for everything (coffee, lunches, brainstorm sessions, walks around the block, guidance, and just being there). Mario Fumerton, thank you for your uncompromising feedback and unwavering support. Both come from a very good heart and have made me stronger. Thank you Theo Hollander for being the ultimate optimist and for all the fun and shenanigans in Uganda. Floor Zweerink, I am so grateful for your help during the last months

of writing. You made the long days so much more bearable. Thank you Chris van der Borgh, Nora Stel, Toon Dirkx, Niels Terpstra, Ariel Sanchez, Thijs Jeursen, Rens Willems and José van Aelst for all your endless comments, suggestions and support. You made it fun to come to work every day. Tessa Diphoorn, Rens Twijnstra and Katrien Klep, I love having you in my (personal) network, you are all great sources of knowledge and laughter.

Niki, Marije, Britte, doctor Georg, Ariadne, Maartje, Rebecca, and Bas, Uganda has a special place in your hearts and you all have a very special place in my memories of Uganda.

Thank you Joseph Matthews for carefully editing my Introduction and articles. Thank you Maartje Bodt for designing the cover of this book, an image speaks a thousand words.

Of course I am also indebted to those who provided the appropriate amount of distraction from academia. Thank you Yelda, Marieke, Anke, Oka, Noor, Lizzy, and Laura for being able to share anything and everything with. There is never a dull moment with Marloes, Deon and Nick in my life. Thanks Marthe for years of engaging in self-reflection with me. Thank you for being you Vivian and always being there. Pierre, thank you for your enduring support and helping me knuckle down and get this done. Rahav, thank you for teaching me to nurture and take care of myself a little better.

For the one I continuously lost in the storm, I hope one day we each find the eye we were so desperately looking for.

Paps, Tom and Bas; each so unique in their own way, but as a daughter/sister I could not have wished for a nicer, more loving, caring, funny and not to forget tall and handsome collection of ‘most important’ men in my life.

Mum, this one is for you, because I am so incredibly proud to be your daughter. You taught me not to be afraid of the unknown, while constantly having my back when I needed you. You always have been and always will be the first person I call to share my life journey with.

INTRODUCTION

The case of Dominic Ongwen

After 25 years of living the life of a rebel in northern Uganda and its neighbouring countries, Dominic Ongwen gave himself up to US military forces on 5 January 2015.[1] It was a highly momentous occasion for many reasons, not the least of which is that Ongwen was one of the first rebel commanders of the infamous Lord's Resistance Army (LRA) that the International Criminal Court (ICC) had indicted in connection with the violent conflict that had raged for decades between the LRA and the government of Uganda. In the eyes of some, Ongwen's surrender marked a 'victory of justice' of sorts. Yet the repercussions and wider significance of this event was not so simple as to be completely encapsulated in such a moralistic phrase.

For one thing, the story of Ongwen's life in the LRA merely illustrates the extreme complexity that one immediately encounters when trying to understand the making of conflict and justice in this tragic case of protracted civil war. Ongwen was around 10 years old when the LRA abducted him from his village. He matured to adulthood inside the rebel organisation, and eventually rose in the ranks to become second in command to Joseph Kony, the supreme commander of the LRA. Even so, what weight can be placed upon the fact that, unlike many individuals who willingly join or are recruited by other rebel or terrorist organisations around the world, Ongwen's participation in the LRA did not begin voluntarily? In fact, a variety of civil society voices in northern Uganda have repeatedly questioned whether Ongwen should face international criminal justice at all. Because he had been abducted as a young child, he can be seen as both victim and perpetrator.[2] Some within civil society would go even so far as holding the Museveni regime partly accountable, because it did not do enough to protect Ongwen from being abducted as a child.

The heated social debate on the extent to which formerly abducted rebels and child soldiers should be held responsible for their actions did not deter the ICC from issuing arrest warrants in 2005 against Kony, two other LRA commanders, and Ongwen, at the request of Ugandan president Yoweri Museveni. Ongwen was the first former child soldier to be added to the ICC's list of indictments. The following years saw several unsuccessful counter-insurgency campaigns, and a round of failed peace talks before a joint military mission was set up in 2012 to 'hunt down' LRA fighters and 'arrest' its commanders. This mission

[1] Reality is always more complicated. In the days after Ongwen's surrender, it was reported that he had walked into a village in the Central African Republic and was subsequently captured by Seleke rebels, who handed him over to the US forces stationed in the area.

[2] For an in-depth description of Ongwen's case, see Baines (2009: 177).

involved a wide variety of actors, including the Ugandan military, the African Union (AU), the United Nations (UN), and the United States' Africa Command (AFRICOM).[3]

It was in this context that Ongwen entered a village in the Central African Republic (CAR) and surrendered himself. On 20 January 2015, the ICC announced that Ongwen would be transferred to its court in The Hague. Commenting on this decision, an ICC representative went on to say:

> I strongly welcome the transfer of Dominic Ongwen to the custody of the Court, which constitutes an important success for the Rome Statute system nearly ten years after the issuance of the warrant of arrest against him […] The affected communities will have the opportunity to see international justice address the horrific violence that took place in Uganda. I join the Court in its appreciation to all those States and organizations whose cooperation made possible the successful implementation of the Court's decisions.[4]

In other words, the move was hailed as a success of the international justice system. Yet behind this veneer of 'a victory for justice', a much more complex, and layered 'assemblage' (as I choose to call it, and will explain shortly) of local, national, and international political and institutional actors, issues, interests, discourses and debates, cooperated or contended with each other on the pressing questions of how to define and how to bring justice to Uganda, not only in specific cases like Ongwen's, but also more generally to war torn societies.

Although elaborated in more detail in subsequent chapters, it is nevertheless worth taking a moment to give a brief preview of this intertwined and ever-shifting constellation of sometimes cooperating and at-times contending actors, interests, frames, and discourses, that are involved in the 'making of justice' for Uganda. To begin with, the complexity that Ongwen's case embodies was evident in the fact that not everybody celebrated his planned transfer to the ICC. In the days following Ongwen's surrender, uncertainty loomed as to whether the US or the Ugandan government would actually hand him over to the ICC. The reasons behind this situation are fascinatingly multi-layered. The US is a third party to the ICC, for it did not ratify the Rome Statute that established the court in 1998.[5] In fact, many members of the US Congress are still vigorously opposed to participating with the ICC.

[3] AFRICOM is the US Africa Command, the military command for Africa established in 2008.

[4] Sidiki Kaba, President of the Assembly of States Parties to the Rome Statute Minister, in: Press Office of the International Criminal Court (2015) 'Dominic Ongwen Transferred to The Hague', 20 January 2015, online available at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1084.aspx.

[5] In 1998, the Clinton administration signed the Rome Statute that established the court but did not refer the treaty to the US Congress for the required ratification. In 2002, President George W. Bush retreated further, informing the ICC that the US was withdrawing its original signature.

However, the Obama administration has shown itself to be willing to cooperate with the ICC by arresting those on the court's list of indicted persons; but the Obama administration is still unwilling to ratify the Rome Statute. The epitome of this new collaborative relationship between the US government and the ICC is AFRICOM's active measures to apprehend, when possible, the indicted LRA commanders under the pretext of 'international criminal law enforcement'. Whether or not the US government was now willing to hand over Ongwen to the jurisdiction of the ICC would crucially test this new transnational alliance.

On the other hand, perhaps the final decision to transfer Ongwen to the ICC or not, lay in practice not with the US government, but rather with the Ugandan government. Although Ongwen was first in the hands of American military personnel, he was then transferred to the physical custody of the Ugandan military. It was the Ugandan president, Yoweri Museveni, who initially had referred 'the situation concerning the LRA' to the ICC in 2003, and gained the court's interest and involvement in that way. Yet Museveni would later go on to denounce the ICC publicly as a 'neo-colonial tool of the West' that mainly targeted African countries, and urge other African states to reject it.[6] The International Crime Divisions (ICD) of the Ugandan High Court, a domestic court, was established in 2008 to meet the complementarity standards of the ICC. In the days following Ongwen's surrender, the Museveni regime announced that it intended to try Ongwen before the ICD instead of the ICC.[7] In the end, neither the US nor the Ugandan governments took the decision to transfer Ongwen to The Hague. After lengthy negotiations, he was handed back to the authorities of the Central African Republic (the country where he had surrendered), and it was they who ultimately delivered him to the ICC.

Beneath the international debate over who had the rightful authority to decide whether or not to transfer Ongwen to the ICC, one can peel back another layer of complexity. At various social and political levels in Uganda, a very vocal and heated disagreement was voiced about who was actually responsible, and should therefore take credit, for his surrender. Many local peace activists I spoke to in northern Uganda in the days following Ongwen's surrender asserted that it was not pressure from the joint military mission, but rather the local 'Come Home' radio programme, that in fact had persuaded him to lay down his weapons and turn himself in.

For more than a decade, the Come Home programme sent out messages urging LRA combatants to give themselves up. The messages tried to convince LRA combatants that they will be provided with amnesty in accordance with the Ugandan Amnesty Act of 2000; the messages promised that they would be welcomed home and forgiven by their villages. Six

[6] See Kesten, M. (2013) ´Plus Ça Change: Museveni and the ICC', Blogpost, *Justice in Conflict*, 12 June 2013, online available at http://justiceinconflict.org/2013/06/12/plus-ca-change-museveni-and-the-icc/.
[7] International Centre for Transitional Justice (2015) 'Is Uganda's Judicial System Ready to Prosecute Serious Crimes?' 22 January 2015, online available at https://www.ictj.org/news/uganda-kwoyelo-case.

months before his surrender, Ongwen released 74 women and children from the bush. Lacambel, the presenter of Come Home, told me that upon her release, one of Ongwen's wives recorded a personal message for Ongwen. In it she stated that it was safe for him to return home and that his family needed him. In line with this reasoning, many respondents in northern Uganda reiterated that the 'ICC should not rush' to prosecute him.[8] To those directly involved, the main priority was to end the conflict once and for all; and many believed that the commanders left in the bush were closely watching what happens to Ongwen before making their own decision to surrender or not. Therefore, local peace activists argued that instead of subjecting him to trial and imprisonment in a foreign country, Ongwen should instead receive amnesty; like other LRA commanders had done before him, he should be encouraged to record additional radio messages urging his remaining comrades to give up, and to divulge useful, actionable military intelligence.

Ongwen's case is a prime example of how a complex constellation of local, national, and international actors are involved in 'resolving' the northern Uganda conflict. Ongwen's surrender led to a range of competing claims among these actors, with each upholding a particular 'frame' of the conflict, casting blame and accountability in specific ways, and justifying divergent institutional responses. Ongwen's physical transfer from the Central African Republic to the ICC in The Hague shows that one of these 'negotiated truths' ultimately institutionalized and materialized into a specific outcome, a lived reality.

It is for the purpose of describing, explaining, and understanding the actors, interests, and voices within this 'global justice assemblage' as pertains to the case of Uganda that the four articles that comprise this dissertation, although distinct in the topics that each one addresses, are nevertheless bound together into a coherent whole. Transcending a local-global divide, the four articles that form the body of this dissertation lend insight into how the above-described assembly of actors became involved in 'governing' the conflict in northern Uganda. By drawing on a critical discursive approach to violent conflict, this dissertation empirically examines the discursive and institutional alliances, shifts and effects that have characterized this assembly's governing trajectory between 2005 and 2015. Four main questions guided the research:

1. What discourses have been produced and distributed regarding the northern Uganda conflict?
2. Which of these discourses have been translated into judicial and military practices?
3. How are these judicial and military practices playing out locally?

[8] Interview with John Lacambel (presenter at Mega FM), Gulu, Uganda, 8 January 2015.

4. How and why are particular signifying discourses and regulatory practices politically functional?

This Introduction presents five building blocks that function as a foundation for the four articles included in this dissertation. The first building block provides a short reflection on the academic journey that led me to adopt the critical discursive approach to violent conflict as an analytical framework and to pose these four central questions in guiding my data-collection on the case of Uganda. I will introduce the four subsequent building blocks at the end of the first.

Building block one: academic journey

As stated by Ragin, 'social research, in simplest terms, involves a dialogue between ideas and evidence' (1994: 56). It is a dialogue between, on the one hand, social theory and analytical frameworks and, on the other hand, evidence and the patterns it produces. Of course, usually one cannot predict exactly how this conversation will develop or pan out — it is something dynamic, changeable and context-dependant. The four articles in this dissertation reflect the continuing dialogue I had as an academic with the evidence I gathered, including the patterns it produced, and existing analytical frameworks and social theory. What was constant in this dialogue was my use of an interpretive epistemology and an embedded case study design, as will be explained in my final building block on methodology. However, as is often the case with an embedded case study design that investigates a contemporary phenomenon in depth and within its real-life context, initially I was unsure exactly what my case was 'a case of'. I therefore used a variety of analytical frames, and my research questions and sources of evidence changed as I progressed.

When I first started my PhD trajectory in 2009, I was intrigued by the relationship between processes of transitional justice and reconciliation in (post) conflict situations. At that point, I located the causes and consequences of civil war at a local and internal level, focusing on the construction of antagonistic identity boundaries that need to be reconciled through the application of transitional justice mechanisms. Considering that a heated transitional justice debate was taking place at the time regarding the case of Uganda, I decided to study these processes in the context of the northern Ugandan conflict. Within the first article included in this dissertation, for example, I questioned which transitional justice mechanisms were perceived to be the most appropriate to address crimes committed by former LRA combatants, such as Ongwen, as well as by the GoU and its military. Here, social identity theory and theories on ethnic boundary-drawing and transitional justice lent me insight into the data I was collecting on inter- and intra-group processes in Uganda, using

mostly in-depth interviews and direct observation techniques as a source of evidence. I soon discovered, however, that these theories, and doing research solely at a local level, were not sufficient for me to understand why the transitional justice mechanisms I was researching were so highly contested amongst an array of local, national and international actors. Moreover, looking exclusively at internal causes, antagonistic identity boundaries and the need for reconciliation did not give me enough explanatory power to clarify the ongoing nature of the conflict.

In retrospect, my view and analytical framework was strongly informed by the 'new war' master-narrative on contemporary war that I would later come to severely critique.[9] Gradually I became aware that the transitional justice mechanisms I was researching were so contested because they also served to define who is responsible for the violence perpetrated and how this violence should be governed. Thus, gaining control of these mechanisms has everything to do with the power to define the nature of the conflict and to legitimize particular interventions. To understand my data and the processes I was witnessing in a more systematic way, I stepped away from the 'local trap' I found myself in and turned my gaze to the critical discursive approach to violent conflict, informed by Giddens' idea on the 'duality of structure' (1984). At the core of this approach lies the assumption that 'war repeats and reproduces itself through discourses, which render it acceptable and necessary, and through social institutions […] which serve as war-making machinery' (Demmers 2012: 123). Through this analytical lens I started to critically reflect on the discourses that were continually reproduced and distributed about the northern Ugandan conflict; by whom and why they were reproduced; and how some (but not others) were becoming increasingly institutionalized within the transitional justice process. This allowed me to critically reflect on the role particular transitional justice institutions, such as the ICC, have in reifying or destabilizing these narratives towards legitimizing or delegitimizing a continuation of war.

This change in analytical frame allowed me to discover the complex constellation of actors involved in trying to 'respond to' and 'resolve' the violence committed throughout the conflict. In articles three and four I start referring to this plethora of actors as an 'assemblage', which consists of heterogeneous elements, including: representatives of domestic and international criminal courts, (donor) governments, lawyers, local and international NGOs, UN, EU and AU agencies, military commands, and local peace activists. Importantly, it also includes the discourses, laws, norms and doctrines they produce which, in collaboration and competition, seek to provide 'solutions' for the violence committed. In academic terms, what these elements have in common is the will to 'govern', or, more precisely: 'the attempt to direct conduct and intervene in social processes to produce desired outcomes and averts

[9] I explain what the new war master-narrative on violent conflict is in building block three.

undesired ones' (Li 2007: 264). As Li describes in her article 'Practices of Assemblage and Community Forest Management', this conceptual lens allows one to analyse what is problematized within a particular discourse, the way in which the problem is rendered technical (what intervention is believed to produce a beneficial result), how alliances are forged in its name, how failures and contradictions are managed, and how it acts in a local setting (Li 2007: 265). In my articles, I demonstrate the emergence of what I refer to here in this Introduction as a Global Justice Assemblage: settings where a range of different global and local justice actors and normativities interact, cooperate and compete to produce new institutions, practices and forms of justice governance in response to the northern Ugandan conflict.

The articles in this dissertation empirically examine the discursive and institutional shifts that have occurred within this global justice assemblage between 2005 and 2015. For example, articles one and two illustrate how a shift took place from a focus on amnesty and traditional justice as a dominant response to the violence perpetrated in northern Uganda, towards international criminal law enforcement (embodied in the ICC). A number of years later, in the face of the ICC's inability to arrest its suspects and its declining legitimacy, article three analyses another discursive and institutional shift amongst the global justice assemblage. This was the push towards meeting the ICC's complementarity standards at a domestic level, embodied in Uganda by the creation of the International Crimes Division of the High Court of Uganda and the adoption of the ICC Act. Finally, article four highlights the last important discontinuity described in this dissertation, namely the tendency towards legitimizing military intervention through a discourse of 'enforcing international criminal law'. All four articles illustrate that changing transnational alliances have been involved in mediating these discursive and institutional shifts. These alliances have given rise to different forms of 'transnational governmentality' that have had a variety of local outcomes. [10] Thus, by situating the emergence of this global justice assemblage within these interrelated transformations of governance, I show how the international criminal justice regime is part of a broader reconstructing and reconfiguration of global-local relations.

The rest of this Introduction is dedicated to describing the four remaining building blocks that serve as stepping-stones to comprehend and situate the four articles included in this dissertation. In the second building block, I explain the main theoretical components and sensitizing concepts within the critical discursive approach to violent conflict that I used. In the third, I describe the rise of the global justice assemblage and the most important discursive and institutional shifts in its understanding of and response to violent conflict. In the fourth, I provide a literature review of other relevant research done on the global justice

[10] The concept of transnational governmentality will be explained in building block two.

assemblage and its attempt to govern the northern Ugandan conflict. Finally, in the fifth I reflect on the methodology I used to answer my four central research questions.

Building block two: the critical discursive approach to violent conflict

The critical discursive approach to violent conflict provides an analytical framework to study complex interconnected relationships within and surrounding a violent conflict. In particular, it facilitates examination of how an assemblage mediates a dominant discourse on the conflict, a mediation that enables particular institutional practices, while also allowing attention to how these practices play out locally. [11]

At the core of the critical discursive approach to violent conflict lies the assumption that war is not an aberration but a social continuity. As Jabri, one of the most important voices in this field, describes in her book *Discourses on Violence*:

> War as a social phenomenon involves individuals, communities, and states and any attempt to uncover its genesis must incorporate the discursive and institutional continuities which render violent conflict a legitimate and widely accepted mode of human conduct (1996: 1)

Drawing on Giddens's (1984) idea of duality of structure, scholars including Brass (1996), Jabri (1996), Apter (1997), Schmidt and Schröder (2001), and Demmers (2012) have extensively theorized how and why discursive and institutional continuities are drawn upon and reproduced by various actors in strategic interaction towards rendering violence against 'the other' as legitimate. Jabri defines discourse as follows:

> Discourses are social relations represented in texts where the language contained within these texts is used to construct meaning and representation […]. The underlying assumption of discourse analysis is that social texts do not merely reflect or mirror objects, events and categories pre-existing in the social and natural world. Rather, they actively construct a version of those things. They do not just describe

[11] Parts of building block two, three and four are repeated in the third and fourth article included in this dissertation. It is hard to prevent a certain amount of repetition (i.e. introducing your applied analytical framework/concepts) in a dissertation made up out of published articles, because each article has to stand on its own. I felt it was important to include in this Introduction a thick description of my analytical framework, the rise of the global justice assemblage and an up-to-date state of the art literature review to be able to offer more in-depth information and situate and highlight the contribution of each of the articles within this dissertation. Thus, while some parts of building block two, three and four are repeated later on, I also provide new and imperative information in each.

> things, they do things. And being active they have social and political implication (1996: 94-95).

In relation to violent conflict, she concludes 'conflict is the time at which the language of politics becomes a discourse of exclusionist protection against a constructed diabolical, hated enemy who is deserving of any violence perpetrated against it' (Jabri 1996: 134).

Different bodies of literature address in different ways the process of constructing a discourse on violent conflict. Collective Action Theory, for example, illustrates how social movements create 'collective action frames' that are understood to 'redefine social conditions as unjust and intolerable with the intention of mobilising potential participants, which is achieved by making appeals to perceptions of justice and emotionality in the minds of individuals', as well as put a moral claim on, for instance, the legitimacy of violence (Tarrow 1998: 111). King notes the importance of gaining a wider audience for these 'frames' within violent conflict:

> Acquiring the power to define a hegemonic discourse about the conflict is a goal self-consciously pursued by belligerents. The aim is, in part, to convince outsiders of the rightness of one's own cause and the perfidy of others, to demonstrate that the opposite side is composed only of ethnic militants, fanatical hardliners, terrorists, separatists and so on. But it is also to control the entire vocabulary that observers and participants use when they speak about the origins of the dispute, the identities of the belligerents and what might count as a legitimate form of conflict termination. Labelling, in other words, is a political act (2004: 452).

Discourse is always an exercise of power, and the asymmetrical access to (material) resources results in certain actors having more power than others to define a particular master narrative on violent conflict. At the same time, discourse is also always relational; it is constructed between crafters and their audience and therefore, as Demmers explains, it has to be not only 'politically functional' but also 'socially meaningful' (2012: 129). The underlying assumption here is Foucauldian; power is not possessed by a single agent but can be exerted when one mediates the discursive structures that define what constitutes acceptable agency, on one hand, and forms of behaviour that are seen as unacceptable and in need of discipline, on the other. As author Gourevitch eloquently describes in his book on the Rwandan genocide, 'Power consists in the ability to make others inhabit your story of their reality' (1998: 48). Crucial to this observation is that the objects and subjects of power are substitutable, and that power is not only exerted on 'others' but also over oneself when one willingly reproduces the social norms and rules set out by the prevailing master-narrative.

This dual aspect of power is defined by Foucault as 'governmentality' or the 'the art of government'.[12] As anthropologist Ferguson and Gupta explain, Foucault's governmentality approach 'draws attention to all the processes by which the conduct of a population is governed: by institutions and agencies, including the state; by discourses, norms and identities; and by self-regulation, techniques of disciplining and care of the self' (2002: 989). The approach is concerned most of all with the myriad ways of the *how* of governing or 'the conduct of conduct' by calculated means (Dean 1999:10 in: Ferguson and Gupta 2002: 989).

Important for the discussions throughout the four articles in this dissertation is that not only actors in and at war are engaged in processes of creating master narratives on violent conflict and trying to govern the populations within them, but so too are so-called 'outsiders', including (I)NGOs, donor governments, UN agencies, the ICC, the AU, academics, lawyers, and military establishments, referred to collectively by Demmers (2015) as the 'conflict industry' and by Duffield ([2001] 2014) as 'strategic complexes of global governance'. As noted before, in this Introduction I coin the actors involved in governing the northern Ugandan conflict between 2005 and 2015 as being part of a global justice assemblage. In line with Foucault's concept of substitutability, these actors are themselves subjects whose understandings have been constructed within particular master narratives that make them see violent conflict in a particular way, in addition to being instigators of these master narratives. Parties to a conflict, on their part, often appropriate or, to use Foucault's term, 'self-submit' the master narratives of a particular assemblage in order to garner international diplomatic, financial and/or military support, and to expand their hold on power. In doing so, they become part of the assemblage and reinforce it. Bhatia illustrates this process by using the example of the Global War on Terror:

> The pronouncement of a 'war on terror' has forced many to verbally negotiate and assert who they are, who they are allied with, and who they are against. Moreover, this is the new dominant framework in which both governments and non-state armed movements present their acts (2005: 7).

This process of assembling a dispersed set of actors and mediating a master narrative on violent conflict always goes hand-in-hand with resistance, contestation, and rejection among various other actors who compete to capture and spread their preferred alternative framing of the conflict. This is far from merely a struggle of words and images. Rather, as noted above, discourse not only defines what defiant behaviour is and who is responsible, it also influences what is seen as appropriate means of dealing with it or governing it. As

[12] This idea of power has been at the core of Foucault's historiography, particularly in his works *Discipline and Punish* and *The History of Sexuality*.

Demmers concludes, the critical discursive approach to violent conflict is thus about '"the politics of portrayal", examining how names and images are made, assigned and disputed, and how this battle at times translates into political and judicial measures and instruments […]' (2012: 127). From this Foucauldian, poststructuralist perspective, I argue that one can derive the dominance of a particular discourse amongst an array of competing claims from the extent to which it has become institutionalized, in terms of regulatory institutions, laws, policies and interventions (such as terrorist listing or an extradition to the ICC) that are exerted on 'others' through disciplinary practices, but also exerted over oneself, through self-submission (i.e. through a self-referral to the ICC), and become part of everyday lived reality. As described in the methodology section, below, in this dissertation I therefore not only engage in analysing discourse, but also carefully examine which discourses have become institutionalised into particular practices, by engaging in policy analysis. Concurrently, I map the shifting transnational alliances that have been involved in mediating a dominant discourse and implementing particular policies and practices on the northern Ugandan conflict. I found the concept of 'transnational governmentality' a very helpful lens to understand and situate the evidence I gathered about the global justice assemblage. With this concept Ferguson and Gupta propose to:

> Extend the discussion of governmentality to modes of government that are being set up at a global scale. These include not only new strategies of discipline and regulation […], but also transnational alliances forged by activists and grassroots organizations and the proliferation of voluntary organizations supported by complex networks of international and transnational personnel and funding. The outsourcing of the functions of the state to NGOs and other ostensibly nonstate agencies, we argue, is a key feature, not only of the operation of national states, but of an emerging system of transnational governmentality (2002: 990).

I agree with Li that the 'analytic of governmentality is usefully distinguished from the ethnographic study of how governmental interventions play out at a particular time and place' (2007: 264), and that it should thus *not* be collapsed into one. More importantly, I agree with her observation that there should be a dialogue between the two. Informed by the critical discursive approach, the first main objective of this dissertation is therefore to analyse what discourses have been mediated on the northern Ugandan conflict and how these, in turn, have enabled certain institutional, judicial and military practices at a global level. Thus my aim is to couple discourse with practice. My second goal is to trace the effects at a local level, on the ground, to discern the consequences of these judicial and military practices, both discursively as well as materially. For as both Brass (1996) and Bhatia (2005) have observed,

far too often complex local variations, motives, histories and interrelationships are lost in the application of particular master narratives. My data clearly illustrate that this is partly due to the fact that the people concerned are often too politically marginalised to contest them. The power to define local incidents of violence, and to place them within a specific master narrative that informs particular governing practices, is thus often removed from, though at the same time also feeding into, the local societies in which they occur. The articles in this dissertation empirically illustrate that this disconnect can have crucial repercussions and unintended outcomes for the day-to-day lives of those 'governed'.

In the following building block, I describe the rise of the global justice assemblage and the most important discursive and institutional shifts in its understanding and response to violent conflict.

Building block three: the rise of the global justice assemblage

Over the past decades, authors such as Richards (1996) Kalyvas (2001), Duffield ([2001] 2014), Bhatia (2005), Dexter (2007 and 2008), and Demmers (2012, 2014 and 2015) have mapped the shifts in master narratives on intrastate violent conflict. In line with Foucault's genealogical method – which aims to study historical discontinuities and breaks rather than chronologically to narrate what happened in the past – we see that with the end of the Cold War a number of discontinuities can be identified with respect to the dominant global understanding of the causes, nature and consequences of intrastate violent conflict. During the Cold War, civil war was often explained in terms of ideological divides and super power rivalry, and then in the early 1990s they were often framed in ethnic terms (Wimmer 2004; Demmers 2012: 113). Since then, and especially since the Global War on Terror, local conflicts are labelled as 'new wars' (Kaldor [1999] 2012). These are signified to take place within failed states, to blur lines between crime, warfare and human rights violations, to be void of traditional war aims, to be supported by informal economies, and to include a variety of actors from child soldiers, to paramilitaries, to 'terrorists'. Above all, they are characterised by mass civilian casualties. And crucially, the sources of the new war conflicts, and the suffering they inflict, are thought to lie in the hands of local entrepreneurs of violence (Kaldor [1999] 2012: 2). Duffield ([2001] 2014: 24) argues that this view of the conflicts marks a clear shift from the 1970's and 1980's, when Wallerstein's world system theory and dependency theory were still prevalent; in those views, underdevelopment and insecurity in the South were seen as necessary by-products of the generation of wealth in the North, with causes located at the external or international level. This understanding has all but disappeared as the idea of the new war has become one of the most influential narratives of contemporary conflicts (Chandler 2006: 484; Dexter 2008: 74; Duffield [2001] 2014: 28).

Duffield illustrates that the new war master narrative mediates a discursive structure that defines what constitutes acceptable agency within violent conflict and forms of behaviour that are seen as unacceptable and in need of discipline:

> It creates a formative contrast between *borderland* traits of barbarity, excess and irrationality, and *metropolitan* characteristics of civility, restraint and rationality. Their wars, for example, are internal, illegitimate, identity-based, characterised by unrestrained destruction, abuse civilians, lead to social regression, rely on privatized violence, and so on. By implication, our wars are between states, are legitimized and politically motivated, show restraint, respect civilians, lead to social advancements and are based on accountable force. In describing their wars, by implication, such statements suggest a good deal about how we like to understand our own violence. They establish, for want of better terms, a formative contrast between borderland traits of barbarity, excess and irrationality, and metropolitan characteristics of civility, restraint and rationality (2002: 1052).

The growing influence of the new war frame on intra state violent conflict has been informed by another discursive historical discontinuity, namely the rise of a rhetoric on human rights. As Manokha argues and substantiates in his article 'Foucault's Concept of Power and the Global Discourse of Human Rights':

> With the end of the Cold War, the concept of human rights, understood predominantly as negative rights of individuals, is less and less contested, and is increasingly acknowledged as one of the priorities of governments […]. To put it differently, human rights may be said to have become a global standard or a global norm with reference to which different forms of agency are evaluated and may be disciplined in various ways by other agents (2009: 430).

The new war and human rights discourses have intertwined and reinforced each other, transforming analysis of warfare into an examination of individual rights abuses that need to be punished and disciplined. What Kalyvas's (2001), Duffield's ([2001] 2014), Smith's (2003) Chandler's (2006), and Dexter's (2007) in-depth analyses of the rise of the contemporary new war concept of violent conflict (including those theorists who have contested it) brings to the fore, is that the nature of civil war has not changed as much as has the illegitimacy and criminality ascribed to the parties involved.

The philosophical underpinnings of the global justice assemblage

> I wanted to emphasize the growing illegitimacy of these wars and the need for a cosmopolitan political response – one that puts the individual rights and the rule of law as the centrepiece of any international intervention […] (Kaldor [1999] 2012: 3).

Although it is beyond the scope of this introduction to discuss the how and the why of the rise of the new war and human rights discourse, the connection is evident between the focus on criminality within war and the rise of an international legal order to respond to the violence perpetrated. As Foucault's concept of power argues, discourses not only describe what behaviour is unacceptable, they also define how defiant behaviour should be dealt with. Since the Cold War, we have seen the significant expansion of a global justice assemblage. This expansion has included the development and application of the laws of war, human rights law, and international criminal law, combined often referred to as 'humanity's law' (Teitel 2011: 4) or 'cosmopolitan law' (Kaldor [1999] 2012: 12). Courts, tribunals, international bodies and political actors draw from various elements of this framework, in assessing the rights and wrongs of conflict, determining whether and how to intervene, and imposing accountability and responsibility on both state and non-state actors.

This legalistic approach to governing war is based on a number of key assumptions about the relationship between war, law and peace that have their roots in Kant's treatise on 'perpetual peace'. Kant's core premise therein was that peace could be achieved through the pacifying effects of law. Prohibitive law could define and pacify the deviant behaviour of warring parties, which Kant referred to as the 'state of nature' of both individuals and states. Kant's Perpetual Peace treatise commenced at the level of civic rights and civic peace within states. Kant argued that the external behaviour of states was highly dependent on the internal institutional structure within the states. In societies where a republican constitution exists, with a clear divide between the executive power and legislative power, where everybody is equal before the law and where 'the consent of citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise' (Kant, Perpetual Peace: 100). Kant believed that this would predispose these states to seek peaceful relations with other like states. Their desire to avoid the state of war would predispose them to *voluntary* and *enduringly* form themselves into a 'federation of states' governed by international law, which forms the foundations of the liberal peace project. This set of laws would regulate the behaviour of states as well as protect their rights, in particular that of sovereignty, by prohibiting forcible interference 'in the constitution and government of another state' (Kant, Perpetual Peace: 97).

The last layer of Kant's Perpetual Peace treatise entailed cosmopolitan rights that applied to both states and citizens, and that brought everyone together in a 'universal community' which 'has developed to the point where a violation of rights in one part of the world is felt everywhere' (Kant 1970: 108). While Kant proposes a judicially framed concept of peace at an individual, international and cosmopolitan level, he nonetheless clearly maintained that the principle of state sovereignty should be upheld and respected, and rejected the idea of a world government to represent cosmopolitan rights. Kant was of the opinion that if states did not voluntarily recognize the principles of international and cosmopolitan rights, there was nothing that other states could do to compel them, except for exposing violations to world opinion. Kant ultimately relies on moral reasoning as the linchpin of peaceful relations between states. It is this element of, or limitation on, how far Kant was willing to extend law into cosmopolitan space, Jabri argues, that has brought contemporary cosmopolitan theorists, such as Habermas, into frame ([2007] 2010: 80). According to Habermas (1997), for peace to make judicial sense it must be backed up by the force of law.

Kant thus ultimately located the agency of peace with the rational citizen and sovereign state and, in line with Foucault's second notion of power, its willingness to 'self-submit' to the rules and norms of international law. Habermas, however, and many other cosmopolitan theorists with him, argue that states have insufficient 'moral self-binding' – as Kant called it – to do so. Therefore, in line with Foucault's first notion of power, for enduring peace to be achieved, unlawful deviant behaviour that abuses individual rights should be sanctioned by 'others', by a 'federation with common institutions which assume state functions, that is, which *legally regulate* the relations between its members and *monitor its compliance* with these rules [emphasis added]' (Habermas 1998: 179).

The global justice assemblage and international criminal law enforcement

This emphasis on the need for a new form of law enforcement is grounded in the belief that state sovereignty should not stand in the way of protecting individual human rights. This idea has gained increasing popularity above and beyond academic cosmopolitan circles, among a wide range of policy actors within the global justice assemblage, marking a significant discontinuity since the end of the Cold War from an emphasis on state security to one of human security (Elliot and Cheeseman 2002: 26; Teitel 2011: 8). Former UN Secretary General Kofi Annan's words illustrate this paradigm shift in a reinterpretation of the UN charter: 'When we read the Charter today, we are more than ever conscious that its aim is to

protect individual human beings, not to protect those who abuse them.'[13] This paradigm shift also highlights what Demmers describes as 'the slippery and controversial relationship between academic analysis on the one hand, and the "reality call" of its ideological and practical implementation on the other hand' (Demmers 2012: 71). We see throughout this Introduction and dissertation, how academic knowledge on new wars and cosmopolitan law enforcement, is re-appropriated, both as concepts and in practice, by global governance institutions and turned into legitimizing discourse.[14]

After the establishment of the ad hoc Rwandan and Yugoslavian tribunals and a number of other special tribunals, the most significant and permanent institutional development with regards to the enforcement of individual rights is the voluntary adoption by 120 states of the Rome Statute in 1998 and the establishment of the ICC in 2002.[15] The Rome Statute establishes that the court has jurisdiction to prosecute the most serious crimes of concern to the international community as a whole, including the crime of genocide, crimes against humanity, war crimes, and the crime of aggression (state violence against another state), if a state is itself unwilling or unable to do so. When the court was established, it was heralded among the global justice assemblage for its ability to give legal status to individual subjects and to puncture the sovereignty of states by arresting and punishing individuals, including those who committed crimes in the service of a state and its military.

The existence of the ICC has created a clear discontinuity in the way in which violent conflict is dealt with. As Luis Moreno Ocampo, the first ICC Prosecutor, emphasized: 'For centuries, conflicts were resolved through negotiations without legal constraints. In Rome in 1998, a new and entirely different approach was adopted. Lasting peace requires justice – this was the decision taken in Rome by 120 States' (Ocampo 2008: 9). As Teitel observes, 'The law and discourse of humanity law are penetrating the sphere of foreign policy decision-making, as can be seen in the increasing frequency with which situations of conflict have hit a political impasse and are being referred to court […]' (2011: 6). Indeed, specific situations of violent conflict have been referred to the ICC by 'outsiders' such as the UN Security Council (e.g. Libya) or the ICC Prosecutor (e.g. Côte d'Ivoire) but also by state parties involved in the conflict who have self-referred to the court (e.g. Uganda, Mali, Democratic Republic of the Congo [DRC]). Referrals have led to numerous arrest warrants for state officials (e.g. al-Bashir of Sudan and Gadhafi of Libya) and rebel actors (e.g. Kony of Uganda and Lubanga of

[13] Anan, K. (1999) 'Two concepts of sovereignty', *The Economist,* 16 September 1999, online available at http://www.economist.com/node/324795.

[14] This dissertation repeatedly empirically exemplifies that this can have unintended and at times serious consequences.

[15] The Rome Statute entered into force on 1 July 2002 after ratification by 60 countries. In 2015, 123 states had ratified the statute.

DRC), who subsequently became defined internationally as 'war criminals' sought for 'arrest and trial'.

As the second article in this dissertation illustrates, in the early euphoric discourse of the global justice assemblage the ICC was seen as the apotheosis of the 'new paradigm of the rule of law', and its aims proliferated far beyond just ending impunity. The discourse expanded to include goals such as conflict resolution, rehabilitation, deterrence, retribution, reconciliation, promoting democracy and providing victim satisfaction. But the ICC soon faced severe criticism about its greatly expanded expectations, its politicized nature, and the public demarche of the US (which feared the ICC would be used as a political tool against it). More specifically, critics argued that it could be instrumentalised by parties to a conflict, that it could bring little or no satisfaction to victims, that it would reduce and demean their experience of atrocity, provide neither proportional punishment nor just retribution, override traditional means of conflict resolution, and therefore was unlikely to do much for reconciliation. The second article in this dissertation analyses how the ICC has attempted to communicate its 'ideal image' to audiences in Uganda, in order to increase its legitimacy. The article's co-authors, Professors Chrisje and Kees Brants, and I conclude that it may well be that communication of the ICC's core identity – the embodiment of the ideal – is impossible, precisely because it must always be in denial of the inevitable political image it presents in practice.

Faced with a growing awareness that the ICC does not invariably have a positive effect on the conflict situations in which it intervenes, recent voices from within the global justice assemblage have started to adjust their narrative on the ICC. They increasingly argue that the ICC can best contribute to ending impunity not by prosecuting perpetrators in The Hague but by helping states prosecute them themselves. As Nouwen explains,

> academics, ICC advocates and even ICC organs, giving complementarity a meaning beyond that of an admissibility rule in the Rome Statute, have argued that the principle embodies the 'primary responsibility' of states to investigate and prosecute crimes within the Court's jurisdiction (2012: 6).

It is therefore argued that states should be encouraged — if not coerced — to implement legal and judicial reform, thus increasing government compliance with international criminal law standards at a domestic level. In line with Li's (2007) conceptualization of 'assemblage', I observe that elements within the global justice assemblage, in an attempt to manage failures and contradictions, have changed their discourse on the relationship between the International Criminal Court and the rule of law, from an emphasis on the international level to a focus on the domestic level.

The third article in this dissertation analyses how this discontinuity is playing out in practice in Uganda. It illustrates how the global justice assemblage, conditioned by its own meta-narratives on the need for complementarity, has increasingly put pressure on the Museveni regime to institutionalize international legal and judicial standards at a domestic level. The regime, in turn, has gradually adhered to these standards, at least officially. By doing so, all actors involved contribute to the further development of the global justice assemblage and its exertion of governing power in Uganda. However, as explained in article three, in practice this has not actually improved government compliance to the rule of law in Uganda and instead is creating legal and thus social uncertainty for many (former) LRA combatants. My conclusion is that this clearly demonstrates that 'outsiders' must empirically engage in a critical reflection on the political use and social impact of the international criminal justice regime they promote, either at an international or domestic level, and that a failure to do so is likely to entrench, instead of breaking through, cycles of exclusion, impunity and violence.

In addition to this shift towards pushing for the domestication of international criminal law, some actors within the global justice assemblage have claimed that the ICC cannot meet its stated goals because it is reliant on member states to enforce its arrest warrants, and in many cases states have not been forthcoming; the case of Sudan's President Bashir is perhaps the most notorious example. As Luis Moreno Ocampo contended at an international conference held in Nuremberg in 2007:

> Individuals sought by the Court are often enjoying the protection of armies or militias, some of them are members of governments eager to shield them from justice. […] It is the lack of enforcement of the Court's decisions which is the real threat to enduring Peace (2008: 12-13).

In light of this dilemma, cosmopolitan theorists have argued that when required, coercive force should be used to protect human rights (Falk 1995; Habermas 1998; Kaldor [1999] 2012; Elliott and Cheeseman 2002; Held 2004; and Archibugi 2004). Cosmopolitan theorists envision these military forces to be operationally and culturally different from modern statist militaries. To quote Kaldor, they are often envisioned as a form of policing:

> In this context, peacekeeping could be reconceptualized as cosmopolitan law-enforcement. Since the new wars are, in a sense, a mixture of war, crime and human rights violations, so the agents of cosmopolitan law-enforcement have to be a picture of soldiers and police ([1999] 2012: 12).

In contrast to traditional state militaries, that engage in what Kaldor refers to as 'spectacular war' intervention, these cosmopolitan police are imagined as divorced from state power purposes and as specialized, flexible and focused on adhering to and advancing the cosmopolitan norms and laws they seek to protect.[16] Ideally, they should be created through the transformation of existing transnational military structures or the creation of new institutionalized and accountable transnational military structures (Kaldor [1999] 2012; Held 1995; Elliot and Cheeseman 2002). Importantly, these police forces are imagined to march into battle and risk their lives under the discursive banner of protecting humanity, not their nation-state. In this regard, Dexter argues that the cosmopolitan law enforcement discourse invokes a significant discontinuity: 'The aim is no longer to kill, destroy, remove or eliminate, but to arrest. There are no enemy forces to defeat, no territory to be won or protected' (Dexter 2008: 61).

Once again, this discourse and the practice of using force in face of 'grave violations of human rights' has become a widely accepted view among the global justice assemblage, above and beyond cosmopolitan theorists. Humanitarian intervention in the era of the 'War on Terror' used to be legitimized by what Lawyer called the 'first good war' narrative,

> a mixture of appeals to upholding international peace and security, national self defense, punishment and deterrence […] it seeks above all the defeat or elimination of perceived threats to the international status quo through the deployment of deadly force (2002: 153 in: Dexter 2008: 59).

Now, however, humanitarian intervention is more and more re-conceptualized as 'a method for enforcing international law with respects to human rights and laws of war, in situations where the state has collapsed or where the state itself violates the law' ([1999] 2012:134). Lawyer and later Dexter define this as 'the second good war narrative' (Lawyer 2002: 153; Dexter 2008: 59).

This discourse has become increasingly institutionalized with the adoption of the Responsibility to Protect (R2P) norm. In 2001, the International Commission on Sovereignty and Intervention came up with the concept of R2P, which was formally adopted by the United Nations General Assembly in 2005. This doctrine sets out the norm that sovereignty is not an absolute right, and that states have the responsibility to protect their population against mass atrocities, namely genocide, crimes against humanity, war crimes and ethnic cleansing. If a state fails in this task, sovereignty can be temporarily suspended and the international community has the duty to intervene through coercive measures, such as economic sanctions

[16] According to Kaldor, the 78-day NATO air campaign in Kosovo represents a 'spectacular' response, subsequently also displayed in Afghanistan and Iraq.

and, as a last resort, military intervention. This marks a clear discontinuity with the cold war era, where state sovereignty, territorial integrity and the norms of non-intervention under the UN charter circumscribed peacekeeping and conflict-resolution activities (Demmers 2012: 71).

Consequently, both under the ICC's complementarity principle and the UN R2P norm, if a state is defined as 'unable' or 'unwilling' to fulfil its responsibility to prosecute its war criminals or protect its citizens, sovereignty can be temporarily suspended to give way to an international judicial or humanitarian military intervention. Often the former precedes the latter, such as was the case in Uganda, Libya and Mali. In this regard, a referral to the ICC followed by citation of the R2P norm are proving to be important legitimizing mechanisms for military intervention. Here again we see the slippery relationship between academic analysis and its practical implementation. As the former ICC Prosecutor unhesitatingly promotes, military action against those who have been declared war criminals by the ICC is 'a totally legitimate operation, politically and legally'.[17]

The 2011 invasion in Libya stands as a prime example. There, a military invasion by Western allies, including AFRICOM and NATO was preceded by Security Council resolutions 1970 and 1973. In those resolutions, the Security Council both referred the case to the ICC and, for the first time, authorized a military intervention citing the R2P. In doing so, the Security Council deplored what it called 'the gross and systematic violation of human rights' and cited 'the Libyan authorities' responsibility to protect its population'.[18] Both resolutions were clearly relied upon by U.S. President Obama to justify the subsequent military intervention:

> Our decision has been driven by Gadhafi who has refused to respect the rights of his people and the potential for mass murder of innocent civilians. It is not an action that we will pursue alone […]. And this is precisely how the international community should work, as more nations bear both the responsibility and the cost of *enforcing international law* [emphasis added].[19]

The case of Libya, and the case of Uganda as discussed in article 4, illustrate that a new transnational alliance is starting to form between the ICC and the US. In recent years, the

[17] Moreno-Ocampo, L. (2009) 'How it Ends', Invisible Children's event, June 2009, online available at https://www.youtube.com/watch?v=XCR3D8nArKU.
[18] United Nations Security Council Resolution 1970, 26 February 2011, online available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011); United Nations Security Council Resolution 1973, 17 March 2011, online available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011).
[19] US President Barack Obama (2011) 'Remarks by the President in Address to Nation on Libya', *Homepage of the White House Office of the Press Secretary*, 28 March 2011, online available at https://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya.

ICC has gone from trying to dodge US denunciation by avoiding engagement with it and its allies, toward actively seeking collaboration with the Obama administration to enforce its arrest warrants through AFRICOM. In an interview with CNN on March 25 2010, special advisor to the ICC Prosecutor, Beatrice Le Fraper Du Hellen, stated;

> We have our shopping list ready of requests from the American Government. […] The American Government first has to lead on one particular issue: the arrest of sought criminals. President al-Bashir, Joseph Kony in Uganda, Bosco Ntaganda, the 'Terminator in the Congo', all those people have arrest warrants against them, arrest warrants issued by the ICC judges, and they need to be arrested now.[20]

With regard to these developments, Jabri concludes 'the only wars that can be fought legitimately today are those that clearly and unambiguously frame enforcement of international law for the sake of humanity as their ultimate purpose' (Jabri [2007] 2010: 80). The power of discourse in our contemporary conflict policy landscape thus lays in the ability to define who is a 'war criminal', and who is in need of 'protection'. This is referred to by Demmers (2015) as the 'politics of judgement'.

The cases of Libya and Uganda also illustrate that, in addition to the parties to the conflict, an assembly of actors is involved in mediating this discourse, including the UN, the prosecutor of the ICC, state officials, INGOs, media, and academics. This does not necessarily mean that those actors engaging in humanitarian interventions actually care about enforcing international criminal law, but only that they find it necessary to claim they do. It also does not necessarily mean that justice will be done before the ICC, as Gadhafi's fate clearly illustrates. This does, however, contribute to the reinforcement of the global justice assemblage and brings with it a broader reconstructing and reconfiguration of global-local relations.

Critiquing the global justice assemblage

To a greater or lesser degree accepting Carl Schmitt's ([1932] 1996) cynical reasoning that every argument about values is actually an attempt to exercise power, many theorists before me, including Dillon (1998), Duffield (2002), Chandler (2003), Dexter (2007 and 2008), Jabri ([2007] 2010) have looked critically at the global and local consequences of the discursive and institutional tendency to delegitimize and criminalize new wars and to respond to them with international criminal law enforcement. While not necessarily rejecting outright the

[20] Beatrice Le Fraper Du Hellen in: Lerner, G. (2014) 'Ambassador: U.S. Moving to Support International Court', *CNN*, 25 March 2010, online available at http://edition.cnn.com/2010/US/03/24/us.global.justice/.

ideals of cosmopolitan theorists or the rise of the global justice assemblage, they put forward a number of arguments about why the former should be aware of the politics involved in the latter, and why there is a need to be wary of the notion of 'legality' serving as a powerful rhetorical legitimizing device for Western intervention. First, Dexter (2007), Chandler (2003) and Jabri ([2007] 2010) argue that the development of this regime has not even-handedly challenged the principle of sovereignty but rather has undermined equality among states, with strong Western states and their allies claiming the right of intervention and weak states being demoted. Since Western states figure prominently in the international institutions and coalitions that have been developed to enforce international criminal law, they inherently have more power to define. To use Dexter's words: 'the roles of criminal and law enforcer appear at this stage to be geographically fixed' (Dexter 2007: 1069).

Second, critics also observe that by classing conflict as a crime in need of international criminal law enforcement, military intervention by Western powers and their allies can be equated with the 'neutrality' of policing and thus as above politics, thereby conveniently concealing ulterior economic or political interests (Chandler 2006: 485). The power of the US, in particular, to influence international narratives and institutions to advance its geopolitical interests is often stressed (Lawyer 2002; Chandler 2006; Dexter 2008).

Third, critical theorists also highlight that focussing on the 'criminal' and 'criminal acts' loses sight of the social and political context in which the violence took place (Dillon 1998: 554; Duffield 2002: 1068). Duffield (2001), Cramer (2006), Jabri ([2007] 2010) and Demmers (2014 and 2015) emphasize that local forms of violence are always part of a wider global neoliberal system of structural inequality. Dexter concludes, 'Current discourses of international criminal justice focus on the criminality of an act, rather than on the power relations that not only created the conditions for that act, but determined whether it was indeed criminal or not' (2007: 1068).

Fourth, the 'criminal' discourse also excludes other forms of conflict resolution, such as mediation or methods of reconciliation.

Finally, highlighting the consequences at a local level, Chandler (2003: 4) argues; no matter how admirable the cause advocated by humanitarian NGOs or 'ethical' governments and international institutions, the rights claimed on behalf of others are based on the incapacity of those others. Analysing the local consequences of humanitarian military interventions more generally, Lawyer reflects;

> There have been cases where humanitarian objectives seem to have authentically provided the primary motivation – Somalia, for example. But there seems to be no case where even well intentioned intervention has produced anything other than a practically or morally highly ambiguous outcome. In most cases any moral legitimacy

> to the resort to deadly force has been at best tarnished and at worst virtually obliterated by some or all of the following: the effects of mixed motives, bad timing and the failure to exhaust other means first, and the specific character of the application of force itself (2002: 159).

The above arguments have either remained abstract or have been developed, for the most part, using a mix of empirical examples from the 'humanitarian interventions' that took place in Kosovo, Somalia, or under the rubric of the 'war on terror', and from the invasions of Afghanistan and Iraq. Still often 'spectacular' in nature, these interventions were predominantly legitimized in terms of Lawyer's 'first good war narrative', described above. The fourth and last article in this dissertation illustrates how the global justice assemblage has mediated a 'second good war narrative' to justify a specialized military intervention by the AU, AFRICOM and the UN in the central African region. By focusing exclusively on this one particular case, article four offers rich empirical evidence of some of the transnational as well as local consequences of responding to violent conflict with international criminal law enforcement, and of AFRICOM becoming involved in what Bachman (2014) defines as 'policing activities' in the region.

Building block four: state of the art

Although none define it precisely as such, numerous scholars have conducted research on the global justice assemblage and its attempt to govern the northern Ugandan conflict. From different disciplinary backgrounds, each provides important empirical evidence for the four central questions posed in this dissertation:

1. What discourses have been produced and distributed on the northern Uganda conflict?
2. Which of these discourses have been translated into judicial and military practices?
3. How are these judicial and military practices playing out locally?
4. How and why are particular signifying discourses and regulatory practices politically functional?

Although the relationship among discourses, policy, local outcomes and actors' interests are closely intertwined, scholars writing on the case of Uganda are generally inclined to focus on one or two of these core components, instead of all four. In the following discussion, I will provide a brief review of the most relevant academic literature on the Ugandan case that has informed this dissertation and I will reflect on the unique theoretical contribution to this literature made by this dissertation.

First and foremost, it must be noted that Atkinson (1999), Doom and Vlassenroot (1999), Finnström (2003), and Branch (2010 and 2011), among others, have provided essential detailed information on the colonial roots of the conflict in northern Uganda and on the construction of an Acholi identity, as well as insight into 'how LRA violence became, at least in the eyes of some, morally and politically justified' (Branch 2010: 25).

Although few scholars who have published on the case of northern Uganda explicitly theorise the role of discourse in violent conflict (except for Titeca and Costeur 2014), a majority do describe the dominant discourses that have been constructed on the conflict. Some talk of discourses (Branch 2007, 2011, and 2012) and master narratives (Finnström 2003 and 2012; Nibbe 2011), others of frames (Titeca and Costeur 2014; Fisher 2007 and 2012) and labels (Nouwen and Werner 2010). In his 2003 book *Living in Bad Surroundings*, anthropologist Finnström was one of the first to use the term 'official discourse' to describe the ways in which particular actors (he defines them as stakeholders) disseminated material only on specific issues 'from the local level in northern Uganda to worldwide media networks, which tend to overshadow completely other aspects of the social reality' (2003: 136). These stakeholders identified by Finnström include the media, international human rights organizations, and the Ugandan government. Finnström illustrates how they produce together an 'official discourse' on the northern Ugandan conflict in which it is defined as a local problem only, often identified as ethnic, that is caused by a 'bizarre' rebel group who abduct innocent children and are solely driven by the idea of the Biblical Ten Commandments (2003: 149-150). Finnström juxtaposes this official discourse against the discourse articulated by the LRA in its manifestos, which includes reference to political goals, historical grievances against the Ugandan government and the belief that the government was purposively exterminating the Acholi people by packing them into camps with the assistance of international actors. Finnström does not fail to repeatedly emphasize the great discrepancy between its written manifestos and the violent means that the LRA uses against Acholi civilians whose rights they purport to be fighting for. However, he does illustrate that many of the political issues raised by the LRA *do* resonate among the Acholi, and he finds that they are frustrated by the fact that none are represented in the 'official discourse' on the conflict (Finnström 2003:137).

Since his 2003 work, many authors, including myself in this dissertation, have built on Finnström's depiction of the 'official discourse', analysing how and by whom it has been reproduced over the years and what shifts have occurred in its core narrative. For example, Fisher, a scholar in international development studies, theorises the agency of African governments in the international system and gives a detailed description of the different longitudinal 'image management strategies' the Museveni regime has engaged in to influence 'outsiders' understanding of the conflict (Fisher 2012). Moreover, scholars such as Finnstöm

(2003 and 2010), Branch (2007, 2011, and 2012), Nouwen and Werner (2010), and Freeland (2015) empirically illustrate how the Museveni regime has appropriated international master narratives to gain support for its military approach to the conflict, instead of engaging in peace negotiations. For example, Finnström (2003: 154), Branch (2011: 86), and Fisher (2012: 12) describe how the Museveni regime, in the aftermath of 9/11, sought to increasingly portray its fight against the LRA as 'Uganda's war on terror' and as a significant part of the 'global war on terror', although the LRA had no substantive links to Islamic organizations such as Al-Qaeda or Al-Shabaab. In the same vein, Akhavan (2005), Branch (2007 and 2011), Nouwen and Werner (2010), Fisher (2014) and Freeland (2015), among others, have done research on Museveni's 2003 self-referral to the ICC of 'the situation concerning the LRA'. Akhavan describes this move as proof of Museveni's attempt to engage an otherwise aloof international community to act on its lofty promise of global justice. Branch (2007 and 2011), Nouwen and Werner (2010), Fisher (2014) and Freeland (2015) argue instead that Museveni's willingness to self-submit to international criminal law was 'part of a military strategy and international reputation campaign, rather than out of a conviction about law and justice' (Nouwen and Werner 2010: 949).

Scholars such as Finnström (2003, 2010 and 2012), Nibbe (2011), Finnegan (2013), and Fisher (2014) have focused on how particular 'outsiders' to the conflict, such as the media, INGOs and donor governments have reinforced the official discourse on the northern Ugandan conflict. As Nibbe explains in her 2011 dissertation entitled 'The Effects of a Narrative: Humanitarian Aid and Action in the Northern Uganda Conflict':

> The perception painted by the international media and aid community was that the northern conflict was one that was unduly borne on the backs of children – either as child soldiers or night commuters. This reinforced a depoliticized narrative about the conflict as 'senseless' and one with no political agenda and the LRA as a collection of brainwashed cult followers that simply aim to wage terror and abduct children (2011).

More recently, Branch (2011), Fisher (2014), and Titeca and Costeur (2014) illustrate with numerous examples how, after the 2006-2008 peace talks between the GoU and the LRA failed, various actors started to move away from supporting peace talks towards promoting the idea that the LRA threat needed to be dealt with 'through a stronger coercive effort, to be realized by building capacity and coordination of regional militaries through increased foreign involvement, particularly by U.S. forces' (Branch 2012: 161).

Finally, in their 2014 article 'An LRA For Everyone: How Different Actors Frame the Lord's Resistance Army', Titeca and Costeur, who have conducted extensive field research in Uganda, the DRC, and Central African Republic (CAR), focus on the current

framing of the conflict. They emphasise how the different actors presently involved in the joint military operation against the LRA, including the Congolese and Ugandan governments and armies, the U.S. government, and a number of INGOs, frame the LRA in a way that does not accurately reflect the reality of a severely weakened LRA on the ground, but that can be understood if one looks at these actors' interests and the specific historical development of political relations among them (Titeca and Costeur 2014).

Moving beyond analysing discourse, Allen (2005), Branch (2007 and 2011), Schomerus (2012), Atkinson et al. (2012), Titeca and Costeur (2014), and Finnegan (2013) have followed the judicial and military policies and practices that have been developed to govern the conflict and have engaged in the field research to study how these practices have played out in the day-to-day lives of those targeted. In 2004 and 2005, Tim Allen (2005), a scholar in development studies, was one of the first to collect data on local responses to ICC involvement in the conflict, even before the ICC issued its arrest warrants. Following in Allen's footsteps, political scientist Branch (2007) conducted research on the image of the ICC in Uganda after it issued its arrest warrants against LRA top commanders in 2005; Branch discusses many of the same issues highlighted by Allen, but lays more emphasis on the ICC's politicization and its political effects (2007). In their 2010 article 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan', Nouwen and Werner (2010) also address the political meaning of the ICC's judicial intervention in Uganda but from an international law perspective. Baines (2009), in turn, specifically focuses on the contested nature of the ICC arrest warrant for Dominic Ongwen. Later, Nouwen (2014) took a different approach to analysing the impact of the ICC in Uganda; considering that the ICC is often portrayed as a symbol for a new world order based on the rule of international law, Nouwen analyses its impact on the rule of law in Uganda from a legal-philosophical perspective.

While the above authors assess the ICC intervention from different disciplinary angles and evaluate its impact varyingly, most scholars agree that Museveni instrumentalised the ICC to bring international legitimation for a military approach against the LRA in name of 'enforcing international law'. A number of scholars have done longstanding field research to evaluate the effectiveness and local impact of past and present military campaigns that have attempted to defeat the LRA or arrest Joseph Kony. These authors include, among others, Branch (2011), Schomerus (2012), Atkinson et al. (2012), Finnström (2012), and Titeca and Costeur (2014). Branch, for example, relays the following about the impact of the 2008 Operation Lightning Thunder (OLT) military campaign, carried out by the Ugandan military (UPDF) and supported by AFRICOM:

> In the case of the OLT, after the LRA escaped – evidently having been tipped off to the operation – it reacted by carrying out a series of brutal attacks on Congolese villages, killing hundreds of civilians and displacing tens of thousands. […] However, because of the moralization of the use of force against Kony, these negative consequences are dismissed and neither the UPDF nor the U.S. government is held accountable. […] As significantly, AFRICOM's proponents take its failure as signalling the need for its expansion: instead of a rethinking of militarization itself, the hundreds of dead Congolese, apparently representing the acceptable 'collateral damage' of deepening US military involvement, have been used to justify a call for a redoubled military effort to wipe out the LRA (2011: 228-229)

Building on this critique and reflecting on the subsequent more permanent and official deployment of 100 AFRICOM military advisors to the region in 2011, Atkinson et al., argue:

> Instead of asking ourselves if 100 US military advisors will be enough to transform the present unsuccessful military approach into an effective military/humanitarian intervention, we should ask what it would take to do the job, look at resources available and then figure out how – or even if – the requirements for probable success can be met (2012: 379).

Based on an extensive military assessment of these requirements, Atkinson et al. conclude that they are highly unlikely to be met and warn of the detrimental consequences for civilian populations (2012: 371).

Schomerus, who has conducted in-depth field research in South Sudan, illustrates with her data 'why continued operations of the UPDF outside their borders recreate the same problem they purport to be fighting: abuse of civilians' (2012: 124). Finally Titeca and Costeur (2014: 20) conclude that the Congolese army stationed in LRA-affected areas prey on the local population, often copying LRA attacks to create fear and lay blame on the LRA.

In 2012, Branch was the first to use the term 'assembly' (without explicitly theorising the concept) to describe the different actors and institutions involved in 'protection efforts against the LRA'. In light of the diminished threat of the LRA by that time and the negative consequences on civilians of a military approach, he argues the following about the reproduction of this assemblage:

> So, instead of assessing the operations against the LRA according to whether they achieve their stated objectives, we should understand them for their productive role in

> assembling actors and institutions whose interest have come aligned with the establishment of administrative, militarized authority through the protection effort against the LRA. Whether they can provide protection against the LRA is, in the end, largely irrelevant to these assemblies' reproduction (2012: 167).

In line with this reasoning, many authors have questioned who has had an interest in maintaining the 'official' discourse on the conflict and promoting a military approach in the name of enforcing international criminal law. Often building on each other's insights, various scholars have reflected on why this has been politically functional for the ICC (Allen 2005; Branch 2011; Nouwen and Werner 2010; Freeland: 2015), for the Ugandan government and its military (Branch 2007 and 2011; Fisher 2012 and 2014; Titeca and Costeur 2014; Freeland: 2015), for the U.S. government and AFRICOM (Branch 2011; Finnegan 2013; Titeca and Costeur 2014), and for INGOs (Finnegan 2013; Fisher 2014).

The four articles included in this dissertation build on and in turn contribute to the above-described multidisciplinary scholarly work and debates constructed on the northern Ugandan conflict. It is apparent from the above, that by applying a critical discursive approach from a conflict studies perspective and explicitly theorising the relationship between discourse, practice, impact and political functionality, this dissertation provides a framework to analyse, connect and situate the crucial contributions of the above scholars in a systematic and theoretically informed way. This Introduction as a whole, however, also highlights what this dissertation is doing differently. First, it offers a comprehensive analysis that steps away from and transcends a scaled, hierarchal conception of space and time between the local and the global. Instead, it discovers and highlights the discursive connections, political alliances and institutional outcomes sustained by an array of actors, situated in a variety of geographical settings. Second, it tries to capture this dynamic phenomenon by theorizing and coining it as a 'global justice assemblage'. Finally, it offers a recent genealogical trajectory of the shifts and trends in space and time within this global justice assemblage and illustrates how it engages in transnational governmentality. In the final section of this Introduction, I explain how this has been achieved by using a range of methodological approaches and sources of evidence.

Building block five: methodology

As stated above, the research conducted for the four articles in this dissertation follows an embedded case study design (Yin 2003). Of core importance in an embedded case study design – one that investigates a contemporary phenomenon in depth and within its real-life context – is that there be an explicit and coherent connection between the research questions

posed, the units of analysis, and the procedure for interpreting data (Yin 2003: 27). Before discussing other methodological considerations, therefore, this methodology section starts with an overview of these core features that allowed me to follow, seek evidence for, and analyse the discursive and institutional discontinuities within the global justice assemblage.

1. *What discourses have been produced and distributed regarding the northern Uganda conflict?*

In my research, and as reflected in articles two, three and four, I have tried to map the (transforming) discourses that different groups of actors have constructed regarding the northern Ugandan conflict. In line with Yanow's (2000) approach to identifying 'interpretative communities', my goal was threefold; 1) to identify actors who might share an understanding and language that would be different from other actors' understanding, 2) to identify the specific artefacts (language, acts, objects) through which these understandings are expressed, communicated and interpreted, and 3) to map the architecture of their similarities and differences with respect to the issue. This required me to engage in document analysis, including media articles, minutes of speeches, audio-visual material and institutional reports. I also engaged in direct observation during the peace talks in Juba in 2007, numerous outreach sessions of the ICC in northern Uganda, and key national and international conferences on issues such as the Ugandan Amnesty Act, the ICC in Uganda, and military interventions against the LRA. This document analysis and direct observation provided sensitizing information for designing in-depth interviews with an array of actors, including civilians who had lived through the war in northern Uganda, former LRA combatants, northern Ugandan religious, traditional and political leaders, national and international lawyers, journalists, human rights activists, academics who specialize in the region, and representatives of (I)NGOs, the ICC, the Amnesty Commission, and the AU. With regards to the categorization of respondents, it is always flawed or insufficient to make simplistic dichotomies between 'formal' and 'informal' views, or 'state' versus 'public opinion' or, worse 'the voice of the people' versus 'power'. My aim here was to interview a diverse range of respondents and present the patterns I discovered in their narratives, without making any generalized claims about categories of respondents.

To make sense of the large amount of evidence these sources provided (written text, transcribed interviews, minutes and field notes), I integrated it into the qualitative data analysis software program MAXQDA. I then used sensitising concepts from frame analysis theory to code the data gathered.[21] In article 2, for example, my co-authors and I relied on

[21] Frames are core components of larger discursive formations.

Entman's (1993) understanding of framing to extract the 'problem definition', 'causal interpretation', 'moral evaluation' and 'treatment recommendation' various actors have with regards to the violent conflict. Similarly, in article 4, I used Benford and Snow's (2000) concepts of 'diagnostic', 'prognostic' and 'motivational' frames to analyse the narratives and images (re) constructed in Invisible Children's social media campaign 'Kony 2012'. This continual dialogue between the concepts in these analytical frameworks and the evidence I gathered allowed me to extract, code, compare and finally represent the complex web of signifying and legitimizing narratives constructed and contested by various interpretive communities regarding the violent conflict in northern Uganda.

2. *Which of these discourses have been translated into judicial and military practices?*

As illustrated by the case of Ongwen, there is a cacophony of different discourses on the causes and consequences of the northern Ugandan conflict. In line with a critical discursive approach (see building block two), I used the extent to which a particular discourse has become translated into judicial and military policies and practices – in terms of money flows, treaties, laws, courts, arrest warrants and military operations – as an indicator of its dominance. Using documents and archival records as sources of evidence, I collected and analysed treaties, laws, acts, statutes, mandates, financial records, institutional reports, and websites to follow the genesis and development of institutions and their policies. In-depth interviews with actors who represent certain institutions were used to clarify, supplement and verify this evidence where needed.

3. *How are these judicial and military practices playing out locally?*

As argued above, I believe that there should be both a useful distinction and also a dialogue between the 'analytic of governmentality' and the study of how policy practices play out at a particular time and place. To answer this third question, I returned to the sources of evidence I used in my first article, namely in-depth interviews, focus group discussions and direct observation in northern Uganda. To understand the impact of particular policy practices from the perspective of those targeted, I interviewed civilians who had lived through the war in northern Uganda, former LRA combatants, northern Ugandan religious, traditional and political leaders, and representatives from NGOs. I also directly observed outreach sessions conducted by the ICC at internally displaced person's camps in northern Uganda to gain additional insight into the social interaction between institutions and the people they 'reach out to'. Again, my transcribed interviews and notes were integrated into MAXQDA. However, instead of using sensitising concepts derived from theory to analyse my data, this

time I engaged in analytical induction. I tried to identify particular common features and major dimensions of variation among my evidence, which allowed me to create particular codes that I used to analyse subsequent data. Through this continuous dialogue between evidence and the patterns it produced, I tried to build a comprehensive representation of the complex array of opinions and experiences expressed by my respondents. Since I only conducted field research in Uganda itself, I built on the (ethnographic) field research of other regional specialists to gain insight into how a number of anti-LRA operations have played out locally in South Sudan, the DRC and the CAR.

4. *How and why are particular signifying discourses and regulatory practices politically functional?*

According to the critical discursive approach, 'structures of signification are mobilised to legitimate the sectional interests of hegemonic groups' (Jabri 1996: 96). Informed by this notion, my final aim in this dissertation was to understand why specific actors have had an interest in reinforcing particular discourses and institutional policies and practices to 'resolve' the northern Ugandan conflict. Of course, this is a big and complex question, and it is therefore difficult to find conclusive evidence and make a solid case for each set of actors. The question of whose interests are being served in a 'moral world' is, however, what drives me as an academic and what turns the analysis presented in this dissertation into a 'critical' analysis. Therefore I decided to take up this challenge and have tried to provide insight into political functionality by mapping chains of events and shifting transnational alliances. To do so, I continuously engaged in data triangulation: aside from doing an extensive review of other academic literature on this topic (see building block three), I analysed documents (websites, institutional reports, minutes of speeches and news clippings), archival records (financial budgets and personnel records), engaged in direct observation at numerous conferences, and held in-depth interviews with political journalists and an array of representatives from the ICC, the AU, Invisible Children, and members of the Ugandan government. Again, my collected data was integrated into MAXQDA and I engaged in analytical induction to compare and contrast the different interests and goals expressed.

To summarise, my units of analysis in this embedded case study design were individuals, groups, institutions, and social interactions, while my sources of evidence were documents, archival records, in-depth interviews, focus groups discussions and direct observation. I took a grounded theory approach to collecting and analysing my evidence. Within the grounded theory approach, data is centre-stage and is systematically generated and analysed step by step in order to reach an understanding of the case and to provide a

theoretical description of it (Glaser and Strauss 1967). In line with the grounded theory approach, my sources of evidence and respondents were sampled through what is called 'theoretical sampling'. This is defined as the 'process of data collection for generating theory whereby the analyst jointly collects, codes and analysis his data and decides which data to collect next and where to find them, in order to develop his theory as it emerges' (Glaser 1978: 36). In this process, ideas and inferences that result from the foregoing analysis are checked against newly collected data. With the aim to fill gaps in particular findings, specific cases – events, respondents, institutions, or groups – are chosen to provide missing information.

This approach allowed me to continuously track the discursive and institutional discontinuities within the global justice assemblage. It forced me to repeatedly broaden my pool of evidence, especially with regard to key respondents (representatives of the ICC in article two; representatives of the International Crime Division of the Ugandan High Court in article three; representatives of AFRICOM and the AU in article four) and institutional documents (the ICC's Rome Statute in article two; the Ugandan ICC Act in article three; the United States' LRA's Disarmament and Northern Uganda Recovery Act in article four). Moreover, I broadened my research field from the local level in northern Uganda, to the international (for example, the European Parliament in Brussels and the ICC in The Hague), and back to the local again. In the Netherlands and Brussels, I interviewed representatives of the ICC, the African Union, Invisible Children, a number of other INGOs, and political journalists. The remaining interviews were conducted during my field trips to Uganda between 2007 and 2015. In total, I spent 12 months in Uganda: five months in 2007, three months in 2009, three months in 2011 and one month in 2015. I spent most of that time in northern Uganda, in the districts of Gulu, Kitgum, and Pader. From time to time I also stayed in Kampala; there I interviewed key officials and participated in relevant conferences and seminars.

In total, I interviewed 176 respondents; some of them were interviewed repeatedly between 2007 and 2015. This allowed me to capture how their opinions changed over time. I stopped collecting data when analysis of newly selected sources of evidence or categories of respondents yielded little new information with regard to the research questions I posed. My respondents were found through key informants in Uganda and the Netherlands, and through the snowball method.

The degree of access and transparency varied immensely among categories of respondents, institutions, timing and geographic location. The head of the ICC outreach department in The Hague, for example, was only willing to briefly speak to me once in 2011 and then did not respond to any of my emails. The head of the ICC outreach department in Uganda, in contrast, became one of my key informants; I was able to interview him

repeatedly over the years and he allowed me to attend ICC outreach sessions.[22] This pattern repeated itself throughout my research; it was often easier to gain access through local partners or representatives than directly through the headquarters of international organizations. I learned through trial and error that I gained the best access to key representatives of international institution, such as Invisible Children, the AU and the ICC, by attending roundtables and conferences that brought together various actors of the global justice assemblage. It seemed that within this context I was perceived as part of the assemblage itself, rather than as a potentially critical academic, and therefore people in these gatherings were more willing to express their opinions freely and to talk to me directly. In Uganda, I was pleasantly surprised and am very grateful for the amount of access I was granted to institutions as well as to personal stories about people's perceptions of and experiences with violent conflict. Access was not always immediate; for example, I had to return numerous times to the headquarters of the International Crimes Division and the Amnesty Commission in Kampala before I could conduct an interview with the people I had made appointments with. Also, as can be expected, I sometimes had to interview somebody a number of times before I built enough rapport and trust to allow them to speak openly about their views. Reflecting on my experiences, my greatest personal lesson as a researcher was understanding the art of balancing patience and perseverance. But overall, I was hardly ever completely denied access in Uganda.

To meet the primary ethical standards of doing social research, all respondents interviewed were informed about the general nature of the data collected and the purpose for which the data would be used. They were subsequently asked for their verbal informed consent. In northern Uganda, I emphasized to all my respondents that they could end the interview at any time, and whenever I observed distress in my respondents, I called for a time-out and asked whether they wanted to continue. To protect the privacy and anonymity of my respondents, I often noted in my articles only the respondent's affiliation. With their informed consent, I did add the names of some of the journalists and key representatives I spoke to. As explained, all evidence was analysed in a structured manner by integrating it into MAXQDA and using both sensitising theoretical concepts and analytical induction to come to a comprehensive representation that reflected the continuous dialogue I had between the analytical frames I used and the patterns my evidence presented. This required me to take a phased approach, where I interchanged periods of collecting and coding evidence with periods of analysing and theorising.

To increase the construct validity and reliability of my case study evidence, I engaged in three processes described and prescribed by Yin: 'data triangulation', the creation of a

[22] It should be noted here that I had a very hard time locating the ICC's office in Kampala, which also demonstrates its inaccessibility for the war-affected communities living in northern Uganda.

'case study data base' and 'maintaining a chain of evidence' (2003: 40-45). With regard to data triangulation, I collected, compared and contrasted evidence from multiple sources of evidence before I extracted any images of, for example, dominant discourses or institutional developments. I also engaged in three other forms of triangulation: theory triangulation, method triangulation and investigator triangulation. While the first two have already been discussed in this Introduction, the last needs clarification. For my first and third articles, I collaborated with three academics from different disciplinary backgrounds, namely criminology, international law and political communication. This, in turn, led to interdisciplinary theory and method triangulation and meant that the data we collected was analysed and coded by different investigators, decreasing the influence of investigator bias. Moreover, collaborating with academics from these specific disciplines increased my knowledge of and access to the global justice assemblage. Yin (2003) also highlights the importance of creating a 'case study database', to increase the reliability of case study research. As noted, I integrated most of my evidence (aside from non-digital documents) into MAXQDA. It is therefore easily accessible to other researchers, upon request. Finally, to further increase the reliability of my findings, I have attempted to maintain a clear line of evidence between my research questions, my sources of evidence, and my case study database; fully citating in my articles to the relevant portions of my database.

A limitation to my embedded case study approach is that a researcher has to be highly adaptive and flexible to engage in the continuous dialogue between the theoretical issues being studied and the data being collected. One also has to be skilled in collecting and analysing evidence from an array of different sources, each demanding a different methodological approach. Moreover, in my case, by analysing not only discourses but also policy and practices, impact and interests, I had less time to research and represent each component in more depth. I have tried to intercept some of these challenges by following additional methodological training, collaborating with academics from different disciplinary backgrounds, engaging in data triangulation, and at all times being aware of the need for researcher reflexivity. Nevertheless, the articles in this dissertation also reflect these challenges and the ways in which I have evolved as an academic. They should *not* be read as chapters in a book, and the questions posed and methodology presented in this Introduction are not explicitly repeated in each article.[23] Instead, this Introduction is the result of connecting the dots looking backwards: a presentation of the accumulated theoretical and methodological knowledge I have gained, during the dialogue I have had between my analytical frames and broadening sources of evidence, while producing the four articles included in this dissertation.

[23] This is partially due to the fact that there was often very little space to do so in peer reviewed book chapters and journal articles (maximum of between 8000 and 10000 words).

The goals of my embedded single case study research were threefold. The first was to engage in interpreting a culturally and historically significant phenomenon, a moment in history when international criminal law enforcement has become one of the prime discursive and institutional responses to civil wars. My aim was to analyse how the enforcement of international criminal law is playing out in practice in Uganda, discursively as well as materially.

A closely related second goal was to give voice to those war-affected civilians living in northern Uganda, who clearly have very little power to redefine the dominant narratives on the violent conflict they have lived through, or to influence the interventions that are being implemented in their name.

My third goal was to revisit and expand theory. As described above, and further elaborated on in article four, many authors who have theorized the role of discourse and institutions in violent conflict either remain highly abstract, or instead have used a mix of empirical examples from various case studies to illustrate the explanatory power of this approach. Clearly, the material presented in the four articles in this dissertation are unique to the case of Uganda. Nevertheless, by analysing a single case study through the lens of the critical discursive approach to violent conflict, I have provided substantial empirical evidence of an approach that has theoretically come of age, though as yet it lacks solid empirical grounding. This analytic generalization has not only verified some of the main theoretical ideas and concepts within the critical discursive approach to violent conflict, it has also allowed me to expand this theory by adopting and introducing the concept of global justice assemblage to describe and characterize the so-called 'crafters' of discourse and policy on the northern Ugandan conflict.

The theoretically informed questions and methodological approach I have developed here can also be relevant to analyse other cases of violent conflict. As often the case in grounded theory, a single case study can lead to other comparative cases to expand, confirm or deepen the assertions (Boeije 2010: 8). One could, for example, apply the same analytical framework and method to understand how a global justice assemblage discursively legitimized both an international judicial and military intervention in Libya in 2011, or in Mali in 2012 and 2013. Meanwhile, one could analyse and follow how these interventions played out locally, both materially and discursively.

Finally, I am a child of my time, unavoidably conditioned by the discursive and institutional continuities I was brought up in. The four articles that form the body of this dissertation clearly illustrate how I began this project from within the dominant frame offered by the global justice assemblage, habituated in the global new war narrative on violent conflict and reinforcing a discourse on the need for transitional justice. As explained in building block one of this Introduction, however, the contesting voices I came across in

northern Uganda, and further afield, increasingly forced me to critically reflect on my own conditioning and assumptions. I ultimately evolved into a critical conflict theorist, who embraced a poststructuralist approach, and is still to some extent part, but also now outside, of the global justice assemblage. This position has at times been uneasy, but it has also offered me a unique opportunity to analyse the trajectory of this assemblage from within. It is also important to note that my aim, in line with the poststructuralist position, was in no way to 'play the part of one who prescribes solutions'. Instead, my aim began from the position of 'destabilizing hierarchies of meanings, knowledge, ideas, categories and classifications, where the purpose is to challenge entrenched assumptions' (Belsey 2002 in: Springer 2012: 140). More specifically, my aim was to incite assemblies of actors, including myself and other academics, who are in the business of governing civil wars, to reflect critically on their own discursive and institutional conditioning and to look beyond their ideals, interests and mandates, towards practice and impact.

1

THE INTERFACE BETWEEN TRANSITIONAL JUSTICE AND RECONCILIATION IN THE WAKE OF CIVIL WAR

A Case Study of Northern Uganda

Lauren Gould and Cedric Ryngaert

in:

Boerefijn, I., L. Henderson, R. Janse, R. Waever (eds) (2012) Human Rights and Conflict:

Essays in Honour of Bas de Gaay Fortman (Cambridge: Intersentia),

pp. 499-524.

Introduction

> 'Though most of them welcomed me, there are others who still say that formerly abducted combatants are mad, people who are not normal, they are not people to rely on and are killers. Such words hurt us a lot and give us pain and bitterness.'[24]

As the experience of this former rebel fighter in northern Uganda illustrates, the nature of contemporary intra-state wars poses profound challenges to intergroup social and political relations after the violence ends. As the work of Fearon and Laitin (2000: 865) reveals, during intra-state conflict, both in-group and out-group violence can instigate a spiral of intergroup dynamics that harden identity boundaries into 'us' versus 'them', setting the stage for dehumanisation of 'the other' and legitimisation of further violence. Neither the signing of a peace agreement nor a one-sided military victory by itself can address the antagonistic relationships that have arisen in a context where civilians have become both active participants in, as well as targeted victims of, extreme violence. If left unattended in the wake of civil war, intergroup perceptions and interactions are prone to remain antagonistic, making future violence more likely to erupt. So, a fundamental question arises following any violent civil war: how do civilians go about coexisting within the same national territorial unit after the killing has stopped? An answer requires people to address the injustices that have taken place, while also moving towards a new relationship that they believe to be at least minimally acceptable and viable. This article offers empirical insight into how this complex process of achieving a sense of justice and reconciling antagonistic identities is unfolding in the wake of northern Uganda's civil war.

The recent widespread proliferation of transitional justice mechanisms attests to a broad recognition of the imperative to combine both justice and reconciliation efforts in order to achieve a sustainable peace. Defined as a range of approaches that societies employ to reckon with legacies of systematic human rights abuses, a transitional justice process in the aftermath of civil war is intended to bring justice to victims, decrease impunity for prior human rights abuses and deter such abuses in the future. Moreover, it is presumed that justice in some form, whether retributive or restorative in nature, must be sought in order for long-term reconciliation to take place. A number of judicial and extrajudicial mechanisms are utilized to help societies strike the right balance in this critical juncture, such as: domestic, hybrid and international criminal prosecution; truth-telling initiatives; reparations; institutional reform; public apologies; memorials and museums; blanket and individualised

[24] Interview with abducted former LRA combatant, Pajule, Uganda, 16 May 2007.

amnesties; and traditional justice mechanisms. [25] A recent survey of current transitional justice literature has concluded that reconciliation remains a fundamental aim of these initiatives and that preventing the reoccurrence of violence and stabilising a post-conflict peace are also among the 'ultimate goals' of transitional justice (Oduro 2007).

The (post) conflict landscape in northern Uganda strongly mirrors these general developments and assumptions within the field of transitional justice. Numerous local, national and international transitional justice interventions and reforms have been promoted and implemented there to respond to the protracted civil war between the Lord's Resistance Army (LRA) and the Government of Uganda (GoU). These have included indictments issued by the International Criminal Court (ICC) against top LRA commanders, the promotion of traditional justice mechanisms such as Mato Oput, and the establishment of a War Crimes Division (WCD) of the Ugandan High Court.[26] Those in favour of international criminal justice and those who support a Ugandan national and/or traditional alternative each have claimed that their approach will contribute to achieving reconciliation.

The reality, however, is that little data has been collected, either within Uganda or further afield, on the ways in which communities can best rebuild relationships in the aftermath of intra-state violence. Even less research has been done on how different forms of transitional justice contribute to this process (Fletcher and Weinstein 2002: 600; Aiken 2010: 2) . Instead, the main emphasis in existing reconciliation and transitional justice research has been on describing and prescribing Christian moral principles (such as truth, justice, forgiveness and mercy) and transitional justice mechanisms that are envisaged as ideal for achieving reconciliation (Boraine and Valentine 2006). Very little empirical research has been done to test the assumptions underlying these moral prescriptions, to explain how reconciliation actually manifests itself in practice, or whether these particular elements facilitate the process. As Fletcher et al. (2009: 170) astutely observe, transitional justice advocates appear to emphasise a standardised 'tool kit' of interventions that can be applied in any context, the basic assumption being that the 'tool kit' is effective and appropriate as long as one can find the right intervention to deploy. Experience has shown, however, that transitional justice processes are top-heavy and politically driven, often operating with a lack of understanding of the local context and grassroots perspectives. The question of what is most beneficial to the people whose lives have been disrupted or even destroyed by civil violence often remains unanswered – or even unasked – during design and implementation of post-violence interventions. This disjuncture between theory and mechanisms, on the one

[25] However, it is exactly the question of which justice approach to take during transition that has caused a lot of debate among transitional justice scholars and practitioners.

[26] Traditionally applied in cases of intentional or accidental killing, *Mato Oput* involves a process of separating the affected clans, voluntary confession by the perpetrator, mediation and truth-seeking by elders, payment of compensation, and drinking blood of a sacrificed sheep mixed with the bitter root, *Oput*, symbolising reconciliation between the clans.

hand, and a lack of empirical grounding, on the other, can distort analysis and understanding of the relationship between the process of transitional justice and the process of reconciliation (Shaw 2005: 11). Furthermore, overstated objectives and claims can lead to unmet expectations and decrease legitimacy and effectiveness of transitional justice mechanisms in the longer term.

To begin to address the absence of empirical evidence regarding the interface between the process of transitional justice and the process of reconciliation, this article offers insight into the local dynamics involved in the conflict in northern Uganda and provides analysis from a grassroots perspective on the unfolding transitional justice process there. In particular, it examines local perceptions about the involvement of the International Criminal Court (ICC), the codification of traditional justice mechanisms, and the establishment of a War Crimes Division (WCD) of the Ugandan High Court, to gain insight into whether these mechanisms are able to facilitate reconciliation. For purposes of this analysis, reconciliation is defined as: *a relational process between and within identity groups, of shifting attitudes, behaviour and cognitive frames, such as to counter a process of lethal political conflict while simultaneously advancing and facilitating minimally acceptable cohabitation*.[27] Thus, these mechanisms will be evaluated in this analysis based on their ability to redefine and transform antagonistic collective identities, moving them towards intergroup attitudes, beliefs and behaviour that support peaceful relations. Three central questions will guide this analysis: 1) What is the historical-political context in which the transitional justice mechanisms are being implemented? 2) How are the different transitional justice mechanisms believed to contribute to reconciliation? 3) What is their effect on antagonistic intergroup perceptions and behaviour in practice? The first section of this article offers insight into the background of the conflict and describes the antagonistic identity boundaries that remain in its wake. The second section gives a brief overview of traditional justice developments that have taken place over the past 10 years in Uganda. The third section assesses the impact of the ICC, the codification of traditional justice, and the creation of the WCD. A concluding section summarizes the lessons learned for Uganda, and for the broader field of transitional justice, regarding the interface between the process of transitional justice and the process of reconciliation.

Note re data: Taking the experiences of the civilian population as the focal point, the observations made in this article are founded upon nine months of field research conducted in Uganda during a five-month period in 2007 and a three-month period in 2009. Through focus-group discussion and in-depth, semi-structured interviews, the opinions of 130 respondents were collected. These respondents included former rebels, community members, family

[27] This working definition of reconciliation was constructed in close collaboration with Mario Fumerton, Assistant Professor, Centre for Conflict Studies, Utrecht University.

members of the civil war deceased, traditional and religious leaders, lawyers, representatives of NGOs, journalists, members of the ICC outreach team, and political leaders. Interviews were held in Kampala and across the northern Ugandan provinces Kitgum, Gulu and Pader (also known as Acholi-land) in internally displaced person's (IDP) camps, satellite camps and traditional homesteads.[28] The data collected was analysed using the digital qualitative analysis program MAX QDA.

Background: conflict in northern Uganda

For over twenty years, northern Uganda experienced a civil war within which a spectrum of war crimes and crimes against humanity were committed. The roots of the violent conflict lay in a North-South divide introduced during British colonial rule (1894-1962). Within that divide, people from the South, largely Bantu ethnic groups, received political and economical advantages, while people from the North, Acholi and West Nile ethnic groups, were over-represented in the civil service and the military.[29] By the time independence came in 1962, these policies had created a context in which elites played into the North-South divide to gain support for multiple military coups. This period especially affected the Acholi people's sense of ethnic identity and their position within society. Constituting the majority of the military when independence came, the Acholi proceeded to become important pawns in the military struggles for power that ensued, either as perpetrators or victims in mass-scale violence. When the current president, Yoweri Museveni, and his National Resistance Army (NRA) came into power through yet another military coup in 1986, he failed to integrate the Acholi into his military, which marked the first time since independence that military as well as economic and political power shifted to the South. This change led to great resentment among people in the North, especially the Acholi, and three successive armed rebellions emerged, the last being the LRA under the rule of Joseph Kony.

[28] Unfortunately, due to limited time and funding, research was not conducted in the neighbouring war-affected Lango and Teso regions. Considering the particular relationship between the Acholi and the LRA and GoU, this analysis does not presume that the data collected within the Acholi region can be generalised to the Lango and Teso regions. For an overview of related perspectives from the Lango and Teso regions, see Komakech and Sheff (2009); Pham et al. (2007).

[29] International Crisis Group (2004) 'Northern Uganda: Understanding and Solving the Conflict,' Africa Report no. 77, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/077-northern-uganda-understanding-and-solving-the-conflict.aspx.

Inter-group perceptions and behaviour among the LRA, the Acholi, and the GoU

Intra-group perceptions and behaviour between the Acholi and lower-ranked LRA combatants

From the outset, the LRA claimed to be fighting to undermine the position of the president and gain effective political participation for the Acholi people (Doom and Vlassenroot 1999). Over the years, however, the LRA increasingly subjected the Acholi people themselves to rape, mutilation, torture, murder, beatings, arson, and looting, justified by accusations of not supporting the LRA cause. The LRA became especially notorious, locally and internationally, due to its mass-scale use of abducted children and adults to serve as porters and fighters. These abductees were often forced to mutilate and kill civilians, including members of their own families and communities. In addition to combat duties, girls were exploited as sex slaves and domestic servants.[30]

The LRA's brutal actions have negated any legitimate concerns and grievances that it might have for waging rebellion. Moreover, the LRA has been unable to articulate its political goals in a way that gains the sympathy of an international, national, and/or local audience. The Acholi feel great bitterness towards the LRA for the suffering they have endured at the LRA's hands and for the thousands who have been abducted and then killed in combat with the government. But at the same time, the LRA's warfare tactics did also help to maintain the Acholi's sense of resentment towards the government; each LRA attack undermined the president's position, demonstrating a lack of power and/or unwillingness by the GoU to make Acholi-land safe. Moreover, when LRA members were killed by the GoU's Ugandan People's Defense forces (UPDF), the Acholi people condemned the army and the government for killing their loved ones who had been abducted into the LRA.[31]

The LRA's use of abducted civilians as its fighting force has also left the Acholi people facing the devastating reality that the majority of the LRA rebels that have inflicted the pain and suffering they have endured are, in fact, community members. This has complex implications for reintegration and reconciliation if and when former LRA combatants manage to escape from LRA servitude in the bush and return to Acholi-land.[32] The violence experienced by abductees fundamentally changes and charges their identities, leaving them

[30] The most recent research carried out by the Berkeley-Tulane Initiative on Vulnerable Populations estimates that the number of people abducted from 1986–2006 stands at between 52,000 and 75,000 (Pham and Stover 2007: 22). It is believed that the LRA has not taken on any voluntary recruits since 1996.

[31] International Crisis Group (2004) 'Northern Uganda: Understanding and Solving the Conflict,' Africa Report no. 77, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/077-northern-uganda-understanding-and-solving-the-conflict.aspx.

[32] By 2007, an estimated 8000 lower-ranked LRA combatants had received an amnesty certificate and returned from the bush. For further details, see Pham and Stover (2007). It is believed many more have returned without a certificate.

feeling powerless to have avoided committing atrocities and powerless to prevent their continuing identification, in the perceptions of their community, with the group perpetuating violence. This leaves them and the broader community to find a way to negotiate an identity that defines a role somewhere between 'civilian' and 'rebel', 'victim' and 'perpetrator', 'community member' and 'outside aggressor'. Furthermore, the returning rebels/community members are left to do this in a context where those who killed and those who lost loved ones live in close proximity. As the opening quote in the introduction to this article illustrates, the majority of lower-ranked combatants are initially welcomed home but over time they often face stigmatisation and exclusion by the broader community. Community members know that the abductees were victims of forced subscription, but nevertheless they fear the aggressive behaviour they believe has been indoctrinated into the abductees.

Inter-group perceptions and behaviour between the Acholi and the GoU

While there is little support for the LRA among the Acholi people, the Acholi's social, political and economic grievances towards the GoU have only broadened and deepened during the conflict. Not only do Acholi feel like the GoU has not done enough to bring the conflict to an end, its counterinsurgency strategies have been experienced by the Acholi as brutal and unjustified. As an Acholi respondent testified:

> The people here do not wish the government well, because they form the opinion that the government did not protect them and they also committed atrocities on them. It is as if the GoU wanted what happened to take place, even what the LRA did, because they were also punishing people or maybe killing people. They are not that different from the LRA. People are not here to support either of them. It is not the case that when you do not support the government that you then support the LRA. These are just two mad people.[33]

From the start of the conflict, the National Resistance Army (NRA), later the UPDF, focused on indiscriminately destroying suspected rebel supporters among civilians; as part of this strategy, the GoU forced displacement campaign drove 90% of Acholi peasants out of their villages into IDP camps through a campaign of murder, intimidation and bombing and burning of villages.[34] A study conducted by Human Rights Watch (HRW) in 2005 reports that, in every IDP camp visited, HRW found cases of abuse by both the LRA and UPDF

[33] Interview with former LRA combatant and counsellor, Gulu, Uganda, 14 August 2009.
[34] These camps were characterised by a severe lack of facilities, resources and security.

soldiers.[35] Although the level of overt government violence against civilians has not been as high as that of the LRA, many scholars, activists and Acholi civilians have argued that war crimes and crimes against humanity have also been committed by government forces, which enjoy wide impunity for these actions (Branch 2007; Iversen 2009).

One can conclude that the violence perpetrated and experienced in northern Uganda has given rise to a number of complex antagonistic intergroup attitudes and behaviours that need to be addressed in order for reconciliation to occur. As the main targets of the violence committed, the Acholi people feel strong grievances toward both the top commanders of the LRA and the GoU for the prolonged suffering they have endured. Moreover, due to the abduction tactics employed by the LRA, the Acholi people are confronted with the daily reality that it was their own children who committed the vast majority of the violence they experienced. This has led to fear and rejection of a large section of the Acholi civilian population who are now forced to live on the fringes of society. Unless the grievances, fear, mistrust, prejudices, sense of victimisation, exclusion, and outright hatred that linger in the wake of the civil war in northern Uganda are addressed, the current relative peace and security there might be short-lived.

A process of transitional justice in the wake of Uganda's civil war

Numerous transitional justice mechanisms have been promoted, and some of them implemented, in Uganda. These approaches have been contradictory and controversial, however, and have led to numerous ongoing debates among local, national and international actors.[36] One of the first defining transitional justice approaches was the adoption of the Amnesty Act in 2000, within which all rebels, including top commanders, were offered blanket amnesty if they were to lay down their weapons and return from the bush. This was strongly lobbied for by Acholi stakeholders (religious, traditional and political elites) as a way to achieve peace and to adequately deal with the forced nature of the participation of lower-ranked combatants. Since 2000, a number of higher-ranked combatants and thousands of

[35] Human Rights Watch (2005) 'Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda', September 2005, online available at https://www.hrw.org/report/2005/09/20/uprooted-and-forgotten/impunity-and-human-rights-abuses-northern-uganda. Moreover, quantitative research carried out by the International Centre for Transitional Justice (ICTJ), Payson Centre for International Development (PCID) and the Human Rights Centre (HRC) in 2007 reports that as many as 6.1% of 2,875 respondents have been beaten, 3% (5% among women) have been sexually violated, and 3% have had a family member killed by UPDF soldiers (Pham et al 2007: 28-30). When asked about the UPDF, almost 70 percent of respondents said the Ugandan military committed war crimes and human rights abuses in northern Uganda (Pham et al. 2007: 35).

[36] For a broad overview of this debate see Baines (2005); Hovil and Quinn (2005); Allen (2006); Branch (2007); Iversen (2009).

lower-ranked combatants have made use of this option and have returned to Acholi-land without prosecution.[37]

In 2003, flying in the face of Acholi support for this blanket amnesty, the GoU 'self referred' the case of Uganda to the ICC. Two years later, indictments were brought against four of the five remaining LRA top commanders. A new round of peace talks began between the LRA and the GoU in 2006,[38] so continuing ICC involvement triggered a fierce 'justice versus peace' debate in which the indictments were seen as an obstacle to the LRA laying down its arms and singing a final peace accord. In this debate, the restorative traditional justice mechanism *Mato Oput* was presented by Acholi stakeholders as a preferred alternative to the retributive style of the ICC.[39]

Faced with this controversy and the top LRA commanders' refusal to lay down their weapons unless the ICC indictments were withdrawn, the GoU changed its stance towards the ICC in 2008. During the peace negotiations in Juba, it was agreed under the Agreement on Accountability and Reconciliation that traditional justice mechanisms would supplement the national criminal justice system, and that the combination would serve to fulfil the Rome Statute's principle of complementarity.[40] The Agreement on Accountability and Reconciliation states that the 'Parties shall promote national legal arrangements, consisting of formal and non formal institutions and measures for ensuring justice and reconciliation with respect to the conflict'.[41] It provides for the establishment of national criminal justice, traditional justice, truth-seeking and a reparation scheme, while the Annexure provides for the implementation of these mechanisms.

Despite this clear shift from international to national justice, the LRA top commanders were not confident about the prospects of the ICC's withdrawal and, after a number of LRA delegates briefly visited the ICC in The Hague to seek clarity, LRA head-commander Kony pulled out of the negotiations in November 2008. He demanded further assurances regarding the process, most importantly that a U.N. Security Council deferral of the ICC prosecution be obtained before he would sign the final peace agreements and present himself for disarmament and national prosecution.

---

[37] From 1 January 2000 to 31 December 2006, 12,119 LRA combatants reported themselves to the Amnesty Commission; 5,677 were children (Mallinder 2009).

[38] Numerous talks were held in Juba under the guidance of the vice president of Southern Sudan, Riek Machar, and five main agenda items were agreed upon, including a Cease Fire Agreement, an Agreement on Comprehensive Solutions to the War, an agreement on Disarmament, Demobilisation and Reintegration and the Agreement on Reconciliation and Accountability. Many believed that these negotiations provided the best chance for bringing peace to northern Uganda.

[39] See footnote 3 for a description of Mato Oput.

[40] The Rome Statute is the treaty that established the ICC. It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002. Pursuant to the Rome Statute's complementarity principle, the ICC holds a case to be inadmissible if the state in question is able and willing to genuinely investigate and prosecute the case itself.

[41] Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, clause 2.1.

This created a complex situation in which a number of agreements were signed by the LRA and the GoU,[42] but it soon became obvious through the LRA's resumed violence in Southern Sudan, Democratic Republic Congo and the Central Africa Republic that the LRA was no longer genuinely interested in the current peace process. The LRA did not, however, return to northern Uganda and relative stability and security has returned there. The government, for its part, has pledged to implement various agreements, including the Agreement on Accountability and Reconciliation, to fulfil the Rome Statute's principle of complementarity.[43] The GoU has since given the Justice Law and Order Sector (JLOS) the task to formulate transitional justice policies for Uganda, and to that end it has established five sub-committees on 1) formal criminal justice; 2) truth-telling; 3) traditional justice; 4) re-integration; and 5) funding.[44]

As mentioned above, the evolution of the transitional justice process in Uganda has given rise to countless inquiries and debates. Both those in favour of international criminal justice as well as supporters of a Ugandan national and/or traditional alternative have declared that their approach would contribute to reconciliation. But what assumptions are these claims based upon? What antagonistic attitudes and behaviours are the different approaches believed capable of addressing? What has been their impact in practice? Considering that the interventions and reforms have been promoted and implemented in the highly politicised and volatile context of ongoing conflict, it is crucial to question whether they are attending to the needs of the victims. The remainder of this article analyses whether these approaches are likely to build grassroots trust in the GoU and work towards national reconciliation. Attention will also be paid to whether these approaches will lend meaning to people's day-to-day interactions and facilitate reconciliation at a local level between former combatants and the broader community.

The impact of the ICC indictments

On 16 December, 2003, Ugandan President Museveni surprised many observers by referring the situation in northern Uganda to the ICC, following encouragement by the ICC Prosecutor, Luis Moreno Ocampo. The following year, Moreno-Ocampo officially announced the opening of the investigation in January 2004, during a joint press conference with president Museveni. Moreno Ocampo filed the following statement:

[42] During the peace talks, the GoU and LRA singed the following agreements: *Cease Fire Agreement*; *Agreement on Comprehensive Solutions to the War*; *Agreement on Disarmament, Demobilisation and Reintegration*; and *Agreement on Reconciliation and Accountability*.

[43] Various reasons for this willingness could be offered, but the most convincing reason is probably Uganda's desire to claim ownership of its justice process in the aftermath of the LRA's weakening.

[44] In response, a loose network of civil society actors set up the Northern Uganda Transitional Justice Working Group (NUTJWG) to engage and inform JLOS about the grassroots perceptions and provide for a critical mass.

> President Museveni has indicated to the Prosecutor his intention to amend the amnesty so as to exclude the leadership of the LRA, ensuring that those bearing the greatest responsibility for the crimes against humanity committed in northern Uganda are brought to justice.[45]

Arrest warrants were filed against five senior LRA commanders on October 13, 2005, including Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen.[46]

Interface between international criminal justice and reconciliation in theory

Upon referring the case to the ICC, the GoU stated that the ICC process would contribute to national reconciliation.[47] This statement is in line with the widely promoted notion that international criminal tribunals, including the ICC, were established not only to investigate and prosecute individuals who had committed gross violations of international human rights and international law, but also to contribute to achieving reconciliation and peace in post-conflict situations. Advocates argue that these international trials of individual perpetrators help communities rebuild in the aftermath of civil war because the trials support the following goals: 1) to discover and publicise impartial truth about atrocities; 2) to punish perpetrators; 3) to respond to the needs of victims; 4) to promote the rule of law in emerging democracies; and 5) to promote reconciliation (Fletcher and Weinstein 2002: 586). Such trials are thus seen as a way for societies to engage in painful but necessary discussions about the past in order to come to terms with recent horrific events, to achieve closure and to rebuild a healthy society free from the encumbrances that destroyed civic stability. With specific reference to reconciliation, it is argued that holding individuals, rather than groups, accountable for crimes against humanity and war crimes will alleviate collective guilt by differentiating between elite perpetrators and indoctrinated followers, allowing 'innocent masses' to identify in their common victimhood. Widespread dehumanisation of a societal group held responsible for the violence is replaced by stigmatisation of the political and/or military leaders who planned the

[45] Press Office of the International Criminal Court (2004) 'President of Uganda refers situation concerning the Lord's Resistance army (LRA) to the ICC', 29 January 2004, online available at https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/2004/Pages/president%20of%20uganda%20refers%20situation%20concerning%20the%20lord_s%20resistance%20army%20_lra_%20to%20the%20icc.aspx.

[46] Otti and Lukwiya are now presumed dead.

[47] General Assembly's Sixth Committee Agenda Item 146: International Criminal Court, 59th Session of the United Nations General Assembly, New York (October 14 2004), summarized in UN Doc. GA/L/3253. (Rosette Nyirinkindi Katungye, Representative of Uganda to the Sixth Committee of the United Nations: 'Hence we are very encouraged that the Office of the Prosecutor has sent out investigative teams to these places to assess the situation in readiness of the Pretrial proceedings. We trust that this will finally bring about reconciliation and serve as a lesson to others that the international community will no longer tolerate impunity.')

atrocities. This process of public differentiation between those who ordered criminal actions and those in whose name these actions were taken is thought to be critical to reconciliation. The process of differentiation allows those most responsible to be removed from society, while 'good' civilians can rebuild their lives and relationships (Akhavan 1998: 740-741).

Interface between international criminal justice and reconciliation in practice

While the notion is appealing that individual prosecutions promote such differentiation, there have been almost no studies that have systematically attempted to examine the role international criminal justice plays in renegotiating collective animosities (Aiken 2010: 168). In fact, one of the few such empirical studies, which focused on Bosnian legal professionals' perspectives of the relationship between criminal trials and reconciliation, showed that the International Criminal Tribunal for Yugoslavia (ICTY) was not accepted by the affected communities as a legitimate institution capable of rendering impartial judgment.[48] Contrary to the predictions of transitional justice theorists, the 'truths' revealed by the ICTY did not break through the discourse created by elites to legitimise violence against the 'other'. It did not lead public opinion to stigmatise elites as the indoctrinators and perpetrators of unjust crimes against humanity; the study's respondents did not differentiate between those who ordered the crimes and those in whose name the actions were taken. Rather, the record was used by political propagandists to solidify a sense that their national group, including their leaders, were a misunderstood or unacknowledged victim of the conflict and now also of the international community. Thus the trials only served to strengthen the 'us' versus 'them' divide among Serbs, Bosniacs and Croats.

Similarly, data collected for this study, on Acholi perspectives regarding the ICC, strongly reflect the difficulty of breaking through the complex identity dynamics involved in violent conflict and only partially support the presumed benefits of international criminal justice mechanisms toward facilitating reconciliation. Concerning the relationship between the LRA top commanders and its fighting force, most respondents supported the notion of prosecuting the LRA top commanders for war crimes committed by the LRA. This falls in line with grassroots perceptions that the top commanders of the LRA (but not the abducted lower-ranked combatants) should be held responsible for the atrocities committed. The ICC would thus underline a divide between the architects of the mass violence and those who were forced to perpetuate it. This approach would also reinforce a sense of joint victimhood among

[48] This study was conducted by the International Human Rights Law Clinic, the Human Rights Centre, and the Centre for Human Rights at the University of Sarajevo. The report, 'Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors' was co-issued in May 2000, and is online available at https://www.law.berkeley.edu/files/IHRLC/Justice_Accountability_and_Social_Reconstruction.pdf. For a detailed analysis of the report, see Fletcher and Weinstein (2002).

lower-ranked combatants and the broader community, which would thereby facilitate reintegration and reconciliation.

Despite these potentially positive aspects about the ICC's approach to justice, the ICC's conduct, timing and focus have been viewed as partial and even illegitimate in the eyes of various actors within the Acholi community. Firstly, when the indictments were brought, there was very little awareness or understanding of the ICC's retributive justice proceedings and outcomes, leaving it far removed from local restorative understandings of justice and open to critical political interpretation.[49] Secondly, as noted above, in light of ongoing peace talks the indictments came to be seen as an obstacle to the LRA laying down its weapons and returning from the bush. In a context in which people's first priority was achieving peace and stability, the ICC's timing and approach to justice were thus seen as counterproductive.[50] Finally, from the outset, the ICC has been perceived as siding with the GoU. This is due to three facts: the GoU 'self- referred' the case to the ICC; the chief prosecutor made a number of public appearances with President Museveni; and, the prosecutor refused to investigate crimes allegedly committed by the UPDF.[51] In a society where the government and its military are seen as major perpetrators within the conflict, the ICC's one-sided investigation and indictment of the LRA top commanders does not fit our Acholi respondents version of the 'truth' about the conflict. Many respondents voiced their dissatisfaction and argued that if LRA top commanders are to be investigated and tried by the ICC, then so should a number of government officials and soldiers within the UPDF:

> It is because of the approach of the ICC that led to the negative opinion of the ICC being formed so strongly. The first time they came people were exited that somebody will whip for us those people who did wrong to us. They are going to whip the LRA and they are also going to whip the government. But on understanding that they cannot whip the government, that is where the problems started coming and why the people were fed up with the ICC straight away.[52]

Ultimately, the Acholi have come to see the ICC as a political tool of President Museveni that allows the government to claim the moral high ground, while holding up its

[49] Quantitative research carried out by the International Centre for Transitional Justice (ICTJ), Payson Centre for International Development (PCID) and the Human Rights Centre (HRC) in 2005 and 2007 shows that in 2005 only 27% of 2,585 respondents had heard about the ICC. In 2007, this number had grown to 60% of 2,875 respondents (Pham et al. 2007: 36).
[50] The same study shows that in 2007, 76% of 2,875 respondents said that pursuing trials *at the present time* would endanger the peace process (Pham et al. 2007: 35).
[51] The ICC Prosecutor has only issued warrants for the arrest of LRA leaders, in part because he claimed that the government's violations were less egregious than the LRA's violations, but no doubt also because the cooperation of Uganda's government might well not be forthcoming if the ICC were to target government forces.
[52] Interview with former LRA combatant and counsellor, Gulu, Uganda, 14 August 2009.

enemies from the LRA to castigation and isolation by the international community, which in turn helped Uganda to sideline the LRA. The Acholi see the indictments as proof of the ICC's failure to understand and accurately reflect the experiences of their identity group. While the Acholi are in favour of the LRA top leaders being punished instead of the lower-ranked combatants, the lack of accountability for the GoU role in the conflict, and the ongoing sense of victimhood vis à vis the GoU, overshadow the positive contribution the ICC could have made towards local reconciliation in the eyes of the Acholi. The ICC's seeming bias against the LRA has led it to be seen by the grassroots community as a mechanism of victor's justice and has served to maintain firmly in place the negative attitudes towards the GoU. This leaves the ICC's role in facilitation of national reconciliation as an unmet expectation.

With the benefit of hindsight we can conclude that the problematic nature of the GoU self-referral lays in the openly collaborative relationship between the ICC and the GoU, which is perceived to be a party to the conflict. Although the ICC prosecutor of course cannot press charges against all those responsible for war crimes and crimes against humanity, it is imperative that all sides are equal before the law, regardless of affiliation. As the opinions of the grassroots population in northern Uganda illustrate, without holding individuals from both parties accountable, the assumed benefits of international criminal investigations and trials towards reconciliation are unlikely to materialise. Because of one-sided accountability, civilians are likely to look towards the court proceedings to confirm their own victimhood in relation to 'the other', with antagonistic identity boundaries likely to be reaffirmed instead of renegotiated. If the ICC hopes to live up to the expectation of facilitating processes of reconciliation in the face of state referral, it must engage in an in-depth analysis of the dynamics involved in the conflict and the identity boundaries that have been formed. The case study of Uganda highlights the importance of impartial conduct towards all parties involved in war crimes and crimes against humanity and the need for extensive outreach toward grassroots communities in order to inform them about the possibilities, and especially the limitations, of the ICC.[53]

The codification of traditional justice

The rise in interest in using forms of traditional justice in northern Uganda to address crimes of the civil war has its roots in the polarised debate during peace talks over the efficacy and appropriateness of using international criminal law versus local level mechanisms for achieving justice, reconciliation and peace. Within this debate, the restorative traditional Acholi justice mechanism *Mato Oput* was strongly promoted as a preferred alternative to the

[53] See the second article in this dissertation 'Communicating the ICC: Imagery and Image-Building in Uganda' for an elaborate discussion and analysis of the ICC's outreach activities in Uganda.

retributive justice style of the ICC. Traditionally applied in cases of intentional or accidental killing, *Mato Oput* involves a process of separating the affected clans, voluntary confession by the perpetrator, mediation and truth-seeking by elders, payment of compensation, and drinking blood of a sacrificed sheep mixed with the bitter root, *Oput*, symbolising reconciliation between the clans.

Unsurprisingly this alternative was strongly supported by the top LRA leaders, who found the idea of a reconciliation ritual more appealing than criminal prosecution (Allen 2006). Advocates also included Acholi stakeholders and local and international NGOs who, prior to the ICC involvement in Uganda and the Juba Peace Talks, had lobbied for the Amnesty Act of 2000 and promoted traditional justice as a means to reintegrate and reconcile lower-ranked combatants with the broader community (Otim and Wierda 2010).

Interface between traditional justice and the facilitation of reconciliation in theory

The debate described above falls in line with a broader discussion within the field of transitional justice about the role of 'Western' retributive justice versus 'traditional' restorative justice. Traditional justice advocates argue that it is inappropriate to impose 'Western' retributive justice on local populations that are more interested in restorative forms of local justice. Justice cannot be imposed by external decree, but needs to be locally rooted.

Traditional justice approaches vary considerably from society to society, from region to region, from community to community, and are in constant flux. But they tend to have in common the active involvement of the victim, perpetrator and community in creating an environment in which offenders acknowledge their deeds and in which victims are compensated for their losses (Bloomfield et al. 2003: 112). Instead of punishing perpetrators and removing them from society, actions that would disrupt the social balance a second time, traditional justice emphasizes reintegration of both the victim and perpetrator back into society. As with *Mato Oput* in northern Uganda, other traditional restorative justice approaches frequently entail elements of truth seeking, mediation, confession, compensation, and forgiveness, and often include elements that are highly symbolic (Boege 2006). They are often non-state centric, process sensitive and address the psychological consequences of war. The inclusive and local nature of traditional restorative justice approaches are believed by their advocates to more adequately deal with the collective nature of mass civilian participation in civil wars, as well as to create a space where people engage directly in a process of (re) negotiation of their identities towards reconciliation.

Interface between traditional justice and the facilitation of reconciliation in practice

While much was said by Acholi stakeholders in favour of the use of *Mato Oput* to process both LRA top commanders and lower-ranked combatants, research established that advocates did not necessarily represent grassroots beliefs and practices in this regard (Baines 2005: 66; Allen 2006: 131). To the contrary, research done in the IDP camps showed that the majority of our respondents did not feel *Mato Oput* could be applied straightforwardly in all cases to promote justice and reconciliation in the current circumstances. As the mother of a former LRA combatant related:

> No I do not want that to become a law because the former combatants were forcefully abducted, forced to kill and above all, after all the counseling, they do not have to be reminded again. Also there are different types of killings, if the person you killed was not known then it should be left out completely. Even if it is known, but from a different village, then it should be left out. If the killing was done in your own village, then a ritual should be used.[54]

Respondents mentioned a number of crucial obstacles to the use of *Mato Oput*. One, due to the scale and nature of the conflict, perpetrators are often unaware of their victim's identity or clan. Without the victim's identity, the perpetrator is unable to confess his/her crimes, ask for forgiveness from or pay compensation to the victim's clan. Compensation from one clan to the next would also be impossible because the scale of crimes was so large and, as a consequence of the war, people barely have enough resources to get by. Also, *Mato Oput* cannot address all the crimes committed in Acholi-land because not all the perpetrators and victims involved in the conflict are Acholi; the LRA spread its operations to other regions in the North, and the war-affected people there, including the Madi, Lango and Teso communities, have differing perspectives on how to attain justice and reconciliation. Finally, the legitimacy of traditional leaders waned during the conflict; they have increasingly been accused of politicisation, corruption and abuse of traditional structures. Surprisingly, research revealed that although *Mato Oput* was widely promoted, the ritual actually occurred only rarely and there were no reported cases of it *ever* being used to address crimes committed related to the war.[55]

During the negotiations on the Agreement on Accountability and Reconciliation in Juba, delegates became increasingly aware of the practical limitations of *Mato Oput* and it was ever more apparent that traditional justice rituals were unlikely to meet the threshold of

[54] Interview with mother of two former abducted LRA combatants, Padibe, Uganda, 7 May 2007.
[55] See also Allen (2006: 165)

complementarity as set out in the Rome Statute. This led to a shift in focus among the parties. Firstly, as will be explained in the next section, the establishment of a War Crimes Division (WCD) of the Ugandan High Court became a high priority in dealing with the LRA top commanders as a step towards meeting the ICC requirements. Secondly, the discussions moved away from a sole focus on *Mato Oput*; the final Agreement on Accountability and Reconciliation mentions a number of traditional justice mechanisms as part of the overall reform framework. As outlined in Clause 3.1:

> Traditional Justice mechanisms, such as Culo Kwor, Mato Oput, Kayo Cuk, Ailuc and Tonuci Koka and others as practiced in the communities affected by conflict shall be promoted, with necessary modifications, as part of a central part of the framework.[56]

Procedures vary among different traditional justice practices, from different regions within northern Uganda, but five principles have been identified at the centre of each: 1) cleansing and welcoming; 2) truth-telling and responsibility; 3) punishment; 4) reparation; and 5) reconciliation and forgiveness (Komakech and Sheff 2009). Traditionally, these elements were used in various combinations to address a variety of crimes ranging from intentional killing to adultery to simple absence from the community. The agreement recognises that 'modifications may be required within the national legal system to ensure a more effective and integrated justice and accountability response'.[57] This seems to imply that domestic law will seek to incorporate elements from the different mechanisms, as appropriate in each context (Mallinder 2009: 51).

However, as Allen astutely observed, listing rituals as if they are codified is misleading (2006: 163-168). Listing various traditional justice mechanisms from different regions may have appeased the non-Acholi traditional and religious leaders involved in the peace talks. But it is important to question whether codification of the five elements above will in fact help build on the understandings and practices already in use in northern Uganda towards renegotiating the identity boundaries between lower-ranked combatants and the broader community.

The data collected in Acholi-land demonstrate that, over the years, many traditional mechanisms have already been creatively adapted to deal with the complex issues that arise with the return of lower-ranked LRA combatants. Herein, it is clear that people have chosen

[56] Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, p. 4. *Culo Kwar* is practiced by the Acholi and Lango, *Kayo Cuk* by the Lango people, *Ailuc* from among the Teso people and *Tonu ci Koka* is part of Madi tradition (Mallinder 2009).

[57] Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, p. 4.

to include those cultural elements that lend insight into their war-afflicted social reality, while they have left out those elements considered inappropriate in the current context. Among the cultural practices and beliefs that former combatants and the Acholi community have chosen to adapt and utilise, one can identify a clear pattern and preference for those that address the occurrence of *Cen,*[58] combined with those that address the perceived aggressive tendencies of combatants. Respondents described how homecoming rituals such as Nyono Tonggweno (stepping on the egg), visiting the Ajwaka (witch doctor), the use of traditional herbs and certain cleansing rituals, such as the slaughtering of the goat, are utilised to prevent or address symptoms indicating the haunting of the dead spirit (*Cen*). These symptoms include flashbacks, panic attacks and uncontrollable behaviour. By purportedly eliminating these symptoms and thus removing the possibility of contamination, these mechanisms contribute to combatants' being perceived as cleansed and stable community members, with which free and normal interaction is possible. In addition, respondents explained that the use of traditional leaders to mediate between the combatants and the broader community, as well as participation in traditionally inspired dance, song and drama groups, were methods utilised to reduce the aggressive tendencies of lower-ranked combatants and prove their ability to adhere to socially acceptable behaviour.[59]

The common thread in all these adapted traditional mechanisms is that they are directed at a combatant's current behaviour, with their perceived effectiveness laying in their ability to stabilise this behaviour and turn the combatant into a functioning, moral and law-abiding citizens with whom normal interaction is possible. All the mechanisms are voluntary and are used flexibly. Many are non-verbal and symbolic in nature and aside from an optional confession to traditional leaders, none of them requires former combatants to openly talk about the violent acts they were personally involved in. As the following quote highlights, none of these mechanisms includes the involvement of both the combatant and the family members of those they killed: 'All of these processes are focused on the well-being of the rebels by settling the problem between the former combatant and the deceased spirit but not the deceased's family'.[60]

The above analysis shows us that the traditional mechanisms being adapted and utilised in Acholi-land focus predominantly on the first and last of the five elements

[58] The local understanding of psychosocial trauma symptoms in Acholi-land is that they are caused by the haunting of the dead spirit, Cen, who impinges on those who have been exposed to war, who killed, or who saw people being killed. In this regard, former combatants often see themselves and are seen by others as polluted. An important aspect of this belief in Cen is that it is not only perceived to pose a threat to those involved in combat, but also to the families and communities they rejoin. Those who were involved in combat are seen as vehicles through which the unquiet spirit of the war dead can enter and afflict entire communities with illness and death. Those who were caught up in the war are perceived as being polluted by the spirit of the dead and as potential contaminators of the social body.

[59] See also Baines (2005: 41-46). For an extensive overview of traditional practices, see Harlacher et al. (2006).

[60] Focus Group Discussion, Elder, Anaka, Uganda, 23 April 2007.

highlighted as being core to such mechanisms across northern Uganda, namely: 1). cleansing and welcoming; and 2). reconciliation and forgiveness. They do not include elements of public truth-telling, accountability, reparation or punishment. Thus, although these five elements may be core to mechanisms that were traditionally used to deal with accidental and/or intentional killings in a non-military context, they are not being applied in the same way to deal with the complexity of returned lower-ranked combatants in the current context. Although this research has only been conducted in Acholi-land, it is likely that including principles of truth-telling, responsibility, punishment and reparation will face the same practical limitations as *Mato Oput*. Moreover, respondents also expressed a strong emotional disapproval of including these elements due to the forced nature of abducted lower-ranked combatants' participation. For example all respondents, including family members of the deceased, were against verbal accountability. Many feared that the process of public confession by lower-ranked LRA combatants would imply a level of responsibility that is not always automatically ascribed, which could lead to increased tension and even violence in a context where people are extremely deprived and live in close proximity of each other. When asked whether the lower-ranked combatant who had killed his brother should confess, one man said: 'He should first tell his parents then he should tell the traditional leader that he killed people and the spirit is haunting him. Even the one who killed my brother should not make a specific confession.'[61]

Finally, codification would mean the loss of the flexible application of these different mechanisms. This could diminish their effectiveness towards individual healing and reconciliation for those who are directly involved. An interviewee noted:

> From having spoken to traditional leaders, the good thing about traditional justice is that it is flexible. If you codify something, it makes it a lot less flexible and there are so many different traditional justice mechanisms, everybody talks about Mato Oput, but there are so many. So I do not know about codifying all of them into one law, basically saying we are going to put them into all together and they will apply to everybody. I do not think communities will accept that. I think the beauty of traditional justice in Uganda is that it is flexible.[62]

One can conclude that people in Acholi-Land are not waiting around for transitional justice mechanisms to be implemented by outsiders. Through the adaptation of traditional mechanisms with a strong focus on improving current behaviour, people in Acholi-land are facilitating improved attitudes and relations between former lower-ranked combatants and the

[61] Interview with family member of deceased, Padibe, Uganda, 7 May 2007.
[62] Interview with Patricia Thaft (Puplic International Law & Policy Group), Kampala, Uganda, 27 August 2009.

broader community. Although traditional approaches are obviously not a panacea for dealing with the consequences of the war in Uganda and their role is losing ground among the younger generations, these mechanisms should be further stimulated and supported where they still lend meaning to people's day-to-day lives and social interactions. However, the data presented here has also shown the danger of taking local meaning out of context. Codification of these rituals and symbols to include such elements as verbal accountability and reparation will not build on the traditional mechanisms that are now being utilised and could jeopardise the progress being made.

War Crimes Division of the High Court

As explained above, during the negotiations on the Agreement on Accountability and Reconciliation, the delegates at Juba increasingly realised that traditional justice mechanisms were limited in their applicability in the current context. National criminal proceedings were much more likely to meet the complementarity threshold of the ICC.

The delegates thus came to the following accord under the Agreement on Accountability and Reconciliation:

> 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.[63]

The agreement's annexure specifies 'a War Crimes Division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict'.[64] In July 2008, the Ugandan Government established the War Crimes Division (WCD) of the High Court of Uganda by administrative decree.[65] Resources have been allocated, with judges and a registrar appointed to the court. The law to be applied by the court can be found in the ICC Act, which was passed on March 10, 2010, but its exact details were not yet public at the time of this writing.[66]

[63] Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, clause 4.1.
[64] Annexure of the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, clause 7.
[65] The War Court was renamed in 2011 as the International Crimes Division (ICD).
[66] The incentive to pass the bill at that time, although an initial draft had existed since 2006, seems to have derived from the desire to host the ICC Review Conference held in Kampala from May 31 to June 11, 2010 (Otim and Wierda 2010: 4).

Interface between national criminal justice and the facilitation of reconciliation in theory

National investigation and prosecution of crimes against humanity are believed to have the same benefits as international criminal justice, namely to establish an impartial truth, reduce impunity, deter future human rights abuses, respond to the needs of victims, and promote the rule of law and reconciliation. With specific reference to the last three objectives, advocates for national criminal justice claim that national trials are more effective in achieving these goals than international criminal courts. It is argued that: 1). the mental and physical ties between the justice system and the legal community are much clearer at the domestic level; 2). national courts and procedures are much more accessible to the victims; and 3). national criminal justice proceedings can enhance the rule of law within war affected countries and (re)establish civic trust in state institutions. The last of these is believed especially to contribute to national reconciliation between a state and its citizens in the aftermath of civil war. If a government is capable of demonstrating its ability to hold individuals accountable for their crimes and proves that all are equal before the law, structural grievances towards the state are likely to diminish. This can provide a framework in which people can (re)gain trust in their shared national identity.

Interface between national criminal justice and the facilitation of reconciliation in practice

Although reforms and improvements in conventional criminal justice structures and processes in Uganda could end a long history of impunity, build trust in state institutions and increase the limited legitimacy of the GoU among the Acholi population, there are many pending uncertainties about the new WCD legislation, which raise doubts about the potential contribution of the WCD to both national and local reconciliation. Firstly, it is unclear whom the WCD intends to prosecute. As noted by Human Rights Watch, the GoU's intention in establishing the special division of the High Court was not to prosecute all perpetrators of the conflict but rather only those whom the ICC had indicted.[67] And as noted above, The Agreement on Reconciliation and Accountability holds that state actors would not be subjected to special processes and military courts are not included.[68] In respect of state actors, the government has repeatedly insisted that it has dealt with crimes committed by the state, through court martials and executions. The International Crisis Group (ICG) has, nevertheless, strongly criticised the level of impunity among state actors:

[67] Human Rights Watch (2009) 'Selling Justice Short. Why Accountability Matters for Peace', July 2009, p. 101, online available at https://www.hrw.org/sites/default/files/reports/ij0709webwcover_1.pdf.
[68] Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, clause 4.1.

> The lack of judicial follow-up for army crimes coupled with the fear of victims to report them and the exclusion of military courts from the judicial mechanisms listed in the Juba protocols amount to guaranteed impunity for senior military, even if common soldiers were quietly court-martialled and executed.[69]

Interestingly, the recently adopted ICC Act includes no prohibition against state prosecution.[70] It is, however, very unlikely that in the current political climate the GoU will change its policy and hold its military publicly accountable. But if the WCD, in line with the ICC, allows the military leaders of the UPDF to walk free, then the national court is also likely to be seen as partial to one side of the conflict and illegitimate. This will hugely undermine Acholi trust in the GoU and its institutions, and the WCD will be perceived as yet another tool of President Museveni to evade justice.

Not only is it unclear whether state actors will be prosecuted, but, given the open-ended mandate given to the Ugandan High Court in the 2007 Agreement, it is not certain whether all LRA combatants, including lower-ranked ones, could face trial. In this respect, it is particularly ambiguous what the Court's position will be in regard to the 2000 blanket Amnesty Act. In the 2007 Agreement there are no provisions prohibiting amnesties for international crimes and it appears to leave in place the amnesties already granted. That said, formerly abducted midlevel commander Thomas Kwoyelo, who was apprehended during 'Operation Lightning-Thunder' in the Democratic Republic of the Congo between 2008 and 2009, has *not* been given amnesty, but will be prosecuted before the High Court.[71]

If this approach toward Kwoyelo may also be applied to rank-and-file LRA members, reconciliation at a local level could be adversely affected. Returned LRA respondents expressed fear that their amnesty certificate would no longer be valid and that they could be arrested and brought before the WCD. They voiced confusion about their already uncertain future and some even stated that the prospect of imprisonment makes a return to violence an attractive alternative. An Acholi village chief expressed the following:

> When arrest takes place and if at all a person like Kwoyelo was arrested without a cause, then former combatants will think that the amnesty that they were granted has ceased to work. Many begin to think that they too will be arrested, so most of them fear for their own arrest.[72]

---

[69] International Crisis Group (2004) 'Northern Uganda: Understanding and Solving the Conflict,' Africa Report no. 77, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/077-northern-uganda-understanding-and-solving-the-conflict.aspx.

[70] See also Otim and Wierda (2010).

[71] See the third article in this dissertation 'The Contestation of Complementarity in Uganda' for an elaborate discussion of the WCD and Thomas Kwoyelo's case.

[72] Interview with Lacen Otinga (Village Chief) Gulu, Uganda, 3 August 2009.

As noted, at a local level in Acholi-land a lot of effort has been invested in trying to fight the stigmatisation and exclusion of lower-ranked combatants who have a mixed identity of both perpetrator and victim. This effort is geared towards emphasising the joint victimhood of both the former combatants and the broader community, as well as stabilising their social behaviour. However, the possible trial of lower-ranked combatants at the WCD sends a very different message, namely that lower-ranked combatants are war criminals who deserve to be punished. This message could once again bring to the foreground the perpetrator identity of those who have returned and have a detrimental effect on the progress made. On this point, an interviewee noted: 'It will make people hold information, it will make people live in fear and then it will make people not trust any system of reconciliation that is put in place, because it could be a trap. The implication is that it gives more harder life to former fighters.'[73]

One can conclude that, as of this writing, the unclear mandate of the WCD creates confusion among the grassroots community and is influencing prospects for both national and local reconciliation. In light of the criticism levelled at the apparent partiality of the ICC, it seems likely that if the WCD does not prosecute senior military officers and is seen to focus solely on the LRA, this is likely to undermine public trust in the government. Furthermore, if the WCD prosecutes lower-ranked combatants, the social perceptions and interactions at a local level between lower-ranked combatants and the broader community are likely to take a turn for the worse.

Conclusion

Understanding reconciliation to be a relational process that involves shifting inter- and intra-group attitudes, cognitive frames, and behaviours, this article has made a step towards qualitatively assessing the possible impact of three transitional justice approaches on reconciliation in the wake of northern Uganda's civil war. The analysis has shown the complexity of the interface between a politically driven process of transitional justice and processes of reconciliation. We have seen that international, national and local interests, priorities and realities can vary immensely in the wake of civil war and that top-down implemented transitional justice interventions often overlook the reconciliatory needs of the grassroots population. If reconciliation is to remain a fundamental objective of the field of transitional justice, this case study suggest that the field needs to reconsider its strategies and engage with the fundamental issue of group identity at the root of mass violence and investigate how collective antagonisms can be challenged. This will require: 1). a greater

[73] Interview with former combatant, Gulu, Uganda, 14 August 2009.

understanding of the social processes involved in the evolution of civil war; 2). more context-specific research on the nature of antagonistic relations in the wake of civil war; 3). knowledge of local interpretations and approaches to the process of reconciliation; and 4). continued empirical testing of the ability of transitional justice mechanisms to contribute to this process.

A number of more specific considerations can also be derived from the assessment of northern Uganda's transitional justice process. Firstly, the immense importance of equal representation has been established. The case study of Uganda shows that the one-sided approach of the ICC and most likely of the WCD, is inconsistent with grassroots communities' version of the 'truth' and has led both mechanisms to be seen as a form of victors justice. This has increased the Acholis' grievances towards the GoU and stands as an important obstacle in the path of national reconciliation.

Secondly, we have seen that the timing of transitional justice interventions is crucial when it comes to meeting the needs of the victims. On the one hand we observed that blanket amnesty and traditional justice approaches were promoted and embraced as means to facilitate reconciliation between returned lower-ranked combatants and the broader community while the war was still ongoing. On the other hand, the indictments set out by the ICC in 2005 were strongly rejected by the community as an obstacle against achieving people's highest priority at the time: peace and security. These findings illustrate that transitional justice mechanisms can facilitate reconciliation long before a conflict has officially been brought to an end, but that their ability to do so is dependent on the unique nature of the antagonistic identities involved and their impact on people's additional concerns.

Thirdly and closely related, analysis of the relationship among the ICC, the WCD, and the Amnesty Act shows that the sequence of transitional justice mechanisms, and clarity about how they interact, is fundamental to their success in building civic trust in national institutions and preventing confusion, increased fear, and a relapse into negative intergroup attitudes and behaviour. For example, due to the WCD's unclear relationship with the previously enacted Amnesty Act, its existence has created unrest among lower-ranked combatants about their future and is tarnishing their reputation among the broader community.

Fourthly, the extensive data collected within the grassroots communities of Acholi-land illustrate that people are not waiting around for transitional justice approaches to be implemented by 'outsiders'. Throughout the war and now in its wake, they are creatively adapting traditional approaches to deal with the reintegration of lower-ranked combatants. Data demonstrate the importance of building on those mechanisms which lend value to people's new social realities, as well as the danger of taking the meaning of different traditional approaches out of context.

Finally, and closely related to all of the above, we have seen that transitional mechanisms implemented at the international and national levels affect both national and local reconciliation, and vice versa. We have seen that the ICC's focus on the LRA top-commanders reinforces the helpful perception of joint victimhood among lower-ranked combatants and the broader community at a local level, but that the unclear later mandate of the WCD could strongly undermine this perception and adversely effect the lives of people in Acholi-land.

All in all, these observations illustrate that the timing, sequencing, approach, and level of implementation of transitional justice mechanisms are extremely important in defining whether they will be effective in (re)constructing antagonistic collective identities towards minimally acceptable cohabitation. These components will always be particular to the circumstances, reinforcing the notion that there is no universal approach to achieving reconciliation between antagonistic identity groups in the wake of civil war. Empirical research and context-specific approaches will remain crucial in defining their success.

Bibliography

Aiken, N. (2010) 'Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland,' *The International Journal of Transitional Justice*, vol. 4, no. 2. pp. 166-188.

Akhavan, P. (1998) 'Justice in The Hague, Peace in the Former Yugoslavia? A Commentary on the UN War Crimes Tribunal,' *Human Rights Quarterly*, vol. 20, no. 4, pp. 737 - 816.

Allen, T. (2006) *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (London: Zed Books).

Baines, E.K. (2005) 'Roco Wat I Acoli. Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reintegration' (Liu Institute for Global Issues), online available at http://www.ligi.ubc.ca/sites/liu/files/Publications/JRP/15Sept2005_Roco_Wat_I_Acoli.pdf.

Bloomfield, D., T. Barnes and L. Huyse (eds) (2003) *Reconciliation After Violent Conflict: A Handbook* (Stockholm: IDEA), pp. 1-178

Boege, V. (2006) *Traditional Approaches to Conflict Transformation: Potentials and Limits* (Berghof Research Centre for Constructive Conflict Management).

Boraine, A. and S. Valentine (2006) *Transitional Justice and Human Security* (Cape Town: International Centre for Transitional Justice).

Branch, A. (2007) 'Uganda's Civil War and the Politics of the ICC Intervention,' *Ethics and International Affairs*, vol. 21, no. 2, pp. 179-198.

Doom, R. and K. Vlassenroot (1999) 'Kony's Message: A New Koine? The Lords Resistance Army in Northern Uganda,' *African Affairs*, vol. 98, no. 390, pp. 5–36.

Ferron, J.D. and D.D. Laitin (2000) 'Violence and the Social Construction of Ethnic Identity,' *International Organisation*, vol. 54, no. 4, pp. 845-877.

Fletcher, L., and H.M. Weinstein (2002) 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,' *Human Rights Quarterly,* vol. 24, no. 3, pp. 573-639.

Fletcher, L., H.M. Weinstein, J. Rowen (2009) ´Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective,' *Human Rights Quarterly,* vol. 31, no. 1, pp. 163-220.

Harlacher, T., F. Xavier Okot, C. Aloyo Obonyo, M. Balthazard, and R.R. Atkinson (2006) *Traditional Ways of Coping in Acholi: Cultural Provisions for Reconciliation and Healing from War* (Kampala: Thomas Harlacher - Caritas Gulu Archdiocese).

Hovil, L. and J. R. Quinn (2005) 'Peace First, Justice Later: Traditional Justice in Northern

Uganda,' Working Paper No. 17 (Refugee Law Project, Faculty of Law, Makerere University, Kampala, Uganda).

Human Rights Watch (2005) 'Unprooted and Forgotten: Impunity and Human Rights Abuses In Northen Uganda,' September 2005, online available at https://www.hrw.org/report/2005/09/20/uprooted-and-forgotten/impunity-and human-rights-abuses-northern-uganda.

Human Rights Watch (2009) 'Selling Justice Short. Why Accountability Matters for Peace,' July 2009, online available at https://www.hrw.org/sites/default/files/reports/ij0709webwcover_1.pdf.

Human Rights Centre, International Human Rights Law Clinic, Centre for Human Rights University of Sarajevo (2002) 'Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors,' online available at https://www.law.berkeley.edu/files/IHRLC/Justice_Accountability_and_Social_Reconstruction.pdf.

International Crisis Group (2004) 'Northern Uganda: Understanding and Solving the Conflict,' Africa Report no. 77, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/077-northern-uganda-understanding-and-solving-the-conflict.aspx.

Iversen, K.A. (2009) 'Transitional Justice in Northern Uganda: A Report on Justice in Ongoing Conflict' (Roskilde University), online available at http://u-landsnyt.dk/sites/default/files/specialeportal/n112959/n112959f2924-thesis_final_30.10.09_1.pdf.

Komakech, L. and A. Sheff (2009) 'Tradition in Transition: Drawing on the Old to Develop a New Jurisprudence for Dealing with Uganda's Legacy of Violence' (Refugee Law Project, Faculty of Law, Makerere University, Kampala, Uganda).

Mallinder, L. (2009) 'Uganda at a Crossroads: Narrowing the Amnesty?' Working Paper from the Institute of Criminology and Criminal Justice, Queen's University Belfast.

Oduro, F. (2007) *What Do We Understand by 'Reconciliation'? Emerging Definitions of Reconciliation in the Context of Transitional Justice* (Ottowa: International Development Research Centre).

Otim, M. and M. Wierda (2010) 'Uganda: Impact of the Rome Statute and the International Criminal Court' (International Center for Transitional Justice), pp. 1-8, online available at https://www.ictj.org/sites/default/files/ICTJ-Uganda-Impact-ICC-2010-English.pdf.

Pham, P., P. Vinck, and E. Stover (2007) 'Abducted: The Lord's Resistance Army and the Forced Conscription in Northern Uganda' (Berkeley-Tulane Initiative on Vulnerable Populations), online available at

http://www.peacebuildingdata.org/sites/m/pdf/HRC_UgandaAbd_20007.pdf.

Pham, P., P. Vinck, E. Stover, A. Moss and M. Wierda (2007) 'When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda' (Human Rights Centre, University of California, Berkeley; Payson Center for International Development, Tulane University; International Center for Transitional Justice, New York).

Pham, P.N., P. Vinck, D.K. Kinkodi, and H. M. Weinstein (2010) 'Transitional Justice, Public Health, and Social Reconstruction,' Social Science & Medicine, vol. 70, no. 1, pp. 98-105.

Shaw, R. (2005) 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone, Special Report no. 130 (U.S. Institute of Peace), online available http://www.usip.org/publications/rethinking-truth-and-reconciliation-commissions-lessons-sierra-leone.

2

COMMUNICATING THE ICC

Imagery and Image-Building in Uganda

Chrisje Brants, Kees Brants and Lauren Gould

in:

Brants, C., A. Hol, and D. Siegel (eds) (2013) Transitional Justice: Imagines and Memories (Farnham: Ashgate Publishing), pp.143-160.

Introduction

The adoption of the Rome Statute in 1998 and resulting establishment of the International Criminal Court (ICC) in 2002 formed the apotheosis (for the time being) of the 'new paradigm of the rule of law' that is international criminal justice (Teitel 2002: 355). Since then though, through the euphoric discourse of international politicians and the legal establishment, the court's aims have proliferated well beyond the limited goal of ending the impunity of perpetrators of mass atrocities, to which the preamble to the statute refers.[74] These aims are now said to include reconciliation, conflict resolution, rehabilitation, deterrence and retribution, promoting democracy and providing victims satisfaction (Brants 2011). This goal of the domestication of violence by law, through the establishment of a just peace (Hazan 2010), reflects not only how idealistic but also how political is this unique venture in cosmopolitan liberalism and human rights (Roach 2009; Teitel 2002).

From the start, critical voices were raised against overblown promises (Turner 2005: 1) and expectations flowing from a surfeit of aims 'as ambitious as they are contradictory' (Alvarez 2004: 321). An international criminal trial, critics say, cannot bring much satisfaction to victims because it reduces and demeans their experience of atrocity, provides neither proportional punishment nor just retribution, overrides traditional means of conflict resolution, and is therefore unlikely to do much for reconciliation.[75] Others question whether the focus on victims is reconcilable with the requirements of a fair trial (Haslam 2004). And 'promoting democracy' is an idea with so many political ramifications that Alvarez (2004: 322) warns of the point at which international trials become the tools of power politics.

The politics of international criminal justice has led to some of the most powerful players on the international stage withholding or withdrawing their support for the ICC. In 2002, Israel and the United States announced they had no intention of becoming a party to the treaty and accordingly had no legal obligations arising from its signature.[76] The American position is fuelled to a large degree by self-interest. Like Israel, which signed with an explicit rejection of 'any attempt to interpret provisions […] in a politically motivated manner against Israel and its citizens,'[77] the United States fears that the ICC could be used as a political tool

[74] Rome Statute of the International Criminal Court, Preamble: Rome, 17 July 1998 [as Corrected by the procés-verbeaux of 10 November 1998 and 12 July 1999], online available at http://legal.un.org/icc/statute/99_corr/preamble.htm.
[75] See Drumbl (2005).
[76] In 1998, the Clinton administration signed the Rome Statute that established the court but did not refer the treaty to the US Congress for the required ratification, so the US did not become a participant or 'party' in the court. In 2002, President George W. Bush retreated further, informing the ICC that the US was withdrawing its original signature. Currently, many members of the US Congress are still vigorously opposed to US participation in the ICC.
[77] Rome Statute of the International Criminal Court, Chapter XVIII : Penal Matters, Rome, 17 July 1998, online available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&lang=en.

against it. More thoughtful critiques of the ICC question the court's democratic deficit and in particular the powerful position of the prosecutor.[78]

Academic criticism, political doubts, the very public démarche of the United States and subsequent attempts by that country to undermine the court among other states, has left the ICC with something of a credibility problem which exacerbates a more fundamental issue. The core identity of the ICC rests, per definition, on global moral disapprobation of the crimes under its jurisdiction, and on its ability to make good the delivery of what is known as 'universal justice'. In the abstract, few, if any, would challenge the legitimacy that could derive from this. But at the same time, that identity is normatively constructed and, unlike that of national criminal justice systems, is not embedded in traditional constitutional structures and legal culture. Moreover, the circumstances in which an intervention is regarded as necessary to achieve what the international community defines, through the Rome Statute and subsequent ICC pronouncements, as universal justice need not correspond to the perceived social reality in the conflict-ridden community where the intervention takes place: that is, acceptance of the ICC's legitimacy in the societies where it is expected to intervene is not a given.

In the context of armed conflict, atrocities are rarely committed by one side only, and perceptions of what constitutes a crime, and who are defined as perpetrators and who as victims, are far from straightforward. Likewise, definitions of what constitutes a 'just' reaction, 'fairness' and 'victim satisfaction' that international justice promises may be contested. Like all crime and criminal justice, core international crimes and international criminal justice are social constructions. That is not to deny that mass atrocities occur, nor is it to negate the suffering of those involved. It is, rather, to point out that the concretization of the aims of international criminal justice is part of a socially constructed, contested reality of contradictory images, definitions, practices and expectations.

For the ICC, acceptance of its interventions as legitimate thus begins with the ability to successfully communicate its core identity to relevant audiences and to counter any contestation. In this article, we propose to unravel such communication and counter-communication in the specific case of Uganda, the first to be considered by the ICC. Seeing this ICC case as a social construction is to regard it as the outcome of a process of explicit and implicit negotiation between different actors and groups, each with its own perceptions, expectations, authority, discursive tools and positions of power, and with different agendas, frames and priorities. Together, in collaboration and/or opposition, they create the Ugandan realities of international criminal justice.

[78] See Morris (2001).

The ICC as corporate communicator

According to advocates of international criminal law enforcement, getting the 'normative' and the 'lived' realities of international criminal justice to correspond as much as possible is a prerequisite to establishing the ICC's legitimacy and requires the court to convince different audiences with different interests of the integrity of its aims and the quality, necessity and usefulness of the justice it dispenses. In that sense, the ICC can be viewed as a corporate entity with an immaterial product to 'sell' and, like all corporate entities, it engages in communication in which image-building plays an important part. The ICC, however, is not like a traditional corporate entity and it does not sell toothpaste. As one of the most important organs of international law, its communication is framed by its core identity as dispenser of global justice and maintainer of the international rule of law. This elevates the status of it communications and creates high expectations. At the same time, its messages are, a priori, governed by principles such as independence, impartiality and fairness, and are determined specifically by the Rome Statute and corresponding rules and regulations. The ICC's core – corporate – identity, therefore, provides a powerful yet restricted framework for communicating what may be expected of it.

The court's jurisdiction is limited to war crimes, crimes against humanity and genocide, committed after the Rome Statute entered into force on 1 July 2002, and is focused on political and military leaders who bear the greatest responsibility for such acts. As the preamble to the statute emphasizes, these core international crimes are the concern of all of humanity, so the community of states as such is entitled, indeed required, to prosecute the perpetrators (Schabas 2001: 22). However, deciding what, who and how to prosecute is typically a prerogative of sovereign states, and for that reason the principle of complementarity in the Rome Statute allows the prosecutor to investigate, and the ICC to declare admissible, only those cases that the state concerned is unwilling or unable to prosecute fairly and impartially.

The Rome Statute gives the prosecutor considerable pre-trial power and discretion. Although he or she can neither issue arrest warrants nor decide definitively that a suspect should be brought to trial (these being powers of the court's pre-trial chamber), only the prosecutor can decide to initiate an investigation. This may occur *proprio motu* (that is, on the prosecutor's own initiative), or if the United Nations Security Council asks that a situation be investigated (or that investigation be deferred), or if a situation has been referred by a state party. Even if a referral is made by a state or the Security Council, however, the referral is not binding and the prosecutor retains the discretion to initiate an investigation or not. The prosecutor, giving serious consideration to 'victims' interests, conducts the preliminary investigation and decides whether to apply for an arrest warrant and against whom. However,

the statute provides no enforcement mechanism: the prosecutor is dependent on the cooperation of states parties in arresting those against whom an ICC warrant has been issued.

Communications activities at the ICC are complicated, not least because the Office of the Prosecutor (OTP) is independent of the court and has its own communications department – the Public Information Unit (PIU) of the OTP. The ICC's Outreach Programme is part of the Registry's Public Information and Documentation Section (PIDS), which also coordinates court-wide public information, including OTP messages 'where appropriate'.[79] Both the OTP and the court include victims in their communications but there is also a specific Victims Participation and Reparation Section with 'wide discretion to use all possible means to give adequate publicity to the proceedings before the Court'.[80] All of these organs, sections, and units are required to disseminate the same core values of global justice but, given their different focus, each may well have a slightly different take on what that means in any particular situation, which can somewhat muddy the communicative waters. In any event, before the court takes any official role, it is the prosecutor who communicates to the affected communities and the outside world what steps he or she has taken, plans to take and why.

Bearing the above in mind, we shall deconstruct the preferred or ideal image – the 'corporate identity' – that the ICC communicates to different audiences, and the images or perceptions that different audiences have of that identity. Successful corporate communication requires, ideally, that the two sides coincide, but in practice this is rarely the case, if only because all communication involves some degree of misunderstanding and distortion – 'noise'. This may come from internal factors (for example the audience's pre-conceptions or inability to access what is being communicated) or (intentionally or unintentionally) by external factors such as the communication of competing imagery (Van Riel 1995). Communication strategies aim at bolstering corporate identity by removing discrepancies with audience image(s) and countering competing imagery. One of the most important of such strategies is framing: 'select[ing] some aspects of a perceived reality and mak[ing] them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation' (Entman 1993: 52).

The resulting message can be communicated (or, more persuasively, 'spinned') in several ways and its content may differ depending on the intended audience. Actors may address the audience directly (reports, meetings, websites). They may also communicate more indirectly through traditional mass media (press, radio, television, film) in press releases and

[79] International Criminal Court (2010) 'Report of the Court on the Public Information Strategy 2011-2013', ICC-ASP/9/29, p. 4, online available https://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-29-ENG.pdf.

[80] International Criminal Court (n.d.) 'Participation of Victims in Proceedings', online available at https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/victims/participation/Pages/participation%20of%20victims%20in%20proceedings.aspx.

at press conferences, and/or by answering a journalist's questions, giving interviews, or allowing representatives of the media access to their activities. However, in these indirect processes, the now-mediated message may not be framed exactly as the communicator intended. Media may use or reinforce the original frame, but through their production of news, journalists select, emphasize, interpret and define, and thus engage in their own framing. Audiences, too, have their own interpretative frame(s), built on personal experience and shared memories, within which people 'translate' what is communicated to them.

We intend to use these insights from (corporate) communication theory to examine what image-building strategies were employed in Uganda and by whom, what role the inherent legally principled nature of the ICC's core identity played and whether the resulting strategies could compete with interpretations and imagery by local and other actors. But first we must make clear both what triggered ICC intervention in Uganda and which methods we used to interpret the subsequent mêlée of conflicting interpretations.

Researching Uganda

In 1986, a military coup brought the Southern Ugandan Yoweri Museveni the presidency, marking a shift in military power from north to south, alienating and traumatizing the northern Ugandan Acholi people and leading to the emergence of several rebel groups, the last remaining of which is the Lord's Resistance Army (LRA). According to its leader Joseph Kony, the LRA fights to regain political autonomy and to retain the culture and tradition of the Acholi (Finnström 2010). It is generally agreed that the LRA has been involved in mass atrocities and in the abduction and forced recruitment of its own people, including children, as soldiers and sex-slaves. The Ugandan government forces (UPDF) have also been accused of committing grave atrocities against the population, particularly before 2002. As a result of the government's anti-insurgency policy, from 1996 onwards an estimated 90 percent of the population in Acholi-land, many abused by either the LRA or the UPDF, were displaced to internally displaced person (IDP) camps with severe shortages of food and abysmal sanitary facilities, health care and security.[81]

On 14 June 2002, Uganda became a state party to the Rome Statute. In December 2003, President Museveni surprised many observers by referring 'the situation of the LRA' to the ICC, following encouragement by ICC Prosecutor Luis Moreno Ocampo, who announced the opening of the investigation in January 2004 during a joint press conference with Museveni in London. The requested arrest warrants were issued against five senior LRA commanders in

[81] Human Rights Watch (2005) 'Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda', Spetember 2005, online available at https://www.hrw.org/report/2005/09/20/uprooted-and-forgotten/impunity-and-human-rights-abuses-northern-uganda.

October 2005 (including Joseph Kony; two of the others are now presumed dead) in connection with war crimes and crimes against humanity. As the ICC's temporal jurisdiction stretches back no further than 2002, the majority of atrocities committed since 1986 cannot be taken into account. To date, the prosecutor feels he has no cases against the government military because, 'crimes committed by the LRA were much more numerous and of much higher gravity' than those of state forces since 2002.[82] Nor have any LRA leaders been arrested.[83]

Uganda's self-referral seemed to present the prosecutor with a straightforward, uncontested case ideal for the ICC's first prosecution:

> From the beginning it was the idea to start with the right case. The fear in those days was to start with the frivolous cases. What I did was to choose the worst crimes and started inviting and welcoming referrals from the territorial states. I knew I had to show, I had to run, I had to show some outcomes, some results.[84]

Indeed, in depicting the LRA as particularly brutal, the prosecutor easily fell in line with the dominant international understanding of the conflict, which sees Joseph Kony as an evil maniac and LRA violence as bizarre and irrational. For the Ugandan government, the referral engaged the international community and held it to its promise of global justice (Akhavan 2005: 404). But President Museveni and the Ministry of Defence also saw it as a way of breaking the military stalemate of the civil war and enlisting international help in arresting the rebels. 'The ICC's legal and the Ministry's military approaches thus shared the avowed aim of catching the LRA, the former with a view to legal proceedings, the latter in order to defeat the enemy' (Nouwen and Werner 2010: 949).

From the beginning then, the motivations and purposes of the Uganda case at the ICC were complex and ambiguous, and it is therefore only to be expected that communications, and the frames and narratives within them, by different actors reflect such complexity and ambiguity. To deconstruct the communication process and evolving narratives and frames, we analysed ICC annual reports, official documents and press releases, and interviewed representatives of the outreach offices in The Hague and Kampala. We also spoke to

[82] Office of the Prosecutor (2005) 'Statement by the Chief Prosecutor on the Uganda Arrest Warrants' 14 October 2015, the Hague, pp. 2-3, online available at http://www.icc cpi.int/NR/rdonlyres/AF169689-AFC9-41B98A3E222F07DA42AD/143834/LMO_20051014_English1.pdf.

[83] In 2015, two years after this article was published, Dominic Ongwen surrendered and was transferred to the ICC. See the Introduction and the fourth article in this dissertation 'The Politics of Portrayal in Violent Conflict: The Case of the Kony 2012 Campaign' for further details.

[84] Luis Moreno Ocampo in *The Reckoning* (dir. Pamela Yates, 2008).

representatives of the Ugandan Coalition for the ICC (UCICC) and other NGOs.[85] To uncover the imagery prevalent in the affected communities in Uganda, we held in-depth interviews and focus group discussions in northern Uganda (in 2007, 2009 and 2011) with both ordinary members of the public and local elites; we were also (participant) observers in ICC outreach activities, analysed official overviews of frequently asked questions at outreach meetings in Uganda, and held interviews with political and social elites. This was supplemented with a secondary analysis of existing community surveys. Finally, we interviewed journalists in Uganda and journalists covering the court in The Hague about their perceptions of the role and performance of the ICC. We also analysed the coverage, frames and narratives in two newspapers in Uganda, and compared these with reports in two western newspapers.

Communications and negotiations

The first communications that framed the ICC in relation to the Uganda conflict took place when the ICC intervention was just beginning, and were therefore a matter for the Public Information Unit (PIU) of the Office of the Prosecutor (OTP) — usually not in direct communication with the affected communities but indirectly, through press conferences and press releases, aimed at a wider, more global audience — making the prosecutor the most visible ICC representative. Yet, in Uganda itself, the deliberate OTP strategy was a 'low profile', to avoid compromising 'confidential and sensitive investigations' and 'witness protection'.[86] This limited any direct communication with the war-affected communities until the court set up a field office in Kampala in 2005 and later the Public Information and Documentation Section (PIDS) of the registry started local outreach sessions in northern Uganda. Outreach has also included 'consultative discussions' with local media and support for radio programmes across the northern region to produce documentaries involving 'opinion shapers', meaning prominent members of the (international) community and intellectuals.

Selling the ICC

Although the PIU elected not to inform the Ugandan people directly about the prosecutor's selection strategy, the OTP's position on who should be investigated and held responsible for the crimes was clearly communicated in other ways. Not only did the prosecutor encourage Uganda's 'self-referral' and announce it during a joint press conference where he

[85] We were unable to obtain cooperation from the public information unit of the OTP although we were in contact with them throughout 2011. They finally agreed to answer a number of questions by email, but never followed up on their commitment.
[86] Human Rights Watch (2008) 'Courting History: The Landmark International Criminal Court's First Years', July 2008, p. 101, online available at http://www.hrw.org/sites/default/files/reports/icc0708webwcover.pdf.

demonstratively shook hands with President Museveni, but ICC prosecution investigators also were guided by government military in Acholi-land, and Ugandan government officials were received and entertained in The Hague (Otim and Wierda 2010). As Nouwen and Werner show persuasively (2010: 951-954), the idea that the prosecutor was on the government side was enduring and was reinforced by his apparent adoption of the Ugandan government's discourse, portraying it as a friend of the court and the LRA as an enemy of the human race. The referral had already named the LRA as the main issue (although after criticism by NGOs this was changed to 'the situation in northern Uganda')[87] and several times the prosecutor himself seemed to imply that there is evidence against the LRA only. In any event, he has been explicit in depicting Kony and the LRA as the major obstacle to peace, and successful ICC intervention as the means of attaining it: 'If you arrest Kony, peace and justice will be achieved in one day.'[88]

But it soon became apparent that, contrary to popular belief, the prosecutor could make no arrests. A change in regional political alignments did, however, have the effect of forcing the LRA over the border into Sudan and bringing them to the negotiating table.[89] The warrants proved a double-edged sword during these negotiations, allowing Kony to use them (or, rather, the lifting of the warrants) as a bargaining chip and, when that failed, to portray the ICC as the main obstacle to peace – painfully illustrated in the film *The Reckoning*, where an LRA contingent is seen to enter an Acholi village with impunity and insist to the gathering of villagers that not the LRA but the 'coalition' of the government and the ICC was keeping the conflict alive. Kony also managed to bargain for peace in exchange for Ugandan, rather than international, justice; 2008 saw the establishment of the International Crimes Division of Uganda's High Court (also known as the War Crimes Division, or War Court), thereby raising the question of the role of the ICC in Uganda now, given the principle of complementarity. The OTP is adamant that the War Court will not prevent the prosecutor going ahead, whatever Kony and the government may have agreed (Nouwen and Werner 2010: 954).[90]

The image of close ties between the ICC and the Ugandan government and army has not been successfully erased and, to this date, one of the most frequently asked questions during outreach sessions remains the lack of state accountability. This is at odds both with the core identity of the ICC and with what the OTP actively aims to disseminate. It is also at odds with what the prosecutor himself has said in numerous press releases, speeches and

[87] Interview with Joyce Apio (Head of UCICC), Kampala, Uganda, 27 October 2011.
[88] Luis Moreno Ocampo in *The Reckoning* (dir. Pamela Yates, 2008).
[89] Due to a peace agreement signed between the South Sudanese people and the Sudan government in Khartoum, the LRA lost regional support from the latter and became increasingly marginalized.
[90] See the third article in this dissertation 'The Contestation of Complementarity in Uganda' for further details on the International Crimes Division of Uganda's High Court and its first case against LRA commander Thomas Kwoyelo.

interviews: he represents truth, law and justice, without preference, and his aim is to end the impunity of international criminals wherever he finds them.

Aware of problems the international tribunals for the former Yugoslavia and Rwanda had faced in establishing understanding and legitimacy among local populations, the court's outreach programme in Uganda (established in 2006) originally aimed to explain what the ICC can and cannot do, 'fostering realistic expectations about the Court's work', as the head of Outreach Kampala put it, preventing 'myths' and 'misconceptions' from taking root in popular consciousness and undermining the larger goals of an accountability mechanism.[91] Its outreach policy is twofold: to reach as many people as possible through local NGOs, elites and communities, and to inform and provide material to the media.

The 'low profile' role of the prosecutor, lack of resources, the perceived security situation, and the negative discourse that had already developed at the grassroots level put outreach on the back foot at first. Their activities consisted primarily of conducting seminars with local NGOs, journalists, members of parliament and the judiciary in the hope that they would disseminate the information provided to the affected communities. When this did not appear to be happening, the level of outreach steadily increased towards the end of the peace talks in 2008 and was broadened to other stakeholders in Uganda, both in the northern regions and in Kampala – specific groups such as market women and small-scale farmers, traditional leaders, internally displaced people, local councils, legal professionals, police, academics and students – through the organization of workshops, panel discussions, roundtables, community information sessions and plays. In addition, a number of lawyers in five northern districts were trained and given their own local radio programmes to discuss the ICC, during which people could call in with questions.[92] These activities are all similar in structure and content: audiences receive legal information about the court, its origin, mandate, the indictments, the need for state cooperation in enforcing arrest warrants and victim participation. Frequently asked questions such as, 'What evidence is there that arresting the top five commanders will end the war?' receive a standardised response: 'Having analysed the situation in northern Uganda, the prosecutor believes that the arrest of the top five commanders of the LRA is a vital component to a meaningful peace.'

Of the 61 ICC press releases on Uganda, the majority are from the Public Information and Documentation Section (PIDS) of the registry. They are mostly informational and educational, reporting (intensified) outreach activities and successes in changing grassroots perceptions. In 2010, the question, 'Why is the ICC targeting only Africans for prosecution' is mentioned for the first time. Several press releases contain responses by prominent Africans,

[91] Interview with Jimmy Otim (Head of ICC Outreach Department Uganda), Kampala, Uganda, 12 October 2011.
[92] Interview with Henry Kilama (Lawyer and ICC Radio Spokesman for MEGA FM), Gulu, Uganda, 24 October 2011.

such as former UN Secretary-General Kofi Annan: 'When he meets Africans from all walks of life they demand justice: from their own courts if possible, from international courts if no credible alternative exists' and, 'As an African, he is proud of the continent's contribution to the ICC'.[93] In short, the court's outreach strategy is reactive, standardised and relatively formal, evolving to include an attempt to intensify ICC engagement with grassroots communities in order to raise awareness of its aims of justice and accountability, and to enhance continuing support of ICC activities.

Following Entman's operationalization of a frame, both the OTP's and outreach's problem definition is the need to bring impunity to an end, the LRA to justice, and peace to northern Uganda. The causal interpretation focuses on the LRA as the perpetrator of the greatest evil and disruptor of the peace talks. The underscoring moral evaluation is one of outrage over the atrocities, and international criminal justice as the best answer to impunity. The treatment recommendation is that, while local justice initiatives are to be respected, the ICC is the organization best equipped to bring justice and peace. The result can be summed up as a peace-through-justice frame. Although in general it is the same as that of outreach, the prosecutor's message personalizes the core identity of the ICC in Luis Moreno Ocampo himself. He is justice personified and gives no quarter: 'I apply the law without political considerations' (quoted in Nouwen and Werner 2010: 942). But both OTP and outreach officers have struggled to convince journalists and community leaders in Uganda of that core identity, given the compelling, competing image that the prosecutor also helped to establish at the beginning, placing the issue of ICC impartiality firmly on the agenda.

This issue is also reflected in collaboration between the ICC and the Ugandan Coalition on the International Criminal Court (UCICC). As a coalition of 265 NGOs that seek to provide information about the court to Ugandans, the UCICC generally embraces and disseminates the peace-through-justice frame and supports the ICC intervention. Increasingly, however, there are tensions in its relationship with the prosecutor and the court, beginning with the prosecutor's early press conference with Museveni (often described as a dramatic 'public relations disaster'). The head of the UCICC pointed to these tensions when discussing 'selective prosecution' in Uganda:

> Sometimes the Prosecutor gets so mad and he says: are you people working with us? We say no, we give you positive criticism […]. You came to Uganda, carried out investigations, there has been information compiled with good pieces of evidence, so

[93] Press Office of the International Criminal Court (2010) 'ICC: Review Conference of the Rome Statute opened in Kampala', 31 May 2010, online available at https://www.icc-cpi.int/en_menus/asp/reviewconference/pressreleaserc/Pages/review%20conference%20of%20the%20rome%20statute%20opened%20in%20kampala.asp.

> you should start on atrocities committed by the UPDF. And he gets so mad and he gets so annoyed.[94]

Another UCICC concern is the scaling down of ICC outreach operations in Uganda and the assumption that local partners will take over. Outreach Uganda originally had five and later three staff officers. Because of the world economic crisis and lack of judicial developments, they were reduced to one in 2012, and the focus in East Africa shifted to Kenya after the prosecutor opened investigations there in 2010.[95] The ICC counts on the UCICC to continue to disseminate its message, but the head of UCICC fears that staff cuts will trigger a backlash ('the court is abandoning us') and have a negative impact on progress made since 2007 and, in the end, on the legitimacy of the ICC in the eyes of many Ugandans.[96]

Reporting the ICC

As noted above, ICC outreach officers actively inform, train and carefully direct the media to get their message and desired image across and to counter what they perceive as misconceptions, while both the OTP and the court regularly provide journalists with press releases. The extent to which these efforts are successful, with the images and frames of the ICC being reflected in the attitude of journalists and in media content, both in Uganda and elsewhere, is examined in this section.

Media can be neutral informers, critical watchdogs, platform providers, opinion leaders or advocates, and sometimes a mixture of all these. But to perform any of these roles, journalists must be knowledgeable, or at least think they are. The aims and expectations of outreach efforts notwithstanding, the Ugandan reporters we spoke with do not think they know very much. Unlike the western journalists, who are international criminal justice experts, these Ugandan journalists admit finding it difficult to report on transitional justice processes. That in itself is a problem, because they see themselves first and foremost as neutral informers, educators of an affected but not necessarily well-informed citizenry. They say they lack the expertise to be critical watchdogs, even if they wanted to be.

All of our interviewees agree on what one described as a 'growing fatigue and frustration' about the lack of arrests and judicial developments. 'The war has kind of fizzled out', a journalist with Kampala-based *New Vision* put it.[97] Almost with a sense of relief, he and his colleagues point to the War Court and its first case — it has definite news value and has put the war back on the media agenda. At the same time, the complexity of the

[94] Interview with Joyce Apio (Head of UCICC), Kampala, Uganda, 27 October 2011.
[95] Interview with Jimmy Otim (Head of ICC Outreach Department Uganda), Kampala, Uganda, 12 October 2011.
[96] Interview with Joyce Apio (Head of UCICC), Kampala, Uganda, 27 October 2011.
[97] Interview with David Mukhooli (Journalist and Chief Editor New Vision), Kampala, Uganda, 5 December 2011.

relationship between the War Court and the ICC puzzles them and makes factual reporting difficult.

The western journalists say they mix factual reporting with what they call a 'realistic assessment' of what the ICC can do. They are also, however, (to a greater or lesser extent) critical of the high-profile role of the prosecutor, while Ugandan journalists make no distinction among court, prosecutor and outreach. All the Ugandan journalists say that in the beginning they had more knowledge of and interest in the ICC and what it is doing in their country, and sympathized with the claim of ending impunity and creating peace through justice. However, the interviews reveal a gap opening up between sympathy for the ICC and belief in its ability to deliver the goods, an ambivalent attitude reflected in the media's content, as discussed below.

In total, the four newspapers we analysed carried 255 items on the ICC and Uganda: 113 in the Northern Ugandan *Daily Monitor* (between 2007 and 2012), 69 in the pro-government *New Vision* (due to limited online accessibility, only in 2010 and 2011), 48 in the *New York Times* (between 2004 and 2012) and 25 in the Netherlands *de Volkskrant* (between 2005 and 2012). Unsurprisingly, the Ugandan papers published more about the ICC in their country than did the western media. In all four newspapers, around half of the items analysed consisted of factual and relatively neutral news reports which revealed no problem definition or moral evaluation. The other half consisted of opinion pieces and editorials (a priori not neutral), and background articles and news reports with 'loaded content'. It is here that we find framing, and the following relates to that 50 percent only.

With the exception of the *New York Times*, the imagery these items reflect has a positive connotation about the ICC in only one-third of the reports: 43 percent are negative, in 9 percent positive and negative images are mixed, and in 15 percent news criticizing the ICC is followed by a rebuttal, a denial of the negative claim that provided the news item's original frame. From 2007, especially in the *Daily Monitor* and *New Vision*, there is an increasing amount of news about official rebuttals of claims by local leaders and others concerning the assumed political nature of the ICC, its pro-Museveni approach, its bias in prosecuting Africans, and its hindrance to peace by not dropping the arrest warrants.

In its 'loaded reports', the Ugandan pro-government *New Vision* is surprisingly more negative (44 percent) than the *Daily Monitor* (39 percent), although the negative slant is probably due to the fact that professional journalistic selection criteria of deviance and conflict tends to lend news items a negative starting point. The two western newspapers differ not only from the Ugandan dailies in the amount of ICC news, but also from each other. The most negative (62 percent) is the newspaper that published the least: *De Volkskrant* mainly carried background articles from one or two correspondents and foreign news editors, who focused predominantly on the lack of achievements of the ICC, and on who and what is to

blame. The *New York Times* was the least negative (28 percent). However, it should be noted that almost half of its items were opinion articles (42 percent) written predominantly not by journalists but by opinion leaders such as Prosecutor Moreno Ocampo, Kofi Annan, and a whole range of NGO representatives. Given the predominance of positive opinion pieces, the *New York Times* could be said to present a platform for support, or at least debate, about the ICC.

The resulting frame in the four media is mixed. They more or less agree that the problem is lack of peace in victimized northern Uganda and limited progress. But there is a difference in causal interpretation, not only between the different publications, but also within the newspapers themselves. At times, more or less everyone and everything seems to be at fault: Kony and the LRA; President Museveni and his political agenda; the ICC and its stubborn refusal to withdraw the arrest warrants; the prosecutor promising more than he can deliver. The underlying moral evaluation is equally mixed: on the one hand, professional neutrality stands in the way of empathy, but on the other, journalists seem angry and increasingly worried about what is seen as 'white man's justice', and find the lack of progress incomprehensible. In spite of the negativism about the ICC's role and functioning, the treatment recommendation sees the solution in ICC action, although this is often contradicted by the urgent suggestion that the prosecutor drop his indictments. The confusing result can best be defined as a help-and-hindrance frame.

After our research period, in March 2012, the appearance on YouTube of *Kony 2012* – a film by the US charity Invisible Children that reflects the ICC's framing of the Ugandan situation – sparked an explosion of western media attention on the atrocities in Uganda, Kony, the LRA and the ICC.[98] The media in the US and Europe showed considerably more interest in this YouTube video than in what had happened in Uganda in the nine years following President Museveni's referral to the ICC. The success of this film, which went viral, raises some intriguing questions: Did the OTP give Invisible Children permission to use footage of Moreno Ocampo talking about Uganda? Did it play an active part in defining how the conflict was framed in the film? Preliminary analysis of western media implies that the YouTube film has been more successful in establishing a positive ICC frame than the ICC itself has. Is this image likely to remain, or be contested? The film advocates 'stopping' Joseph Kony through an increase in international and regional military support for the Ugandan government. Its portrayal of conflict and solution has been met with fierce criticism among northern Ugandans. How will this affect the legitimacy of the ICC there?[99]

[98] Invisible Children (2012) 'Kony 2012', online available at http://invisiblechildren.com/kony-2012/.
[99] See article four in this dissertation 'The Politics of Portrayal in Violent Conflict: The Case of the Kony 2012 Campaign' for an elaborate discussion of the Kony 2012 campaign and some of the answers to these questions.

Given the ICC's outreach efforts (claiming to reach tens of thousands) and their use of opinion leaders, local partners, and media to inform local populations, it is important to ask whether, and if so how, this communication strategy has affected the key audiences. If an increase in familiarity with the court is the yardstick, then originally outreach was successful. In 2005, before the programme was established, a survey by the University of Berkeley in northern Uganda showed that 73 percent of respondents knew (next to) nothing about the ICC (Pham et al. 2005: 36). By 2007, up to 70 percent had heard of it (Pham et al. 2007) and during our interviews in 2009, the majority of people had a basic knowledge of the ICC. By 2011, however, knowledge and interest seemed to be declining and only very few of our respondents had been in direct contact with an outreach team (this is reaffirmed by Pham et al. 2010; of those who had heard of the ICC, only 3 percent had participated in a meeting that discussed the court).

These findings hardly demonstrate a positive effect from the court's outreach strategy. However, its impact cannot simply be measured by the number of meetings and people informed, without examining what was said and how it was received. Although outreach activities have increasingly allowed for dialogue in the form of Q&As, local activists complain that ICC speakers were more interested in their own agendas than in the concerns of the audience. Our respondents also complained that the content was too legalistic and inaccessible and that tough questions were met with only standardized answers.

At the same time, whatever happens through outreach, the prosecutor's selection strategy seems to have had the earliest and most visible impact on how the reality of the ICC intervention is defined on the ground. The prosecutor's support for the GoU's self-referral plus public appearances with President Museveni, combined with an ineffectiveness of outreach, provided space and legitimacy for ICC opponents to create an image of the court as biased and a form of victor's justice. Importantly, the majority of our respondents are not opposed to international criminal law in general, and support the ICC focus on 'those most responsible', which corresponds with their perception that the top LRA commanders (not the abducted lower-rank combatants) should be held accountable. But the Prosecutor's single focus on the LRA is regarded by many Acholi as a virtual denial of government violence, which affronts and misinterprets reality (in the 2010 Pham et al. survey more than two-thirds of the respondents in the four northern provinces said that the government should also be held accountable). A former LRA combatant, now social worker, told us:

> It is because of the approach of the ICC that led to the negative opinion of the ICC being formed so strongly. The first time they came people were exited that somebody

> will whip for us those people who did wrong to us. They are going to whip the LRA and they are also going to whip the government. But on understanding that they cannot whip the government, that is where the problems started coming and why the people were fed up with the ICC straight away.[100]

This negative image was exacerbated during the peace talks (2006-2008), when local stakeholders, including political elites, representatives of NGOs, and traditional and religious leaders increasingly argued against the ICC indictments. Not only was the UPDF seen as a major perpetrator, many regarded the ICC intervention as an obstacle to peace (asking the rebels to come to the negotiating table while risking arrest was seen as making the war more difficult to resolve) and argued against the 'one-sided, western style' retributive justice approach that is far removed from Acholi customary law. Local stakeholders promoted the traditional restorative justice instrument *Mato Oput* as a preferred alternative to the ICC. This discourse increased international recognition of the authority of the Acholi elite at the negotiation table and political support for their position among their people. Their language rang true to Acholi reality: a desire for peace talks, an end to the rebellion, and consideration for the affected communities' desire to return home and rebuild their lives.

After 2008, without the political arena of the peace talks, ICC outreach met with less opposition or counter arguments and, by 2009, a majority of our respondents were in favour of an international trial of top LRA leaders. This, however, seemed to be based on a misconception about the mandate of the ICC. The majority of the respondents believed that the ICC itself could arrest the LRA leaders and bring the conflict to an official end, something the peace talks had been unable to do.

By 2011, our respondents seem disillusioned about the effectiveness of the court; not only was it seen as obstructing peace, but three years after the peace talks failed the LRA top commanders were still at large and no judicial developments had taken place – all of which had seemingly legitimized government-led military campaigns in the name of enforcing international law. Knowledgeable respondents continued to assert that the ICC's 2002 jurisdictional limit was arbitrary and left the bulk of atrocities by both sides beyond justice. This seems to suggest that the outreach efforts (to educate that the law does not permit otherwise and that, of the violence that falls under the ICC's jurisdiction, the most serious had been perpetrated by the LRA) had not had – or at least had not consolidated – the desired cognitive effect. In light of no final peace accord (although the security situation had improved immensely in northern Uganda) and no justice, and given the ICC's limited

[100] Interview with social worker and former LRA combatant, Gulu, Uganda, 14 august, 2009.

temporal jurisdiction and lack of powers to execute arrest warrants, many in the community at large still questioned whether the court was an appropriate mechanism for achieving justice.

This frustration with the court and its declining perceived relevance in people's day-to-day lives has been further complicated by establishment of the War Court. The War Court's first trial ended with the accused (Kwoyelo), who was not indicted by the ICC, being granted amnesty.[101] The trial highlights the dilemma of victims who were also perpetrators: Kwoyelo was a child soldier. The efficacy of the War Court can be questioned on the strength of this first case, but this does not mean that its existence, and confusion about its relationship to the ICC, will not undermine the latter's legitimacy (as may the African Union's advice to its member states in 2010 to cease cooperation with the ICC). The latter issue had already appeared as a frequently asked question, 'Why is the court only active in African countries? Is this a new form of western imperialism?' and is increasingly present in people's narratives regarding the Court.

The problem definition to be distilled from this complex tangle of competing images has changed over the years and remains mixed. While some in Uganda still believe in the ICC and its mission, a sizeable group questions this, even redefining the problem as the ICC presenting a western model of justice that might result in losing the peace. The causal interpretation focuses on both the LRA and the Ugandan government as responsible for the atrocities, but also on the ICC as an obstacle to the solution. The moral evaluation, while always decrying the violence, does not look to the Rome Statute only, but includes a preference for alternatives to what is sometimes defined as 'white man's justice'. This is reflected in the treatment recommendation which includes national justice, traditional reconciliation rituals, amnesty, and negotiation between the government and the LRA. In any event, where the greatest desire among the population is for enduring peace, the resulting frame can best be summed up as peace-first-justice-later… but-when-and-how?

Conclusion

While the image our Ugandan respondents hold of the role and performance of the ICC has fluctuated with the political situation and differs according to geographical location within Uganda, in the affected communities it is often the reverse of what the ICC wishes to communicate. Both the court and the prosecutor frame their message as peace-through-justice: problem and solution are identified as the need to end impunity and to bring the LRA

[101] On the basis of equality before the law, the Amnesty Law 2000 granted many LRA members amnesty, but Kwoyelo had been refused without reason. The prosecution has appealed the Constitutional Court's amnesty ruling to the Supreme Court. See the third article in this dissertation 'The Contestation of Complementarity in Uganda' for further details on the International Crimes Division of Uganda's High Court and its first case against LRA commander Thomas Kwoyelo.

to justice, with the ICC as the most appropriate forum for that justice, and with peace to northern Uganda as the result. The affected communities, on the other hand, increasingly hold a peace-first-justice-later frame. They question the role of the ICC, and whether what is seen as western-style justice, with a high profile prosecutor who seems on good terms with President Museveni and who promises a lot but delivers little, *can* achieve peace and justice. The picture emerging from the media is mixed and, interestingly, there is little difference between the Ugandan and western newspapers we analysed. Criticism of the prosecutor and the lack of progress, and references to 'white man's justice', go hand in hand with support for the ICC and adoption of its framing of the problem.

The ICC has apparently failed to synchronize its image, as held by the population and local elites in northern Uganda, with the core identity that is the heart of the message it wants to communicate. This points to a failure in ICC communication strategy but also to a more serious problem. From the start, the ICC intervention in Uganda was contested by social and political elites in the north. Some of their concerns – the ICC's lack of impartiality, its ignoring of government army atrocities and of local traditions of justice – could be construed as misconceptions and lack of knowledge on the part of local communities. But not only has the ICC's communication policy been mostly unsuccessful in countering these concerns, in fact they have grown and intensified. The image of effectiveness, efficiency and empathy the ICC was expecting to establish for itself by succeeding in a seemingly clear-cut and unproblematic initial case – that of the five senior LRA commanders — has not materialized. As a consequence, the legitimacy of the ICC in Uganda was, and continues to be, contested. This has created something of a Catch-22 situation. If outreach is scaled down or withdrawn, or if the case were dropped following the establishment of the War Court, and, more importantly, as the Ugandan situation no longer takes priority given both scarcer funds and a proliferation of cases elsewhere, the ICC will be accused of failure. On the other hand, if its active and high profile role of bringing the LRA commanders to justice is maintained but Kony et al. are not captured and brought to The Hague and sentenced, the ICC will be seen as standing in the way of reconciliation and, ultimately, of peace itself. Either way, the Ugandan image of the ICC will be that of an unsuccessful, wavering and perhaps even unreliable organization.

This failure by the ICC to successfully 'communicate' seems to derive both from the organization itself and from the specificity of the Ugandan case. It is difficult to avoid the conclusion that President Museveni used the ICC – and the prosecutor – to establish legitimacy for himself in a political and military struggle against a rebel faction. Uganda may have seemed to present the ICC with a clear-cut case at the time, and the prosecutor's insistence that the gravity of crimes since 2002 justified using his resources against LRA commanders only may carry some weight, but the self-referral of the Ugandan government

served to underline the political nature of ICC operations and cast doubts on its impartiality and independence. The way the ICC is seen to operate is partly a consequence of both statutory prosecutorial powers and the performance of this prosecutor in particular. Moreno Ocampo is energetic, charismatic and above all high-profile. A prosecutor with a strong personality, unafraid of tackling political situations and up to dealing with the United Nations and local governments, was a must for the ICC after its shaky start when many, egged on by the United States, doubted its legitimacy and efficacy. At the same time, where the prosecutor promotes himself as the personification of international justice, this has been an invitation for criticism and ambivalence among NGO supporters and journalists.

The activities and communications of the OTP and its outreach have created expectations both of retribution and of reconciliation and peace for victims and displaced or otherwise affected communities (whose primary desire is an end to the situation in which they find themselves). But these aims have been criticized as contradictory and, with the LRA able to promote a counter-image of the ICC as an obstacle to peace, the lack of any enforcement capability has rendered the ICC in Uganda particularly impotent. Where trust and reliability are the cornerstones of legitimacy, failing to fulfill expectations creates disappointment and distrust, which is exacerbated by an undermining discourse on the part of Ugandan elites, local and otherwise, and other African states. Africa has many unstable states where gross violence is perpetrated against the population, but that holds for many other parts of the world too. Although six of the eight situations under preliminary consideration by the OTP do not concern African states, all of the seven situations brought before the ICC are in Africa. The fact that visible ICC activities are concentrated on the African continent feeds an image of the ICC as 'white man's justice', and that too has been absorbed into Ugandan discourse.

As many have emphasized, international criminal justice is an idealistic goal but it is above all a *political* undertaking, and it is well-nigh impossible to escape the consequences of its political nature. The ICC's communication strategy is based on the belief that any lack of legitimacy derives from a lack of information, which promotes misunderstandings and myths, and can be resolved through increasing local knowledge. The images and narratives we found in Uganda, however, are not myths or misunderstandings. Rather, they are the social construction of a lived reality that includes the ICC, but reflects its inherently political nature, while ideals figure only if they are realized. It may well be that communication of the ICC's core identity – the embodiment of the ideal – is impossible, precisely because it must always be in denial of the inevitable political image it presents in practice.

Bibliography

Akhavan, P. (2005) 'Developments at the International Criminal Court: The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court,' *American Journal of International Law*, vol. 99, no. 2, pp. 403-421.

Alvarez, J. (2004) 'Trying Hussein: Between Hubris and Hegemony,' *Journal of International Criminal Justice*, vol. 2, no. 2, pp. 319-329.

Brants, C.H. (2011) 'Universal Crimes, Universal Justice? The Legitimacy of the International Response to Genocide, Crimes against Humanity and War Crimes,' in: Crawford, A. (ed.) *International and Comparative Criminal Justice and Urban Governance: Convergence and Divergence in Global, National and Local Settings* (Cambridge: Cambridge University Press), pp. 86-109.

Drumbl, M. (2005) 'Collective Violence and Individual Punishment: The Criminality of Mass Atrocity,' *Northwestern University Law Review*, vol. 99, no. 2, pp. 539-610.

Entman, D. (1993) 'Framing: Towards Clarification of a Fractured Paradigm,' *Journal of Communication*, vol. 43, no. 4, pp. 51-59.

Finnström, S. (2010) 'An African Hell of Colonial Imagination? The Lord's Resistance Army in Uganda, Another Story,' in: Allen, T. and K. Vlassenrood (eds) *The Lord's Resistance Army: Myth and Reality* (London: Zed Books), pp. 74-89.

Haslam, E. (2004) 'Victim Participation at the International Criminal Court: A Triumph of Hope over Experience?' in: MacGoldrick, D., P. Rowe and E. Donnely (eds) *The Permanent International Criminal Court: Legal and Policy Issues* (Oxford: Hart), pp. 315-334.

Hazan, P. (2010) *Judging War, Judging History: Behind Truth and Reconciliation* (Stanford, CA: Stanford University Press).

Human Rights Watch (2005) 'Unprooted and Forgotten: Impunity and Human Rights Abuses in Northen Uganda,' September 2005, online available at https://www.hrw.org/report/2005/09/20/uprooted-and-forgotten/impunity-and-human-rights-abuses-northern-uganda.

Human Rights Watch (2008) 'Counting History: The Landmark International Criminal Court's First Years,' July 2008, online available at https://www.hrw.org/sites/default/files/reports/icc0708webwcover.pdf.

International Criminal Court (2010) 'Report of the Court on the Public Information Strategy 2011-2013', ICC-ASP/9/29, online available at https://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-29-ENG.pdf.

Morris, M. (ed.) (2001) 'The United States and the International Criminal Court,' Special

Issue, *Law and Contemporary Problems*, vol. 64, no. 1.

Nouwen, S. and W. Werner (2010) 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan,' *European Journal of International Law*, vol. 21, no. 4, pp. 941-965.

Otim, M. and M. Wierda (2010) 'Uganda: Impact of the Rome Statute and the International Criminal Court' (International Center for Transitional Justice), pp. 1-8, online available at https://www.ictj.org/sites/default/files/ICTJ-Uganda-Impact-ICC-2010-English.pdf.

Pham, P., P. Vinck, M. Wierda, E. Stover, and A. Di Giovanni (2005) 'Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda' (International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley).

Pham, P., P. Vinck, E. Stover, A. Moss and M. Wierda (2007) 'When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda' (Human Rights Center, University of California, Berkeley; Payson Center for International Development, Tulane University; International Center for Transitional Justice, New York).

Pham, P, P. Vinck and E. Stover (2010) 'Transition to Peace: A Population-Based Survey on Attitudes about Social Reconstruction and Justice in Northern Uganda' (International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley).

Roach, S. (ed.) (2009) *Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court* (Oxford: Oxford University Press).

Schabas, W. (2001) *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press).

Teitel, R.G. (2002) 'Humanity's Law: Rule of Law for the New Global Politics,' *Cornell International Law Journal*, vol. 35, no. 2, pp. 355-387.

Turner, J. (2005) 'Nationalizing International Criminal Law,' *Stanford Journal of International Law*, vol. 41, no. 1, pp. 1-15.

Van Riel, C. (1995) *Principles of Corporate Communication* (London: Prentice Hall).

3 |

THE CONTESTATION OF COMPLEMENTARY IN UGANDA

The Case of Thomas Kwoyelo

Lauren Gould

in:

Brants, C.H. and S. Karstedt (eds) (forthcoming in 2016) Transitional Justice and its Public Spheres (Oxford: Hart Publishing).

Introduction

During the last decade, situations arising out of violent conflicts have increasingly been referred to the International Criminal Court (ICC). Advocates of the ICC argue that criminal proceedings against those most responsible for war crimes will mobilize efforts to arrest violent, extreme actors, bring 'justice' to the victims, end impunity, deter future atrocities, facilitate reconciliation and contribute to the rule of law (Moreno-Ocampo 2008: 9). But while the ideal of achieving peace through the pacifying effects of international criminal law is appealing,[102] how it plays out in practice in highly contentious political contexts has been far from straightforward. This has left the ICC exposed to a chorus of criticism which targets its overblown promises and accuses it of being a tool of the powerful (Thoms et al 2008; Brants et al. 2013).

One recent result of this crisis within the regime of international criminal justice has been a shift in the discourse on what the ICC can – and cannot – deliver. Most notably, there has been a nuanced but important move away from the grand aim of achieving 'universal justice' towards a narrower goal of ending the impunity of perpetrators by promoting, via its principle of complementarity, a domestication of international criminal law in which states are encouraged to carry out their own prosecutions and to build a national culture of accountability (Nouwen 2014).

This article explores how this shift is playing out in practice in Uganda, where, in the aftermath of the ICC's first intervention, various (international) actors have pushed for the establishment of a national war court and the adoption of ICC-focused national laws and processes, to meet the ICC's complementarity standards. From a conflict studies perspective, this article focuses on the first case brought before the International Crimes Division (ICD) of the High Court of Uganda – the case of Thomas Kwoyelo. Kwoyelo was around 14 years old when he was abducted by the Lord's Resistance Army (LRA) from his village in northern Uganda in 1987. As a child soldier, Kwoyelo, like thousands of other abductees, was indoctrinated and forced to commit many atrocities against his own Acholi people. Kwoyelo moved up through the ranks within the LRA and was a midlevel commander by the time he was captured by the Ugandan military in 2009. His case before the ICD is a first of its kind in several respects. Not only was he the first LRA combatant to apply for amnesty but not have it granted, he was also the first defendant ever to be charged before the ICD with offences relating to international war crimes.[103] The Ugandan government, as well as the international

[102] An international criminal legal response to controlling war is based on a number of key assumptions about the relationship between war, law and peace that have their roots in Kant's treatise of Perpetual Peace, as discussed in the Introduction to this dissertation. Kant's core premise herein was that peace could be achieved through the pacifying effects of law. See the Introduction to this dissertation for more information.

[103] There are a few cases of LRA repeat offenders being denied amnesty. See Mallinder (2009: 61).

nongovernmental organisations (INGOs) and donors who pushed for establishment of the ICD, are keen to see Kwoyelo's case successfully prosecuted. His anticipated trial has, however, also been met with strong opposition among a range of other actors within Uganda.

Applying a critical discursive frame analysis to the contestation surrounding Kwoyelo's case offers a fruitful approach to explore how international efforts to institutionalise international criminal law at a domestic level are being co-opted, contested and rejected by various actors, and how this is affecting particular social and political processes. Tracing some of the alternative frames that have developed to contest the dominant legal accountability frame evolving within the transitional justice process in Uganda, this analysis suggests that international criminal law's legal categories of prosecution are not neutral labels that accurately reflect objective realities. Rather, I argue that they constitute semantic frameworks of power and authority that political actors can appropriate for political ends in processes of contentious politics. As seen in the case of Kwoyelo, by reforming its justice regime and framing Kwoyelo as a 'war criminal', the Ugandan government can produce the idea that once-abducted children, now adult LRA, are to blame for the conflict. My findings suggest that defining such individuals in this way under international criminal law will be perceived by many Ugandans as inaccurate and inequitable, because detailed understanding of their life histories throws into question their degree of legal responsibility for their actions. Furthermore, any precedent set by the Kwoyelo case will likely have crucial repercussions on 1) rebel defection from the LRA in return for government amnesty, 2) the legal status and social identity of all ex-LRA combatants, and 3) the legitimacy of the broader transitional justice processes taking place in Uganda.

The first section of this article explains the core theoretical components of the critical discursive approach to violent conflict and the role of framing therein. From these core components, three fundamental questions arise, that guide the remainder of my analysis: 1) How has an international criminal legal frame of the violent conflict been produced in Uganda? 2) How has it been translated into institutional policies and practices at a domestic level? and 3) How are these policies and practices playing out locally?

The evidence presented in this article is based on participant observation during the Juba Peace Talks in 2007, on in-depth policy and document analysis of the justice reforms taking place in Uganda, and on nine months of field research conducted in Uganda.[104] Semi-structured in-depth interviews and focus group discussions were held with 32 respondents, including former LRA combatants, internally displaced people, traditional and religious

[104] The author conducted field research from July to September in 2009, October to December in 2011, and in January of 2015. Other research was conducted from March through May in 2010 by Ariadne Asimakopoulos, a Conflict Studies and Human Rights Masters student at Utrecht University. See Asimakapoulus, A. (2010) 'Justice and Accountability: Complex Political Perpetrators. Abducted as Children by the LRA in Northern Uganda' (MA thesis, Utrecht University).

leaders, Ugandan lawyers, a member of the Ugandan Amnesty Commission, the Head of the War Crimes Prosecution Unit of the High Court in Uganda, the Assistant Registrar of the ICD, the directors of a number of (I)NGOs working on transitional justice, journalists, members of the ICC outreach team, Kwoyelo's lawyer, and Kwoyelo himself, in the maximum security prison of Kampala. Distinctions between 'formal' and 'informal' views, or 'state' versus 'public opinion' or, worse 'the voice of the people' versus 'power' always fall short. So, my aim here was to interview a diverse range of respondents and present the patterns I discovered in their narratives, without making any generalized claims about categories of respondents.

A critical discursive approach to violent conflict

The Ugandan case is a prime example of how civil wars are characteristically fought with the widespread involvement of the civilian population as well as rebel, state, regional and international actors. How this diverse set of actors is mobilized to join in a war is a difficult and unresolved crucial question. The critical discursive approach to violent conflict tries to provide an answer by analysing the 'discursive and institutional continuities that render violent conflict a legitimate and widely accepted mode of human conduct' (Jabri 1996: 1). Discourse, and its ability to frame, enable and justify particular policies and practices, are seen as central in the lead up to and continuation of war. Different bodies of literature address this process in different ways. Collective Action Theory, for example, illustrates how social movements create 'collective action frames' that are understood to 'redefine social conditions as unjust and intolerable with the intention of mobilizing potential participants, which is achieved by making appeals to perceptions of justice and emotionality in the minds of individuals'; they also put a moral claim on, for instance, the (il)legitimacy of violence (Tarrow 1998: 111). King notes the importance of gaining a wider audience for these 'frames' within violent conflict:

> Acquiring the power to define a hegemonic discourse about the conflict is a goal self-consciously pursued by belligerents. The aim is, in part, to convince outsiders of the rightness of one's own cause and the perfidy of others, to demonstrate that the opposite side is composed only of ethnic militants, fanatical hard-liners, terrorists, separatists and so on. But it is also to control the entire vocabulary that observers and participants use when they speak about the origins of the dispute, the identities of the belligerents and what might count as a legitimate form of conflict termination. Labelling, in other words, is a political act (2004: 452).

As stated by Demmers (2012: 25), 'discourse is always an exertion of power', and the asymmetrical access to (material) resources results in certain actors having more power than others to define a particular discourse on violent conflict. At the same time, discourse is also always relational; it is constructed between crafters and their audience and therefore has to be both 'socially meaningful' as well as 'politically functional'. The underlying assumption is Foucauldian: power is not 'possessed' by agents but rather can be exerted when they mediate the discursive structures that define what constitutes acceptable agency and forms of behaviour that are seen as unacceptable and in need of discipline.[105] This mediation always goes hand-in-hand with resistance, contestation, transformation, and rejection among various actors who compete to capture and spread their preferred framing of violence. This is far from merely a verbal game; discourse not only defines what deviant behaviour is but also influences what is seen as an appropriate means of dealing with it. Critical discourse analysis is thus about, '"the politics of portrayal", examining how names and images are made, assigned and disputed, and how this battle at times translates into political and judicial measures and instruments (such as terrorist listing)' (Demmers 2012: 127). From this perspective, I argue that one can derive the dominance of a particular discourse, from amongst an array of competing claims, by examining the extent to which it has become institutionalized, in terms of regulatory institutions, laws and policies that affect the day-to-day lives of those targeted.

Not only actors in and at war are engaged in processes of framing and sense making, so too are so-called 'outsiders', including INGOs, donor governments, UN agencies, academics and international lawyers. In line with Foucault's concept of substitutability, these actors are themselves subjects whose understandings have been constructed within particular meta-narratives that make them see violent conflict in a particular way, just as much as they are instigators of these meta-narratives. Parties to a conflict, on their part, often appropriate these meta-narratives to garner international support and allies, expand their hold on power and legitimise particular interventions. Drawing from De Goede and Simon, I refer to this multifarious diffuse set of actors, that at times 'still hold together and exercise power', as an 'assemblage' (Goede and Simon 2013: 315, 317). Importantly, this concept also includes the discourses, laws, norms and doctrines they produce which, in collaboration and competition, seek to 'govern' the violent conflict. As Li describes in her article 'Practices of Assemblage and Community Forest Management', this conceptual lens allows one to analyse what is problematized within a particular meta-narrative, the way in which the problem is rendered technical (what intervention is believed to produce a beneficial result), how alliances are forged in its name, how failures and contradictions are managed, and how it acts in a local

[105] This idea of power has been at the core of Foucault's historiography, particularly in his works *Discipline and Punish* and *The History of Sexuality*.

setting (2007: 265). Unfortunately, far too often complex local variations, motives, histories and inter-relationships are lost in the application of meta-narratives on violent conflict. This can have detrimental consequences for the effectiveness of the policies, laws and interventions they inform.

Over the past decades, authors such as Richards (1996), Duffield ([2001] 2014), Dexter (2007), Bhatia (2005) and Demmers (2014 and 2015) have mapped the shifts in meta-narratives on violent conflict. From colonial racism to the Cold War ideological standoff, New Barbarism, ethno-nationalist conflict, and the War on Terror, different international meta-narratives have arisen. Increasingly since the 1990s, sense has been made of the horrific realities of violent conflict by promoting the idea that there are 'greedy', 'evil' individuals in the world 'out there' who conceptualise, instigate, frame and plan violence for their own benefit. Coined as 'new wars', this diagnosis transforms the framing of warfare into an illegitimate mass abuse of human rights, a crime with universal jurisdiction. As Chandler (2006: 485) observes, this produces the tendency to perceive internal conflicts as crimes to be policed, judged and righted rather than as political conflicts to be mediated.

Framing violent conflict within the international criminal justice regime

The connection between the new war meta-narrative's focus on 'criminality' and the rise of an international criminal justice regime to respond to the violence perpetrated is evident. The most significant and permanent institutional development in this regard is the adoption of the Rome Statute by 120 states in 1998 and the resulting establishment of the ICC in 2002.[106] The creation of the ICC has introduced a major discontinuity in the way in which violent conflict is dealt with. As the former ICC Chief Prosecutor, Moreno Ocampo, emphasized, 'for centuries, conflicts were resolved through negotiations without legal constraints. In Rome in 1998, a new and entirely different approach was adopted. Lasting peace requires justice [...]' (2008: 9). Since its inception, situations of violent conflict increasingly have been referred to the ICC by 'outsiders' to the conflict, such as the UN Security Council (e.g. the case of Libya) and the ICC Prosecutor (e.g. Côte d'Ivoire), but also by state parties involved in the conflict, through the principle of self-referral (e.g. Uganda). Referrals have led to numerous arrest warrants for state officials (e.g. Gadhafi) and rebel actors (e.g. Kony), who thereby become defined internationally as 'war criminals' and thus must be arrested and tried. In this regard, the international criminal justice regime – both in its laws and in the courts that enforce them – has introduced a dominant meta-frame with which various actors in conflict

[106] This was achieved after 60 states ratified the statute. In 2015, a total of 123 states had ratified the statute.

situations need to engage, in the sense that they make use of it, redefine it and compete with it.

Since its establishment, advocates of the ICC have argued that prosecution and imprisonment of those most responsible will not only bring justice to victims, but will also contribute to an array of other goals, such as weakening external support for armed groups, bringing accountability issues surrounding the conflict into focus, helping deter further crimes and advancing reconciliation in post-conflict situations (Thoms et al. 2008). The latter is believed to be achieved by building consensus around a frame, according to which the political and militant leaders who planned the atrocities are stigmatised, while 'good' civilians can identify in their common victimhood and rebuild their lives and relationships.

While these ideals are appealing, empirical evidence of the ability of the ICC to facilitate these processes and reframe local interpretations of violence is inconclusive, to say the least (Hazan 2006). One aspect of the ICC's difficulties has been in establishing itself as a legitimate mechanism able to render impartial 'truth'. Instead, it is often contested for being one-sided, a tool used by the 'powerful' to articulate who is to blame for the conflict, entrenching instead of ending impunity (Nouwen and Werner 2010). More recently, it has been specifically accused of unfairly targeting African states, embodying the latest line of neo-colonial tools imposed on weak states by the powerful West (Brants et al. 2013).

A critique of a different nature is that the ICC is unable to handle adequately those frequent messy situations in which the distinction between 'perpetrator' and 'victim', 'leader' and 'follower', is far from clear. International criminal law, for instance, does not recognise the specific category of 'victimised' children who grow up to be adult 'perpetrators'. It seeks to protect child soldiers from conscription and prosecution, while also working to prosecute those who enslave children for the purpose of getting them to participate in armed conflict, but there are no specific guidelines or principles as to how abducted children who commit atrocities after they turn 18 should be legally treated. Instead, international criminal law prescribes for them the same treatment as for those who abducted them in the first place. This is clearly exemplified by the case of Dominic Ongwen, who was abducted by the LRA when he was 10 years old and who, at the time of writing, awaits trial before the ICC.[107] Applying international criminal law to cases such as Ongwen loses sight of the complex interconnected levels of responsibility in the war in Uganda and raises doubts as to whether it will indeed have outcomes that match its stated aims.

Faced with a growing awareness that the ICC does not invariably have a positive effect on the conflict situations in which it intervenes, an assemblage of actors recently has

[107] See Baines (2009: 177). See also the Introduction and the fourth article in this dissertations 'The Politics of Portrayal in Violent Conflict: The Case of the Kony 2012 Campaign' for more information on Ongwen's surrender and his transfer to the ICC.

started to adjust its narratives regarding the ICC. They argue that the ICC can contribute to ending impunity not by prosecuting perpetrators in The Hague but by helping states prosecute them themselves. As Nouwen explains,

> academics, ICC advocates and even ICC organs, giving complementarity a meaning beyond that of an admissibility rule in the Rome Statute, have argued that the principle embodies the 'primary responsibility' of states to investigate and prosecute crimes within the Court's jurisdiction (2012: 6).

States should therefore be encouraged – if not coerced – to implement legal and judicial reform and increase government compliance to international criminal law standards at a domestic level. This begs the question whether such domestic engagement will mitigate the critiques the ICC faces and will lead to desired outcomes when international criminal law is applied in contentious (post) conflict situations.

Drawing on the critical discursive approach's insight into the relationship between power, discourse, framing, institutions, and political and social outcomes, the remainder of this article analyses how this process is unfolding in Uganda by posing the following questions: 1) How has an international criminal legal frame of the violent conflict been produced? 2) How has it been translated into institutional policies and practices at a domestic level? and 3) How are these policies and practices playing out locally?

Politics of portrayal in Uganda

The roots of the civil war between the government and the LRA in northern Uganda lie in a north-south divide introduced during British colonial rule (1894-1962). The British 'reified and essentialized an Acholi identity' in the north as the Acholi became over-represented in the civil service and the military (Branch 2011: 25). Once independence came in 1962, the subsequent political elites further entrenched this north-south divide through ethnic favouritism and violent political purges. When President Museveni and his National Resistance Army (NRA) came to power through a military coup in 1986, he framed his rebellion as a southern Bantu war against the Acholi, whom he characterized as the embodiment of northern state power. Seen as the ethnic enemy, Acholi leaders were excluded from Museveni's new National Resistance Movement government and the NRA launched a violent counterinsurgency in Acholiland. This established a serious, ongoing security threat among the Acholi people and led to the emergence of a number of rebellions, the last remaining being that of the LRA, which operates under the rule of Joseph Kony.

From the outset, the Acholi bore the brunt of the conflict between the LRA and government military forces. Both parties committed grave atrocities against the population. Tens of thousands of people were abducted by the LRA and over two million people were displaced, many of whom were forced violently by the government into so-called 'protected camps'. After the Juba peace talks between the government and the LRA started in 2006, relative stability returned to northern Uganda. However, after those same talks failed in 2008, the conflict continued beyond the borders of Uganda, encompassing parts of the Democratic Republic of the Congo (DRC), South Sudan and the Central African Republic (CAR).

From the onset of the conflict, both LRA commanders and the Ugandan government have clearly engaged in creating 'collective action frames' to legitimate their violent campaigns. Although there was always a great discrepancy between the written and spoken objectives of the LRA and the violent military tactics of the organisation against the people they claimed to represent, the LRA commanders continued to diagnose the root of the Acholi population's suffering and grievances in terms of the policies of President Museveni and his military. During his research on the LRA, Finnström (2010: 170) came across letters and manifestos from the LRA to the population in northern Uganda. These included lists of historical grievances against the government and expressed the belief that the government was purposively exterminating the Acholi people by packing them into camps, with the assistance of international actors. Based on this frame, the LRA leaders claimed that their cause was a legitimate fight against President Museveni in order to promote a political existence for the Acholi people.

With regard to mobilising their fighting force, the LRA commanders subjected new recruits to extreme indoctrination and continuous propaganda. Once abducted, children and adults were often initiated through a series of cruel beatings and subsequently required to participate in rituals where they were convinced that Kony possessed powers to predict the future and defeat his enemies. The LRA also used frames of 'chosen-ness', 'sacredness', 'ancestral homeland', 'fraternity' and 'liberation' as key elements toward constructing identity boundaries and legitimising violence.[108] As a former LRA combatant describes the indoctrination process:

Kony makes many promises such as, 'you, who were taken from school, we did not abduct you. We went and chose you; you are our brothers and sisters. Those stupid Acholi who do not want to fight with us, we do not need them. We want you, so we can fight and overthrow the dictatorship of Museveni. You are the new Acholi now, you are the Israelites and this is now the Promised Land. You crossed the Nile, so this movement is following the Bible. Next

[108] See for more examples Baines (2009: 170-171).

year we will overthrow and it will be you, the educated people, who will become minister and drive big cars'. Quite some people tend to believe him because he can be so convincing, you have to see it to understand.[109]

The official state discourse on the conflict, expounded by President Museveni and endorsed by a larger international audience, has always downplayed the repression and violence committed by the Ugandan armed forces. Instead, it focused on LRA brutality, particularly against children, and on the need to defeat the organisation militarily.[110] In many accounts, the rebel group is framed as 'bizarre', and the violence it commits as simply irrational: 'The Lord's Resistance Army, Africa's longest surviving insurgent group, which has a reputation for extreme brutality, is made all the harder to understand given their almost total lack of any political goals'.[111] In 2001, the United States went as far as putting the LRA on its Terrorist Exclusion List.

In this regard, the LRA has been unable to articulate its political goals in a way that gains the sympathy of a larger audience. Its brutal actions negated any legitimate concerns or grievances it might have had for waging rebellion. President Museveni has had a keen interest in upholding a 'barbaric' and 'terrorist' frame of its LRA enemy because this has allowed him to continue to present himself — to his constituency and to the international community — as the sole legitimate power holder, and the LRA as an illegitimate rebel group which needs defeating militarily.

Producing an international criminal legal frame

For years, the assemblage involved in governing the violent conflict in northern Uganda considered it predominantly a military and at times a political issue (when the LRA and government engaged in peace negotiations), rather than a legal one. Moreover, a blanket Amnesty Act adopted in 2000 assured that a legal frame was kept at bay. The Amnesty Act was reluctantly established by the government after strong lobbying by Acholi stakeholders (religious, traditional and political elites) who saw it as a way to induce LRA combatants to lay down their weapons and to adequately deal with their predominantly forced participation. According to the Amnesty Act, 'any Ugandan who has at any time since the 26th of January 1986 engaged in or is engaged in armed rebellion against the Government of Republic of

[109] Interview held with former LRA combatant, Gulu, Uganda, 27 April 2010.
[110] See for a discussion of this 'official discourse', Finnström (2003: 136).
[111] Thomson, M. (2011) 'Don't Scream When the Knife Comes', *BBC Radio 4 Report*, 17 February 2011, online available at http://news.bbc.co.uk/today/hi/today/newsid_9400000/9400287.stm.

Uganda' will receive amnesty.[112] How then has an international criminal legal frame been produced in Uganda?

This process started in 2003 when, flying in the face of the Acholi support for amnesty, the Ugandan government surprised many observers with its 'Referral of the Situation Concerning the Lord's Resistance Army' to the ICC. The ICC Prosecutor officially opened an investigation in 2004, and one year later the prosecutor requested, and the court issued, arrest warrants against five senior LRA commanders (including Kony and former child soldier, Ongwen). The prosecutor argued that he had no case against the government and its military because the ICC's jurisdiction stretches back no further than 2002, and that since then, 'crimes committed by the LRA were much more numerous and of much higher gravity than those committed by the UPDF'.[113] It is likely, however, that his decision was also influenced by the knowledge that, if he were to target government forces, President Museveni might not cooperate with the prosecutor's work. In the wake of the arrest warrants, the Amnesty Act was amended to give the Minister of Internal Affairs the authority to exclude named individuals from the scope of amnesty, with approval of the Parliament.[114]

The referral to the ICC, the arrest warrants and the amendment of the Amnesty Act clearly introduced an international criminal legal frame to the conflict in which the identity of the LRA commanders was reduced to that of war criminals rather than political and military combatants, with the Acholi cast as the LRA's civilian victims. This narrative did not fit the Acholi's understanding of the conflict; they see both the GoU and the LRA commanders as key perpetrators, and the ICC soon faced severe criticism for its lack of impartiality (Brants et al. 2013). The ICC's narrative did, however, fall within the longstanding military paradigm established by President Museveni and the Ministry of Defence, who saw ICC intervention as a way of enlisting international help for their military campaign in the name of arresting 'war criminals' and 'enforcing international law' (Nouwen and Werner 2010: 949).

In the wake of the ICC arrest warrants, a change in regional political alignments took place due to a peace agreement signed between the South Sudanese people and the Sudan government in Khartoum. The LRA lost regional support from the latter, became increasingly marginalized, and returned to the negotiating table in Juba in 2006. There, however, Kony refused to sign a final peace agreement until the ICC arrest warrants had been lifted. Soon parties to the peace talks realized that the only sustainable way to achieve this was to

[112] Between 2001 and 2006, 12,119 LRA combatants, including a number of commanders ranked higher than Kwoyelo, returned or where captured and received an amnesty certificate. A number of repeat offenders were denied amnesty. See Mallinder (2009: 61).

[113] Moreno-Ocampo, L. (2005) 'Statement by the Chief Prosecutor on the Uganda Arrest Warrants', The Hague, 14 October 2005, online available at http://www.icc-cpi.int/NR/rdonlyres/9AC37606-6662-448F-8689-7317E341E6D7/277305/Uganda_LMO_Speech_141020091.pdf.

[114] The Minister has not yet done this, so those indicted by the ICC and Thomas Kwoyelo remain eligible for amnesty under Ugandan law. See for a more detailed descriptions of the relationship between the Amnesty Act and the ICD Nouwen (2012: 7).

challenge the warrants' admissibility on grounds of complementarity. This would require commitment on behalf of the government to put in place domestic justice mechanisms, before which LRA leaders could appear. Hence, however unintended and contested, a legal accountability frame had become a dominant aspect of the peace negotiations, which had to be acknowledged and adhered to.

Institutionalizing international criminal law at a domestic level

One year into the Juba peace negotiations, the government and the LRA agreed to the following under agenda item 3, 'Accountability and Reconciliation':

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.[115]

The annexure to the agreement specifies that, 'a War Crimes Division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict'.[116]

In spite of the apparent shift from international to national retributive justice, Kony was not confident about the prospects of the ICC's withdrawal and in November 2008 he refused to sign the final peace agreement.[117] In response, Museveni swiftly sought collaboration with the governments of the DRC, CAR, and South Sudan, and gained diplomatic and material support from the United States to launch yet another military offensive, but this time in the name of 'enforcing international law'.[118] Although Kony escaped, the joint military mission did manage to capture a number of LRA commanders, including Thomas Kwoyelo. Kony retaliated by killing up to 865 civilians.[119]

This created a complex situation, in which the LRA and the government signed a number of agreements, but no final peace accord was ratified and the war continued across regional borders. Under substantial pressure from the international community, the

[115] Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, clause 4.1.
[116] Annexure of the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, 29 June 2007, clause 7.
[117] Kony demanded further assurances on the exact process. It is, of course, difficult to speculate about Kony's exact motives for pulling out of the peace negotiations.
[118] See the fourth article in this dissertations 'The Politics of Portrayal in Violent Conflict: The Case of the Kony 2012 Campaign' for more information on the various military campaigns that followed the failure of the 2006-2008 peace talks.
[119] Human Rights Watch (2010) 'Trial of Death: LRA Atrocities in North-eastern Congo', March 2010, p. 5, online available at http://www.hrw.org/sites/default/files/reports/drc0310webwcover_0.pdf

government pledged to implement a number of the agreements made under the agenda item Accountability and Reconciliation, including the establishment of the International Crimes Division (ICD) of the Ugandan High Court, to fulfil the principle of complementarity of the Rome Statute. Since then, an assemblage has increasingly directed its agenda, advice, budgets and lobbying activities towards the realisation of the ICD, which came into being in 2008 (modelled on international tribunals), and adoption of the ICC Act in 2010.[120] This assemblage brings together an array of actors including international human rights NGOs, donor governments, and pro-bono lawyers, in collaboration with Ugandan NGOs and legal professionals.[121] In line with Foucault's concept of substitutability, Nouwen argues that the international background of many of these actors can explain their push for complementarity:

Most of these experts work at the international level, in international NGOs, courts and jurisdictions, and have assumed functional bias towards 'the international'. Their automatic but incorrect assumption is that 'international' laws, standards, courts and practices are by definition better than domestic ones, and that 'the international' is by definition good for the rule of law, at the international *and* domestic level (2012: 17).

The prosecutor, for his part, supported the establishment of the ICD as a way to meet the growing demand for impartiality on behalf of the ICC, his underlying assumption being that the ICC could retain its focus on the LRA top commanders, while the ICD could deal with state officials (Branch 2011: 189). However, this assemblage failed to realise that the reasons for impunity within Uganda itself was not due to the lack of a domestic legal basis for prosecution: Uganda has had an act criminalizing grave breaches of the 1949 Geneva Conventions since 1965, and most of the crimes within the ICC's jurisdiction are also criminalized under the Ugandan Penal Code. Rather, the impunity was due more simply to a lack of enforcement: no investigations, prosecutions or arrests of either state officials or rebel actors.[122]

The lack of domestic prosecution of rebel leaders seemingly changed in June 2010, when it was reported that Kwoyelo would be the ICD's first case.[123] Joan Kagezi, the Directorate of Public Prosecution's (DPPs) senior Principal State Attorney and Head of the

[120] ICD jurisdiction includes any offence relating to genocide, crimes against humanity, war crimes, terrorism, human trafficking, piracy and any other international crimes as may be provided for under the ICC Act, No.11 of 2010, the Geneva Conventions Act, Cap 363, the Penal Code Act, Cap. 120, or any other penal enactments.
[121] These actors included, among others, the International Coalition for the ICC, the International Criminal Justice Movement, the Public International Law & Policy Group, and the Refugee Law Project.
[122] See for more details Nouwen (2012).
[123] 'Kwoyelo for War Crimes', *New Vision*, 25 June 2010, online available at http://www.newvision.co.ug/D/8/13/723897.

War Crimes Prosecution Unit (WCPU) of the ICD, explained why the DPP is keen to see Kwoyelo successfully tried:

We just believe the Kwoyelo case is going to be a test case for us; it is going to lay down a number of precedents because we are now going to consider the issues of amnesty vs. international law. If it lays down a precedent, the sky will be the limit. We will know whom to get, among those combatants who get amnesty and not.[124]

Significantly, other cases have been handled completely differently. Two well-known LRA Brigadiers (Sam Kolo and Bania Kenneth), both more senior than Kwoyelo, were granted amnesty, while General Major Caesar Acellam was exempted from ICD criminal proceedings because, reportedly, he is under Ugandan military protection in return for providing intelligence on the LRA. Kagezi admitted that no fixed format exists for midlevel commanders, especially those who were abducted as children, and that 'they will be considered on a case-by-case basis'.[125]

Although ICD jurisdiction theoretically includes prosecution of state actors as well as rebels, this is unlikely given that the government has repeatedly insisted that it has dealt with crimes committed by its military through courts martial and executions.[126] In addition, state officials often point to the absence of ICC proceedings against actors from the government's side to highlight that they and the Ugandan military are exempt from legal accountability (Nouwen 2012: 24).

What is clear from the above is that the government, with the assistance of the international community, is reforming its justice apparatus to be able domestically to frame a wide range of LRA combatants, not just the top commanders indicted by the ICC, as 'war criminals'. However, the attempt to prosecute Kwoyelo before the ICD has become subject to deliberation and resistance among various actors in Uganda. To analyse the power of this contestation, I revisit a central question, namely, what counter-narratives have been produced and to what extent have they been institutionalised?

[124] Interview with Joan Kagezi (Head of WCPU of the ICD), Kampala, Uganda, 10 May 2010. The ICC Act will not be used in Kwoyelo's trial as it only came into effect in 2010 and does not have retroactive application. Therefore, Kwoyelo was charged with 12 grave breaches of the Geneva Conventions Act of 1964, including wilful killing (5 counts), taking hostages (2), extensive destruction of property (2), and causing serious body harm (1); alternative accounts include murder (33 counts), kidnap with intent to murder (17), robbery with aggravation (1), and attempted murder (2).

[125] Interview with Joan Kagezi (Head of WCPU of the ICD), Kampala, Uganda, 10 May 2010.

[126] The International Crisis Group has strongly criticised the level of impunity among state actors: 'The lack of judicial follow-up for army crimes coupled with the fear of victims to report them and the exclusion of military courts from the judicial mechanisms listed in the Juba Protocols amount to guaranteed impunity for senior military, even if common soldiers were quietly court-martialled and executed', see International Crisis Group (2008) 'Northern Uganda: The Road to Peace, with or without Kony', Africa Report no. 146, p. 10, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/146-northern-uganda-the-road-to-peace-with-or-without-kony.aspx.

Playing out locally

My data illustrate that different respondents from the war-affected Acholi region maintain competing narratives about actors such as Kwoyelo. When an array of Acholi respondents (including former LRA combatants, family members of the deceased and traditional and religious leaders) were asked who they believed were the main victims of the conflict, the majority answered 'child abductees'. Respondents argued that abductees were forced to commit terrible crimes, the dead spirit therefore haunts them and they have been deprived of an education. Consequently, abductees should be given amnesty and be reintegrated into society. Their answers became less straightforward, however, when talking about former child soldiers who return as adults. It is at this moment when doubts arise about responsibility and victimhood.

Acholi respondents who were not former abductees themselves, or who were not related to former abductees, tended to distinguish between those adult combatants who never accommodated themselves to the level of violence, who remain afraid, and who seek escape, versus those who participate actively and show eagerness toward their combat roles and their superiors. A number of explanations are given for this eagerness, including that LRA combatants are angry about their own abduction and take revenge by abducting others and being particularly cruel, and that they seek promotion in order to gain greater security and more food. Nevertheless, according to a majority of the Acholi respondents without ties to or experience as abductees, once an abductee orders others to fight, abduct, kill or loot, this individual becomes responsible for those actions and is a 'perpetrator'.

Others, however, argue that midlevel commanders remain 'victims' because they have been forced and trained from a young age to commit crimes. Those who uphold this frame are often family members of abductees or former abductees themselves. These respondents emphasise the heavy indoctrination and propaganda LRA combatants are subjected to, and argue that those who are abducted at a young age are unlikely to understand right from wrong in these complex, violent contexts, and in any case are not in a position to choose. According to a father of two abductees: 'Kwoyelo was abducted at a very young age. He was trained to do many bad things such as killing and looting and was not in a position to refuse. Everything he did must have been an order from a higher level.'[127] Moreover, respondents who maintain the 'victim' frame refer to the fear of being caught while escaping, fear of the ICC, and fear of rejection by family and community members as reasons for remaining with the LRA.

[127] Interview with the parent of a former abductee, Awach, Uganda, 26 April 2010.

Overall, we see that most respondents ascribe a reasonably high level of agency to those abductees who gained rank within the LRA. However, most respondents maintain different frames, when defining a combatant's level of responsibility, based on their (the respondent's) position within society and/or personal war experiences.

Interestingly, only a minority of respondents supported bringing cases such as Kwoyelo before the ICD. Those few who were in favour stress that a history of abduction should be taken into account during trial. Those against put forward a number of reasons that reflect the contentious political context in which Kwoyelo's trial is set to take place. Firstly, it is clear from many respondents' answers that peace remains their main interest in defining how LRA combatants are framed and brought to justice. Many said that, as long as the LRA have not laid down their weapons, they [the respondents] are not interested in retributive justice. It is believed that the LRA forces active in neighbouring countries will closely follow the shift from amnesty to applying international criminal law, and it is feared that this will impede defection and prolong the likelihood of the LRA returning to Ugandan soil.

Respondents were also unified in their opinion that higher ranked LRA commanders and military commanders should be the first to be subjected to international criminal law, not those whom the LRA abducted and the government failed to protect. Kwoyelo himself expressed great confusion about the fact that he was imprisoned while commanders, such as Brigadiers Bania and Kolo, were granted amnesty: 'These men were much more senior than I was, had much [more] responsibility and there was not even a single charge for them, not even by the ICC. Thus, those who actually abducted me are free now and I, the one who was abducted, am in prison.'[128] Other respondents highlighted the government's responsibility: 'Actually our blame goes to the government because it failed to protect our children. It is the government's failures that made these combatants to be abducted and forced to commit what they did.'[129] These quotes illustrate that, without first holding the instigators of the violence from both parties equally accountable, the trial of Kwoyelo is unlikely to reflect these respondents' framing of the conflict and so the ICD will, along with the ICC, come to be seen as partial and a form of victor's justice.

It is also clear from respondents' answers that the shift from granting amnesty to applying international criminal law is creating confusion among the grassroots population. In general, respondents are in favour of amnesty for lower-ranked combatants, and do not reject amnesty for midlevel commanders, especially when asked whether it is fair to grant one commander amnesty while other ex-commanders are put on trial. The establishment of the ICD goes against this support and is creating concern among returned LRA combatants; they

[128] Interview with Thomas Kwoyelo, Luzira Prison Kampala, Uganda, 7 April 2010.
[129] Interview with Lacen Otinga (Village Chief), Gulu, Uganda, 2 August 2009.

are starting to doubt whether their amnesty certificates will protect them against prosecution and trial by the ICD.

Finally, a number of respondents emphasised that Kwoyelo's legal status could affect the social identity of all former LRA abductees who have returned and who are trying to reintegrate into their communities: 'They will come to be seen more as criminals, as perpetrators, because our society does not understand our court system. For them, when you are arrested, you are already a criminal; you are already guilty. This sends a strong message.'[130]

In line with the above narratives, there have been a number of institutional attempts to challenge Kwoyelo's prosecution before the ICD. On 12 January 2010, for instance, members of Uganda's Amnesty Commission visited Kwoyelo in prison and encouraged him to apply for amnesty. The public relations officer of the Amnesty Commission explained in an interview that although the Amnesty Act was amended to allow for the exclusion of the leaders of the rebellion, the Amnesty Commission provide amnesty to anyone who has not been indicted by the ICC. [131] However, once a former combatant has applied for amnesty, the DPP has to certify that the combatant is not charged with any offence unrelated to war or armed rebellion, before the combatant may be granted amnesty release. In Kwoyelo's case, he was charged with, among other things, 'kidnapping with intent to murder'. It is difficult to maintain that these crimes were not committed 'in the cause of the conflict', since kidnapping has been one of the main tactics of the rebellion.[132] Nevertheless, the Amnesty Commission never heard back from the DPP when it sent a letter applying for amnesty for Kwoyelo, and his trial before the ICD was set to commence in July 2011.

Before the actual trial began, however, Kwoyelo's defence went to the Constitutional Court of Uganda to challenge the fact that their client was denied amnesty, arguing that indicting Kwoyelo while amnestying others constitutes a violation of the constitutional guarantee of equality before the law. The Constitutional Court ruled in Kwoyelo's favour, holding that he was entitled to amnesty and should be released. These orders were repeatedly ignored by the government and then stayed by the Supreme Court to allow the DPP to appeal the ruling to the Supreme Court itself. Subsequently, it took nearly three years before the Supreme Court ruled in favour of the DPP, and Kwoyelo's case is now once again set to commence before the ICD in 2016. During this entire time, Kwoyelo has been sitting in the maximum security Luzira Prison in Kampala.

[130] Interview with Lacen Otinga (Village Chief), Gulu, Uganda, 2 August 2009.
[131] Interview held by Asimakopoulos with Moses Draku (Amnesty Commission), Gulu, Uganda, 20 April 2010.
[132] As Nouwen (2012: 27) explains, this would indicate a revolutionary reinterpretation of the Amnesty Act. In no other case has the DPP argued that crimes committed by an LRA member while part of the rebellion were not covered by the Amnesty Act.

One is left to infer from the above that, although an assemblage has advised and lobbied for the existence of the ICD and the adoption of the ICC Act in the name of complementarity, they have not been able to put effective pressure on the executive powers to implement the verdict of the Constitutional Court or to assure Kwoyelo a fair and speedy trial. All the while, those who do not support prosecuting most former LRA combatants have seen their discursive and institutional powers to contest the dominant legal accountability frame repeatedly undermined.

Conclusion

Kwoyelo's case illustrates that the international criminal justice regime is a global-local arena, in which a variety of actors fight a discursive battle over legitimacy, justification of violence, blame and accountability. By tracing the micro-level dynamics of this process in Uganda, I have highlighted some of the detrimental effects of international efforts to respond to civil war by institutionalizing international criminal law at a domestic level.

The first of these effects concerns how international criminal law's legal categories of prosecution are (inadvertently) presenting President Museveni with a powerful semantic and cognitive (and internationally legitimated) framework, through which to articulate who is to blame for the conflict. As it currently stands, both the ICC and the ICD are prosecuting the LRA only, while allegations of atrocities committed by the government and its security forces have apparently been ignored or overlooked. If this remains the case, these international and domestic international criminal law institutions will continue to be viewed as partial, and as a tool of the powerful, which only serve to reinforce the enduring grievances the Acholi population harbour against the government.

The second effect this article has touched upon relates to procedural fairness in the ICD's application of international criminal law. Prosecuting Kwoyelo while not bringing criminal proceedings against other (more senior) LRA leaders is widely perceived as unequal and grossly unfair treatment. These inconsistencies will hardly serve to strengthen the legitimacy of the ICD. Moreover, it is creating legal uncertainty for those thousands of combatants who have an amnesty certificate, and will likely be followed closely by those who are still active within the LRA.

The third issue pertains to the politics and practice under international criminal law of framing formerly abducted child soldiers who mature into midlevel commanders as 'perpetrators' to be prosecuted. Kwoyelo currently serves as a quintessential example of this and a potential precedent. This article has illustrated that the frames used within international criminal law simplify complex realities into clear-cut categories of 'victim' and 'perpetrator'. In this process, it often obliterates contextual and phenomenological details and the 'grey

areas' arising therefrom. My analysis illustrates that applying an individual 'perpetrator' frame to cases such as that of Kwoyelo does not reflect the struggle various actors within Uganda have in framing the identity and appropriate means of justice for abducted child soldiers who mature into commanders. People in northern Uganda hold Kwoyelo responsible for his actions; however, his accountability is mitigated by the circumstances which gave rise to his 'victim' status. A justice approach that can only produce a simple 'victim'/'perpetrator' or 'guilty'/'innocent' frame provides very little room for the acknowledgement of these extraordinary circumstances.

The possible trial of a midlevel commander at the ICD sends a very strong message that not just the leaders but a wide range of LRA combatants are 'war criminals' who deserve to be punished. Acholi respondents fear that this could affect the legal status, and therefore the social identity, of all those former abductees who have returned to their homes. Rather than removing from society only those most responsible, applying this frame could contribute to the further 'othering' of a much larger segment of society already facing political and economic exclusion. One can argue that instead of domestic prosecution before the ICD, alternative justice approaches should be sought to account for the extraordinary circumstances in which children are forced to become adult perpetrators.

Most importantly, the analysis presented in this article illustrates how an assemblage, including international actors conditioned by their own meta-narratives on the need for complementarity, has had the power to institutionalize legal and judicial reform in Uganda but has not been able to improve government compliance. Meanwhile, those who question the dominant legal accountability frame have seen their power to contest it and/or end state impunity, gradually weakened. This clearly exemplifies the need for 'outsiders' to empirically engage in a critical reflection on the political use and social impact of the international justice regime they promote, either at an international or domestic level. A failure to do so is likely to entrench rather than break through cycles of exclusion, impunity and violence.

Bibliography

Baines, E. (2009) 'Complex Political Perpetrators: Reflections on Dominic Ongwen,' *Journal of Modern African Studies*, vol. 47, no. 2, pp. 163-191.

Bhatia, M. (2005) 'Fighting Words: Naming Terrorists, Bandits, Rebels and Other Violent Actors,' *Third World Quarterly*, vol. 26, no. 1, pp. 5-22.

Branch, A. (2011) 'The Politics of Violence in Acholiland', in: Branch A. (ed.) *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford: Oxford University Press).

Brants, C.H., K. Brants, and L.M. Gould (2013) 'Communicating the ICC: Imagery and Image Building in Uganda,' in: Brants, C., A. Hol, and D. Siegel (eds) *Transitional Justice Images and Memories* (London: Ashgate), pp. 143-160.

Chandler, D. (2006) 'Back to the Future: The Limits of Neo-Wilsonian Ideals of Exporting Democracy,' *Review of International Studies*, vol. 32, no. 3, pp. 475- 494.

Demmers, J. (2012) *Theories of Violent Conflict: An Introduction* (London: Routledge 2012).

Demmers, J. (2014) 'Neoliberal Discourses on Violence: Monstrosity and Rape in Borderland War', in: Ponzanesi, S. (ed.) *Gender, Globalization, and Violence: Postcolonial Conflict Zones* (New York: Routledge).

Demmers, J. (2015) 'Theorizing the Politics of Judgement,' in: Zarkov, D. and H. Hintjens (eds) *Conflict, Peace, Security and Development: Theories and Methodologies (*New York: Routledge).

Dexter, H. (2007) 'New War, Good War and the War on Terror: Explaining, Excusing and Creating Western Neo-Interventionism,' *Development and Change*, vol. 38, no. 6, pp. 1055-1071.

Duffield, M. ([2001] 2014) *Global Governance and the New Wars* (London: Zed Books).

Finnström, S. (2003) *Living in Bad Surroundings: War, History, and Everyday Moments in Northern Uganda* (Durham, NC: Duke University Press).

Finnström, S. (2010) 'An African Hell of Colonial Imagination? The Lord's Resistance Army in Uganda: Another Story,' in: Allen T. and K. Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (London, Zedbooks).

Goede, M. and S. Simon (2013) 'Governing Future Radicals in Europe,' *Antipode*, vol. 45, no. 2, pp. 315-335.

Hazan, P. (2006) 'Measuring the Impact of Punishment and Forgiveness: A Framework for Evaluating Transitional Justice,' *International Review of the Red Cross*, vol. 88, no. 861, pp.19-47.

Human Rights Watch (2010) 'Trial of Death: LRA Atrocities in North-eastern Congo,' March 2010, online available at

http://www.hrw.org/sites/default/files/reports/drc0310webwcover_0.pdf.

International Crisis Group (2008) 'Northern Uganda: The Road to Peace, with or without Kony,' Africa Report no. 146, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/146-northern uganda-the-road-to-peace-with-or-without-kony.aspx.

Jabri, V. (1996) *Discourses on Violence: Conflict Analysis Reconsidered* (Manchester: Manchester University Press).

King, C. (2004) 'The Micropolitics of Social Violence,' *World Politics*, vol. 56, no. 3, pp. 431 455.

Li, T.M. (2007) 'Practices of Assemblage and Community Forest Management,' *Economy And Society*, vol. 36, no. 2, pp. 263-293.

Mallinder, L. (2009) 'Uganda at a Crossroads: Narrowing the Amnesty,' Working Paper Series Beyond Legalism: Amnesties, Transition and Conflict Transformation (Queen's University Belfast).

Moreno-Ocampo, L. (2008) 'Building a Future on Peace and Justice: the International Criminal Court,' in: Ambos, K., J. Large and M. Wierda (eds) *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* (Heidelberg: Springer).

Nouwen, S. and W. Werner (2010) 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan,' *European Journal of International Law*, vol. 21, no. 4, pp. 941-965.

Nouwen, S. (2012) 'The ICC Intervention in Uganda: Which Rule of Law Does it Promote,' Legal Studies Research Paper Series, paper no. 22/2012 (University of Cambridge).

Nouwen, S. (2014) *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge: Cambridge University Press).

Richards, P. (1996) *Fighting for the Rainforest* (Londen: Heinneman).

Tarrow, S. (1998) *Power in Movement: Social Movements, Collective Action and Politics* (Cambridge: Cambridge University Press).

Thoms, O.N.T., J. Ron, and R. Paris (2008) 'The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners,' CIPS Working Paper (University of Ottawa Centre for International Policy Studies).

4 |

THE POLITICS OF PORTRAYAL IN VIOLENT CONFLICT

The Case of the Kony 2012 Campaign

Lauren Gould

in:

Alternatives: Global, Local, Political, 2015, vol. 39, no. 4, pp. 207-230.

Introduction

On 5 March 2012, the United States-based international nongovernmental organisation (INGO) Invisible Children launched a 30-minute social media campaign dubbed *Kony 2012*.[133] Drawing on Internet language and Facebook style, it called upon its audience to cooperate in an 'experiment' that would lead to the arrest of Joseph Kony, the leader of the Ugandan rebel group called the Lord's Resistance Army (LRA). The campaign instantly created a sense that 'we', self-defined as an informed part of 'humanity who has a need to belong and connect', 'can do something [to] stop him, the bad guy', and bring him to justice at the International Criminal Court (ICC).[134] The campaign proposed to 'make Kony famous', just like a Hollywood star. This would, Invisible Children argued, increase global civil society's awareness and thus result in pressure on the United States (US) government to arrest Kony, which in turn would lead the US to sustain its military commitment to the Ugandan government. In order to achieve this goal, the video asked viewers to buy an 'action kit', to make donations, and above all to 'share' the video through social media.

Within a week of its launch, *Kony 2012* was viewed over 76 million times on YouTube.[135] It became the most viral video in history, drawing a massive following among (predominantly) youth not only from the US but from around the globe (Caytas 2012). In 2012 alone, the campaign took in nearly 10,5 million dollars for Invisible Children.[136]

The campaign and the 'humanitarian war' it called for led to a frenzy of media attention. Various actors praised the campaign. Representatives from INGOs admired its ability to simplify a complex reality and distinguish between 'good' and 'evil': 'I believe that the success of the Kony video', wrote the CEO of ChildFund International, 'stems from its ability to plainly, simply and unambiguously articulate both the problem and an actionable solution'.[137] The video was also celebrated for highlighting how the abuse of human rights in Africa is an injustice to the whole of humanity: 'When a warlord continues to kill and torture across a swath of Congo and Central African Republic […] it's a human burden', opined a columnist in *The New York Times.*[138] Finally, many admired Invisible Children's tactical use of social media to increase awareness and mobilise the masses towards online activism. Jay

[133] Invisible Children, 'Kony 2012,' online available at http://invisiblechildren.com/media/videos/program-media/kony-2012/.
[134] Ibid.
[135] Rainee, L., P. Hitlin, M. Jurkowitz, M. Dimock, and S. Neidorf (2012) 'The Viral Kony 2012 Video,' Report (Pew Research Centre), online available at http://www.pewinternet.org/2012/03/15/the-viral-kony-2012-video/.
[136] Invisible Children, 'Financials', online available at http://1lk1xi4cfy0i21okqqtz5u518zo.wpengine.netdna-cdn.com/wp-content/uploads/2012/11/highlights-from-2012.pdf.
[137] Goddard, A. (2012) 'Beyond the Kony Video,' *The Huffington Post,* 4 April 2012, online available at http://www.huffingtonpost.com/anne-goddard/beyond-the-kony-video_b_1403039.html.
[138] Kristof, N. (2012) 'Viral Video, Vicious Warlord,' *The New York Times,* 14 March 2012, online available at http://www.nytimes.com/2012/03/15/opinion/kristof-viral-video-vicious-warlord.html?_r=0.

Carney, the White House Press Secretary, congratulated the 'hundreds of thousands of Americans who have mobilised to this unique crisis of conscience'.[139]

The video's campaign, however, was not universally embraced; in fact, it was severely contested. Ugandan and foreign journalists, activists, and regional specialists were outraged by the oversimplified and outdated nature of the footage presented, asserting that 'the war is much more complex than one man called Joseph Kony'.[140] Furthermore, critics asserted, 'its portrayal of his alleged crimes in northern Uganda are from a bygone era',[141] and 'in the areas where the LRA operates today, residents' main concerns involve the general lack of security—including protection from Ugandan and Congolese army operations. In short *Kony 2012* misses the point'.[142] In addition, it was argued that '[the video] evokes the problematic metaphor of a Western saviour who has come to improve the lives of Africans without any reasonable measure of African input on the matter'(I'Anson and Pfeifer 2013: 50). Others questioned the humanitarian discourse presented in the film, stating, 'Invisible Children's portrayal of the LRA crisis was designed not primarily to make these issues accessible to a wide audience, but to maximise the amount of revenue that would accrue to the agency itself'.[143] Some made more far-reaching claims, stating, 'Invisible Children are "useful idiots" being used by those in the US government who seek to militarise Africa […]'.[144] Finally, a few described the campaign as a form of what was coined as 'slactivism' (slacker activism), saying, 'it suggests to the next generation that one can fight the injustice and evil in "dark Africa" from the comfort of your own home, without any knowledge of the geopolitical causes or local consequences'.[145]

At the core of these debates, one can identify a divide between those who look at *Kony 2012* through different lenses. One is the lens of 'cosmopolitan humanitarianism', through which the campaign is viewed as meaningful solidarity, with its foundations in a type of 'perpetual peace' as imagined by Kant, and more specifically in Habermas's later rendition, 'cosmopolitan order'. Through this lens, a violation of rights in one part of the

[139] 'Joseph Kony 2012: Obama administration congratulates success of the campaign,' *The Telegraph,* 9 March 2012, online available at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/uganda/9132991/Joseph-Kony-2012-Obama-administration-congratulates-success-of-campaign.html.

[140] Kagumire, R. (2012) 'My Response to Kony 2012', *YouTube,* 7 March 2012, online available at https://www.youtube.com/watch?v=KLVY5jBnD-E.

[141] Izama, A. (2012) '#StopKony2012: For most Ugandans Kony's Crimes are from a Bygone Era,' *African Arguments,* 2 March 2012, online available at http://africanarguments.org/2012/03/08/stopkony2012-for-most-ugandans-konys-crimes-are-from-a-bygone-era-by-angelo-izama/.

[142] Schomerus, M., T. Allen, and K. Vlassenroot (2013) 'Kony and the Prospects for Change,' *Foreign Affairs, 12* March 2013, online available at http://www.foreignaffairs.com/articles/137327/mareike-schomerus-tim-allen-and-koen-vlassenroot/kony-2012-and-the-prospects-for-change.

[143] Cavanagh, C.J. (2012) 'Kony 2012 and the Political Economy of Conflict Representation', *The Nordic Africa Institute*, 9 March 9 2012, online available at http://www.nai.uu.se/news/articles/2012/03/09/145947/index.xml.

[144] Branch, A. (2012) 'Dangerous Ignorance: The Hysteria of Kony 2012,' *Al Jazeera,* 12 March 2012, online available at http://www.aljazeera.com/indepth/opinion/2012/03/201231284336601364.html.

[145] Author's translation, see Gould, L. (2012) 'Kony 2012 Vertelt het Halve Verhaal,' *Trouw,* 15 March 2012, online available at http://www.trouw.nl/tr/nl/4496/Buitenland/article/detail/3225746/2012/03/15/Campagne-Kony-2012-vertelt-het-halve-verhaal.dhtml.

world is felt everywhere and calls for a humanitarian intervention in the name of protecting human rights. Others, however, are deeply sceptical and critical of such universal claims and argue, in line with Schmitt, that every argument about values, and about the 'humanitarian war' doctrine, is an exercise of power.[146]

Discussions of 'humanitarianism' and the 'protection of distant others' easily get stuck in this abstract dualism (cosmopolitan humanitarianism versus hegemonic interest). My aim is to look beyond these mutually exclusive understandings, trying thereby to unravel the complex interconnected dynamics between global discourses on conflict, their enactment by various actors, and their local consequences. *Kony 2012* provides an exemplar of how some discourses on violent conflict do not merely describe and characterise contemporary conflict but can also justify and legitimise particular real-world interventions, in this case a military one. For however much the *Kony 2012* campaign may have been contested and criticised, shortly after its release US President Barack Obama announced that he would be continuing military support for AFRICOM, in order to bring this 'madman to justice'.[147] In addition, the African Union (AU) promised to send an international brigade of 5000 troops 'to stop Kony, to stop his atrocities and neutralize this man'.[148]

Informed by a critical discursive approach, this article poses the following four central questions: 1) What discourse on violent conflict did *Kony 2012* reproduce? 2) What military policies and practices have been legitimised in its name? 3) How are these policies and practices playing out locally? and 4) Who has an interest in maintaining *Kony 2012's* signifying discourse? Methodologically, this article draws from a discursive frame analysis of *Kony 2012*; from in-depth interviews with spokespersons from Invisible Children and other INGOs, representatives from the ICC, the advisor to the AU Special Envoy for LRA issues, the PR officer of the Ugandan military, and academics and journalists specialised in the region; and from long-term grassroots fieldwork conducted by the author in Uganda between 2007 and 2015, and during a three-month period in the spring of 2013.[149] Although my findings are tentative, and the need for more micro-level research is evident, this article

---

[146] For an in-depth discussion of Kant's ideas on 'perpetual peace,' Habermas's reformulation in the idea of 'cosmopolitan order', and Schmitt's critique, see Jabri ([2007] 2010: 67-93).

[147] US President Barack Obama (2012) 'Remarks by the President at the United States Holocaust Memorial Museum,' *Homepage of White House Office of the Press Secretary*, 23 April 2012, online available at http://www.whitehouse.gov/the-press-office/2012/04/23/remarks-president-united-states-holocaust-memorial-museum. AFRICOM is the Unites States Africa Command, the military command for Africa established in 2008.

[148] Madeira, F. (2012) 'Press Conference on the LRA,' *United Nation News* Centre, 26 June 2012, online available at http://www.un.org/apps/news/story.asp?NewsID=42331&Cr=LRA&Cr1=#.Uz1W4jnunG5.

[149] Data in Uganda was collected through focus group discussions, in-depth interviews, (participant) observation and reviews of press-reports. Respondents included former LRA combatants, internally displaced people, family members of the deceased, traditional and religious leaders, journalists, Ugandan lawyers, directors and employees of a number of local NGOs and Ugandan military commanders. The collected data was coded, compared and analysed using the digital qualitative analysis program MAX QDA. The data collected in the spring of 2013 was gathered by Thomas Kouveld, a Conflict Studies and Human Rights Masters student at Utrecht University. See Kouveld, T. (2013) 'Cosmopolitan Warmongering in Uganda: A Discursive Approach to Kony 2012' (MA thesis, Utrecht University, 2013).

argues that the *Kony 2012* narrative is tragically disconnected from how an array of local actors frame the violence that took place in Uganda. It also illustrates that the humanitarian intervention promoted in the campaign is having perverse consequences, namely an increase in human rights abuses in central Africa and a declining awareness and funding for the more complex violent realities on the ground.

The critical discursive approach to violent conflict

The critical discursive approach provides an analytical framework to study the complex interconnected relationship between global discourses on violent conflict and their local outcomes. Its core components will be presented here and will stand as a theoretical backdrop to the central questions posed in the remainder of this article.

Drawing on Giddens's (1984) idea of duality of structure, scholars within the critical discursive approach have extensively theorised how discursive and institutional continuities are drawn upon and reproduced by various actors, both 'within' and 'outside' of violent conflict, to give meaning to the violence perpetrated and to legitimate particular responses (Apter 1997; Jabri 1996; Schmidt and Schröder 2001; Demmers 2012). While these scholars offer anecdotal empirical examples to illustrate the validity of this approach, in his article, 'Fighting Words: Naming Terrorist, Bandits, Rebels and Other Violent Actors', Bhatia (2005) systematically illustrates, with numerous empirical examples from the 'Global War on Terror', how naming matters and how certain names are seen to 'hurt' in contemporary violent conflict. He also provides examples of how complex local variations, motives, histories and interrelationships are often overlooked or minimized in favour of dominant classificatory lenses. Bhatia argues that this can have crucial repercussions for the effectiveness of the policies they inform (2005: 8). Yet, aside from a number of empirical studies on the local outcomes of international master narratives on sexual violence in Africa, very few scholars have analysed how dominant discourses on violence play out locally (Baaz and Stern 2010; Turcotte 2011; Autesserre 2012; Douma and Hilhorst 2012). Thus, while the critical discursive approach has theoretically come of age, the field of study lacks empirical grounding, a crucial dialogue between ideas and evidence, which is something this article aims to provide.

At the core of the critical discursive approach to violent conflict lies the assumption that war is, in fact, not an aberration but a social continuity. As Jabri describes in her book *Discourses on Violence*, 'war as a social phenomenon involves individuals, communities, and states and any attempt to uncover its genesis must incorporate the discursive and institutional continuities which render violent conflict a legitimate and widely accepted mode of human conduct' (1996: 1). Discourse, and its ability to authorise, enable and justify particular

policies and practices, is thus believed to be central in the lead up to and continuation of war. Herein, the ability to frame violence, and have that frame accepted by a broader audience, is closely related to power. Certain agents simply have more 'power to define' than others, and can mobilise structures of signification to legitimate their sectional interests. However, as will become clear when discussing how *Kony 2012* plays out locally, discourses on violence are always subject to competition, resistance and reinterpretation, and they generate in their wake counter-discourses that challenge the established order. The critical discursive approach, therefore, tries to identify when people are receptive or resistant to certain discourses. Demmers clarifies that discourses of violence are most likely to become dominant when they are, 'both socially meaningful and politically functional' (2012: 129). Highlighting the crucial relationship among power, discourse and institutional policies and practices, she explains that critical discourse analysis is about '"the politics of portrayal", examining how names and images are made, assigned and disputed, and how this battle at times translates into political and judicial measures and instruments' (2012: 127).

Important for our discussion is that it is not only people in and at war who are engaged in processes of framing and sense-making. So, too, are so-called 'outsiders', including (I)NGOs, donor governments, UN agencies, the ICC, the AU, the World Bank, academics, lawyers, commercial enterprises and military establishments, all of which are referred to collectively by Demmers as the 'conflict industry' (2015). In line with Foucault's concept of substitutability, these actors are themselves subjects whose understandings have been constructed within particular meta-narratives that make them see violent conflict in a particular way, just as much as they are instigators of these meta-narratives. Parties to a conflict, on their part, often appropriate these meta-narratives to garner international support and allies, expand their hold on power and legitimise particular interventions.

From colonial racism, the Cold War ideological standoff, ethno-nationalist conflict, and the War on Terror, different international classificatory lenses have arisen through interaction among an assemblage of actors within the conflict industry. [150] These actors not only define and interpret local incidents of violence but also, importantly, act upon these interpretations (Bhatia 2005: 8). A number of scholars have critically reflected on this close relationship between contemporary classificatory lenses and their role in justifying particular international interventions (Duffield 2002; Dexter 2007; Jabri [2007] 2010; Demmers 2014; Demmers 2015; Duffield 2010; Mamdani 2009). They argue that, with the end of the Cold War, hegemonic discourses have shifted to what Kaldor ([1999] 2012) termed a new war understanding of civil war. New wars are signified as taking place within failed states, blurring lines between crime, warfare and human rights violations, being void of traditional

[150] As Bhatia (2005: 8) explains, each conflict and the actors within are seen through whichever classificatory lens has been recently adopted to analyse violence in the outside world.

war aims, being supported by informal economies, and including a variety of actors from child soldiers, to paramilitaries, to terrorists. Above all, they are viewed as being caused by internal factors and are characterised by mass civilian casualties. As Duffield argues, this creates a 'formative contrast between *borderland* traits of barbarity, excess and irrationality, and *metropolitan* characteristics of civility, restraint and rationality' (2002: 1052). This, in turn, provides the moral cosmopolitan justification for increased Western interventionism in the name of the humanitarian 'protection of distant others', transforming the violence of war into the language of 'rescue'. As will be illustrated in the following section, *Kony 2012* clearly reproduces this global new war and humanitarian war discourse.

These contemporary discourses on conflict and conflict resolution have been increasingly institutionalised in international policies, such as the 2005 United Nations 'Responsibility to Protect' (R2P) initiative and the ICC's Rome Statute. Such prohibitions provide the constraining normative and legal baseline for judging violations of human rights norms and laws of war. Significantly, they also applaud international humanitarian intervention when states themselves do not live up to their obligation to deal with these violations. Both under the UN R2P norm and the ICC's complementarity principle, if a state is defined as 'unable' or 'unwilling' to fulfil its responsibility to 'protect' its citizens or 'prosecute' its war criminals, sovereignty can be temporarily suspended to give way to an international judicial or military humanitarian intervention (termed by Mamdani as the New Humanitarian Order).[151] Often the former (judicial intervention) legitimises the latter (military intervention), as we will see in the frames used in *Kony 2012* and in the realities of the international interventions taking place in Uganda. With regard to these developments, as Jabri points out,

> humanitarian intervention sets the stage for a post-Westphalian international political order that is no longer necessarily based on the sovereignty of states as the baseline of legitimacy, but on the judgment of conduct in relation to the realm of the human and its expression in human rights […] ([2007] 2010: 120-121).

Hence, the power of discourse in the contemporary conflict policy landscape lies in the ability to frame these judgments of conduct, to define what is a 'failed state', who is a 'war criminal', and who is in need of 'rescue'.[152]

Whether these developments are understood as a progressive form of value-led 'post imperialism' or a form of interest-led 'new imperialism', it is safe to say that liberal and cosmopolitan thought, at the very least, provide the discursive and institutional backdrop for

[151] See Mamdani (2009: 272-282)
[152] See for a similar line of reasoning, Demmers (2015).

current social practice and continuation of humanitarian war. This has profound repercussions for the populations targeted. As highlighted by both Bhatia (2005: 8) and Brass (1996: 2), the power to define local incidents of violence, to place them within a specific contemporary classificatory lens such as the new war frame, is removed from but certainly feeds into the local societies in which they occur. This relocation, described here as a 'disconnect', can have tragic repercussions on the day-to-day lives of those targeted.

A number of scholars researching gender violence in Africa illustrate, for example, how international policy narratives on sexual violence in the Democratic Republic of the Congo (DRC) and the Niger Delta have achieved prominence because they provide straightforward explanations for the violence, suggest feasible solutions to it, and resonate with foreign audiences (Baaz and Stern 2010; Turcotte 2011; Autesserre 2012; and Douma and Hilhorst 2012). However, they also demonstrate that these narratives recycle racial stereotypes of the African male as a barbaric, vengeful rapist and obscure the central role of international conditions facilitating such violence. These narratives and the policies they inform have led to local results that clash with their intended purposes, termed by Autesserre as 'perverse consequences'. These include overshadowing awareness of and fundraising for victims of other forms of (structural) abuse. In the DRC, it has also allowed sexual violence to increasingly become a bargaining strategy for various local actors (Autesserre 2012: 216-217).

Informed by these findings, my objective here is to not only analyse how the discourse reproduced in *Kony 2012* has authorised international intervention at a macro-level. I also aim to trace its effect at a micro-level, on the ground, to discern the consequences of its broader discourse, both discursively as well as materially. To do this in a systematic manner, I apply the analytical tool of 'frame analysis', part of the larger field of discourse analysis. Snow and Benford (1992: 136), who adapted Goffman's concept of 'framing' (1974) to the field of social movements theory, argue that organizations (such as Invisible Children) within social movements are deeply involved in naming and interconnecting grievances, constructing larger 'frames' of meaning that resonate with populations' cultural predispositions, and communicating a uniform message to power holders and others. Termed later by Tarrow as 'collective action frames', these frames are understood to 'redefine social conditions as unjust and intolerable with the intention of mobilizing potential participants, which is achieved by making appeals to perceptions of justice and emotionality in the minds of individuals' (1998: 111). Benford and Snow's research (2000: 620) shows that the more culturally believable these collective action frames are, the more credible the framing and the broader its appeal. Applying this analytical model will allow me to identify the core collective action frames within *Kony 2012*. In so doing, I will analyse why they are so socially meaningful and politically functional for some, as well as trace the alternative frames that various others have

developed to challenge Invisible Children's master narrative. All the while, I will reflect on how Invisible Children's broader discourse is playing out in people's day-to-day lives.

Framing *Kony 2012*

In light of its millions of viewers and the revenue it produced, *Kony 2012* has been heralded for its ability to 'mobilise the world'. As Richard, a 26 year-old intimately involved with Invisible Children since his college years explained, 'Invisible Children can be so effective in motivating people because they all share a common understanding of the world, common language, common experience, that you can then use to motivate them'.[153] To understand how Invisible Children spoke to 'the children of our times', we now turn to our first central question: What discourse on the violent conflict in Uganda did *Kony 2012* reproduce, and why was it so socially meaningful to a Western audience?

The first core collective action frame identified by Benford and Snow is the 'diagnostic frame'. It focuses on some event or aspect of life that is troublesome and in need of change (Benford and Snow 2000: 616). The most noticeable diagnostic frame used in *Kony 2012* is the so-called 'injustice frame', which 'identifies the victims of a given injustice and amplifies their victimization' (Benford and Snow 2000: 615). In *Kony 2012,* victimhood is clearly inscribed upon the bodies of the Acholi community in northern Uganda and manifests itself in the person of Jacob Acaye, a former LRA child soldier. Acaye is introduced as 'our friend in Africa', through a series of short video clips and photographs on a Facebook profile page. Scrolling through the timeline, the viewer is presented with his life history, which goes back to 2003, when Invisible Children's Jason Russell, the maker of the film, met Jacob, 'in very different circumstances. He was running for his life'.[154] The smooth, well-known world of digital social media suddenly fades away to confront the viewer with a rediscovery of the borderlands. The footage, shot at night and supported by off-camera lighting, creates a dark and ominous image of the war-torn town of Gulu. The young Jacob tells how he witnessed his brother being killed by the LRA and breaks down in tears. Russell immediately comforts him and tells him, 'It's okay'. Elaborating on his moral urge 'do something', he promises the young boy, 'we are going to do everything that we can to stop them'.[155]

The diagnostic frame also serves to point out who is responsible for the problems at hand — who is the 'enemy' but also, more generally, who is 'with us' and who is 'against us'. It thus engages in both 'adversarial framing' and 'boundary framing' (Benford and Snow

[153] Interview held by Amy Finnegan for her ethnographic research on IC supporters in the US, see Finnegan (2013: 147).
[154] Invisible Children, 'Kony 2012,' online available at http://invisiblechildren.com/media/videos/program-media/kony-2012/.
[155] Ibid.

2000: 616). This is where monstration — the creation of a 'monster' figure — becomes manifest in Invisible Children's discourse. Chambers (2012: 31), who conducted a case study on the monstration of militant Islamist Abu Musab Al Zarqawi, argues that a community always exists in an ongoing, mutual relationship with its monster. It creates it, fears it and seeks to destroy it. The monster in *Kony 2012* is Joseph Kony, top commander of the LRA and wanted by the ICC for numerous war crimes and crimes against humanity. This diagnostic frame is introduced when Russell explains the essence of the LRA conflict to his 4-year-old son, Gavin. With the simplistic narrative of 'good' versus 'evil', accompanied by pictures of Kony and Jacob laid out side-by-side, Kony is identified as the 'the bad guy' who abducts thousands of people 'and makes them shoot and kill other people'.[156] Kony is later portrayed on a poster alongside Osama Bin Laden and Adolf Hitler. His portrayal as monster is finalised with his criminalisation and the de-politicisation of the LRA conflict. Luis Moreno Ocampo, the first ICC Prosecutor argues, 'the criminal here is Kony', and Russell claims, 'as if Kony's crimes aren't bad enough, he is not fighting for any cause, but only to maintain his power'.[157] Kony is thus portrayed as a monstrous, one-dimensional representative of the dark side of human existence, in violation of law and humanity. Chambers highlights that monsters always manifest 'against the law' in the broadest sense and, 'their existence, as living violations, has a primary function *for* law; it draws the circle within which the lawful community of peace, order, and goodness takes shape and retains form' (2012: 31). Moreover, it provokes an irrepressible desire on the part of the law-abiding communities, '[…] to hunt down, destroy, vanquish or in some respect "bring them to justice"' (Chambers 2012: 33).

This brings us to the 'prognostic frame', which presents a solution or plan of action to tackle the problem introduced in the diagnostic frame (Benford and Snow 2000: 616). In the case of *Kony 2012,* the goal is repeated over twenty times: 'Kony must be stopped'. The only way to achieve this, Russell argues, is through military intervention by the Uganda military, backed by the 100 US military advisors stationed in central Africa since late 2011. The military advisors are identified as agents of peace; they are sent in, 'because the people demanded it, not for self-defence, but because it was right'.[158] Their presence, moreover, is considered pivotal. If they leave, 'we' have failed, Russell claims, and Kony can continue his rampage. But the story also warns that the military advisors may be pulled out, 'at any time'. The proposed way to ensure this does not happen is to 'make him famous', thereby pressuring the US government to act. This can be achieved by sharing the video, by buying an 'action kit' and plastering the *Kony 2012* poster on 'every corner' in 'every city' during the Cover the

[156] Invisible Children, 'Kony 2012,' online available at http://invisiblechildren.com/media/videos/program-media/kony-2012/.
[157] Ibid.
[158] Ibid.

Night action of 20 April 2012. The poster symbolises not only the ultimate identification of the monstrous enemy, but also a call to defeat Kony by Western intervention, just as were Osama Bin Laden and Adolf Hitler.

The final core collective action frame identified by Benford and Snow, and dominant throughout *Kony 2012*, is the 'motivational frame', which constitutes a call to collective action. It features notions of collective identity, agency, vocabularies of severity, urgency, efficacy and propriety (Benford and Snow 2000: 617). Invisible Children's constituency is personified in the campaign by groups of young metropolitan adults that are afforded a tremendous amount of agency, from putting up posters to demonstrating or speaking in public about the Ugandan cause. It is argued by Ocampo that we are, 'living in a new world, a Facebook world', in which, 'the people of the world see each other and can protect each other'. It is repeatedly claimed that what we do in life 'defines us' and that 'we' have the power to end the war in Uganda, to change 'the course of human history'. We are also continually reminded that, 'the time is now', but also that, 'time is running out', and that the expiry date of the campaign is December 2012.[159]

This detailed analysis of *Kony 2012* shows, as argued by Bhatia, that discursive representations of violent conflict fulfil at least two functions. They recruit supporters by propagating a concrete 'us' versus 'them' divide, and they justify action through labelling (Bhatia 2005: 12). The campaign clearly reproduces the popular cosmopolitan notion that a violation on one side of the world is felt all over the world. However, instead of diminishing boundaries of inclusion and exclusion, this notion of humanity reinforces a strong discourse of victimisation and of monstration of the 'other'. Kony is diagnosed as the evil monstrous 'other' who, without any political goals, perpetrates human rights abuses against innocent victims. The northern Ugandan peasantry are robbed of self-determination and agency, expected to collectively suffer in silence as a homogenous mass until they are (re)discovered and rescued by 'us', Western agents of peace. This legitimises a humanitarian war that is above politics, an expression of the universal moral responsibility of the law-abiding global community.

This discourse is 'socially meaningful' to a broad Western audience because it creatively combines the contemporary hegemonic new war, cosmopolitanism, and humanitarian war discourses of our time. In addition, it reinforces a familiar Western racialising of African bodies as violent and in need of 'discipline', as repeatedly addressed by post-colonial scholars (Cesaire 1955; Fanon 1963; Valentin-Yves 1994; Mama 1997; and Cooper 2002). More specifically, the campaign reproduces what Finnström (2003: 136) calls the dominant 'official discourse' on the northern Ugandan conflict: the meaningless, criminal

[159] Invisible Children, 'Kony 2012,' online available at http://invisiblechildren.com/media/videos/program-media/kony-2012/.

brutality of the LRA, the innocent child-victims, and the Western Saviour. As Branch (2011: 6) illustrates in his book *Displacing Human Rights,* this discourse has been upheld for years by an assembly of actors and has informed numerous international interventions in northern Uganda. Since 2009, a number of INGO's have shifted the emphasis within this official discourse. They have moved from stressing the need for international humanitarian aid and international criminal law enforcement towards the need for humanitarian military intervention by the US government.[160] Invisible Children has been at the forefront of this discursive shift and 'the high profile Kony 2012 campaign is undoubtedly the most influential example of this trend' (Fisher 2014: 694).

In name of *Kony 2012*

Given that discourses not only describe and characterise but also authorise, enable and justify specific policies and practices, it is important to discern what events followed the Invisible Children's *Kony 2012* campaign and to analyse whether any such events were legitimised through alignment with *Kony 2012's* broader collective action frames. The following important developments will be analysed here: 1) US President Barack Obama's commitment to the continued presence of 100 US military advisors in the region; 2) creation of a Regional Task Force under the leadership of the AU; and 3) expansion of the US's War Crimes Rewards programme to include Kony and two of his military advisors.

On 23 April 2012, less than two months after the *Kony 2012* film was released, President Obama announced that he would continue to commit 100 United States Africa Command (AFRICOM) soldiers to assist in the mission to arrest Kony.[161] In his speech, Obama clearly alluded to Invisible Children, *Kony 2012* and its signifying discourse:

> We are joined today by communities who have made it your mission to prevent atrocities in our times; the museum's committee of conscience, NGOs, faith groups and college students. You have harnessed the tools of the digital age, online maps and satellites, a video, a social media campaign seen by millions. You understand that change comes from the bottom up, from the grassroots.[162]

[160] These INGO include IC, Resolve, Enough, International Crisis Group and Human Rights Watch.
[161] US President Barack Obama (2014) 'Remarks by the President at the United States Holocaust Memorial Museum,' *Homepage of White House Office of the Press Secretary,* 23 April 2012, online available at http://www.whitehouse.gov/the-press-office/2012/04/23/remarks-president-united-states-holocaust-memorial-museum.
[162] US President Barack Obama (2014) 'Remarks by the President at the United States Holocaust Memorial Museum,' *Homepage of White House Office of the Press Secretary,* 23 April 2012, online available at http://www.whitehouse.gov/the-press-office/2012/04/23/remarks-president-united-states-holocaust-memorial-museum.

He continued by drawing on the official discourse on the conflict and reinforcing the *Kony 2012* campaign's injustice and adversarial frames to justify AFRICOM's military presence in Uganda:

> Today, I can announce that our advisers will continue their efforts to bring this madman to justice and to save lives. It's part of our regional strategy to end the scourge that is the LRA and help realize a future where no African child is stolen from its family and no girl is raped and no boy is turned into a child soldier.[163]

The intervention these frames are used to legitimise is a continuation of a practice that has been in place for many years. The 100 AFRICOM soldiers have been deployed in Uganda since October 2011. Their stated objective is to train Ugandan soldiers and to assist the mission through intelligence and advice but not to 'engage LRA forces unless necessary for self-defense'.[164] The groundwork for this mission was laid under the US's LRA Disarmament and Northern Uganda Recovery Act of 2009*,* which was signed into US law in 2010 after intense lobbying by Invisible Children and other INGOs working on the 'LRA issue'. This law calls for, 'increased, comprehensive US efforts to help mitigate and eliminate the threat posed by the LRA to civilians and regional stability', and requires regular official reporting to Congress on how the fight against the LRA is proceeding.[165] The law thus makes the defeat of the LRA part of US foreign policy, though in fact it only further institutionalized a well-established alliance between the US and the Ugandan government. As is discussed later in this article, the US government has been providing the Ugandan government with military aid for its 'war against the LRA' as far back as the period immediately following the September 11, 2001 attacks, and by 2008 AFRICOM had become more directly and actively involved, providing intelligence as well as military advisors in the regional joint military mission Operation Lightning Thunder.[166]

A more significant change in the wake of *Kony 2012* was the establishment of a Regional Task Force (RTF) under the mandate of the AU. This was announced on 23 March

---

[163] US President Barack Obama (2014) 'Remarks by the President at the United States Holocaust Memorial Museum,' *Homepage of White House Office of the Press Secretary,* 23 April 2012, online available at http://www.whitehouse.gov/the-press-office/2012/04/23/remarks-president-united-states-holocaust-memorial-museum.

[164] US President Barack Obama (2014) 'Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate Regarding the Lord's Resistance Army,' *Homepage of White House Office of the Press Secretary*, 11 October 2004, online available at http://www.whitehouse.gov/the-press-office/2011/10/14/letter-president-speaker-house-representatives-and-president-pro-tempore.

[165] Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009, Pub. L. No.111-172 (2010).

[166] Operation Lightning Thunder was a joint intelligence-led military operation led by Uganda, with participation from South Sudan, DRC and CAR and supported by AFRICOM, in which LRA camps in the DRC were attacked. See Van Puijenbroek, J. and N. Plooijer (2009) 'How enlightening is the Thunder?' IKV Pax Christi, pp. 12-13, online available at http://www.paxvoorvrede.nl/media/files/how-enlightning-is-the-thunder.pdf.

2012 during a joint press conference including, among others, Francisco Madeira, the Special Envoy of the AU for LRA issues, and Abou Moussa, the UN Secretary-General's Special Representative and head of the UN Office for Central Africa.[167] Madeira made public there the fact that Uganda, the DRC, Southern Sudan, and the Central African Republic (CAR) had committed to providing 5000 troops for an RTF that would be, 'free to move in all four countries' in order to address the threat of 'Kony and his team'. He further explained that the AU-led RTF would be commanded by Uganda, backed by the UN, and would receive support from the 100 AFRICOM military advisors present in the region.[168] During the press conference, Abou Moussa mentioned *Kony 2012* directly, stating that although the video was controversial, it had been useful and important in increasing international awareness about Kony.[169] Indeed, the plans for an AU-led RTF had been on the table for a long time. In 2009, an action plan had been adopted during a special summit in Tripoli. Thereafter, numerous meetings took place to create a regional brigade that would be able to intervene directly in all LRA-affected countries.[170] However, the idea of a central command with direct operational authority over troops in the entire region met with heavy resistance, especially from the DRC and CAR. These countries distrusted the deployment of Ugandan troops on their territory and argued that they faced threats to their own state security that were more imminent than that of the LRA.[171] Mike Bugason, advisor to the AU Special Envoy on the LRA, explained in a personal interview, 'Invisible Children's campaign, although out-dated, brought the international attention, engagement, and pressure that was needed to launch the RTF two months after the campaing's release'.[172] When asked why the AU wanted to lead the mission, he explained, 'the LRA issue is not a national problem, it is a regional problem, and a regional problem needs regional coordination and therefore the AU is the only suitable institution to lead this mission with the support of the US military'.[173]

Finally, on 3 April 2013, over a year after the release of *Kony 2012*, it was announced

---

[167] 'African countries to launch UN-backed task force against Lord's Resistance Army,' *UN News Centre,* 23 March 2012, online available at http://www.un.org.proxy.library.uu.nl/apps/news/story.asp?NewsID=41627&Cr=LRA&%20Cr1#.UyxEoTlm_G4.

[168] Thus the Ugandan military mission, backed by AFRICOM, would now fall under the mandate of the AU.

[169] 'African countries to launch UN-backed task force against Lord's Resistance Army,' *UN News Centre,* 23 March 2012, online available at http://www.un.org.proxy.library.uu.nl/apps/news/story.asp?NewsID=41627&Cr=LRA&%20Cr1#.UyxEoTlm_G4.

[170] See for an overview of meetings and decisions made: International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, online available at http://www.crisisgroup.org/~/media/files/africa/central-africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

[171] Interview with Mike Bugason (the advisor to the AU Special Envoy for LRA), Brussels, Belgium, 2 October 2013. See also International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, p. 13, online available at http://www.crisisgroup.org/~/media/files/africa/central-africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

[172] Interview with Mike Bugason (the advisor to the AU Special Envoy for LRA), Brussels, Belgium, 2 October 2013.

[173] Interview with Mike Bugason (the advisor to the AU Special Envoy for LRA), Brussels, Belgium, 2 October 2013.

that the US Secretary of State, under the War Crimes Reward Program, would offer up to five million dollars for information leading to the arrests, the transfer, or conviction of three top leaders of the LRA: Joseph Kony, Okot Odhiambo and Dominic Ongwen.[174] This signified the first time that ICC fugitives had been added to the War Crimes Rewards Program list. Only eight days after this announcement, a Google+ online 'hangout' session took place with Stephen Rapp, the US Ambassador-at-Large for War Crimes Issues, Fatou Bensouda, the current ICC prosecutor, Lisa Dougan, Director of Civic Engagement at Invisible Children, and Marc Quaterman, Director of Research at the INGO Enough Project.[175] All participants repeatedly praised each other's institutional work and the move to put Kony on the War Crimes Reward Program as important contributions to international justice and ending impunity. Lisa Dougan thanked the thousands of activists, 'who were lobbying their members of Congress to see the passage of legislation that enabled this extension'.[176] The mere fact that both the ICC prosecutor and the ambassador participated in this 30-minute online conversation alongside Invisible Children illustrates how willing both actors were to embrace Invisible Children's collective action frames to justify their policies. Ambassador Rapp relayed that the five million dollar reward would help the US military 'chase Kony, bring him in and neutralize the LRA', and would send out 'a message that there will be accountability for mass atrocities, that there are consequences'.[177] Marc Quaterman did briefly mention that the US itself is not participant in the ICC, though the Obama administration is clearly changing its approach to the ICC in contrast to the Bush administration, which rejected the ICC outright and tried to persuade other nations to follow suit.[178] The Obama administration 'is prepared to listen and to work with' the ICC, which may 'involve diplomatic or political efforts; it could involve other things', although the US is not prepared to ratify the treaty that established the court.[179] The mission against the LRA and the five million dollar reward symbolize these new 'efforts'. When questioned about the apparent paradox in this new collaboration, Gilbert Bitti, a Senior Legal Adviser at the ICC stated, 'in some circumstances your biggest enemy becomes your best friend, you take what you can get and admit there is

[174] Rapp, S.J. and D.Y. Yamamoto (2013) 'Expansion of the War Crimes Reward Program,' *Homepage U.S. Department of State*, 3 April 2013, online available at http://www.state.gov/j/gcj/us_releases/remarks/2013/207031.htm.

[175] Google+ Hangout sessions allow for up to ten people to engage in a live video call. See for this session 'Ambassador Stephan Rapp Google+ Hangout on War Crimes Issue,' *YouTube,* 10 April 2013, online available at https://www.youtube.com/watch?v=KWlp6FtVfP0.

[176] Ibid.

[177] Ibid.

[178] In 1998, the Clinton administration signed the Rome Statute that established the court but did not refer the treaty to the US Congress for the required ratification, so the US did not become a participant or 'party' in the court. In 2002, President George W. Bush retreated further, informing the ICC that the US was withdrawing its original signature, and many members of the US Congress are still vigorously opposed to US participation in the ICC.

[179] Amanpour, C. (2010) 'Seeking Global Justice, Transcripts,' *CNN Transcripts*, 25 March 2010, online available at http://transcripts.cnn.com/TRANSCRIPTS/1003/24/ampr.01.html.

injustice in the ICC's selection process'.[180]

From the above we can conclude that an assemblage has been keen to further embrace and reinforce Invisible Children's monstration of Kony and its plea for a humanitarian war, ostensibly to protect the rights of 'others', so as to legitimise a number of key policies and practices. This has strengthened particular transnational alliances among Invisible Children, the ICC, the US, the Ugandan government, and the AU. But do these 'others', who are meant to be protected by this alliance, actually embrace Invisible Children's framing of their local reality? And what consequences have the above developments had on their day-to-day lived reality?

Playing out locally

First and foremost, it is important to note that while *Kony 2012* gained massive attention in the West, the spread of the movie in Uganda, and especially northern Uganda, was much more marginal. This is partially due to the lack of broadband Internet connection. However, Invisible Children also admits that, unlike the countrywide screening tour in the US, they put, 'little-to-no-effort in spreading the movie in northern Uganda'.[181] Those in Uganda who had no Internet access to it and missed the two organised screenings were out of luck, although some heard about it over the radio. In an interview with Jimmy Otim, the head of the ICC's Outreach Department in Uganda, it became clear that even he had not been informed about the film's release, and knew nothing about the former prosecutor's participation in the campaign. Nonetheless, Otim claimed that northern Ugandans were very pleased with the movie, though he had not gauged the local reactions directly.[182] This is an example of how a global cosmopolitan narrative can 'target' an entire population, despite them having very little knowledge of its existence.

Ugandan respondents who had seen the movie, including journalists, NGO representatives and Ugandan lawyers, all stressed that it presents out-dated images. The video uses footage from 2003 to show the threat of LRA violence, presenting northern Uganda as a region torn by war. However, since the LRA moved out of Uganda in 2006, and into neighbouring countries, northern Uganda has experienced a peaceful period of rebuilding and growth (Allen et al. 2010). Several respondents therefore questioned Invisible Children's intentions in presenting these images now. As a Ugandan journalist explained, 'how can this thing come out, when Kony was here six years ago? […] These guys, for them, they just want

[180] Communication with Gilbert Bitti (Senior Legal Adviser to the Pre-Trial Division ICC), The Hague, The Netherlands, 3 October 2013.
[181] Communication with Lisa Dougan (Director of Civic Engagement IC), The Hague, The Netherlands, 3 October 2013.
[182] Interview with Jimmy Otim (Head of ICC Outreach Department Uganda), Kampala, Uganda, 19 April 2013.

to go and make money, money for their own selfish gain, of course'.[183]

A number of respondents emphasised that the campaign's footage caused painful memories and old fears to resurface, and former LRA combatants were afraid that the images might jeopardise their already fragile position in society. This discourse was prevalent among those who had attended the screening in Lira, organised by the local NGO African Youth Initiative Network (AYINET).[184] They felt further that 'making Kony famous' was very insensitive to the suffering they had endured. Reflecting on the memory of Invisible Children activists wearing *Kony 2012* t-shirts, Victor Ochen, director at AYINET, quotes one of the villagers as saying, '[...] why do you put on this t- shirt, yet I am suffering? Why do you celebrate a terrorist?' Thus the film, and the visual metaphor of the *Kony 2012* posters that advertised it, were met with confusion and hurt, and in the end the screening was stopped when people started throwing rocks at the screen.[185] A similar screening, organised by Invisible Children in Gulu, did not fare much better. The event was documented in an official Invisible Children video, which portrayed a peaceful showing.[186] However, the Acholi Times and a number of my respondents who attended the screening reported that police dispersed an angered crowd with tear gas and live ammunition.[187]

In response to the victims' pleas, Victor Ochen asked representatives of Invisible Children to stop what the Invisible Children called the Cover the Night action, a one-night publicity blitz for the campaign.[188] He conveyed the following about their conversation:

> They insisted about the Cover the Night, and then we asked them, 'Can you explain [to] us why you can't avoid Cover the Night? The victims are saying, "Please don't do it".' They [Invisible Children] said, 'For your sake, we are going to do it.' And that's when I said, 'Okay, fine, if you can't hear the voice of the people, who are saying it hurts us, it creates more injuries, don't do it, then you have an invisible agenda […] then your agenda is different from theirs'.[189]

[183] Interview with Risdel Kasasira (editor at the Daily Monitor), Kampala, Uganda, 24 April 2013.
[184] Interview with Victor Ochen (Director of AYINET), Gulu, Uganda, 17 May 2013.
[185] Reactions to the movie were so emotional that AYINET decided not to continue with the tour. Interview with Victor Ochen (director of AYINET), Gulu, Uganda, 17 May 2013.
[186] Invisible Children, 'Cover the Night: Gulu, UG/ Dungu, DRC', online available at http://invisiblechildren.com/media/videos/program-mobilization/cover-the-night-gulu-ug-dungu-drc/. → Youtube: https://www.youtube.com/watch?v=_vzkMF74LlY
[187] Interview with Derek Kibisi (Journalist and Film Producer), Kampala, Uganda, 9 January 2015. See also Okumu, D.L., A. Moses, and S. Lawino (2012) 'Kony Screening in Gulu Leaves One Dead and Many Injured,' *Acholi Times*, 16 April 2012, online available at http://www.acholitimes.com/index.php/8-acholi-news/154-kony-2012-screening-in-gulu-leaves-one-dead-and-many-injured.
[188] For the Cover the Night action, Invisible Children called upon its supporters to plaster Kony 2012 posters 'on every corner, in every city' during the night of April 20, 2012.
[189] Interview with Victor Ochen (Director of AYINET), Gulu, Uganda, May 17, 2013.

In addition to the evident discomfort and, at times, outrage triggered by Invisible Children's injustice frame, many of my Acholi respondents were equally upset that war crimes committed by the Ugandan military were entirely left out of the *Kony 2012* narrative. This shows how a very different adversarial frame exists locally. From the start of the protracted conflict in 1987, many Acholis, as well as human rights organisations, have accused the Ugandan government and its army of rape, beatings and extrajudicial killings. Moreover, from 1996 onwards the government forced, often violently, the civilian population into so-called 'protected camps'. Civilians found outside of these camps after curfew were often abused by soldiers. And at the height of the conflict, as many as 1000 people per week died in these camps due to the crowded, miserable living conditions[190] — a much higher death rate than from LRA violence. However, none of this is included in *Kony 2012*. In fact, research has repeatedly shown that the ICC's arrest warrants against the LRA top commanders – a key legitimising frame in *Kony 2012* – are perceived as highly partial by the Acholi population precisely because the prosecutor did not investigate the crimes committed by the Ugandan military.[191]

This alternative local adversarial frame (which includes both the LRA and state actors) partially explains people's mixed reactions to the prognostic frame presented by Invisible Children. While an array of my respondents expressed support for Kony's eventual arrest and prosecution, answers varied immensely when it came to questions of when, by whom, and how. Notably, war-affected rural respondents expressed optimism and high expectations about the collaboration between the US and the AU to arrest Kony. They believed that the US's military and technical support will help capture Kony, something they felt was important to ensure that the LRA does not return to northern Uganda. Yet, these same respondents also expressed that this was not their highest priority; rebuilding their lives and access to healthcare and education were given precedence. When questioned about the War Crimes Reward Program, an Acholi lawyer reiterated this sentiment, stating, 'the five million dollar bounty would better be spent on rebuilding the lives of the victims. Is Kony really that elusive that you need a bounty?'[192]

War-affected respondents were especially sceptical about international support to the Ugandan government and its military in the mission to 'hunt down Kony'. As stated by one respondent, 'the government of Uganda are not the right people; they are not the right people

[190] Human Rights Watch (2005) 'Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda', September 2005, online available at https://www.hrw.org/report/2005/09/20/uprooted-and-forgotten/impunity-and-human-rights-abuses-northern-uganda.

[191] Previous research on the image of the ICC among northern Ugandans repeatedly shows that its legitimacy has been severely undermined due to the initial openly collaborative relationship between the previous ICC prosecutor and President Museveni and the prosecutor's failure to investigate crimes committed by the Ugandan military. See Brants et al. (2013).

[192] Interview with confidential source (Directorate of Public Prosecution, Uganda), Utrecht, The Netherlands, 9 August 2013.

to arrest Kony […] because the government - they also contributed to what is this war'.[193] Not only is the Ugandan government perceived as a party to the conflict but, in the respondents' view, the alliance between the international community and the Ugandan government has thus far yielded little success in bringing the war to a formal end or Kony to justice. For many, Museveni's 2003 self-referral of the 'LRA situation' to the ICC, and the subsequent arrest warrants against the LRA in 2005, gave Kony and his top commanders little incentive to lay down their weapons and return from the bush. As such, these actions were seen as obstacles towards achieving peace during the locally supported 2006-2008 peace negotiations (Brants et al. 2013: 156). Instead, many local as well as foreign actors believed that Museveni's self-referral was not so much a call to 'universal justice' as a political tool to portray the government's opponent as an 'enemy of mankind'. This, in turn, cleared the way for the government's preferred militarism in the region by providing international legitimacy and support in the name of 'enforcing international law' (Nouwen and Werner 2010; Branch 2007). Indeed, since the start of the conflict, Museveni has often pulled out of peace negotiations prematurely and has vigorously promoted a military solution to the 'LRA issue', including missions such as Operation Iron Fist (2002), Iron Fist II (2004) and Operation Lightning Thunder (2008)— a strategy that has shown, as yet, no success in definitively defeating the LRA, and that has regularly led to mass scale LRA retaliation against civilians (Fisher 2014: 690-691). For example, the joint regional Operation Lightening Thunder (2008-2009), led by Uganda and supported by AFRICOM, saw Kony escape unharmed only to later launch a series of attacks killing over 865 civilians in the DRC and South Sudan.[194] As Branch (2007: 228) observes, neither Uganda nor the US was held accountable for leaving these civilians unprotected or for the subsequent instability, insecurity and militarisation of the communities affected. Advocating for a Ugandan military solution, supported by the US, was therefore a very unpopular prognostic frame among my northern Ugandan respondents; it accomplished nothing more than reminding them of decades of suffering, during which one military attempt after another failed. Disillusioned by these efforts, the Archbishop of Gulu argued, 'instead of relying on military intervention, let us redouble our efforts to engage in dialogue'.[195]

The military intervention *Kony 2012* promotes also seems to be having perverse consequences in neighbouring countries. Recent reports by regional specialists, and even Invisible Children itself, demonstrate that Invisible Children's *Kony 2012* discourse not only does not match current realities on the ground, but also contributes to a worsening in local

[193] Interview with confidential source (community member), Awach, Gulu, Uganda, 21 March 2013.
[194] Human Rights Watch (2010) 'Trial of Death: LRA Atrocities in North-eastern Congo,' March 2010, p. 5, online available at http://www.hrw.org/sites/default/files/reports/drc0310webwcover_0.pdf.
[195] Interview with John Baptist Odama (Arch Bishop, Gulu, Uganda, 7 January 2015.

security dynamics in the regions in which the LRA continues to operate.[196]

The last major reported LRA attacks were in retaliation for Operation Lightning Thunder, with a December 2009 massacre in Makambo, DRC, killing at least 321 people.[197] After 2010, however, the level of LRA violence and abductions declined dramatically, reaching an all-time low in 2012, when *Kony 2012* was released (Branch 2012: 161). Since then, the LRA has counted only an estimated 250 armed fighters, operating in vast areas in the DRC and the CAR, and in a small enclave in South Sudan, but not in northern Uganda. Their trademark attacks became much smaller scale and much less frequent (Titeca and Costeur 2015: 9). In its 2013 Annual Security Report, even Invisible Children defines the LRA as '[a] group whose modus operandi resembles that of common bandits', a far cry from the monstrous war criminals they were made out to be just a year earlier in *Kony 2012*.[198]

Conversely, the current mission to 'hunt down Kony' has led to a sharp militarisation of the entire region, with the presence of many armed actors publically justified exclusively in terms of the fight against the LRA. From 2012 until the time of this writing, the Congolese army, backed by the UN mission in DRC, has continued its counter-LRA strategies in affected areas in the DRC. Concurrently, the AU RTF, with the support of AFRICOM, has operated sporadically in all LRA-affected countries – CAR, DRC, and South Sudan. The soldiers' presence there has, to a certain extent, deterred and degraded the LRA. For example, in 2013, Invisible Children reported that several LRA camps were destroyed and 16 of its estimated 250 combatants were killed or captured while another 16 defected.[199] In August 2014, LRA top commander Dominic Ongwen released 74 women and children abductees, and in January 2015, he surrendered in CAR.[200] Despite these gains, however, overall the AU's

[196] Considering that I have not done field research myself in the DRC, CAR or South Sudan, I predominantly base my findings in this section on the field research conducted by regional experts Kristof Titeca and Koen Vlassenroot. Titeca is a postdoctoral fellow from the Research Foundation – Flanders (FWO), based at the Institute of Development and Management (University of Antwerp) and the Conflict Research Group (University of Ghent). Vlassenroot is a Professor in the Conflict Research Group at the University of Ghent. Both have done extensive research on the LRA in both Uganda as well as the DRC. My information is drawn from their presentations, published articles and a personal interview with Titeca (University of Antwerp and Ghent), Utrecht, The Netherlands, 5 June 2013. Information is also drawn from The Resolve and Invisible Children (2013) 'LRA Crisis Tracker, Annual Security Brief: January-December 2013', online available at http://reports.lracrisistracker.com/pdf/2013-A-LRA-Crisis-Tracker-Annual-Brief.pdf and The Resolve and Invisible Children (2014) 'LRA Crisis Tracker, Mid-Year 2014 Security Brief: January-June 2014', online available at http://reports.lracrisistracker.com/en/midyear-2014/. The LRA Crisis Tracker collects, analyses and digitally presents data concerning LRA incidents, including attacks, abductions and killings in LRA affected areas.

[197] Human Rights Watch (2010) 'Trial of Death: LRA Atrocities in North-eastern Congo', March 2010, p. 18, online available at http://www.hrw.org/sites/default/files/reports/drc0310webwcover_0.pdf.

[198] The Resolve and Invisible Children (2013) 'LRA Crisis Tracker, Annual Security Brief: January-December 2013', online available at http://reports.lracrisistracker.com/pdf/2013-A-LRA-Crisis-Tracker-Annual-Brief.pdf.

[199] The Resolve and Invisible Children (2013) 'LRA Crisis Tracker, Annual Security Brief: January-December 2013', online available at http://reports.lracrisistracker.com/pdf/2013-A-LRA-Crisis-Tracker-Annual-Brief.pdf.

[200] Interview with Lacambel (Radio presenter Mega FM), Gulu, Uganda, 7 January 2015. Although an in-depth discussion of Dominic Ongwen's case falls outside the scope of the present analysis as he surrendered at the time of publication, his surrender, and subsequent referral to the ICC, raise a number of important questions that beg for further research. Although his surrender is obviously a symbolic event and will be used to justify further military intervention and will likely stand to improve the ICC's legitimacy, a number of things remain unclear. First, was his surrender induced through military pressure or the local 'Come Home' radio messages or even his deteriorating

military successes have been very limited. This is partly due to regional issues that have hampered its operations. For example, Ugandan troops are still not permitted on DRC soil due to an ongoing lack of trust. Congolese and South Sudanese troops were inactive during the first half of 2013 due to insufficient supplies. A Ugandan contingent (1000 soldiers) remained idle between March and October 2013 in CAR after a coup there. Currently, all South Sudanese troops have withdrawn due to the outbreak of civil war in South Sudan, and some of the Ugandan RTF troops have been redeployed to support the South Sudanese President Kiir in this internal struggle.[201] In light of these military deficiencies, peace activists in Gulu, including the local public relations manager for Invisible Children, claim that recent LRA defections are not primarily due to any pressure exerted by the AU military campaign but rather to the messages broadcasted on the local 'Come Home' radio programme.[202]

As the AU military campaigns remain to a large extent ineffective as it battles to overcome deep-seated regional divisions, various actors are taking advantage of the militarisation of the region and the international focus on the LRA. In some cases, the very soldiers who have been deployed to fight the LRA and protect civilians are reportedly posing a major threat to the population. For years, the Ugandan military has been renowned for its human rights abuses against civilians across its borders. Discussing its violations in Sudan, Schomerus concludes 'continued operations of the UPDF outside its borders recreate the same problems they purport to be fighting: abuses of civilians' (2012: 124). Moreover, it has been reported that Congolese soldiers stationed in LRA-affected areas have done little to protect the civilian population and have in fact committed more violations (including looting, sexual violence, murder and arrest) in comparison to presumed attacks carried out by the LRA (Titeca and Costeur 2015: 20).[203] The word 'presumed' here refers to another major security issue, namely that an array of actors, including bandits, poachers, armed groups and again soldiers, have allegedly been disguising themselves and the style of their attacks to make it appear that they are LRA. This has been done in order to not only scare the local population

relationship with Joseph Kony? Second, is his surrender a major setback for the LRA, considering the current fragmented nature of the LRA and Ongwen's ostracisation by Kony. Finally, will the victims in Acholi-land support him being brought to the ICC, considering he was abducted at the age of ten and many Acholi respondents I spoke to just after his surrender argued that he should be give amnesty and used as an example to persuade the remaining LRA commanders to lay down their weapons. See the Introduction of this dissertation for a more elaborate discussion of Ongwen's case.

[201] Interview with confidential source (UPDF Commander), Gulu, Uganda, 6 January 2015.

[202] Mega FM has been broadcasting the 'Come Home' radio program for over a decade. Therein, LRA combatants are ensured that they will be welcomed home by the broader community and will receive blanket amnesty under the Ugandan Amnesty Act. A LRA commander who returned less than a year ago, after being in bush for over 15 years, confirmed that it was these messages that inspired him to come home. Interview with confidential source (former LRA Commander), Gulu, Uganda, 7 January 2015.

[203] See also The Resolve and Invisible Children (2014) 'LRA Crisis Tracker, Mid-Year 2014 Security Brief: January-June 2014,' online available at http://reports.lracrisistracker.com/en/midyear-2014/.

into submission and facilitate looting, but also to misdirect blame to the LRA.[204]

The *Kony 2012* discourse obscures these and other threats, such as violent rebellions in the DRC and CAR, and civil unrest in South Sudan. Moreover, it is making it harder for local humanitarian organisations to rally support for a comprehensive approach. Regional specialist Titeca highlights that humanitarian actors increasingly have to emphasise the LRA in their programmes in order to raise funds and,

> as a result, a number of programmes were implemented which were specifically targeted towards LRA-effects, but – in a situation of strongly reduced LRA attacks – had relatively little results, while the increased attacks and dangers of other actors were not sufficiently addressed.[205]

Fellow regional specialist Professor Vlassenroot concluded the following at an international conference in The Hague entitled 'The Lord's Resistance Army Conflict: Where State Security and Human Security Meet': 'The number of attacks conducted by the LRA and the number of attacks conducted by other forces stationed in the area equals each other […] reducing the problem to a LRA threat and reducing the solution to a military response is a major risk we are taking'.[206]

Maintaining *Kony 2012*'s signifying discourse

In light of the ongoing unsuccessful counter-LRA operations and the current dwindling 'threat' of the LRA in relation to much more pressing security issues in the region, several of my respondents, as well as Ugandan and foreign academics and political journalists, have questioned why an assemblage is so keen to reinforce Invisible Children's signifying discourse and push for a military solution to the 'LRA issue'.

Invisible Children – The *Kony 2012* campaign's new war depiction of the Ugandan conflict in terms of mass of human rights abuses against helpless child victims by a cynical war criminal is used by Invisible Children to justify why they, as part of global civil society,

[204] As representatives of IC and The Resolve mention in their Annual Security Brief, this makes it much more difficult for protection actors to identify perpetrators. The Resolve and Invisible Children (2014) 'LRA Crisis Tracker, Mid-Year 2014 Security Brief: January-June 2014,' online available at http://reports.lracrisistracker.com/en/midyear-2014/. This was also confirmed in an interview with Kristof Titeca (University of Antwerp and Ghent), Utrecht, The Netherlands, 5 June 2013. See also Titeca, K. (2014) 'The (LRA) conflict: Beyond the LRA Lobby and the Hunt for Kony and Towards Civilian Protection,' *African Arguments*, 17 May 2013, online available at http://africanarguments.org/2013/05/17/the-lra-conflict-beyond-the-lra-lobby-the-hunt-for-kony-and-towards-civilian-protection-by-kristof-titeca/.

[205] Titeca, K. (2014) 'The (LRA) conflict: Beyond the LRA Lobby and the Hunt for Kony and Towards Civilian Protection,' *African Arguments*, 17 May 2013, online available at http://africanarguments.org/2013/05/17/the-lra-conflict-beyond-the-lra-lobby-the-hunt-for-kony-and-towards-civilian-protection-by-kristof-titeca/.

[206] Vlassenroot, K. (2013) 'Regional Tendencies, Governance in a Non Government Zone and Options', speech given at Dutch Ministry of Foreign Affairs, The Hague, The Netherlands, 3 October 2013.

can claim rights on behalf of others. Moreover, as Fisher (2014) illustrates, Invisible Children is much more likely to achieve one of its main goals 'to influence political leaders to adopt our proposals', if their recommendations are in line with the political interests of the policy makers they are lobbying. As explained below, rallying for a military solution is clearly aligned with the interests of both the Ugandan and the US government. Over the years, this has allowed Invisible Children to gain access to and build a close alliance with both administrations (Fisher 2014).

ICC – Faced with the reality that many state parties have failed to deliver indicted war criminals to the ICC, the Office of the Prosecutor has changed its approach to the US in recent years. It has gone from merely trying to avoid US condemnation towards actively seeking collaboration with the Obama administration to enforce its arrest warrants. As the special advisor to the prosecutor, Beatrice Le Fraper Du Hellen, stated in an interview with the CNN:

> We have our shopping list ready of requests for the American Government. The American Government first has to lead on one particular issue: the arrest of sought criminals. President al-Bashir, Joseph Kony in Uganda, Bosco Ntaganda, the 'Terminator in the Congo' - all those people have arrest warrants against them, arrest warrants issued by the ICC judges, and they need to be arrested now.[207]

Being featured in *Kony 2012* and vying for US military intervention is the discursive embodiment of this newfound approach by the ICC.[208]

Museveni regime – With regard to the government of Uganda, over the years my respondents have often reiterated, 'If Museveni truly wanted to bring this war to an end, he would have done so a long time ago'.[209] Critics argue that Museveni instead has actively maintained the image of the 'LRA threat' in need of military defeat, especially vis-a-vis the US government. This has offered Musaveni a number of benefits. On the international level, it has allowed him to reinvent himself as a key US ally, especially in the wake of 9/11. In return for significant American military aid and diplomatic support for his 'war on terror' against the LRA (in 2001 the LRA was put on the US Terrorist Exclusion List), Museveni has proven to be, 'a valuable and important partner in the worldwide anti-terrorism coalition', now especially in Somalia and Sudan (Fisher 2012). This reputation remains crucial to him in

[207] Amanpour, C. (2010) 'Seeking Global Justice,' *CNN Transcripts*, 25 March 2010, online available at http://transcripts.cnn.com/TRANSCRIPTS/1003/24/ampr.01.html.
[208] In an interview with the legal advisor to the President of the ICC it was confirmed that the ICC supported the prosecutors' participation in the campaign and viewed it as a great success. Interview with Hirad Abtahi (Legal Adviser of the Presidency ICC), The Hague, The Netherlands, 12 June 2013.
[209] Interview with confidential source (Directorate of Public Prosecution in Uganda), Utrecht, The Netherlands, 29 August 2013.

avoiding donor censure and accountability for his worsening democratic and human rights record, as well as corruption (Fisher 2012: 7).[210]

On a regional level, the military solution legitimises sending Ugandan troops into neighbouring countries, where prior interventions have led to massive looting of resources and atrocities against civilians.[211] After the failure of the 2008 Operation Lightening Thunder, for example, an informal agreement permitted a few Ugandan intelligence groups to stay on Congolese territory, ostensibly to chase Kony. These few troops turned out to be an estimated 3000, which remained in the DRC until 2011. This created tensions with Congolese troops, who accused the Ugandan military of involvement in illicit ivory trade and complicity with the LRA, for example, through staging LRA attacks and supplying the LRA (Titeca and Costeur 2015: 14).[212] Ultimately, the DRC banned Ugandan forces from entering the country.[213] As Titeca explained, 'with the AU's move to combine the RTF forces, the DRC fears that the Ugandan military will use it as an excuse to once again cross its border'.[214] Indeed, ever since discussions about a RTF commenced, the DRC has been pressured to allow Ugandan soldiers back on its territory, with the DRC frequently being referred to as a 'weak state' unable to 'protect its citizens' (Fisher 2014: 693).[215]

At a national level, Museveni's 'counter-LRA operations' earn at least 30 million US dollars annually for the Ugandan military, upon which the president increasingly bases his power.[216] Finally, the 'war on Kony' serves as a pretext for restricting Ugandan civil liberties,

---

[210] See also International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, p. 4, online available at http://www.crisisgroup.org/~/media/files/africa/central-africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

[211] In December 2005, the International Court of Justice found the Ugandan state guilty of killing and torturing civilians, destroying villages and plundering natural resources during its five-year occupation of North-eastern DRC, between 1996 and 2001. Reparations for violating its sovereignty have still not been paid. See 'Case Concerning Armed Activities on the Territory of the Congo, Democratic Republic of the Congo v. Uganda,' judgment, December 19, 2005.

[212] See also International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, p. 6-8, online available at http://www.crisisgroup.org/~/media/files/africa/central-africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

[213] A similar process happened in CAR, where the government first welcomed the Ugandan military to engage in counter-LRA operations. But it increasingly fears that the Ugandan military is profiting from their natural wealth and Bangui has repeatedly ordered for limited Ugandan engagement. See International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, p. 8, online available at http://www.crisisgroup.org/~/media/files/africa/central-africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

[214] Interview with Kristof Titeca (University of Antwerpen and Ghent), Utrecht, The Netherlands, 5 May 2013. See also International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, p. 11-13, online available at http://www.crisisgroup.org/~/media/files/africa/central-africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

[215] Various representatives from the AU, Invisible Children, the UN and EU also reiterated this sentiment during the conference 'The Lord's Resistance Army conflict: Where State Security and Human Security Meet', Brussels, Belgium, 2 October 2013.

[216] This budget is provided for through the LRA Disarmament and Northern Ugandan Recovery Act. In principle this is paid to contractors, but in reality, as regional specialist Kristof Titeca explained, the UPDF makes a list of goods it needs and this is given to military contractors. Interview with Kristof Titeca (University of Antwerpen and Ghent), Utrecht, The Netherlands, 5 May 2013.

harassing the opposition, and rallying southern support (Mwenda 2010: 4).

US government – Similarly, a number of Ugandan as well as foreign actors also question the US's incentive to stop Kony. Even the INGO and ICC representatives with whom I spoke thought it was unlikely that the campaign and the military intervention it calls for will lead to the actual arrest of Kony any time soon because 'too many actors, including the US, have an interest in maintaining the status quo'.[217] Milton Allimadi, Ugandan Publisher of the *Black Star News*, conveyed the following about the financial interests of the US in the region:

> Many sceptics believe that the US has other interests; it is no coincidence that major oil discoveries have been made in the northern part of Uganda, Southern Sudan, parts of the Congo and in Central African Republic. […] Many people believe that the US wants boots on the ground.[218]

Indeed, between 2001-2007 the 'oil rush' of sub-Saharan Africa grew from five to seven percent of world production, accounting for roughly a fifth of US oil imports. This increase has risen most quickly in eastern Africa (Van de Walle 2009: 8; Anderson and Browne 2011: 370). More specifically, by 2009 Tullow Oil discovered an estimated two billion barrels in Uganda (Anderson and Browne 2011: 374). These developments have not gone unnoticed by the US, other Western powers and emerging economies, all of whom continue to seek new energy resources. China, especially, is becoming a, 'formidable competitor for both influence and lucrative contracts on the Continent'.[219] China owns 40 percent of the largest oil producing company in Sudan, and by 2013 it had become the second largest foreign investor in Uganda, after India. According to Daniel Volvan, the Director of the African Security Research Project in Washington, China's and other emerging economies' growing economic and military involvement in Africa has ignited what has come to be known as 'the new scramble for Africa. [And] in response the US has dramatically increased its military presence in Africa and created a new military command—the Africa Command or AFRICOM'.[220] According to its mission statement, AFRICOM, '[…] builds defense

[217] Interview with Joost Pruienbroek (Program Leader Central Africa IKV Pax Christi), Utrecht, The Netherlands, 10 June 2013. This opinion was repeated in a number of interviews. Interview with Frederick de Vlaming (researcher for Amnesty International), Utrecht, The Netherlands, 24 June 2013; Interview with Hirad Abtahi (legal advisor to the President of the ICC), The Hague, The Netherlands, 12 June 2013; Interview with Robert Bodegraven (public relations officer War Child), Amsterdam, 10 June 2013.

[218] Allimadi, M. (2014) 'Kony 2012: Ugandans Criticize Popular Video for Backing U.S. Military Intervention in Central Africa,' *Democracy Now,* 18 April 2012, online available at http://www.democracynow.org/2012/4/18/kony_2012_ugandans_criticize_popular_video.

[219] Mbeki, T. (2012) 'Is Africa There for the Taking?' *New African*, 1 March 2012, online available at http://newafricanmagazine.com/is-africa-there-for-the-taking/.

[220] Volman, D. (2014) 'The Security Implications of Africa's New Status in Global Geopolitics,' African Security Research Project (Washington DC), online available at

capabilities, responds to crisis, and deters and defeats transnational threats in order to advance U.S. national interests and promote regional security, stability, and prosperity'.[221] In more unguarded moments, officials have been more straightforward; Vice-Admiral Robert Moeller, at a conference in 2008, declared that AFRICOM was about preserving, 'the free flow of natural resources from Africa to the global market', while citing terrorism, oil disruption and China as major 'challenges' to US interests.[222] Political journalist Glazebrook argues:

> The small number of US personnel actually working for AFRICOM – approximately 2000 – belies the ambition of the project […]. The US soldiers employed by AFRICOM are not there to fight, but to direct; the great hope is that the African Union's forces can be subordinated to a chain of command headed by AFRICOM.[223]

The 2011 military intervention in Libya was a test case. Preceded by a Security Council referral to the ICC and a UN resolution referring to the R2P norm, it was the first war actually commanded by AFRICOM. It proved remarkably successful, as a significant regional power was destroyed without the loss of a single US or European soldier. But for AFRICOM, the significance of this war went much deeper than that. In taking out Muammar al-Gaddafi, AFRICOM had eliminated one of AFRICOM's fiercest adversaries (Forte 2012: 172). As Demmers explains:

> Gaddafi's regime had been one of repression, human rights abuses, and nepotism since he came to power in 1969; it was only when he became a serious obstacle for western access to African resources as Chairman of the African Union in 2009 - stepping up efforts to build a militarily and financially unified Africa and forcing the US established AFRICOM to house its headquarters not in Africa itself, but in Stuttgart, Germany - that state violence in Libya became the 'responsibility of humanity' (2015: 240)

It was within months of the fall of Tripoli – and in the same month as Gaddafi's execution – that President Obama announced the deployment of the 100 AFRICOM forces to

---

http://ruafrica.rutgers.edu/events/media/0809_media/volman_nai.doc. See also Volman (2007: 739); Le Van (2010: 8); Van de Walle (2009: 8).

[221] United States AFRICOM Command (n.d.) 'About the Command', online available at http://www.africom.mil/about-the-command.

[222] Vice-Admiral Robert Moeller (2008) 'United States Africa Command: Partnership, Security, and Stability', Powerpoint Presentation, Office of the Under Secretary of Defence for Forces Transformation and Resources and the Center for Technology and National Security Policy (National Defence University, Fort McNair), Washington DC, 18 February 2008.

[223] Glazebrook, D. (2012) 'The Imperial Agenda of the US's 'Africa Command,' *The Guardian*, 14 June 2012, online available at http://www.theguardian.com/commentisfree/2012/jun/14/africom-imperial-agenda-marches-on. See also Volman (2007: 739).

Uganda and the three other African countries depicted in *Kony 2012*. Critics argue that this was no coincidence, nor was the US's new willingness to act as the ICC's police force, and that the success of the *Kony 2012* campaign has helped justify US military action across the resource rich terrain. As Branch argues, 'how often does the US government find millions of young Americans pleading that they intervene militarily in a place rich in oil and other resources?'[224]

The AU – It seems that the AU – after losing in Gaddafi one of its most avid supporters and financial backers – is once again willing to collaborate with AFRICOM and is keen to (re)position itself as a regional conflict-solving mechanism.[225] The 'hunt for Kony' provides a perfect opportunity to pursue this course of action under the sympathetic eye of the international community.

The above analysis illustrates how dominant discourses on new war violence and cosmopolitan humanitarianism can be instrumentalised and reinforced by an assemblage that brings together an array of actors, institutions, interests and forms of authority. It also empirically illuminates one of Keen's observations (2008) that war is not always solely about winning but also can have complex economic, political and psychological benefits for some of the actors involved, including Western youths who, from the comfort of their own home, feel like they are saving innocent victims.

Conclusion

There is nothing much new about Invisible Children's representation of violence in Africa; rather, it recycles and reinforces longstanding racialised stereotypes of the African male, and merely places these in a new war frame of civil war. In *Kony 2012*, the roots of the violence in Uganda and its neighbouring countries are diagnosed as residing solely within the character of the 'monstrous' Kony, who has no political goals, engages in criminal human rights abuses against innocent civilian victims, and is a moral threat to the law-abiding global community. By applying this frame, Invisible Children attempts to justify its claiming of rights on behalf of others, while at the same time legitimising a particular type of military intervention, namely, a war fought on humanitarian grounds. This war is portrayed as standing above politics, simply equated with enforcing cosmopolitan norms and laws, which are socially meaningful to 'us' in the West.

[224] Branch, A. (2012) 'Dangerous Ignorance: The Hysteria of Kony 2012,' *Al Jazeera*, 12 March 2012, online available at http://www.aljazeera.com/indepth/opinion/2012/03/201231284336601364.html.
[225] Interview with Kristof Titeca (University of Antwerpen and Ghent), Utrecht, The Netherlands, 5 May 2013. See also International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, p. 12, online available at http://www.crisisgroup.org/~/media/files/africa/central-africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

Looking through the lens of a critical discursive approach, this article illustrates how an assemblage, that brings together an array of actors within the conflict industry, has jumped on the *Kony 2012* bandwagon and is perpetuating a particular narrative in order to sustain a military presence in the region, which has also served to entrench particular forms of transnational governmentality. By tracing some of the micro-level effects of this process, this article offers empirical evidence of how a global discourse on cosmopolitan humanitarianism can become tragically disconnected from local lived realities.

The first disconnect lies between the actors who claim rights on behalf of others, and those others. My data illustrate that the rights claimed on behalf of others — in this case, the civilian population of northern Uganda — by INGO's, international institutions, and 'moral' governments, often stand independent from, and sometimes in opposition to, the agency of those others. In the matter of *Kony 2012,* neither Invisible Children nor representatives of the ICC made an attempt, before or after the campaign's release, to consult with, and to verify whether their reading of the 'victims' reality was socially meaningful to those they claim to represent.

This brings us to the second disconnect, namely between a simplified new war framing of local incidents of violence and its more complex local counterparts. Situated in its historical, social and political contexts, the *Kony 2012* narrative is highly contested based on the social-psychological impact of its injustice frame, and it is rejected (particularly locally) based on its one-sided adversarial frame. Moreover, various actors are believed to have little interest in truly resolving the 'LRA issue'. This latter sentiment was even reiterated by representatives of the ICC and INGOs, who admit that geopolitical interests, above and beyond any cosmopolitan incentives, are more likely to explain the current humanitarian intervention. These interests include improving the effectiveness and international legitimacy of Invisible Children, the ICC and the AU, strengthening the Ugandan government's national power, regional influence and international alliances, and justifying flexible expansion of AFRICOM in the region in order to support US interests there.

Most pressingly, this article highlights that the *Kony 2012* narrative, and the humanitarian war it calls for, is simultaneously disconnected from, but feeding into, local security dynamics. This has led to a number of perverse consequences. Although LRA attacks have decreased and the amount of defectors have risen prior to and after the release of the film, its narrative is leading to a militarisation of the region, where numerous actors conduct crimes, some even masquerading as the LRA. Moreover, the narrative hampers humanitarian organisations by drawing attention and resources away from more pressing security issues. This could ultimately mean that the *Kony 2012* narrative will lead to results that are the complete opposite of Invisible Children's supposed purpose; that is, it could lead to an increase in human rights violations.

Finally, this article demonstrates that the development of cosmopolitan norms and laws favour strong states. Western states and their allies, in this case the US and the government of Uganda, have more power to define the special rights of intervention, while states defined as weak, such as the DRC, are increasingly demoted. Moreover, the party that can portray itself as acting in the name of these norms and laws is not held to the same standards and conditions as the party being pursued. The US, for example, is actively involved in enforcing international criminal law through the ICC but is itself not a participant in the court. Meanwhile, by aligning itself with the US and initially with the ICC, the Ugandan government has been able to evade prosecution of its own war crimes and has increasingly seen its military powers strengthened in the name of 'enforcing international law'.

Whether the humanitarian intervention rallied for in *Kony 2012* is seen as a move toward a new cosmopolitan order, or as a new form of imperialism, or as something in between, my analysis has shown that it has profound consequences not just at a geopolitical level but also at a local level. With reference to the latter, the civilians on the receiving end of this humanitarian war lack the power to define what rights should be protected, by whom, and how, and have no way of holding the intervening actors accountable.

Bibliography

Allen, T., F. Laker, H. Porter, and M. Schomerus (2010) 'Postscript: A Kind of Peace and an Exported War,' in: Allen, T. and K. Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (London: Zedbooks), pp. 279-284.

Anderson, D.M. and A. J. Browne (2011) 'The Politics of Oil in Eastern Africa,' *Journal of Eastern African Studies*, vol. 5, no. 2, pp. 369-410.

Apter, D. (1997) *Legitimization of Violence* (New York: New York University Press).

Autesserre, S. (2012) 'Dangerous Tales: Dominant Narratives on the Congo and their Unintended Consequences,' *African Affairs*, vol. 111, no. 433, pp. 202-222.

Baaz, M.E. and M. Stern (2010) 'The Complexity of Violence: A Critical Analysis of Sexual Violence in the DRC,' Sida Working Paper*,* online available at http://nai.diva-portal.org/smash/get/diva2:319527/FULLTEXT02.pdf.

Benford, R.D. and D.A. Snow (1992) 'Master Frames and Cycles of Protest,' in: Morris, A.D. and C.M. Mueller (eds) *Frontiers in Social Movement Theory* (New Haven: Yale University Press).

Benford, R.D. and D.A. Snow (2000) 'Framing Processes and Social Movements: An Overview and Assessment,' *Annual Review of Sociology*, vol. 26, pp. 611-639.

Bhatia, M. (2005) 'Fighting Words: Naming Terrorists, Bandits, Rebels and Other Violent Actors,' *Third World Quarterly*, vol. 26, no. 1, pp. 5-22.

Branch, A. (2007) 'Uganda's Civil War and the politics of ICC Intervention,' *Ethics and International Affairs,* vol. 21, no. 2, pp. 179-198.

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

Branch, A. (2012) 'The Paradox of Protection: Aligning Against the Lord's Resistance Army,' *African Security*, vol. 5, pp. 160-178.

Brants, C.H., K. Brants, and L.M. Gould (2013) 'Communicating the ICC: Imagery and Image Building in Uganda,' in: Brants, C., A. Hol, and D. Siegel (eds) *Transitional Justice Images and Memories* (London: Ashgate), pp. 143-160.

Brass, P.R. (1996) *Riots and Progroms* (New York: New York University Press).

Caytas, J. (2012) 'Justifying the Kony Wars: Targeted Manufacture and Use of Synthetic Evidence,' *Foreign Policy Journal*, online available at http://www.foreignpolicyjournal.com/2012/11/13/justifying-the-kony-wars-targeted manufacture-and-use-of-synthetic-evidence/

Cesaire, A. (1955) *Discours sur le Colonialisme* (Paris : Editions Présence Africaine).

Chambers, P. (2012) 'Abu Musab Al Zarqawi: The Making and Unmaking of an American Monster (in Baghdad),' *Alternatives: Global, Local, Political,* vol. 37, no. 1, pp. 30

51.

Cooper, F. (2002) *Africa since 1940: The Past of the Present* (Cambridge: Cambridge University Press).

Demmers, J. (2012) *Theories of Violent Conflict: An Introduction* (New York: Routledge).

Demmers, J. (2014) 'Neoliberal Discourses on Violence: Monstrosity and Rape in Borderland War,' in: Ponzanesi, S. (ed.) *Gender, Globalization, and Violence: Postcolonial Conflict Zones* (New York: Routledge).

Demmers, J. (2015) 'Theorizing the Politics of Judgement,' in: Zarkov, D. and H. Hintjens (eds) *Conflict, Peace, Security and Development: Theories and Methodologies* (New York: Routledge), pp. 234-246.

Dexter, H. (2007) 'New War, Good War and the War on Terror: Explaining, Excusing and Creating Western Neo-Interventionism,' *Development and Change,* vol. 38, no. 6, pp. 1055-1071.

Douma, N. and T. Hilhorst (2012) 'Fond de Commerce? Sexual Violence Assistance in the Democratic Republic of the Congo,' Occasional Papers series no. 2 (Disaster Studies, Wageningen University).

Duffield, M. (2002) 'Social Reconstruction and the Radicalization of Development: Aid as a Relation of Global Liberal Governance,' *Development and Change*, vol. 33, no. 5, pp. 1049-1071.

Duffield, M. (2010) 'The Liberal Way of Development and the Development –Security Impasse: Exploring the Global Life Chance Divide,' *Security Dialogue*, vol. 41, no. 1, pp. 53-73.

Fanon, F. (1963) *The Wretched of the Earth* (New York: Grove Press).

Finnegan, F. (2013) 'Beneath Kony 2012: Americans Aligning with Arms and Aiding Others,' *Africa Today*, vol. 59, no. 3, pp. 136-162.

Finnström, S. (2003) *Living in Bad Surroundings: War, History, and Everyday Moments in Northern Uganda* (Durham, NC: Duke University Press).

Fisher, J. (2012) 'Managing Donor Perceptions: Contextualizing Uganda's 2007 Intervention in Somalia,' *African Affairs*, vol. 111, no. 444, pp. 10-19.

Fisher, J. (2014) 'Framing Kony: Uganda's War, Obama's Advisers and the Nature of "Influence" in Western Foreign Policy Making,' *Third World Quarterly*, vol. 35, no. 4, pp. 686-704.

Forte, M.C. (2012) 'Libyan Pan Africanism and Its Discontents,' in: Forte, M.C. (ed.) *Slouching Towards Sirte: NATO's War on Libya and Africa* (Montreal: Baraka Books), pp. 137-185.

Giddens, A. (1984) *The Constitution of Society: Outline of the Theory of Structuration* (Berkeley: University of California Press).

Goffman, E. (1974) *Frame Analysis: An Essay of the Organization of Experience* (New York: Harper Colophon).

Human Rights Watch (2010) 'Trial of Death: LRA Atrocities in North-eastern Congo,' March 2010, online available at http://www.hrw.org/sites/default/files/reports/drc0310webwcover_0.pdf

I'Anson, C. and G. Pfeifer (2013) 'A Critique of Humanitarian Reason: Agency, Power and Privilege,' *Journal of Global Ethics*, vol. 9, no. 1, pp. 49-63.

International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, online available at http://www.crisisgroup.org/~/media/files/africa/central africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

Jabri, V. (1996) *Discourses on Violence* (Manchester: Manchester University Press).

Jabri, V. ([2007] 2010) *War and the Transformation of Global Politics* (New York: Palgrave Macmillan).

Kaldor, M. ([1999] 2012) *New and Old Wars:* Organised Crime in a Global Era (Cambridge: Polity Press).

Keen, D. (2008) *Complex Emergencies* (Cambridge: Polity Press).

Le Van, C. (2010) 'The Political Economy of African Responses to the U.S. Africa Command,' *Africa Today*, vol. 57, no. 1, pp. 3-23.

Mama, A. (1997) *Beyond the Mask, Race, Gender, and Identity* (New York: Routledge).

Mamdani, M. (2009) *Saviors and Survivors, Darfur, Politics and the War on Terror* (London and New York: Verso).

Mwenda, A. (2010) 'Uganda's Politics of Foreign Aid and Violent Conflict: the Political Uses of the LRA Rebellion', in: Allen, T. and K. Vlassenroot (eds) *The Lord's Resistance Army. Myth and Reality* (London and New York: Zed Books), pp. 45-58.

Nouwen, S. and W. Werner (2010) 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan,' *European Journal of International Law*, vol. 21, no. 4, pp. 941-965.

Rainee, L., P. Hitlin, M. Jurkowitz, M. Dimock, and S. Neidorf (2012) 'The Viral Kony 2012 Video,' Report (Pew Research Centre), online available at http://www.pewinternet.org/2012/03/15/the-viral-kony-2012-video/.

Schmidt, B.E. and I.W. Schröder (eds) (2001) *Anthropology of Violence and Conflict* (New York: Routledge).

Tarrow, S. (1998) *Power in Movement: Social Movements, Collective Action and Politics* (Cambridge: Cambridge University Press).

Titeca, K. and T. Costeur (2015) 'An LRA for Everyone: How Different Actors Perceive and Construct the LRA Differently, and How this Leads to Less Effective Interventions,' *African Affairs,* vol. 114, no. 454, pp. 92-114.

Turcotte, H. (2011) 'Contextualizing Petro-Sexual Violence,' *Alternatives: Global, Local, Political,* vol. 36, no. 3, pp. 200-220.

Valentin-Yves, M. (1994) *The Idea of Africa: African Systems of Thought* (Bloomington: Indiana University Press).

Van Puijenbroek, J. and N. Plooijer (2009) 'How enlightening is the Thunder?' IKV Pax Christi, online available at http://www.paxvoorvrede.nl/media/files/how-enlightning is-the-thunder.pdf.

Volman, D. (2007) 'US to Create New Regional Military Command for Africa: AFRICOM,' *Review of African Political Economy*, vol. 34, no. 114 , pp. 737-744.

Volman, D. (2014) 'The Security Implications of Africa's New Status in Global Geopolitics,' African Security Research Project (Washington DC), online available at http://ruafrica.rutgers.edu/events/media/0809_media/volman_nai.doc.

Van de Walle, N. (2009) 'US Policy Towards Africa: The Bush Legacy and The Obama Administration,' *African Affairs*, vol. 109, no. 434, pp. 1-21.

BIBLIOGRAPHY

Aiken, N. (2010) 'Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland,' *The International Journal of Transitional Justice*, vol. 4, no. 2. pp. 166-188.

Akhavan, P. (1998) 'Justice in The Hague, Peace in the Former Yugoslavia? A Commentary on the UN War Crimes Tribunal,' *Human Rights Quarterly*, vol. 20, no. 4, pp. 737 816.

Akhavan, P. (2005) 'Developments at the International Criminal Court: The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court,' *American Journal of International Law*, vol. 99, no. 2, pp. 403-421.

Allen, T. (2006) *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (London: Zed Books).

Allen, T., F. Laker, H. Porter, and M. Schomerus (2010) 'Postscript: A Kind of Peace and an Exported War,' in: Allen, T. and K. Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (London: Zedbooks), pp. 279-284.

Alvarez, J. (2004) 'Trying Hussein: Between Hubris and Hegemony,' *Journal of International Criminal Justice*, vol. 2, no. 2, pp. 319-329.

Anderson, D.M. and A. J. Browne (2011) 'The Politics of Oil in Eastern Africa,' *Journal of Eastern African Studies*, vol. 5, no. 2, pp. 369-410.

Apter, D. (1997) *Legitimization of Violence* (New York: New York University Press).

Archibugi, D. (2004) 'Cosmopolitan Democracy and its Critics,' *European Journal of International Relations*, vol. 10, no. 3, pp. 437-473.

Atkinson, R.R. (1999) *The Roots of Ethnicity: The Origins of the Acholi of Uganda before 1800* (Philadelphia: University of Pennsylvania).

Atkinson, R.R., Lancaster, P., Cakaj, L. and Lacaille, G. (2012) 'Do No Harm: Assessing a Military Approach to the Lord's Resistance Army,' *Journal of Eastern African Studies*, vol. 6, no 2, pp. 371-382.

Autesserre, S. (2012) 'Dangerous Tales: Dominant Narratives on the Congo and their Unintended Consequences,' *African Affairs*, vol. 111, no. 433, pp. 202-222.

Baaz, M.E. and M. Stern (2010) 'The Complexity of Violence: A Critical Analysis of Sexual Violence in the DRC,' Sida Working Paper, online available at http://nai.diva portal.org/smash/get/diva2:319527/FULLTEXT02.pdf.

Bachman (2014) 'Policing Africa: The US military and visions of crafting "good order,"' *Security Dialogue*, vol. 45, no. 2, pp. 119 –136.

Baines, E.K. (2005) 'Roco Wat I Acoli. Restoring Relationships in Acholi-land: Traditional

Approaches to Justice and Reintegration,' (Liu Institute for Global Issues), online available at http://www.ligi.ubc.ca/sites/liu/files/Publications/JRP/15Sept2005_Roco_Wat_I_Acoli.pdf.

Baines, E. (2009), 'Complex Political Perpetrators: Reflections on Dominic Ongwen,' *Journal of Modern African Studies*, vol. 47, no. 2, pp. 163-191.

Belsey C. (2002) *Poststructuralism: A Very Short Introduction* (Oxford: Oxford University Press).

Benford, R.D. and D.A. Snow (1992) 'Master Frames and Cycles of Protest,' in: Morris, A.D. and C.M. Mueller (eds) *Frontiers in Social Movement Theory* (New Haven: Yale University Press).

Benford, R.D. and D.A Snow (2000) 'Framing Processes and Social Movements: An Overview and Assessment,' *Annual Review of Sociology*, vol. 26, pp. 611-639.

Bhatia, M. (2005) 'Fighting Words: Naming Terrorists, Bandits, Rebels and Other Violent Actors,' *Third World Quarterly*, vol. 26, no. 1, pp. 5-22.

Bhatia, M. (2005) 'Fighting Words: Naming Terrorists, Bandits, Rebels and Other Violent Actors', *Third World Quarterly*, vol. 26, no. 1, pp. 5-22.

Bloomfield, D., T. Barnes and L. Huyse (eds) (2003) *Reconciliation After Violent Conflict: A Handbook* (Stockholm: IDEA), pp. 1-178

Boege, V. (2006) *Traditional Approaches to Conflict Transformation: Potentials and Limits* (Berghof Research Center for Constructive Conflict Management).

Boeije, H.R. (2010) *Analysis in Qualitative Research* (London: Sage).

Boraine, A. and S. Valentine (2005) *Transitional Justice and Human Security* (Cape Town: International Centre for Transitional Justice).

Branch, A. (2007) 'Uganda's Civil War and the politics of ICC Intervention,' *Ethics and International Affairs*, vol. 21, no. 2, pp. 179-198.

Branch, A. (2010) 'Exploring the Roots of LRA Violence: Political Crisis and Ethnic Politics in Acholiland,' in: Allen, T. and K. Vlassenrood (eds) *The Lord's Resistance Army: Myth and Reality* (London: Zed Books)

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

Branch, A. (2012) 'The Paradox of Protection: Aligning Against the Lord's Resistance Army,' *African Security,* vol. 5, no. 3-4, pp. 160-178.

Brants, C.H. (2011) 'Universal Crimes, Universal Justice? The Legitimacy of the International Response to Genocide, Crimes against Humanity and War Crimes,' in: Crawford, A. (ed.) *International and Comparative Criminal Justice and Urban Governance: Convergence and Divergence in Global, National and Local Settings*

(Cambridge: Cambridge University Press), pp. 86-109.

Brants, C.H., K. Brants, and L.M. Gould (2013) 'Communicating the ICC: Imagery and Image Building in Uganda,' in: Brants, C., A. Hol, and D. Siegel (eds) *Transitional Justice Images and Memories* (London: Ashgate), pp. 143-160.

Brass, P.R. (1996) *Riots and Progroms* (New York: New York University Press).

Caytas, J. (2012) 'Justifying the Kony Wars: Targeted Manufacture and Use of Synthetic Evidence,' *Foreign Policy Journal*, online available at http://www.foreignpolicyjournal.com/2012/11/13/justifying-the-kony-wars-targeted manufacture-and-use-of-synthetic-evidence/

Cesaire, A. (1955) *Discours sur le Colonialisme* (Paris : Editions Présence Africaine).

Chambers, P. (2012) 'Abu Musab Al Zarqawi: The Making and Unmaking of an American Monster (in Baghdad),' *Alternatives: Global, Local, Political,* vol. 37, no. 1, pp. 30-51.

Chandler, D. (2003) 'The Dynamics of Empire: the Need for a New Analysis of Imperialism,' *Global Dialogue*, vol. 5, no. 1-2, online available at http://www.worlddialogue.org/content.php?id=221.

Chandler, D. (2006) 'Back to the Future: The Limits of Neo-Wilsonian Ideals of Exporting Democracy,' *Review of International Studies,* vol. 32, no. 3, pp. 475-479.

Cooper, F. (2002) *Africa since 1940: The Past of the Present* (Cambridge: Cambridge University Press).

Cramer, C. (2006) *Civil War is Not a Stupid Thing: Accounting for Violence in Developing Countries* (London: Hurst &. Co).

Demmers. J. (2012) *Theories of Violent Conflict: An Introduction* (New York: Routledge).

Demmers, J. (2014) 'Neoliberal Discourses on Violence: Monstrosity and Rape in Borderland War,' in: Ponzanesi, S. (ed.) *Gender, Globalization, and Violence: Postcolonial Conflict Zones* (New York: Routledge).

Demmers, J. (2015) 'Theorizing the Politics of Judgement,' in: Zarkov, D. and H. Hintjens (eds) *Conflict, Peace, Security and Development: Theories and Methodologies (*New York: Routledge), pp. 234-246

Dexter, H. (2007) 'New War, Good War and the War on Terror: Explaining, Excusing and Creating Western Neo-Interventionism,' *Development and Change*, vol. 38, no. 6, pp. 1055-1071.

Dexter, H. (2008) 'The New War on Terror, Cosmopolitanism and the Just War Revival,' *Government and Opposition,* vol. 43, no. 1, pp. 55-78.

Dillon, M. (1998) 'Criminalising Social and political Violence Internationally,' *Millenium*, vol. 27, no. 3, pp. 543-68.

Doom, R. and K. Vlassenroot (1999) 'Kony's Message: A New Koine? The Lords Resistance

Army in Northern Uganda,' *African Affairs*, vol. 98, no. 390, pp. 5–36.

Douma, N. and T. Hilhorst (2012) 'Fond de Commerce? Sexual Violence Assistance in the Democratic Republic of the Congo,' Occasional Papers series no. 2 (Disaster Studies, Wageningen University).

Drumbl, M. (2005) 'Collective Violence and Individual Punishment: The Criminality of Mass Atrocity,' *Northwestern University Law Review*, vol. 99, no. 2, pp. 539-610.

Duffield, M. ([2001] 2014) *Global Governance and the New Wars* (London: Zed Books).

Duffield, M. (2002) 'Social Reconstruction and the Radicalization of Development: Aid as a Relation of Global Liberal Governance,' *Development and Change*, vol. 33, no. 5, pp. 1049-1071.

Duffield, M. (2010) 'The Liberal Way of Development and the Development –Security Impasse: Exploring the Global Life Chance Divide,' *Security Dialogue*, vol. 41, no. 1, pp. 53-73.

Elliot, L. and C. Cheeseman (2002) '*Cosmopolitan Theory*, *Militaries, and the Development of Force',* Working Paper (Canberra, Research School of Pacific and Asian Studies, Australian National University).

Entman, D. (1993) 'Framing: Towards Clarification of a Fractured Paradigm,' *Journal of Communication*, vol. 43, no. 4, pp. 51-59.

Falk, R. (1995) *On Humane Governance* (Cambridge: Polity Press).

Fanon, F. (1963) *The Wretched of the Earth* (New York: Grove Press).

Ferguson, J. and A. Gupta (2002) 'Spatializing States: Towards an Ethnography of Neoliberal Governmentality,' *American Ethnologist*, vol. 29, No. 4, pp. 981-1002.

Ferron, J.D. and D.D. Laitin (2000) 'Violence and the Social Construction of Ethnic Identity,' *International Organisation*, vol. 54, no. 4, pp. 845-877.

Finnegan, F. (2013) 'Beneath Kony 2012: Americans Aligning with Arms and Aiding Others,' *Africa Today*, vol. 59, no. 3, pp. 136-162.

Finnström, S. (2003) *Living in Bad Surroundings: War, History, and Everyday Moments in Northern Uganda* (Durham, NC: Duke University Press).

Finnström, S. (2010) 'An African Hell of Colonial Imagination? The Lord's Resistance Army in Uganda, Another Story,' in: Allen, T. and K. Vlassenrood (eds) *The Lord's Resistance Army: Myth and Reality* (London: Zed Books), pp. 74-89.

Finnström, S. (2012) 'KONY 2012, Military Humanitarianism, and the Magic of Occult Economies' *Africa Spectrum,* vol. 47, no. 2-3, pp. 217-135.

Fisher, J. (2012) 'Managing Donor Perceptions: Contextualizing Uganda's 2007 Intervention in Somalia,' *African Affairs*, vol. 111, no. 444, pp. 10-19.

Fisher, J. (2014) 'Framing Kony: Uganda's War, Obama's Advisers and the Nature of "Influence" in Western Foreign Policy Making,' *Third World Quarterly*, vol. 35, no.

4, pp. 686-704.

Fletcher, L., and H.M. Weinstein (2002) 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,' *Human Rights Quarterly,* vol. 24, no. 3, pp. 573-639.

Fletcher, L., H.M. Weinstein, and J. Rowen (2009) ´Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective,' *Human Rights Quarterly,* vol. 31, no. 1, pp. 163-220.

Forte, M.C. (2012) 'Libyan Pan Africanism and Its Discontents,' in: Forte, M.C. (ed.) *Slouching Towards Sirte: NATO's War on Libya and Africa* (Montreal: Baraka Books), pp. 137-185.

Freeland, V. (2015) 'Rebranding the State: Uganda's Strategic Use of the International Criminal Court,' *Development and Change*, vol. 46, no. 2, pp. 293-319.

Giddens, A. (1984) *The Constitution of Society: Outline of the Theory of Structuration* (Berkeley: University of California Press).

Glaser, B. and A.L. Strauss (1967) *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Chicago: Aldine Publishing Company).

Glaser, B. (1978) *Theoretical Sensitivity* (Mill Valley CA: Sociology Press).

Goede, M. and S. Simon (2013) 'Governing Future Radicals in Europe,' *Antipode*, vol. 45, no. 2, pp. 315-335.

Goffman, E. (1974) *Frame Analysis: An Essay of the Organization of Experience* (New York: Harper Colophon).

Gourevitch, P. (1998) *We Wish to Inform you that Tomorrow we Will be Killed with our Families: Stories from Rwanda* (New York: Farrar, Straus & Giroux).

Habermas, J. (1997) 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight,' in: Bohman, J. and M. Lutz-Bachmann (eds), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge MA and London: MIT Press).

Habermas, J. (1998) *The Inclusion of the Other: Studies in Political Theory*,' Cronin, C. and P. De Greiff, (eds) (Cambridge, Mass: MIT Press, 1998).

Haslam, E. (2004) 'Victim Participation at the International Criminal Court: A Triumph of Hope over Experience?' in: MacGoldrick, D., P. Rowe and E. Donnely (eds) *The Permanent International Criminal Court: Legal and Policy Issues* (Oxfort: Hart), pp. 315-334.

Harlacher, T., F. Xavier Okot, C. Aloyo Obonyo, M. Balthazard, and R.R. Atkinson (2006) *Traditional Ways of Coping in Acholi: Cultural Provisions for Reconciliation and Healing from War* (Kampala: Thomas Harlacher - Caritas Gulu Archdiocese).

Hazan, P. (2006) 'Measuring the Impact of Punishment and Forgiveness: A Framework for Evaluating Transitional Justice,' *International Review of the Red Cross*, vol. 88, no.

861, pp.19-47.

Hazan, P. (2010) *Judging War, Judging History: Behind Truth and Reconciliation* (Stanford, CA: Stanford University Press).

Held, D. (2004) *Global Covenant* (Cambridge: Polity Press).

Hovil, L. and J. R. Quinn (2005) 'Peace First, Justice Later: Traditional Justice in Northern Uganda', Working Paper No. 17 (Refugee Law Project, Faculty of Law, Makerere University, Kampala, Uganda).

Human Rights Watch (2005) 'Unprooted and Forgotten: Impunity and Human Rights Abuses in Northen Uganda,' September 2005, online available at https://www.hrw.org/report/2005/09/20/uprooted-and-forgotten/impunity-and human-rights-abuses-northern-uganda.

Human Rights Watch (2008) 'Counting History: The Landmark International Criminal Court's First Years,' July 2008, online available at https://www.hrw.org/sites/default/files/reports/icc0708webwcover.pdf.

Human Rights Watch (2009) 'Selling Justice Short. Why Accountability Matters for Peace', July 2009, online available at https://www.hrw.org/sites/default/files/reports/ij0709webwcover_1.pdf.

Human Rights Watch (2010) 'Trial of Death: LRA Atrocities in North-eastern Congo,' March 2010, online available at http://www.hrw.org/sites/default/files/reports/drc0310webwcover_0.pdf.

Human Rights Center, International Human Rights Law Clinic, Center for Human Rights University of Sarajevo (2002) 'Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors', online available at https://www.law.berkeley.edu/files/IHRLC/Justice_Accountability_and_Social_Reconstruction.pdf.

I'Anson, C. and G. Pfeifer (2013) 'A Critique of Humanitarian Reason: Agency, Power and Privilege,' *Journal of Global Ethics*, vol. 9, no. 1, pp. 49-63.

International Criminal Court (2010) 'Report of the Court on the Public Information Strategy 2011-2013,' ICC-ASP/9/29, online available at https://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-29-ENG.pdf.

International Crisis Group (2004) 'Northern Uganda: Understanding and Solving the Conflict,' Africa Report no. 77, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/077-northern-uganda-understanding-and-solving-the-conflict.aspx.

International Crisis Group (2008) 'Northern Uganda: The Road to Peace, with or without Kony,' Africa Report no. 146, online available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/146-northern

uganda-the-road-to-peace-with-or-without-kony.aspx.

International Crisis Group (2015) 'The Lord's Resistance Army: End Game?' Africa Report, no. 128, online available at http://www.crisisgroup.org/~/media/files/africa/central africa/182%20the%20lords%20resistance%20army%20--%20end%20game.pdf.

Iversen, K.A. (2009) 'Transitional Justice in Northern Uganda: A Report on Justice in Ongoing Conflict,' (Roskilde University), online available at http://u-landsnyt.dk/sites/default/files/specialeportal/n112959/n112959f2924-thesis_final_30.10.09_1.pdf.

Jabri, V. (1996) *Discourses on Violence: Conflict Analysis Reconsidered* (Manchester: Manchester University Press).

Jabri, V. ([2007] 2010) *War and the Transformation of Global Politics* (New York: Palgrave Macmillan).

Kaldor, M. ([1999] 2012) *New and Old Wars:* Organised Crime in a Global Era (Cambridge: Polity Press).

Kalyvas, S. (2001) '"New" and "Old" Civil Wars: A Valid Distinction?' *World Politics*, no. 54, pp. 99-118.

Kant, I. (1970) *Political Writings,* ed. Reiss, H., trans. Nisbet, H.B. (Cambridge: Cambridge University Press).

Keen, D. (2008) *Complex Emergencies* (Cambridge: Polity Press).

King, C. (2004) 'The Micropolitics of Social Violence,' *World Politics*, vol. 56, no. 3, pp. 431-455.

Komakech, L. and A. Sheff (2009) 'Tradition in Transition: Drawing on the Old to Develop a New Jurisprudence for Dealing with Uganda's Legacy of Violence' (Refugee Law Project, Faculty of Law, Makerere University, Kampala, Uganda).

Lawyer, P. (2002) 'The "Good War" After September 11', *Government and Opposition*, vol. 37, no. 2, pp. 151-172.

Le Van, C. (2010) 'The Political Economy of African Responses to the U.S. Africa Command,' *Africa Today*, vol. 57, no. 1, pp. 3-23.

Li, T.M. (2007) 'Practices of Assemblage and Community Forest Management,' *Economy And Society*, vol. 36, no. 2, pp. 263-293.

Mallinder, L. (2009) 'Uganda at a Crossroads: Narrowing the Amnesty?' Working Paper from the Institute of Criminology and Criminal Justice, Queen's University Belfast.

Mama, A. (1997) *Beyond the Mask, Race, Gender, and Identity* (New York: Routledge).

Mamdani, M. (2009) *Saviors and Survivors, Darfur, Politics and the War on Terror* (London and New York: Verso).

Manokha, I. (2009) 'Foucault's Concept of Power and the Global Discourse of Human Rights,' *Global Society*, vol. 23, no. 4, pp. 429-452.

Moreno-Ocampo, L. (2008) 'Building a Future on Peace and Justice: the International Criminal Court,' in: Ambos, K., J. Large and M. Wierda (eds) *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* (Heidelberg: Springer).

Morris, M. (ed.) (2001) 'The United States and the International Criminal Court,' Special Issue, *Law and Contemporary Problems*, vol. 64, no. 1.

Mwenda, A. (2010) 'Uganda's Politics of Foreign Aid and Violent Conflict: the Political Uses of the LRA Rebellion,' in: Allen, T. and K. Vlassenroot (eds) *The Lord's Resistance Army. Myth and Reality* (London and New York: Zed Books), pp. 45-58.

Nibbe, A.A. (2011) 'The Effects of a Narrative: Humanitarian Aid and Action in the Northern Ugandan Conflict,' vol. 72, no. 8.

Nouwen, S. and W. Werner (2010) 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan,' *European Journal of International Law*, vol. 21, no. 4, pp. 941-965.

Nouwen, S. (2012) 'The ICC Intervention in Uganda: Which Rule of Law Does it Promote,' Legal Studies Research Paper Series, paper no. 22/2012 (University of Cambridge).

Nouwen, S. (2014) *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge: Cambridge University Press).

Ocampo, L.M. (2008) 'Building a Future on Peace and Justice: the International Criminal Court,' in: Ambos, K., J. Large and M. Wierda (eds) *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* (Heidelberg: Springer).

Oduro, F. (2007) *What Do We Understand by 'Reconciliation'? Emerging Definitions of Reconciliation in the Context of Transitional Justice* (Ottowa: International Development Research Center).

Otim, M. and M. Wierda (2010) 'Uganda: Impact of the Rome Statute and the International Criminal Court' (International Center for Transitional Justice), pp. 1-8, online available at https://www.ictj.org/sites/default/files/ICTJ-Uganda-Impact-ICC-2010 English.pdf.

Pham, P., P. Vinck, M. Wierda, E. Stover, and A. Di Giovanni (2005) 'Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda' (International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley).

Pham, P., P. Vinck, E. Stover, A. Moss and M. Wierda (2007) 'When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda' (Human Rights Centre, University of California, Berkeley;

Payson Center for International Development, Tulane University; International Center for Transitional Justice, New York).

Pham, P., P. Vinck, and E. Stover (2007) 'Abducted: The Lord's Resistance Army and the Forced Conscription in Northern Uganda' (Berkeley-Tulane Initiative on Vulnerable Populations), online available at http://www.peacebuildingdata.org/sites/m/pdf/HRC_UgandaAbd_20007.pdf.

Pham, P.N., P. Vinck, D.K. Kinkodi, and H. M. Weinstein (2010) 'Transitional Justice, Public Health, and Social Reconstruction', *Social Science & Medicine*, vol. 70, no. 1, pp. 98-105.

Pham, P, P. Vinck and E. Stover (2010) 'Transition to Peace: A Population-Based Survey on Attitudes about Social Reconstruction and Justice in Northern Uganda' (International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley).

Ragin, C. (1994) *Constructing Social Research* (Thousand Oaks, London, and New Delhi: Pine Forge Press).

Rainee, L., P. Hitlin, M. Jurkowitz, M. Dimock, and S. Neidorf (2012) 'The Viral Kony 2012 Video,' Report (Pew Research Center), online available at http://www.pewinternet.org/2012/03/15/the-viral-kony-2012-video/.

Richards, P. (1996) *Fighting for the Rainforest* (Londen: Heinneman).

Roach, S. (ed.) (2009) *Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court* (Oxford: Oxford University Press).

Schabas, W. (2001) *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press).

Schmitt, C. ([1932] 1996) *The Concept of the Political*, trans. Schwab, G. (Chicago IL: University of Chicago Press).

Schmidt, B.E. and I.W. Schröder (eds) (2001) *Anthropology of Violence and Conflict* (New York: Routledge).

Schomerus, M. (2012) 'They Forget What They Came For: Uganda's Army in Sudan,' *Journal of Eastern African Studies*, vol. 6, no. 1, pp. 124-153.

Shaw, R. (2005) 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone, Special Report no. 130 (U.S. Institute of Peace), online available http://www.usip.org/publications/rethinking-truth-and-reconciliation-commissions-lessons-sierra-leone.

Smith, M.L.R. (2003) 'Guerrillas in the Mist: Reassessing Strategy and Low Intensity Warfare,' *Review of International Studies*, vol. 29, no. 1, pp. 19-38.

Springer, S. (2012) 'Neoliberalism as Discourse: Between Foucauldian Political Economy

and Marxian Poststructuralism,' *Critical Discourse Studies,* vol. 9, no. 2, pp. 133-147.

Tarrow, S. (1998) *Power in Movement: Social Movements, Collective Action and Politics* (Cambridge: Cambridge University Press).

Thoms, O.N.T., J. Ron, and R. Paris (2008) 'The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners,' CIPS Working Paper (University of Ottawa Centre for International Policy Studies).

Titeca, K. and T. Costeur (2015) 'An LRA for Everyone: How Different Actors Perceive and Construct the LRA Differently, and How this Leads to Less Effective Interventions,' *African Affairs,* vol. 114, no. 454, pp. 92-114.

Teitel, R.G. (2002) 'Humanity's Law: Rule of Law for the New Global Politics,' *Cornell International Law Journal*, vol. 35, no. 2, pp. 355-387.

Teitel, R.G. (2011) *Humanity's Law* (Oxford: Oxford University Press).

Turcotte, H. (2011) 'Contextualizing Petro-Sexual Violence,' *Alternatives: Global, Local, Political,* vol. 36, no. 3, pp. 200-220.

Turner, J. (2005) 'Nationalizing International Criminal Law,' *Stanford Journal of International Law*, vol. 41, no. 1, pp. 1-15.

Valentin-Yves, M. (1994) *The Idea of Africa: African Systems of Thought* (Bloomington: Indiana University Press).

Van de Walle, N. (2009) 'US Policy Towards Africa: The Bush Legacy and The Obama Administration,' *African Affairs*, vol. 109, no. 434, pp. 1-21.

Van Puijenbroek, J. and N. Plooijer (2009) 'How enlightening is the Thunder?' IKV Pax Christi, online available at http://www.paxvoorvrede.nl/media/files/how-enlightning is-the-thunder.pdf.

Van Riel, C. (1995) *Principles of Corporate Communication* (London: Prentice Hall).

Volman, D. (2007) 'US to Create New Regional Military Command for Africa: AFRICOM,' *Review of African Political Economy*, vol. 34, no. 114, pp. 737-744.

Volman, D. (2014) 'The Security Implications of Africa's New Status in Global Geopolitics,' African Security Research Project (Washington DC), online available at http://ruafrica.rutgers.edu/events/media/0809_media/volman_nai.doc.

Wimmer, A (2004) 'Introduction: Facing Ethnic Conflicts,' in: Wimmer, A. et al. (eds) *Facing Ethnic Conflicts: Toward a New Realism* (Lanham MD: Rowman & Littlefield).

Yanow, D. (2000) 'Conducting Interpretive Policy Analysis,' Sage University Papers Series on Qualitative Research Methods, vol. 47 (Thousand Oaks, CA: Sage).

Yin, R.K. (2003) *Case Study Research: Design and Methods* (California & London: Sage).

NEDERLANDSE SAMENVATTING

De Mondiale Gerechtigheids-Assemblage

Praktijken van Internationaal Strafrecht in het Noord-Oegandese Conflict

Sinds het begin van de eenentwintigste eeuw werken lokale, nationale en internationale politieke actoren zowel met als tegen elkaar, aan prangende vraagstukken met betrekking tot het definiëren en bereiken van gerechtigheid in het Noord-Oegandese conflict. Tezamen vormen zij een complex en gelaagd 'mondiale gerechtigheids-assemblage'. Dit assemblage bestaat uit vertegenwoordigers van nationale en internationale strafhoven, (donor) overheden, lokale en internationale niet-gouvernementele organisaties (NGO's), agentschappen van de Verenigde Naties (VN), de Europese Unie (EU) en de Afrikaanse Unie (AU). Daarnaast spelen juristen, militaire bevelhebbers en vredesactivisten een belangrijke rol. Zij houden ieder, in samenwerking of tegenspraak, vast aan een bepaald narratief van de langdurige burgeroorlog tussen het Verzetsleger van de Heer, onder leiding van Joseph Kony, en de Oegandese regering. Op basis daarvan benaderen zij het schuld- en verantwoordelijkheidsvraagstuk op hun eigen, specifieke wijze. Ook hun uiteenlopende, institutionele reacties rechtvaardigen zij op grond van dit narratief.

Om de verschillende actoren, belangen en geluiden binnen dit mondiale gerechtigheids-assemblage te beschrijven, te verklaren en te begrijpen, zijn de vier artikelen die de kern van dit proefschrift vormen verbonden tot een coherent geheel. Deze artikelen overstijgen de te simpele scheiding van het lokale en mondiale domein. Zij geven inzicht in hoe de hierboven beschreven verzameling van actoren juridisch en politiek betrokken raakte bij het Noord-Oegandese conflict, uit naam van het internationaal strafrecht. Dit proefschrift bestudeert op een empirische wijze de karakteristieken van dit gerechtigheids-assemblage, en haar lokale consequenties tussen 2005 en 2015. Daarvoor wordt een kritische, discursieve benadering van gewelddadig conflict gehanteerd. Vier hoofdvragen hebben het onderzoek geleid:

1. Welke discoursen, die betrekking hebben op het conflict in Noord-Oeganda, zijn er ontwikkeld en verspreid?
2. Welke van deze discoursen zijn vertaald in juridische en militaire praktijken?
3. Hoe tekenen deze juridische en militaire interventies zich uit op lokaal niveau?
4. Waarom zijn specifieke discoursen en interventies functioneel in het politieke veld, en hoe?

Om deze vragen te beantwoorden heb ik gebruik gemaakt van een interpretatieve epistemologie en een geïntegreerd casestudie ontwerp, dat een hedendaags fenomeen diepgaand en in haar werkelijke context onderzoekt. De analyse-eenheden die zijn ingebed in dit ontwerp zijn individuen, groepen, instituten en sociale interacties. Ik verzamelde data uit bronnen zoals archiefstukken, beleidsdocumenten, diepte-interviews, focusgroepen en observaties. Daarbij hanteerde ik een gefundeerde theoriebenadering voor het verzamelen en analyseren van mijn bewijsmateriaal.

Artikel 1

Het Grensvlak tussen Overgangsjustitie en Verzoening
Een casestudie over Noord-Oeganda

In de nasleep van burgeroorlogen vormen sociale en politieke intergroepsrelaties een complexe en diepgaande uitdaging. Antagonistische intergroepspercepties en interacties blijven vaak voortbestaan, hetgeen de kans op een uitbarsting van geweld in de toekomst vergroot. Een fundamentele vraag die daarom uit iedere burgeroorlog voortvloeit, is: hoe gaan burgers weer over tot samenleven binnen een gezamenlijk nationaal en territoriaal gebied, nadat het geweld is geëindigd? Een antwoord op dit vraagstuk vereist dat de onrechtvaardigheden die hebben plaatsgevonden worden geadresseerd, terwijl er tegelijkertijd moet worden gewerkt aan een nieuwe relatie die men tenminste acceptabel en leefbaar acht. Dit artikel biedt empirisch inzicht in hoe een dergelijk complex proces zich ontvouwt in de nasleep van de burgeroorlog in het noorden van Oeganda.

Als reactie op de langdurende oorlog tussen het Verzetsleger van de Heer en de regering van Oeganda werden talrijke lokale, nationale en internationale interventies en hervormingen op het gebied van overgangsjustitie gestimuleerd en geïmplementeerd. Dit artikel bestudeert specifiek de interventie van het Internationaal Strafhof, de codificatie van traditionele rechtvaardigheidsmechanismen en de oprichting van een *War Crimes Division* van het Oegandese Hooggerechtshof. Het bestudeert de lokale percepties over deze drie mechanismen, om zo inzicht te verkrijgen in de vraag of zij in staat zijn om verzoening te bevorderen.

De analyse geeft inzicht in de complexiteit van het grensvlak tussen een politiek gedreven proces van overgangsjustitie enerzijds, en verzoeningsprocessen anderzijds. Het laat zien dat internationale, nationale en lokale belangen, prioriteiten en werkelijkheden onmetelijk ver van elkaar verwijderd kunnen zijn in de nasleep van een burgeroorlog. Ook toont het aan dat behoeftes tot verzoening, die veelal leven onder bevolkingsgroepen, vaak

over het hoofd worden gezien. Als het terrein van de overgangsrechtspraak verzoening tot een fundamentele doelstelling wil blijven stellen, dan suggereert deze casestudie dat zij zich zal moeten wenden tot enkele mogelijke herzieningen. Zo zou de overgangsjustitie zich bezig dienen te houden met de elementaire kwestie omtrent groepsidentiteit, welke aan de basis ligt van massageweld, en dient zij te onderzoeken hoe collectief vijandschap kan worden getrotseerd. In het geheel bezien illustreert dit artikel dat de timing, de sequentie, de benadering, het implementatieniveau en de onpartijdigheid van de gehanteerde mechanismen van overgangsjustitie van extreem belang zijn. Deze aspecten staan te allen tijde in relatie tot een specifieke context en bepaalde omstandigheden. Dit versterkt de opvatting dat er geen universele benadering is voor het bereiken van verzoening tussen verschillende antagonistische identiteitsgroeperingen in de nasleep van een burgeroorlog. Empirisch onderzoek en contextspecifieke benaderingen zullen daarom van cruciaal belang blijven voor het bepalen van hun succes.

Artikel 2

Het Internationaal Strafhof in Communicatie
Verbeelding en de creatie van beelden in Oeganda

De internationale gemeenschap beantwoordt massale gruweldaden ten tijde van internationale en interne conflicten in toenemende mate met het internationaal strafrecht. De ontwikkeling van deze vorm van strafrecht in de twintigste eeuw resulteerde tot de oprichting van het Internationaal Strafhof. In het vroege, euforische discours van de mondiale gerechtigheids-assemblage werd het Hof gezien als de apotheose van het 'nieuwe paradigma van de rechtsorde'. Haar doelstellingen reikten ver voorbij het slechts beëindigen van straffeloosheid. Maar al gauw werd het Internationaal Strafhof geconfronteerd met scherpe kritiek over haar vergaande doelstellingen en haar gepolitiseerde karakter.

In dit artikel wordt betoogd dat internationale misdaden en het internationaal strafrecht, zoals alle vormen van misdaad en strafrecht, sociale constructies zijn. Hiermee wordt geenszins ontkend dat massale gruweldaden zich voordoen, noch wordt hiermee het lijden van de betrokkenen ontkend. Waar het op wijst, is dat de concretisering van de doelstellingen van het internationaal strafrecht onderdeel is van een sociaal geconstrueerde, betwiste realiteit van tegenstrijdige beelden, definities en verwachtingen.

Voorstanders van het Internationaal Strafhof geloven dat de publiekelijke acceptatie van haar interventies van groot belang is voor de legitimiteit van het Hof. Daarom zijn zij van mening dat het cruciaal is dat zij de kernidentiteit van het Strafhof succesvol communiceren naar een relevant publiek, en betwistingen tegengaan. In dit artikel hebben mijn co-auteurs en

ik dergelijke (contra)communicatie ontrafeld in het specifieke geval van Oeganda, waar het Internationaal Strafhof in 2005 voor het eerst arrestatiebevelen uitbracht ten aanzien van vijf topcommandanten van het Verzetsleger van de Heer.

Met behulp van inzichten uit de (organisatie)communicatietheorie illustreert dit artikel welke beeldvormingsstrategieën werden toegepast in Oeganda en door wie. Tevens werd onderzocht of de strategieën van voorstanders van het Internationaal Strafhof konden concurreren met de interpretaties en verbeeldingen van lokale en andere actoren. Onze conclusie is dat het communiceren over de kernidentiteit van het Internationaal Strafhof – de belichaming van het ideaal – onmogelijk is, juist omdat het Hof altijd in ontkenning dient te zijn van het onvermijdelijke politieke beeld dat zij in de praktijk presenteert.

Artikel 3

De Strijd om Complementariteit in Oeganda
De Thomas Kwoyelo-Zaak

Geconfronteerd met een groeiend besef dat het Internationaal Strafhof niet altijd een positief effect heeft op de conflictsituaties waarin zij intervenieert, beginnen verscheidene stemmen binnen de mondiale gerechtigheids-assemblage hun narratief over wat het Hof kan – en niet kan – leveren, bij te stellen. Zo is er een belangrijke verschuiving zichtbaar van het grootse streven om 'universele rechtvaardigheid' te bereiken, naar het smaller gedefinieerde doel een einde te maken aan straffeloosheid van daders. Steeds meer actoren maken zich hard voor de domesticering van internationaal strafrecht. Het doel is dan om staten aan te sporen hun eigen strafrechtelijke vervolgingen uit te voeren in lijn met het complementariteitsprincipe van het Hof, en tevens een nationale cultuur te construeren waarin strafrechtelijke aansprakelijkheid een belangrijke rol speelt.

Dit artikel onderzoekt hoe deze verschuiving zich in de praktijk uittekent in Oeganda, waar in de nasleep van de eerste interventie door het Internationaal Strafhof verschillende (internationale) actoren hebben aangedrongen op de oprichting van een nationaal straftribunaal voor oorlogsmisdaden. Dit artikel richt zich op de eerste zaak die aanhangig werd gemaakt bij de afdeling internationale misdaden van het Hooggerechtshof van Oeganda – de zaak van voormalig kindsoldaat Thomas Kwoyelo.

De analyse die in dit hoofdstuk wordt gepresenteerd illustreert hoe een assemblage van actoren wel de macht had om in Oeganda wettelijke en juridische hervormingen te institutionaliseren, maar niet in staat bleek om de daadwerkelijke naleving door de Oegandese overheid af te dwingen. Ondertussen zagen degenen die vraagtekens stelden bij het berechten van een voormalig kindsoldaat door het Oegandese Hooggerechtshof hun vermogen om dit te

betwisten en/of de straffeloosheid van de staat aan te kaarten steeds verder afbrokkelen. Dit maakt duidelijk dat er een expliciete noodzaak bestaat voor 'buitenstaanders' om op empirische wijze kritisch te reflecteren op het politieke gebruik en de sociale impact van het internationaal strafrechtregime dat zij promoten, zowel op internationaal als nationaal niveau. Faalt men dit te doen, dan zal de cyclus van uitsluiting, straffeloosheid en geweld vermoedelijk niet worden doorbroken, maar juist worden verankerd.

Artikel 4

Verbeeldingspolitiek Ten Tijde van Gewelddadig Conflict
De Kony 2012 Campagne

Verschillende actoren binnen de mondiale gerechtigheids-assemblage stellen dat het Internationaal Strafhof faalt in het bereiken van de door haar gedefinieerde doelen, omdat het Hof afhankelijk is van haar lidstaten in het uitvaardigen van arrestatiebevelen. Lidstaten zijn daarin over het algemeen niet toeschietelijk. In het licht van dit dilemma hebben deze actoren daarom betoogd dat, indien nodig, militaire interventies moeten kunnen worden ingezet om het internationaal strafrecht af te dwingen.

Het vierde en laatste artikel van dit proefschrift analyseert de campagne *Kony 2012,* welke is ontwikkeld door de NGO 'Invisible Children'. Hierin wordt een internationale militaire interventie gepropageerd om Joseph Kony te arresteren uit naam van het internationaal recht. Het artikel laat zien hoe de AU, het AFRICOM van de Verenigde Staten en de VN het narratief dat in deze campagne wordt gepresenteerd gebruiken om daadwerkelijk over te gaan tot een militaire interventie in de Centraal-Afrikaanse regio.

Dit artikel biedt een rijk scala aan empirisch bewijsmateriaal van enkele van de transnationale en lokale consequenties die zijn voortgekomen uit deze militaire interventie. Deze omvatten onder meer de militarisering van de Centraal-Afrikaanse regio en een afname van kennis over, en financiering voor complexere veiligheidskwesties ter plaatse. Tenslotte wordt er inzicht verschaft in hoe en waarom de ontwikkeling van internationale normen en wetten gunstig zijn voor sterke staten en instituten. Tegelijkertijd ontbreekt het burgers aan de ontvangende zijde van de zogenoemde 'humanitaire interventies' de macht om te bepalen welke rechten beschermd zouden moeten worden, door wie en hoe. Voorts missen ze iedere mogelijkheid om interveniërende humanitaire actoren verantwoordelijk te stellen voor hun daden.

CURRICULUM VITAE

Lauren Gould was born on 17 May 1983 in Sydney, Australia. She studied 'Social Psychology' (BA Cum Laude, 2006) and 'Conflict Studies and Human Rights' (Ma Cum Laude, 2007), both at Utrecht University. In September 2008 she became a junior lecturer at the Centre for Conflict Studies, Utrecht University. In 2009, she also started her PhD research, supervised by Prof. Georg Frerks and Dr. Jolle Demmers. Additionally, she has worked as a lecturer at University College of Amsterdam (2013) and in the Political Science department of the University of Amsterdam (2015).

Lauren Gould is currently lecturer in History of International Relations and Conflict Studies, Utrecht University.