

**The International Criminal Court Indictments In
Uganda And The International Criminal Tribunal in
Rwanda: Lessons In Applying International Law and
Justice Mechanisms**

By

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Declaration

I do hereby declare that to the best of my knowledge, this research work is a result of my effort, and has never been presented anywhere else for any award, either in full or in parts.

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DEDICATION

I dedicate this research and study to God for providing me with life, knowledge and wisdom to undertake and accomplish it. In the same way, I dedicate it to my family, in particular Dad and Mum, Mr. and Mrs. Ssebaduka for their moral and spiritual support. To all my brothers and sisters, I love you, and wish you the same achievement and more. God bless you overwhelmingly.

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LIST OF ACRONYMS

AI	Amnesty International
ARLPI	Acholi Religious Leaders' Peace Initiative
AMREF-U	American Relief-Uganda
CCJP	Catholic Commission for Justice and Peace
CPA-G	Concerned Parents Association-Uganda
CRPB	Conflict Resolution and Peace Building Project
CSOPNU	Civil Society Organizations for Peace in Northern Uganda
FGD	Focus Group Discussion
GoU	Government of Uganda
GUSCO	Gulu Support the Children Organization
HURINENT	Human Rights Network
ICC	International Criminal Court
ICG	International Crisis Group
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
IFWA-U	International Faith Watch-Uganda
JYAK	Jamii Ya Kupatanisha
LRA	Lord's Resistance Army
MUBS	Makerere University Business School
MUK	Makerere University Kampala
NGO	Non Governmental Organization
NRM	National Resistance Movement
NUPI	Northern Uganda Peace Initiative
OPM	Office of the Prime Minister
RLP	Refugee Law Project
RPA	Rwanda Patriotic Army
RPF	Rwanda Patriotic Front
UHRC	Uganda Human Rights Commission
UNRF	Uganda National Rescue Front
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Education Fund

Abstract

The LRA, under the leadership of Joseph Kony, has fought a twenty years' war in northern Uganda, characterized by gross human rights violation, war crimes and crimes against humanity, against the government of Uganda. In Rwanda, close to one million Tutsis and moderate Hutus were massacred during the 1994 genocide. Many of those who survived today suffer from psychological and physical wounds as a result of the genocide.

In Uganda, ICC issued arrest warrants for the top five LRA commanders in October 2005, while in Rwanda, ICTR was established in November 2004, and started its operations based in Arusha, Tanzania in 2005, to prosecute persons behind the genocide and others serious violations of humanitarian law. These cases reveal the growing momentum in the evolution of International Human Rights through providing human rights implementers and claimants more mechanisms to pursue justice and accountability.

The application of International Human Rights Law of the 1998 Rome Statue of the ICC in Uganda, and the International Humanitarian Law of the ICTR in Rwanda has raised justice and accountability intervention impasse between international and local justice and accountability mechanisms. This study endeavored to draw key lessons from the analysis of the application of the ICC and ICTR mandates, as compared to the local justice mechanisms, in causing justice and accountability in the above Ugandan and Rwandan scenarios respectively.

Both primary and secondary data sources were relied upon in compiling the findings of this study. Primary data was obtained from interviewees who were key informants, self administered questionnaire and focused group discussions in both Uganda and Rwanda.

The study established that international justice and accountability mechanisms are insufficient in meeting the real demands and perception of justice and accountability for the victimized communities, especially in the African context. It recommends that the international community should encourage alternative and local forms of justice like the Gacaca court system in Rwanda and the Mato-oput system in Northern Uganda, to exist in cooperation, not competition, with the international justice mechanisms, perceived by many victims as being retributive.

CHAPTER ONE: GENERAL INTRODUCTION

1.0 Introduction

Large-scale violations of human rights do not just happen. They occur because a favorable environment for their occurrence has been nurtured and cultivated for long periods. The starting point in addressing the problem of impunity that makes widespread violations of human rights possible is to bring the perpetrators to justice. In Africa, International Criminal Court (ICC) indictments of the LRA chief commander Joseph Kony and his four senior commanders Vincent Otti, Okot Odhiambo, Dominic Ongwen¹ and Raska Lukwiya,² and the International Criminal Tribunal for Rwanda (ICTR) that is prosecuting people behind the 1994 Rwanda genocide, represent a new international trend of placing directly criminal responsibility on individuals, who commit gross human rights violations, war crimes against humanity and genocide.

Drawing on many sources, like documents of the United Nations agencies like UNICEF, UNDP; international, regional and local non governmental organizations like Amnesty International, International Center for Transitional Justice, coupled to the primary data, this study analyses the strengths and challenges arising in the application of the international law and justice mechanisms in both cases of the northern Uganda war and the 1994 Rwanda genocide. From this analysis, the study points out key issues as lessons for consideration in the attempt of applying international law and justice mechanisms in

¹ Dominic Ongwen died in combat on 30th September 2005, while Vincent Otti was reported killed by Kony toward the end of 2007.

² On 13th October 2005, the ICC unsealed arrest warrants for five LRA commanders, including the leader Joseph Kony. International Crisis group, Policy Briefing (11th January 2006), *A Strategy for Ending Northern Uganda's Crisis*, African Briefing N^o 35, Kampala/Brussels, p.1.

pursuing accountability and justice on the African continent, which should inform future similar international justice interventions, especially in Africa.

1.1 Background to the Study

For over 20 years since 1986, when president Museveni took over power in Uganda, the armed conflict that emerged in the north of Uganda between LRA and its leader, Joseph Kony, and the Government of Uganda, has had various consequences, which have generated untold suffering for the people in that region. More than 1.8 million people, many of them ethnic Acholi, were forced to live in camps for internally displaced people (IDP), a figure which represents more than 80% of the population of the region.³ It is also widely estimated that 30,000 children⁴ from that region have been abducted by the rebels, the boys to act as soldiers, kidnapped girls to be used by rebels as sex slaves and as carriers of supplies. The region has been decimated socially and economically.

The above situations raised serious questions of mainly how the perpetrators of this conflict would be made to account and what form of justice will be satisfying in the eyes of the innocent civilians. As one option of establishing a historical opportunity to institutionalize forward-thinking conflict resolution, accountability and justice measures, and as a matter of state practice, Uganda opted to refer the above mentioned LRA senior commanders behind the northern Uganda conflict to the ICC. Uganda signed the Rome

³ World Vision, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda* (Kampala: World Vision, 2004), 4.

⁴ Tim Allen points out that “the scale of abduction is a matter of speculation” due to insufficient monitoring. See Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court’s Intervention* (London: Crisis States Research Centre, Development Studies Institute, London School of Economics, February. 2005).

statute of the International Criminal Court (ICC) on the 17th March 1999 and ratified it on the 14th June 2002.⁵ State parties to the ICC are authorized under article 14(1) of Rome Statute to refer the matter to the ICC in which one or more of the crimes within the jurisdiction of the court have been committed since the 1st of July 2002 when the statute came into force.⁶ Article 5(1a, b, c, d) of the Rome Statute (1998) on the jurisdiction of the ICC states that,

The jurisdiction of the court shall be limited to the most serious crimes of concern of the international community as a whole. The court has jurisdiction in accordance with this statute with respect of the following crimes: a) the crime of genocide, b) the crime against humanity, c) war crimes and d) the crime of aggression.⁷

The International Criminal Court (ICC) was asked by President Museveni of Uganda in December 2003 to investigate the actions of the Lord's Resistance Army in northern Uganda. On the 29th January 2004, the Argentine ICC prosecutor Luis Moreno Ocampo announced that there was sufficient evidence to start inquiring into the grave human rights violations committed by the LRA.⁸ Moreno is on record as stating that; "The rebels have kidnapped thousands of kids, forced them to be soldiers, forced them to kill their parents, and forced them to be sex slaves. I don't know a more awful crime".⁹

In the case of Rwanda, "The land of thousand Hills",¹⁰ historically, both the majority Hutu who formed about 84 percent and the Tutsi about 15 percent,¹¹ identified

⁵ ICTJ and the Human Rights Center report; *Forgotten Voices*, July 2005 p.7

⁶ Rome Statute of the International Criminal Court, July 1998, U.N.Doc.A/CONF.183/9

⁷ Ibid, Rome Statute 1998

⁸ Global Policy Forum report (2004, January 29th), *International Criminal Court gets its first case: Against rebels in Uganda*, New York, [http://: www.globalpolicy.org](http://www.globalpolicy.org).

⁹ Ibid, supra note 5.

¹⁰ Kim, (April 2004), *Rwanda Massacre*, http://www.theinternetparty.org/commentary/c_s.php

¹¹ Rwanda has a third tribe; the Twa, who form one percent of the total population. The Twa do not have as similar traits like the other tribes, a reason why many studies attempt to sideline them in representing and analyzing the social interaction and state building of the Rwanda people.

themselves as *Banyarwanda* or people of Rwanda.¹² They spoke the same language, Kinyarwanda, without differences in dialect or vocabulary; they were members of the same religious institutions, shared a common public sphere and participated in the same cultural and social rituals.¹³ The big question of the day is how did these tribes with very strong inter-social interaction fabrics, in which ethnic differences played no recognized role resort to genocide? In an attempt to inform the concern raised above, some scholars contend that, given the high degree of social fluidity and proximity between the Hutu and Tusti, relations between both groups cannot be characterized as particularly confrontational.¹⁴ The “clan” school of thought contends that, the historical record demonstrates that social hostilities (that laid the genocide foundation) emerged more often among competing clan dynasties than between ethnically self-distinguished Hutu and Tusti groups.¹⁵ As such, the social geography of Rwanda before European expansion in the late nineteenth and early twentieth centuries was organized according to clan “ubwoko” or caste structures, rather than ethnic structures.¹⁶

This study will in the next chapter contribute in detail on the social and economic dynamics, responsible for the Rwanda genocide, and whether they were tailored on clan or ethnic lines. Nevertheless, the author hereby feels that ethnicity as a contributory factor to the genocide should not be simply swept under the carpet, since the issue of ethnicity occupies a central position in the emerging discourse of national unity and

¹² G. Prunier (1997), *The Rwanda crisis, History of Rwanda*, New York, pp 368.

¹³ M. Drumbl, (2000), *Punishment, post-genocide: from guilt to shame to civism in Rwanda*, N.Y.U.L., 1221.

¹⁴ Ibid, M. Drumbl, 1235.

¹⁵ Jason Benjamin Fink, (2005), *Deontological Retributivism and The Legal Practice of International Jurisprudence: The case of the International Criminal tribunal for Rwanda*, Journal of African Law, 49, 2, 101-131, school of Oriental and African Studies, printed in the United Kingdom.

¹⁶ Ibid Prunier, supra note 11 at 15.

identity articulated in post-genocidal Rwanda. This opinion will be further explored and attested to in the proceeding chapters of this study. Whether the competition between the Rwandan clans or ethnicity instigated, the Rwanda genocide, the bottom line, which is part of the main focus of this study, is that gross human rights violations and conflict characterized the nation of Rwanda in 1994 constituting genocide.

On April 30th 1994, just over three weeks after the start of the genocide, the Security Council issued a statement recalling the definition of genocide and asking the secretary General to make proposals for investigating such serious violations of International humanitarian law. Once the U.N. special rapporteur for Rwanda and a commission of experts named the Security Council both concluded that Rwandan authorities had committed genocide and that soldiers of RPA¹⁷ were guilty of violations of international humanitarian law, the Security Council established the International Criminal Tribunal for Rwanda in November 1994.¹⁸

The International Criminal Tribunal for Rwanda (ICTR) was established to prosecute serious violations of international of international humanitarian law, to sustain law and order, thereby to contribute to the restoration and maintenance of peace and national reconciliation in Rwanda.¹⁹ This study therefore seeks to establish whether the justice and accountability meant to be realized under the international human rights law enshrined in the 1998 Rome Statute of the ICC, which informed the crafting of the indictments for the top LRA commanders herein mentioned above, as well as the justice and accountability derived from the international Humanitarian law, which guides the prosecutions under the ICTR just, comprehensive and applicable in dealing with African context, gross human rights violations, like in the above two cases under analysis.

¹⁷ RPA: - Rwanda Patriotic Army, Rwanda's Hutu majority state army in 1994.

¹⁸ Alison Des Forges (1999), *Leave None to Tell the Story*, Human Rights Watch, printed in the United States of America, at 737.

¹⁹ C.M. Carroll, (2000), *An assessment of the Role and effectiveness of the International Criminal Tribunal for Rwanda and the Rwandan national Justice system in dealing with the mass atrocities of 1994*, B.U. International Limited, L.J.

To this end, the study will analyze the strength, challenges as well as opportunities derived in the attempt of implementing the ICC and ICTR mandates, which will be presented herein as lessons drawn from the above cases to inform future intended international human rights and humanitarian law applications, in dealing with the question of accountability and justice for individuals behind gross human rights violations, especially on the African continent.

1.2 Statement of the Problem

The ICC indictments of the top five LRA commanders mentioned above and the (ICTR) that is prosecuting people behind the 1994 Rwanda genocide, represent a new international trend and attempt of placing directly criminal responsibility on individuals, who commit gross human rights violations, war crimes, crimes against humanity and genocide through international judicial intervention, by applying international human rights law like in the case of the 1998 Rome Statue of the ICC or the international Humanitarian law in the case of the ICTR. With the growing demand and recognition in Africa, for African justice solutions to African problems, evidenced locally in Rwanda, where the genocidal victims resorted to the traditional *Gacaca* system alongside the ICTR, as well as in Uganda where majority of the victims demand for traditional justice and reconciliation, this has raised justice and accountability intervention impasse between international and local justice and accountability mechanisms, which this study will explore as lessons for future interventions of international law in the attempt of addressing gross human rights violations, especially in Africa.

1.3 Definition of Key Terms

Analysis: -The action of evaluating or estimating the quality, ability, and nature of someone or something over a period of time.

Conflict: - It is the state of confrontation between two parties of different perceptions, values, attitudes or beliefs, which may results in either positive or negative results.

Culture: - The partners of behaviors, values and communications styles, which describe unique characteristics of a particular ethnic or cultural group.

Gacaca: -Community based court system of justice in Rwanda of elected local magistrates trying suspected perpetrators of the 1994 genocide whose roles were minor, to confess and seek forgiveness for their roles in the genocide hence later reintegrated into the communities when they are socially and widely acceptable.

Human rights: - These are fundamental principles that are universal in nature, which all men, women, children, and other marginalized groups' posses because of being human. These rights are necessary for human survival, existence, and development and they are indivisible, inherent, and inalienable.

International law: - It is a body of law that governs the interactions and relations between nations, resulting from official rules treaties, agreements and customs.

Justice: - Here Justice refers to a multi-faceted ongoing set of processes moving towards social relations that are regarded as equitable by those engaged in them.

Leadership: - A process of influencing other people to achieve objectives and goals in any given society establishment at a given period.

Mato-Oput: - **Traditional** Justice mechanism emphasizing reconciliation practiced among the Acholi people in Northern Uganda, who have suffered the blunt of the 20 years war led by Joseph Kony, leader of the LRA.

Northern Uganda: - In the context of this study, Northern Uganda means the political north that includes the Northeastern districts of Teso into which the LRA have made incursions.

Peace: - Used in the context to imply absence of war and as a social, cultural, economic and political trend that ensures justice, stability, equity, and prosperity through formal and informal institutions.

Reconciliation: - Is the restoration of trust in a relationship where trust has been violated, sometimes repeatedly. In this study, it is premised on the demand for sustainable (everlasting or durable) peace and social-economic and human development after along suffering of people from war or conflict.

Rwanda Republic: - Formerly a German and Belgium colony in the great lakes region of central Africa, bordered by Uganda, Burundi, Democratic Republic of Congo and Tanzania. It covers an area of 26,338 km² with a population estimate of 7.95 million as per the 2004 census. It obtained independence from Belgium on 1st July 1962.

Tribunal

It is a panel of legal experts operating in form of a court or special committee.

Uganda Republic

Formerly a British colony in East Africa bordered in the east by Kenya, in the north by Sudan, DRC in the west, Rwanda in southwest and Tanzania in the south. It covers an area of 236,040km² and obtained independence from the British on the 9th October 1996.

1.4 Scope of the Study

The geographical scope of study consisted of the war affected districts of Gulu, Pader, and Lira. Some respondents and interviews in line with the study were conducted also in Kampala because of its multicultural composition, having the highest percentage of elites in the country, who were very resourceful for the study. The study also covered the gacaca courts in Rwanda, specifically in Kigali, Kibuye and the ICTR in Arusha Tanzania that are trying persons suspected to have been behind the 1994 Rwanda genocide, with intent of provide further reflection on the approach to justice and accountability in Africa. A total of 120 respondents from the above areas were involved in this study. In the case of Uganda, the study focused from 1986 when the NRM took over power in Uganda to June 2007, the time of compiling this study. In the case of Rwanda from January 1994 to January 2006

In terms of content, the study explored the fault lines responsible for the outbreak of both the LRA rebellion in northern Uganda and the 1994 Rwanda genocide, to establish herein the nature and magnitude of human rights violations. The proposed international law intervention mandates for the two case studies will be analyzed, lessons will be drawn from the strength, weaknesses and opportunities from the attempt of applying such mandates in the pursuit of justice in Africa.

1.5 Objectives the Study

1.5.1 General Objective of the Study

The general objective of the study is to draw lessons from the analysis of the application of the mandates of the 1998 Rome statute of the ICC and ICTR statute in causing justice and accountability in Uganda and Rwanda respectively.

1.5.2 Specific Objectives of the Study

- ❑ To establish the mandates of the ICC and ICTR in the cases of the violations of human rights in the Northern Uganda war and the 1994 Rwandan genocide.
- ❑ To Compare the ICC mandate in the northern Uganda case and that of the ICTR in Rwanda.
- ❑ To establish the advantages and disadvantages from the attempt of applying the ICC and ICTR mandates in the Northern Uganda war and 1994 Rwandan genocide respectively.
- ❑ To draw lessons from the above case studies to inform future attempts of applying international human rights and humanitarian law in pursuing justice and accountability, especially in Africa.

1.6 Research Questions

- ❑ What atrocities were committed by the LRA in Northern Uganda as well as during the Rwanda genocide of 1994 in terms of human rights violations?
- ❑ What are the applicable international laws in both cases of the LRA atrocities in northern Uganda and the 1994 Rwanda genocide?
- ❑ What are the advantages and disadvantages of implementing the ICC mandate in enforcing justice in the case of the indicted LRA commanders as well as the ICTR for those suspected to be behind the 1994 Rwanda genocide?
- ❑ What lessons can be drawn from the above two cases to inform future attempts of applying international human rights and humanitarian law in pursuing justice and accountability, especially in Africa.

1.7 Significance of the Study

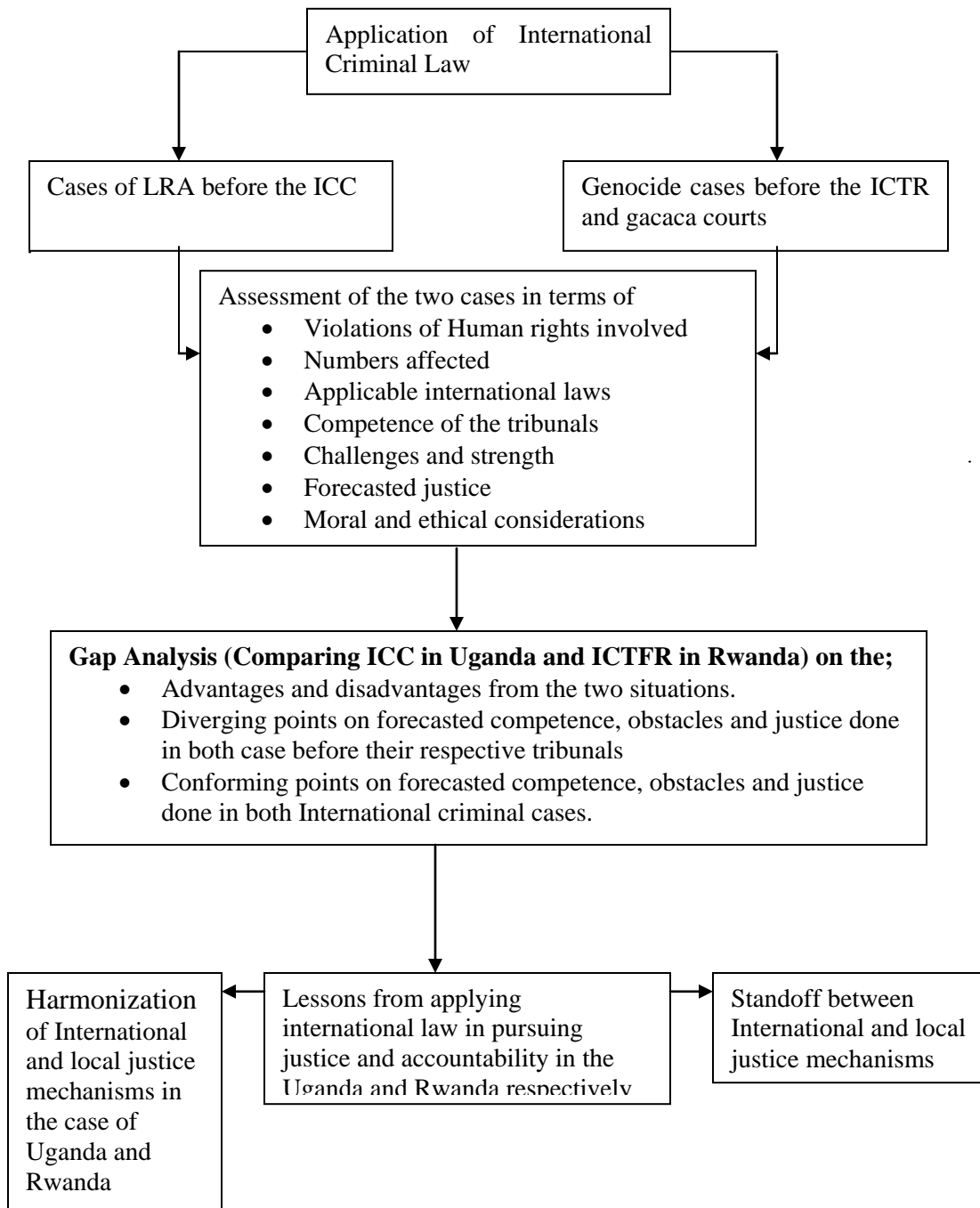
This study causes a deeper understanding into the whole situation of the LRA case before the ICC and the ICTR, through analyzing the applicable international laws and justice mechanisms in the gross violation of human rights in both cases.

The study also assists local and international Non-governmental organizations, Uganda policy makers and the civil society operating in the war torn Northern Uganda to strategically approach the peace reconstruction program for the region by borrowing from other possible approaches of enforcing justice from the Rwanda tribunals.

The study explores lessons to apply elsewhere in Africa in pursuit of justice and accountability in Africa through implementing international human rights and

humanitarian law. Hence the findings will assist policy makers both in Africa and beyond to be informed to this effect.

1.8 Conceptual Framework



CHAPTER 2: LITERATURE REVIEW

2.0 Introduction

Several researchers and scholars of international law and human rights have spent a lot of cognitive energies in an effort to analyze and understand the genesis, application and effectiveness of international law in conflict resolutions, especially in enforcing justice and accountability. This chapter establishes and complements the qualitative and quantitative studies that have greatly contributed to the understanding about the international humanitarian and human rights laws, and how applicable they are in pursuing justice and accountability in the case of Joseph Kony of the Lord's Resistance Army (LRA) and the 1994 Rwanda genocide cases.

2.1 Understanding Underling Factors for the Cyclic Conflicts in Uganda

Understanding the nature and causes of conflict in Uganda is a fundamental prerequisite before any attempts are made to resolve these conflicts. Conflicts in Uganda today, like the one in the north, have important historical roots that cannot be ignored, as they are embedded in different divides, caused by pre-colonial political processes, colonial, and post-independence policies, coupled with external factors such as conflicts in neighbouring countries and the proliferation of small arms.

Dating from the pre-colonial period, Uganda has had numerous periods of turbulence and insecurity, as kingdoms rose and fell through violent struggles. There were wars between the various communities such as Buganda and Bunyoro, Bunyoro and Ankole, Buganda and Busoga, and others. Violence was therefore part of the transformation of the Ugandan society. The establishment of the colonial estate was further achieved largely through violent means. The colonialist took advantage of the conflicts that existed between the different nationalities and ethnic groups in Uganda, and they then used one nationality against the other in pursuit of their expansionist policy in the country. These policies impeded the emergence of a Ugandan nationalism and instead generated ethnic, religious and regional divisions

that were to contribute in the later years to civil instability, political and armed violence.²⁰

Against this background of nation building in Uganda, characterized by the long history of violence, NRM/NRA took power in 1986. Barely seven months after capturing of power, the insurgency broken out in the Acholi sub region spearheaded by the Uganda People's Democratic Army/Movement.²¹ These military groups included: the Holy Spirit Mobile Forces (HSMF) of Alice Lakwena, Uganda People's Army (UPA) led by Peter Otai, Force Obote Back (FOBA) led by Obote, West Nile Bank Front (WNBF) led by Juma Oris, and Later LRA of Joseph Kony.²² The author on the basis of the above is convinced that part of the causes of the cyclic nature of violence in post colonial Uganda, is a political cause through a militaristic scramble approach. As such, regional marginalization in the distribution of political and economic benefits has greatly interplayed in causing conflicts in Uganda.

Further more, the absence of a mature democratization process that challenges the past and existing premature power structures has made the country to face recurrence of conflicts of the past. The twenty years failure of the NRM government to protect its population as an obligation,²³ from the LRA insurgency attests to this. It also raises questions on the political will of the government in committing itself to end this insurgency in the north. Is Kony therefore fighting a political war? And if yes, how relevant can the 1998 Rome statute of the ICC be in redressing political injustices in

²⁰ NUPI Summary report (February 2006), Issues Paper on the *Development of a Conflict Resolution and Peace Building Policy for the Government of Uganda*, published by NUPI, Kampala, p.3.

²¹ Joanna R. Quinn, *Customary Mechanism and the International Criminal Court*, Working Paper, Refugee Law project, Kampala

²² Ibid, supra note 20 at 4.

²³ Uganda constitution (1995): National objective III (V), stipulates that, the state shall provide a peaceful, secure and stable political environment, which is necessary for economic development.

Uganda? In an attempt to respond to this question, the biggest challenge is that, no research has provided an authoritative explanation of why the LRA have carried on this war and survived for the last twenty years amidst the same population they inflict atrocities. Some school of thought contends that;

The LRA insurgency lacks any clear and negotiable political objectives. It claims to represent the grievances of the Acholi people are at odds with its method. Because the LRA actions are difficult to place within a coherent strategy aimed at achieving an identifiable political outcome, it is also difficult to develop an effective counter strategy. LRA targeting of the Acholi has created a self-perpetuating cycle of loss, resentment and hopelessness that feeds the conflict but also widens the gap between the government and the local people. The conflict has four main characteristics. First, it is a struggle between the government and the LRA, secondly, it is the predominantly Acholi LRA and the under Acholi population who bear the brunt of violence that includes indiscriminate killing and the abduction of their children to become fighters, auxiliaries, and sex slaves. This violence is aimed at cowing the Acholi and discrediting the government. Thirdly, it is fuelled by animosity between Uganda and Sudan, who support rebellions on each other's territory; finally, it continues the north-South conflict that has marked politics and society since independence.²⁴

It is not entirely true that LRA has no political cause. This is premised on the fact that in the peace negotiations between the LRA and government of Uganda, it is the political wing of the LRA in Juba, which is in the talks with an equally political team from the central government of Uganda, discussing among others, issues related to power sharing. The Crisis Group above, identifies that one of the dimension of this war is the animosity between Uganda and Sudan, The group makes a great omission herein of not distinguishing whether any regional political dynamics between Uganda and Sudan are at stake, hence justifying not only the political character of LRA war, but more so the

²⁴Crisis Group Africa reports N° 77 (April 2004), *Northern Uganda: Understanding and solving the conflict*, [http:// www.crisisgroup.org/home/index.cfm? /1](http://www.crisisgroup.org/home/index.cfm?/1)

intricate regional politics at stake as well. Kony considers himself “a passerby”²⁵ handed over a lion’s tail. He illustrated this using a proverb in one of his communiqué to his kinsmen, stating that:

It was raining and a young man decided to take a shelter in an abandoned hut, then suddenly, a lion entered the same hut to take a shelter and lay at the doorstep facing outside. The young man had no choice but to grab the lion’s tail and both started to struggle almost the whole day. Fortunately, another passerby came around. The young man kindly asked for help since he was already tired. He then handed over the lion’s tail to the passerby while he goes to call the villagers to come and kill the lion. Unfortunately, the young man went to the village and never returned. Even the villagers never showed up.²⁶

Critical to point out herein is that, the author of this study is not a sympathizer of Kony, but for purposes of provoking a wider spectrum, of what awaits the ICC to make just, this illustration is borrowed. Secondary it would sound logical to conclude from the above proverb that, just like many other war criminals, Kony aims at exonerating himself from the responsibility of the crimes he has committed. The study is not contesting the nature of crimes, for which Kony and his top four commanders were indicted. It simply invites the reader to ponder over the paradigm that, certainly the underlying factors for the LRA war with the central government of Uganda predate the emergency of Kony and the LRA. Indeed Kony and his top commanders are replaceable figures in this conflict. Failure to appreciate this, Uganda risks having another “Kony” rising up in northern Uganda just as the LRA rebels are being defeated. In general, it would be inappropriate to rule out these positions without a fair and robust scrutiny of the entire northern Uganda conflict from multifaceted perspectives, especially for the ICC.

²⁵ In a retreat of the Acholi leaders, organized by CSOPNU and JYAK at Paraa-Masindi district in June 2005, chaired by his highness Rwot Lawi Rwodi Onen David Achana II the paramount chief of the Acholi, and attended by former LRA Brigadiers, Kenneth Banya and Sam Kolo, the Rwot asked participants to reflect on a proverb that came from Kony himself over Radio Mega FM of Gulu district of the “Lion and a passerby”;

²⁶ CSOPNU and JYAK report (June 2005), Retreat of the Acholi Leaders under the theme: *Together Making A Difference*, Paraa-Masindi, p.13

2.2 Understanding Why the 1994 Rwanda Genocide Occurred

Rwanda, a tiny central African state, is a former German and Belgian colony. Some scholars argue that European colonialism actively appropriated cultural differences, primarily responsible for the outbreak of the 1994 genocide. Germany throughout its presence in Rwanda (1895-1916), applied a racial discourse to their reordering of indigenous Rwandan society.²⁷ Germany race theorists and anthropologists supported the social authority of the Tutsi regime by positioning a racialist theory designed to explain the cultural and social hegemony exhibited by the ruling Tutsi elites.²⁸ When Belgium took over (after 1916) from Germany, they too were able to satisfy their imperial needs and exert political and administrative hegemony over Rwanda by incorporating and sustaining local Tutsi elite.²⁹ When the Tutsi lost power to the majority Hutu in 1959, the authority goal posts shifted, with the Tutsi receiving the blunt of the Hutu.

On 1 July 1962, Rwanda attained her independence following a four years revolution when the Hutu, a majority but marginalized tribe of Rwanda rose up against the Belgian and Tutsi minority tribe of Rwanda in one of Africa's bloodiest intertribal conflicts ever. The ethnic-based political conflicts between the two related tribes continued and sparked off the 1973 coup d'état. In 1994 the Tutsi under RPF (Rwanda Patriotic Front) launched an attack on Rwanda leading to the death of President Juvenal Habyarimana something that sparked off the 1994 Rwanda genocide.³⁰

On Wednesday evening April 6th 1994 when the plane carrying president Juvenal Habyarimana was shot down, the presidential guard and other troops commanded by colonel Bagosora, backed by militia, murdered the moderate Hutu government officials, creating a vacuum in which colonel Bagosora and his supporters began systematically

²⁷ A. Zimmerman (2001), *Anthropology and Anti-humanism In Imperial Germany*, Chicago

²⁸ M. Bunzl and H.G. Penny (eds) (2003), *Worldly Provincialism, Germany Anthropology in the Age of the Empire*, Ann Arbor.

²⁹ Ibid, supra note 15 at 6.

³⁰ Mahmood Mamdani (2001), *When Victims Become Killers, Colonialism, Nativism, and the Genocide in Rwanda*, Princeton University press, p.74

slaughtering Tutsi.³¹ Des Forges ably presents to us above what sparked off the genocide but fails to point out the individuals who shot down the plane. The relevance of the argument is that, institutions do not act but it is individuals who act on their behalf. For any meaningful reconciliation in Rwanda, the truth of who bombed President Juvenal Habyarimana's plane is needed so that those individuals can face justice for having precipitated the grounds that sparked off the genocide. For the ICTR, this is one of the challenges to cause accountability for these individuals.

The author does not suggest that those who butchered the Tutsi are not guilty because they are, and most of them are facing trial in the local gacaca court and others in the ICTR. The point of emphasis herein is that, these were secondary players in the genocide. It is possible that if the plane was not shot, perhaps the genocide could have been averted.

It is true that status and power differentials as observed above, which existed between the Tutsi and Hutu are contributory factors to the hatred of Hutu, backed by the Twa to butcher the Tutsi and moderate Hutu as manifested in the 1994 genocide. This study however wishes to state that these should be qualified as fueling factors. If such cultural tensions were to spark off the genocide in Rwanda, the big question will be why the genocide did not occur long ago when such tensions emanated and it occurred in 1994?

Indeed, in agreement with some scholars,

The predecessors of today's Hutu and Tutsi (The two biggest tribes of Rwanda) indeed created a single cultural community, the community of Kinyarwanda speakers, through centuries of cohabitation, intermarriage, and cultural exchange. This cultural community

³¹ Alison Des Forges (1999), *Leave None to Tell the Story*, Human Rights Watch, printed in the United States of America, at 6.

is to be found today both within the borders of the state of Rwanda and outside of it. It is a regional community.³²

Was the genocide therefore politically motivated, structural and systemic in executing? And if partly true, then how relevant is the ICTR mandate in causing accountability and justice for politically rooted consequences in the form of the 1994 Rwanda genocide? I say that those who bombed the plane bear the responsibility of sparking off the genocide to a greater extent and they should be investigated, arrested, and made to face justice. And I believe I share this position with many others that meaningful justice and reconciliation of Rwanda demands the exposure of those who bombed the plane such that the political tensions surrounding it are calmed by facing the truth of this matter.

2.3 Human Rights Violations Committed By Kony and the LRA

Phuong Pham et al (Phuong July 2005) establish that;

The LRA rebels mutilate, abduct children, and commit rape and other acts of sexual violence against women and the girls. The LRA routinely cuts off lips, ears, and breasts; gouges eyes; and amputates limbs. Many of these mutilations are carried out to prevent “betrayals.” Killing of civilians are wide spread. Men are forced to lie on their fronts, and their heads smashed. Women are forced to lie on their backs, and their throats are cut.³³

Article 1, 3 and 5 of the UDHR (1948), respectively state that, (1) all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood; (3) every one has the right to life, liberty and security of the person; (5) No one shall be subjected to torture or to

³³ Behind the violence (2004): *Causes, consequences and the Search for Solutions to the War in Northern Uganda*, Refugee Law working Paper No. 11, Kampala: faculty of Law, Makerere university, p.23

cruel inhuman or degrading treatment or punishment.³⁴ Considering the above provisions of the UDHR 1948, Joseph Kony and the LRA are acting contrary to the moral equivalent of the international human rights bible and standards and therefore guilty of violating the international moral standard, to which Uganda acceded. Important to note herein is that the UDHR being a moral statement and not a legal instrument, does not in specific terms impose specific penalties to those who act contrary to its mandate, a reason why in the case of Joseph Kony before the ICC, or the 1994 Rwanda genocide trials, it cannot help the court in determining specific penalties against violators of human rights and humanitarian law respectively. This however should not be perceived to imply that the UDHR is useless, because in any case its principles are embodied into other human rights instruments

Jemera Rone (2005), an American researcher in a similar way presents that;

The LRA continues to commit mass killing of civilians in northern Uganda, keeping the population—and its own combatants, mostly forcibly recruited during childhood—in a constant state of terror. Since February 2005, rebel attacks on camps and settlements have increased. In March, seven civilians were beaten to death with hoes in Adjumani in an attack on Dzaipi trading center...The LRA abducts children and adults to serve as soldiers, and girls to serve as sex slaves to its commanders—and brutalizes all abductees to deter their escape. Those abducted persons attempting to escape are killed or seriously wounded as an example to other abductees. ...The LRA beats and otherwise mistreats civilians as a part of a campaign intended to instill terror in the population. It severely punishes anyone who does not do what it demands, even if that person lacks the physical capacity to comply...The LRA first started mutilating civilians in the early 1990s as a response to the government's attempts to form local militias in northern Uganda. Victims' hands, feet, noses, ears, lips and breasts were cut off, often as punishment, causing widespread panic amongst the population...UNICEF estimates that some 20,000 children have been abducted in the nineteen years of war³⁵

Every evening, scores of children living outside of the towns in the war affected districts of Gulu, Lira and Pader make a nightly trek into the centers of provincial towns.

³⁴ See- Universal Declaration of Human Rights, 1948 10th December, articles 1-5.

³⁵ Jemera Rone, (Sept. 2005), *Uprooted and Forgotten Impunity and Human Rights abuses in northern Uganda*, report also available at, [http://: www.hrw.org/english/docs/2005](http://www.hrw.org/english/docs/2005), contacted 11th November 2005.

They sleep in doorways, on verandas, and in bus stations, hospitals, and in schools. They are known as “night commuters”, and they make the trip from their rural homes because they are afraid of being abducted by the LRA.³⁶ The LRA reportedly favors 9 to 12 year olds abductees because the age group is the most malleable.³⁷ These reports express the willfully committed acts against humanity mainly on the Acholis’ by Kony, a self styled embodiment and personification of the Holy Spirit.³⁸ The big task for the ICC is whether it has the capacity and mandate to prosecute crimes dating back to the early 1990s, when as observed above, was the time for the peak gross human rights violations identified above.

2.3.1 Ugandan Government’s Responsibility in the LRA War

In its response to the LRA threat, the GoU sought to protect its citizens by mainly annihilating the insurgency via military offensive and by making civilians responsible for their own defense through a strategy of civil militarization, like the AMUKA boys in Teso region.³⁹ Researchers such as Jemera Rone,⁴⁰ provide us with cases involving UPDF officers exposing almost the same gravity in violating the rights of the defenseless, homeless, internally displaced persons, especially those linked to the political opposition of the National Resistance Movement, and its mentor Yoweri Kaguta Museveni.

³⁶See Human Rights watch, “*Abducted and Abused: Renewed conflicts in Uganda*” July 2003, at 17-18.

³⁷See “Behind the Violence,” supra note 26 at 23.

³⁸ Kony believes that he is in direct contact with the Holy Spirit and considers himself as the agent of divine retribution for the past transgressions the government has committed against northerners.

³⁹CSOPNU-CARE (U) report (December 2004), *Nowhere to Hide: Humanitarian Protection Threats in Northern Uganda*, plot 17 MacKinnon Rd, Kampala, p.2

⁴⁰ Jemera Rone is a celebrated American researcher who compiled the Human Rights Watch Report, *Uprooted and Forgotten Impunity and the Human Rights abuses in northern Uganda* that revealed abuses by the LRA and UPDF against civilians in northern Uganda. The minister of defense of the Ugandan government, Amama Mbabazi rubbished the report on grounds that Rone’s report is a mouthpiece for the opposition.

With authority from the head of the armed forces in Uganda, who then happened to be President Museveni, the army intensified the pursuit of the LRA rebels in 2002 using helicopter gunship. On July 24th 2002, UPDF helicopter gunship killed 13 civilians in Pader district, in the same month, the army mistook five civilians for LRA rebels, killing three and injuring two in Lira district.⁴¹ Although the government instituted investigations into the two incidents, findings were not released and no action has been taken against the UPDF soldiers responsible for the killing. UHRC reports indicate that there have been cases of UPDF abuses ranging from extra judicial killings, rape, unlawful detention and imposition of undeclared curfews.⁴² Such acts if proven to be culpable do not further the interest of solving the war and should not only be eliminated but also investigated and punished using the same ICC yardstick of international law of human rights.

The willful killings, torture and mistreatment, rape and arbitrary arrests and detentions of civilians in northern Uganda, by the UPDF soldiers highlighted in this report, are serious crimes that may fall within the ICC's jurisdiction. The Ugandan government's tendency of rejecting reports that point out the UPDF's violation like Jemera Rone's conclusion of the Human Rights Report 2005 as being erroneous cannot help the process of justice in northern Uganda because the government cannot resist the lessons from such reports. The fact that the government possesses military and police records of errant UPDF soldiers who have been apprehended, convicted and punished by the court martial serves

⁴¹See country reports on Human Rights Practices-2003, released by the Bureau of Democracy, Human Rights, and Labor, February 25, 2004, the Bureau of Public Affairs, U.S. department of state. www.state.gov/g/drl/hrrpt/2003/27758.htm-137k.

⁴²See- Uganda Human Rights Commission, Annual report, January 2001-September 2002, at 121, also available at www.uhrc.org.

as a precedent to justify before the ICC that, the UPDF is not immune to committing some of the human rights violations as portrayed by many of the human rights researchers in northern Uganda, the likes of Jemera Rone's research.⁴³

No country has a perfect human rights record and Uganda is no exception. The guardians of this country should do better than just rubbishing criticisms, and think of rehabilitating the lives of thousands of IDPs. The war victims down the 20 years of instability yearn for enough food to eat, a decent place to sleep, a safe place to bring up their children. Restoring peace and calmness in northern Uganda is the first anticipated true form of justice for the war victims; otherwise the ICC justice will have no moral bearing on the minds of the defenseless war victims in insecure political and military environments. The big question is whether the ICC intervention in pursuing justice in northern Uganda will help or spoil the peace process initiatives taken by both local and international NGOs, as well as the government peace initiatives.

2.3.2 Criminal Gravity of the 1994 Rwanda Genocide

Prior to the premeditated execution and butchering of the Tutsi, the radical Hutu propagandist undertook intensive mobilization of the killers preparing for the planned genocide. Mamdani (2001) exposes that, "killings in Rwanda were not done by shadowy death squads but by mobs of machete-wielding citizens".⁴⁴ The Human Rights Watch report (1995) also states that,

⁴³Maxie Muwonge, (October 19th, 2005), *Human Rights Reports a Result of Proper Researches*, Daily Monitor Newspaper, pp12.

⁴⁴ Mamdani, supra note 34 at 267

The rehearsals took place in more than a dozen communities, the most important being the commune of Kibilira in October 1990, March 1992, and January 1993; in several communes in northwestern Rwanda, including Mukingo, Kinigi, Gaseke, Giciye, Karago, and Mutura in January and February 1991; in the region known as Bugesera, commune Kankenze, in March 1992; in several communes of Kibuye in August 1992; and again in the northwest in December 1992 and January 1993.⁴⁵

Des Forges (1999) supplements the above positions by exposing how the killers, mainly Hutus and Twa sharpened their focus to exterminate all Tutsi.

Speaking on Radio Rwanda early on the morning of April 12 1994, MDR⁴⁶ power leader Frodauld Karamira told his listeners that the war was everyone's (Hutu) responsibility. He called on people (Hutu), not to fight among themselves but rather assist the armed forces to finish their work... An hour later, Radio Rwanda broadcast a press release from the Ministry of Defense. It denied "lies" about divisions in the armed forces and among Hutu generally and insisted that: Soldiers, gendarmes (National Police), and all Rwandans have decided to fight their common enemy in unison and have all identified him. The enemy is still the same...the Ministry of Defense asks Rwandans, soldiers and gendarmes the following: Citizens are asked to act together, carry out patrols and fight the enemy (Tutsi). In the streets of Kigali, people were singing a little song that told it all: *Umwanzi wacu n'umwe turamuzi n'umutusi*, implying our enemy is one we know him. It is the Tutsi".⁴⁷

Important to note herein is the role of the media in fuelling violations of human rights, just like Radio Rwanda did during the genocide. As such, there is need to proactively engage the media into responsible journalism as part of seeking justice and reconstruction of Rwanda, hence exploring all options to justice building beyond the ICTR mandate.

Considering that Hutu were ordered to fight the enemy (Tutsi) or get killed, it is possible that majority of the Hutu who were alive then actively participated or assisted in the killing of the Tutsi for the sake of their life. If the above is true and aware that the current government in Rwanda is majority Hutu based, then is the ICTR nature of justice

⁴⁵see Human rights watch, slaughter Among Neighbors; *The Political Origins of communal Violence, New Haven*: human Rights Watch and Yale University Press, 1995, pp 20-32.

⁴⁶ Democratic Republican Movement (MDR), a Hutu based party which led the revolution of 1959 and unseated the Tutsi aristocracy; strongest in the center of the country.

⁴⁷Alison Des Forges (1999), supra note 35 at pp.202-203.

the best suited to reconcile the majority suspected leaders and the minority surviving Tutsi victims? From his consultations in Rwanda, Mamdani (2001) established that, “in 1997 another minister in Rwanda told me that 80 percent of those Hutu alive had participated in the killing”.⁴⁸ If Mamdani’s figures are to be considered correct, then all these Hutu are liable to punishment as per the international criminal code or the Nuremberg principles of 1950, which state that “the fact a person acted pursuant to order of his government or of a superior does not relieve him from criminal responsibility under international law provided a moral choice was in fact possible for him”.⁴⁹ Considering moderate Hutu did not kill and instead they were killed too, then it is right to argue that there was a moral option for those who committed the atrocities.

The radical Hutu and Twa who killed the Tutsi deserve the trials and convictions for their crimes against humanity during the 1994 genocide. Meaningful and everlasting justice in Rwanda must borrow from this analysis to reflect and build on the unimaginable complex lived realities and beliefs of the Tutsi people it is designed to bring justice to. The necessary condition to attain this is first of all, to reconcile the historically constructed ethnic divisions between the Hutu and the Tutsi. This same appeal and analysis fits well in the case of the northern Uganda crisis where it is widely believed that the political, social and economic- historically constructed divisions between the tribes of the north and the south contributed to the sustainability of Kony rebellion.

⁴⁸Mamdani, *supra* note 38 at 266.

⁴⁹ Christine Van den Wyngaert et al (ed)(2002), *International Criminal Law, A collection of International and European Instruments*, published by Kluwer Law International, P.O.Box 85889, 2508 CN, The Hague, The Netherlands

Fundamental justice requires the government of Uganda alongside the ICC option to focus on readdressing these historical divisions.

2.4 International Criminal Law and International Crimes

Most legal scholars agree that a recognizable body of international criminal law does exist. In its widest context, the source of international criminal law might be derived from the general principles of international law recognized by civilized nations; and therefore, found in the customary law accepted by states, the general criminal law recognized by nations, and the treaties which govern particular conduct⁵⁰ This category of international laws deals with war crimes and crimes against humanity, including genocide. In general, international criminal law instantiates a variety of substantive internationally acceptable doctrines and procedures that focus on the individual culpability for his or her crimes committed against humanity in any corner of the world.

The earliest attempt of coming up with laws and institutions punishing an international crime occurred when international law accepted the concepts that sea pirates are enemies of mankind and that piracy is an offense against the laws of nations. The constitution of the United States in 1789 took the pioneering step of empowering the Congress to define and punish pirates and felonies committed on the high seas as offenses against the law of nations. In 1819 United States enacted this law and in the very next year, Justice Story in *United States Vs Smith* applied that law.⁵¹

Perhaps according to Sohn, this was the first precedent under international criminal law to punish an international crime of which the cases of Joseph Kony and his senior indicted commanders before the ICC are to follow.

⁵⁰ See, American Society of International law 2005, http://www.eisil.org/index.php?sid=921019130&t=sub_pages&cat=21 1st Nov. 2005 p.21.

⁵¹ See, Ferenz B. Benjamin (1980), *An International Criminal Court, A Step Towards World Peace*, p.xv

It is however imperative to map out that the crimes of the sea pirates as compared to the tragic and willful mass human rights violations in northern Uganda and those committed during the 1994 Rwanda genocide are incomparable in intention, intensity and moral gravity.

2.4.1 ICC and the case of the LRA

For over two decades, the population of Northern Uganda, mainly in the districts of Kitgum, Lira, Gulu and Pader⁵² have lost any semblance of ordinary life in what has been generally accepted as one of the world's worst humanitarian crises between the LRA and the UPDF.⁵³ The case of Joseph Kony currently before the ICC, is one among other cases of concern of the international community as a whole, in which individuals who have committed serious crimes against humanity are to be held accountable.

The International Criminal Court (ICC) is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished. The ICC was established by the Rome Statute of the International Criminal Court on 17 July 1998, when 120 States participating in the "United Nations Diplomatic [Conference of Plenipotentiaries on the establishment of an International Criminal Court](#)" adopted the Statute. This is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished. Accordingly, the Statute entered into force on 1 July 2002. Anyone who commits any of the crimes under the Statute after this date will be liable for prosecution by the Court.⁵⁴

Considering that the ICC does not have retrospective powers to prosecute crimes committed before 1st July 2002, a lot of what would have been vital hard evidence against

⁵² See Appendix 2 for the district location on the map of Uganda.

⁵³ See International Center for Transitional Justice report; *Forgotten Voices*, July 2005, p.3, available at <http://www.hrw.org/english/docs/2005>, contacted 11th November 2005.

⁵⁴ International Criminal Court: *Historical Introduction*, available at <http://www.icc-cpi.int/about/ataglance/history.html>, accessed 27th march 2004.

Kony and his four indicted senior LRA commanders, as well as evidence against the government will not be considered by the court. War victims who suffered unimaginable willful human rights abuses between 1987 and before 1st July 2002, during the various bloody counter offensive operations between the LRA and the UPDF, will undoubtedly perceive this critical time constraint as a moral defect of the ICC mandate.

On the 29th January 2004, the Argentine ICC prosecutor Louis Moreno Ocampo announced that there was sufficient evidence to start inquiring into the grave human rights violations committed by the LRA.⁵⁵ Ocampo, the ICC prosecutor remarked that; “the rebels have kidnapped thousands of children, forced them to be soldiers, forced them to kill their parents, and forced them to be sex slaves. I don’t know a more awful crime”.⁵⁶

On 13th October 2005, pre-trial chamber II unsealed the warrants of arrest for five senior leaders of the Lord’s Resistance Army (LRA) for crimes against humanity and war crimes committed in Uganda since July 2002. The Chamber concluded that; “there are reasonable grounds to believe that Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya, ordered the commission of crimes within the jurisdiction of the Court”.⁵⁷ Their warrants of arrest summarily identify the following counts against them. Joseph Kony (LRA leader): 12 counts of crimes against humanity (CAH) and 21 count of war crimes, Vincent Otti: 11 counts of CAH and 21 counts of war crimes, Okot

⁵⁵See, The Sunday Vision, Uganda’s Leading News Paper, 1st February, 2004, “Kony’s Arrest warrants Out Soon” at 1

⁵⁶ See, The Global Policy Forum report “*International Criminal Court gets its first case: Against rebels in Uganda.*” January, 29, 2004, available at, [http://: www.globalpolicy.org/icc](http://www.globalpolicy.org/icc), accessed on: 27th March 2004.

⁵⁷see Rene wadlow, Uganda: *ICC Issues Arrest Warrants for Lord's Resistance Army*, Thursday 20th October 2005 [http:// www.towardfreedom.com/home/content/view/632/1](http://www.towardfreedom.com/home/content/view/632/1) visited 1/November/2005.

Odhiambo: 2 counts of CAH and 8 counts of war crimes, Dominic Ongwen: 3 counts of CAH and 4 counts of war crimes, and Raska Lukwiya: 1 count of CAH and 3 counts of war crimes.

Whereas it is true that the ICC arrest warrants opened up a leeway of hope of seeing justice done and seen to be done by the various stakeholders⁵⁸ in this war, ICC failure to release the warrant of arrest for even a single UPDF officer could be interpreted as its failure to incorporate the moral perspective and thirst of some war victims who live with the daily reality and reminders, of incomprehensible psychological and physical horrors inflicted on them by some UPDF members. This explains why some of the war victims question the comprehensiveness of the ICC justice. This study will inform us in the proceeding chapter on the nature of reactions of the victims, government, CSOs and the international community at large towards the ICC indictments and how they are perceived to contribute to justice and accountability, starting with consolidating the illusive peace that ensures in many parts of northern Uganda.

2.4.2 International Criminal Tribunal for Rwanda

Des Forges (1999) presents that,

Once the U.N. special rapporteur for Rwanda and a commission of experts named by the Security Council both concluded that Rwandan authorities had committed genocide, and that soldiers of the RPA were guilty of violations of international human rights law, the Security Council established the International Criminal Tribunal for Rwanda.⁵⁹

⁵⁸ These stakeholders include the war victims of northern Uganda, the central government of Uganda, the general public in Uganda, various local and international Non Governmental Organizations, and the entire international community.

⁵⁹ Ibid, Alison Des Forges (1999), supra note 47 at pp.737.

It is imperative to point out that Alison fails to establish why the U.N. and the general international community who were in Rwanda before the genocide having realized the willingness of the Rwandan government authorities in power to promote the genocide, decided to intervene with insufficient force and authority that failed to avert its occurrence and rather decided to strongly intervene after its climax. In May 1994, U.N. secretary-General Boutros-Ghali admitted that the international community had failed the people of Rwanda in not halting the genocide. In 1998, the U.S. president Bill Clinton apologized for not having responded to Rwandan cries.⁶⁰ This again raises a challenge to the nature of mandate that the UN sets for peace missions like the one that was in Rwanda, which witnessed the genocide without applying the necessary counteroffensive against the genocide perpetrators.

Since it is the primary legal and moral responsibility of every sovereign state to maintain the internal security, peace and human rights observance within its territories, and in the case of Rwanda, the signs of the genocide were evident to both AU and UN, this raises questions as why the AU did not immediately intervene to avert the situation before it completely melted into a genocide. How then does international law either that encoded in the ICTR or ICC statute engage such structural challenges that enable the violation of human rights to transpire as they helplessly watch on? In the pursuit of justice and accountability for such human rights violations like in the case of Rwanda genocide and the LRA war, what responsibility lies with institutions like UN and AU?

⁶⁰ Ibid, Alison Des Forges (1999), supra note 47 at pp.768.

In terms of the ICTR mandate, the resolution adopted by the UN-Security Council conferred to the ICTR substantive jurisdiction over crimes of genocide and crimes against humanity.⁶¹ This mandate as compared to the mandates of institutions like AU in addressing impunity cases in Africa raises questions over how relevant and empirical, as well as complementary is the ICTR in pursuing justice and accountability in Rwanda as compared to the Rwanda domestic court systems as well as the native justice approaches. This nexus will be informed by the views and opinions of victims and activists for Rwanda justice in the proceeding chapters.

2.4.3 ICTR jurisdictions; a comparison with the ICC

The tribunal is to judge person's accused of genocide, crimes against humanity, and violations of article 3 common to the Geneva conventions and protocol II Additional to the conventions. It is accorded jurisdiction over persons of whatever nature, nationality, accused of committing such crimes in Rwanda and over Rwandans charged with such crimes in neighboring states as well. The mandate of the tribunal extends to crimes committed from January 1, 1994 to December 31st 1994...The tribunal is competent to judge persons who "planned, instigated, ordered, committed or otherwise aided and abetted" in executing the crimes within its jurisdiction.⁶²

It is worth acknowledging that by having the ICTR or the ICC instituted to try people for committing crimes against humanity, this testifies to how international human rights and humanitarian laws have raised to yet another prestigious and vital level of defending humanity against individuals who promote such crimes. In a resolution passed in February 1995, (S/RES/978), the security council specifically asked member states to arrest those suspected of genocide crimes that fell under the competence of the tribunal.⁶³

⁶¹U.N. Doc. S/RES/955 (1994), ICTR statute, arts, 2, 3, 4, S.C. Resolution 955, U.N. SCOR, 49th Sess., 3453rd meeting.

⁶²see Statute of the International Tribunal for Rwanda, article 6,2 and 3, also available in the annex statute printed in United Nations, The United Nations and Rwanda, pp. 387-93.

⁶³ see Alison Des Forges, Leave None To Tell The Story, 1999 at 740.

Simultaneously, the ICC issued the arrest warrants of Joseph Kony and his four senior chief commanders, which implied that the Uganda government is mandated to arrest Joseph Kony. In the two cases, it is very clear that the process of arresting suspects is not only very expensive for these two highly indebted poor African countries, but also almost next to impossible, considering like in the case of Uganda, the government having failed to completely flush out the LRA in the first place, ran to the ICC as an option to have these members arrested using the good will and contributions of ICC member states.

The Rome Statute (1998) says that, “the accused shall be present during the trial”.⁶⁹ The case of Joseph Kony like many of the missing wanted genocide perpetrators might never be heard because the governments responsible have failed to produce them for international justice to take course. The big question that research has not exhausted is who is to blame for not shouldering this responsibility of arresting Kony, considering that Kony and his commanders are fugitives in foreign sovereign states like Congo? And in such cases if Kony and his commanders never step a foot at The Hague, how relevant and applicable is the ICC mechanism in pursuing accountability and justice in Northern Uganda?

The Rome Statute (1998) states further that,

The court may transmit a request for the arrest and surrender of a person, together with the material supporting the request, to any state on the territory of which that person may be found and shall request the cooperation of that state in the arrest and surrender of such a person. States parties shall in accordance with the provisions of this part and procedure under their national law, comply with requests for arrest and surrender.⁶⁴

⁶⁴ Rome Statute (1998) of the ICC article 63 (1)

The whereabouts of Joseph Kony and his army is known to Uganda. Many times the Ugandan army has reported that Kony rotates between southern Sudan, northern Uganda and in the north east of the Democratic Republic of Congo. These three states for over the last 20 years have experienced incomprehensible violence inflicted on their citizens but with no sufficient joint effort to capture Kony from his known hideout. The Ugandan government has received permission often times to pursue Joseph Kony deep into Southern Sudan but all efforts of capturing him turning out to be futile.

There is need for more research to establish why the unpredictable insurgent leader has managed to survive arrest despite all this pressure around him or else the Ugandan government and the neighboring governments of Sudan and DRC may not easily dismiss the ground of some critics who perceive the war as being politically driven to create an agenda for the government to stay longer in power promising to end the war, or to support an illicit war economy. In such intricate interests in this war, the ICC mandate stands to be challenged in providing a comprehensive solution to the Ugandan case herein discussed.

In conclusion, the following key issues are deducible from the fore-cited literature surrounding the ICTR and ICC mandated.

- Unlike the International Court of Justice that handles judicial matters of conflict between member states of the U.N., the above tribunals handle individuals who have committed serious crimes against humanity.

- The two tribunals take precedent over the national courts of the states under its jurisdiction. The persons tried by these tribunals cannot be charged for the same crime in national courts, nor vice versa, except if the national trial deemed to have been only a charade.
- The ICTR, mandate is limited from 31st December 1994 to December 31st 2008, while the ICC is not time bound from its date of inception on the final date to its jurisdiction. The ICTR is therefore a specific tribunal for the Rwanda genocide trials hence a temporary tribunal, while the ICC is a permanent tribunal.
- The ICC and ICTR justice and accountability mechanisms are limited in scope as far as providing comprehensive remedy to intricate, historically enrooted political, social-economic causes of both the LRA as well as the Rwanda genocide. Indeed one could rightly say that they seek to address the symptoms and effects of these two scenarios, but not the root causes.
- Both tribunals do not have retrospective powers to prosecute for similar crimes that were committed before the date on enforcement of their statutes.
- These tribunals represent an international wake up call to have individuals that commit individuals against humanity punishable basing on an international acceptable standard.
- To Africa, these two tribunals have established precedents, inspiration and encouragement that no one will escape justice if he or she tries to justify his or her political, social and or military cause through engaging in crimes against humanity and genocide.

CHAPTER 3: RESEARCH METHODOLOGY

3.0 Introduction

This chapter gives a description of the targeted population that was studied as well as the procedure and techniques that were used by the researcher to get relevant responses on the topic of study.

3.1 Research Design

This comparative study was conducted along a descriptive survey design. Both qualitative and some aspects of quantitative data were used especially where percentages and averages were involved in analyzing responses of thematic focus of this study. This allowed an in-depth inquiry and analysis of the field experiences. The study involved the use of questionnaires, focus group discussions, key informants interviews and documentary analysis to enhance the internal validity and reliability of the study findings.

3.2 Area and Population of Study

Geographically in Uganda, the study consisted of the war affected districts of Gulu, Pader and Lira. Some respondents and interviews in line with the study were conducted also in Kampala because of its multicultural composition, and considering that it has the highest percentage of elites across the country. In Rwanda, the research covered the gacaca courts, specifically in Kigali and Kibuye, where respondents informed this study. There views were complemented by responses from the key interviews with some ICTR staff based in Arusha Tanzania, which is conducting trials for people suspected to have carried out the 1994 Rwanda genocide.

3.3 Sampling Technique

A stratified sampling technique was employed to allow for the identification of information-rich groups of respondents. These included ex-LRA returnees at World Vision-War child Gulu and GUSCO, the IDPs and their camp leadership in the war affected districts of Gulu, Lira and Pader. In Kampala, groups of Master Students of Human rights, Peace and conflict studies, Ethics and public management of Makerere University 2004/5, who had just concluded a study trip to Northern Uganda, interfacing with the conflict situation and analysis therein the region were included in the study.

3.3.1 Sample Criteria

A total of 120 questionnaires were filled and returned from the four districts under study, 5 focused group discussions conducted; one at GUSCO, one at World Vision-Gulu Children of war reception center in January 2006, 2 with the CRPB during their two weeks workshop at Regency Hotel Kampala in April, and one with CSOPNU during a peace workshop held at Impala Hotel- Munyonyo Kampala in may 2006. 32 key informants were interviewed in total, with 8 from Makerere University, 1 from the Rwandan Embassy in Uganda, 4 from the ICTR, 2 Researchers of the gacaca courts from Kibuye and Kigali, and the others 15 from the cited international and national NGO's involved in this study. The table below presents the summary selection criteria.

Table 1: Sample Selection Criteria

Study District	Criteria
Gulu	Affected by LRA armed conflict, home of many NGOs' involved in humanitarian assistance to the war victims, has many IDPs, and accessible, main center of the Acholi people.
Lira	Home for the Langi people also victims of LRA, has several IDPs and NGOs' providing humanitarian assistance.
Pader	Most affected in the Acholi sub region by the LRA insurgency, and has many IDPs.
Kampala	Capital city with elites from all regions of the country, home for many local and international NGOs' and agencies involved in providing humanitarian assistance to Northern Uganda, and also headquarter of many of the government ministries that were part of this research.
Aretha	The headquarters of the ICTR, which is prosecuting people suspected for having played a bigger role in the 1994 Rwandan genocide.
Kigali	The capital of Rwanda, as well as the administrative region of the Rwanda unity government, which is now engaged with reconciling all the Rwandan tribes.
Kibuye	Venue for the gacaca court system within Rwanda

3.4 Data Collection Methods

The researcher employed triangulation methodologies to meet the objectives of the study. Each of the methods employed revealed different aspects of the empirical reality and field experiences surrounding the area of study as observed below.

3.4.1 Interviews

Personal or interface interview sessions were conducted to obtain data from the war victims, workers of U.N. listed above. Focused group discussions were also conducted with diplomats from the Rwandan Embassy in Uganda, ICTR and gacaca courts' witnesses at Kibuye. A key informant from Ssengonba and Sons Advocates-Kampala, who had conducted research on some cases before the ICTR and gacaca courts in Arusha and Kigali respectively informed this study as well. These methods enabled the researcher

to probe deeper and make clarifications on inadequate or vague responses surrounding the area of study, hence leading to the gathering of complete and reliable information.

3.4.2 Questionnaires

Both closed and open-ended questionnaires were used to elicit data required from respondents in the districts under study. They were self administered for the sampled respondents in the four districts of Gulu, Lira, Pader and Kampala.

3.4.3 Observation

This method was used in the study to verify and confirm the actual human rights violations in visited IDP camps in Gulu district, Lira and Pader districts covered by this study. The method enabled the researcher to draw valid conclusions on the magnitude of devastations in terms of property and the general welfare of the people as a result of this war.

3.5.0 Data Analysis and Presentation

Both qualitative and quantitative data was gathered during the research and analyzed to meet the study theme.

3.5.1 Qualitative Data

Qualitative data was recorded in notebooks and tapes. It was later compiled depending on the subsection as scheduled in the questionnaires, edited to remove inaccurate or irrelevant responses and coded into emerging themes that were analyzed in line with the research questions and objectives of the study attaching significances to it. Data

generated from the focus group discussions and key informants was subjected to a content analysis process based on the emerging issues of the study.

First, raw data was organised to reflect different perceptions expressed by the focus groups and key informants. A summary of the different perceptions was then made under the different subsections from which the final write up of the study report was done. Direct quotations from discussions were also used to complement the study.

3.5.2 Quantitative Data

This data was thematically supported by descriptive statistics to analyze the various responses that were obtained from mainly the open-ended questions. It was summarized presented in tables and computed into averages and percentages using SPSS II. Statistical diagrams representing a general overview on the major sub themes of the study as fixed in the questionnaires were obtained. Explanatory notes from interface interview sessions were used to attach more meaning to the data.

3.6 Ethical Consideration

The confidentiality of the respondents was maintained and respected. Names of respondents who preferred anonymity were not included. The few names that appear in the study findings are only for those who approved to have them included. The field responses obtained and the photographs taken like of the ex-LRA returnees under rehabilitations at World Vision Gulu and GUSCO receptions centers, including those taken during the focused group discussions were strictly used for research purposes only.

3.7 Limitation of the Study

- The researcher's movements in the war torn districts of Pader and Lira mainly were limited because of the continuous attacks from some small groups of the LRA from the month of September 2005 to January 2006.
- There was insufficient cooperation from the camp leaders at Palenga, Pabbo, Minakulu, Pece and Layibi IDPs' camps who stopped me from taking photographs within and around the camps, citing security reasons.
- Language barrier was another setback considering that Acholi and Langi languages, which the researcher was not familiar with, are mainly used in the districts of Gulu, Lira and Pader. The researcher had to employ an interviewer to assist in carrying out translations especially while interviewing LRA ex combatants at World Vision and GUSCO rehabilitation center in Gulu district.
- The whole research project was very expensive. The travel and accommodation expenses to and from the war torn Ugandan districts of Gulu, Lira, Pader, as well as to the Republic of Rwanda was very high.

The above challenges were dealt with in the best possible way. Regarding the issue of security, the researcher concentrated in areas like the municipality councils of the northern Uganda districts, which formed the geographical scope of this study. For the areas outside these municipalities, the research relied on the security briefs of the various IDP camps before he ventured to move there to gather the data. Translators were used to help with the language barrier problem and with the resources mobilized by the researcher; primary data was obtained and herein presented in the next chapter.

CHAPTER FOUR: DATA PRESENTATION

4.0 Introduction

A total of 120 valid questionnaires were filled and returned from the four districts under study, 5 focused group discussions conducted, and 32 key informants interviewed. The research covered four districts of Gulu, Lira, Pader and Kampala in Uganda; Kibuye and Kigali in Rwanda as well as Arusha.

4.1 Socio-Demographic Information

Table 2 Distribution of Respondents in Uganda by District

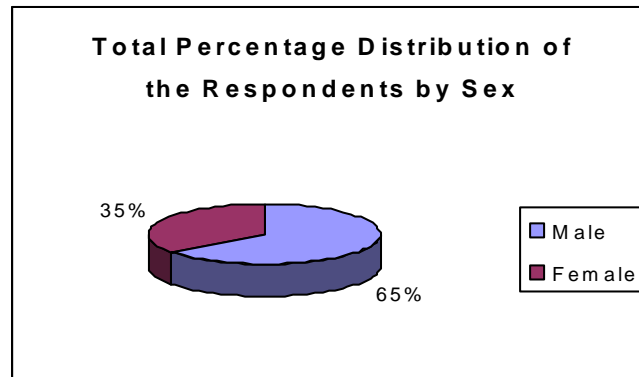
	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Gulu	40	33.3	33.3	33.3
Kampala	56	46.7	46.7	80.0
Lira	14	11.7	11.7	91.7
Pader	10	8.3	8.3	100.0
Total	120	100.0	100.0	

In Gulu district, of the 40 respondents interviewed 32 (80 percent) were male, with 8 (20 percent) female. In Kampala district, 56 respondents were interviewed with 24 (43 percent) of them male, 32 (57 percent) female. In Lira district 14 respondents were interviewed with 12 (86 percent) male, 2 (14 percent) female. In Pader district 10 respondents were interviewed and all 10 (100 percent) were male. Kampala district had the highest number of female respondents. On the average 78 (65 percent) of the total respondent were male and 42 (35 percent) female, making the male to female ratio of respondent to be approximately 2 to 1. Table 3 and figure 1 below summarize this data.

Table 3 Distribution of Respondents by Sex

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Male	78	65.0	65.0	65.0
Female	42	35.0	35.0	100.0
Total	120	100.0	100.0	

Figure 1:

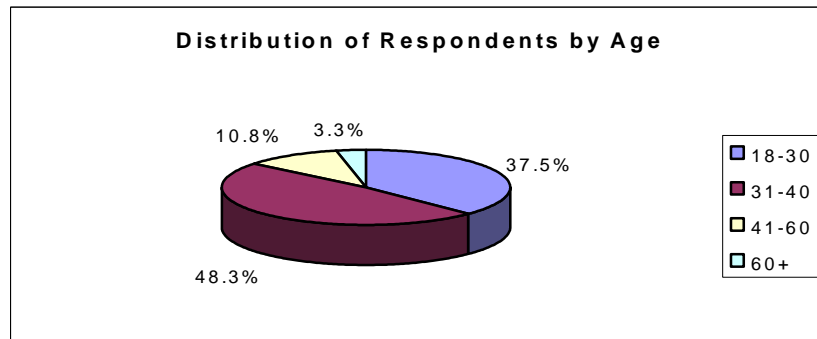


In terms of age distribution, the mean age was 33.9 and the median age 33.3 years. 58 (48.3 percent) of the total respondents fell into the age bracket of 31-40 years, representing the highest age group of respondents, with only 4 (3.3 percent) of the total respondents being above 60 years. Table 4 and figure 2 summarize this data below.

Table 4 Distribution of Respondents by Age

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 18-30	45	37.5	37.5	37.5
31-40	58	48.3	48.3	85.8
41-60	13	10.8	10.8	96.7
60+	4	3.3	3.3	100.0
Total	120	100.0	100.0	

Figure 2:

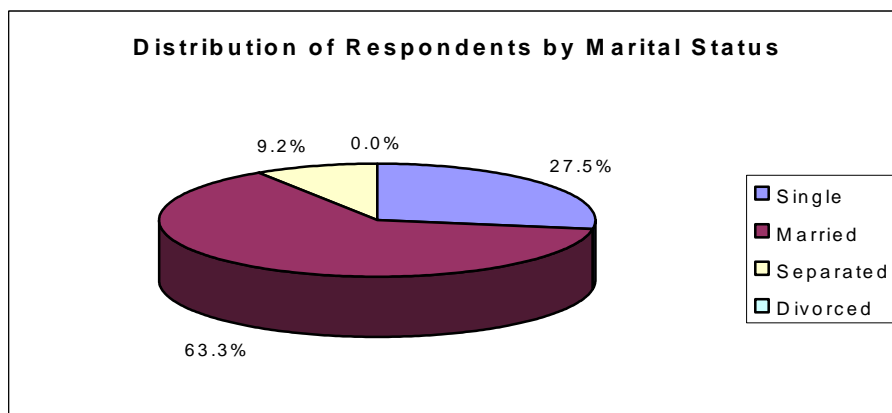


In terms of marital status, 33 respondents (27.5 percent) described themselves as single, 76 (63.3 percent) as married, 11(9.2 percent) separated, and none of the respondent confessed being divorced. Cases of those who are separated were recorded mainly in the three war districts of Gulu, Lira and Pader. Table 5 and figure 3 summarize this data.

Table 5 Distribution of Respondents by Marital Status

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Single	33	27.5	27.5	27.5
Married	76	63.3	63.3	90.8
Separated	11	9.2	9.2	100.0
Total	120	100.0	100.0	

Figure 3:



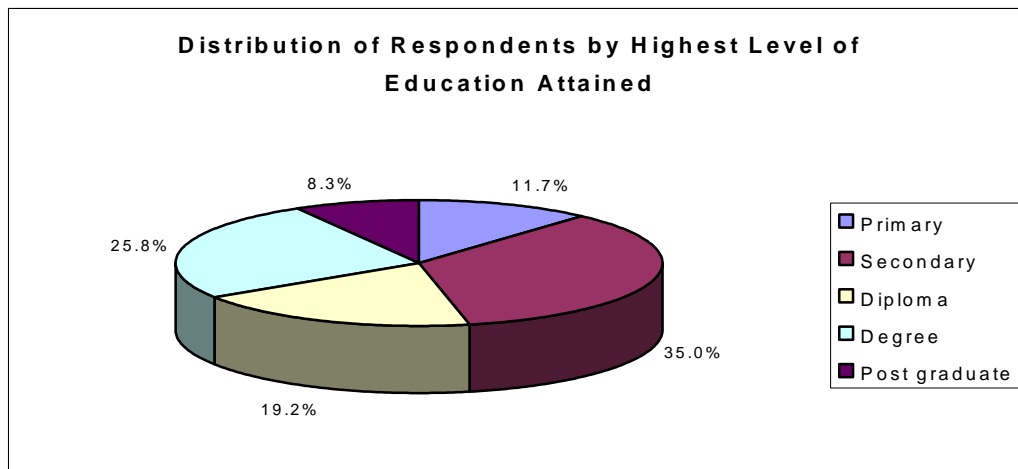
In terms of the highest level of education attained, 14 respondents (11.7 percent) had received primary education. 42 (35 percent) had obtained secondary education representing the highest category of respondents, with 64 respondents having attained a diploma and above. Table 6 and figure 4 summarize this data below.

Table 6:

Distribution of Respondents by the Highest Level of Education attained

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Primary	14	11.7	11.7	11.7
Secondary	42	35.0	35.0	46.7
Diploma	23	19.2	19.2	65.8
Degree	31	25.8	25.8	91.7
Postgraduate	10	8.3	8.3	100.0
Total	120	100.0	100.0	

Figure 4:



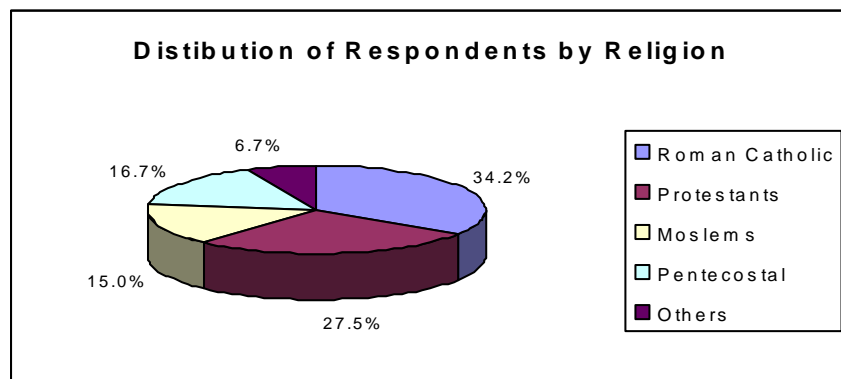
A total of 33 (27.5 percent) considered themselves to be protestants or of the Anglican faith, 41 (34.2 percent) of the respondents considered themselves to be Roman Catholics,

18(15 percent) Moslems, 20 (16.7 percent) Pentecostals and 8 (6.7 percent) belonged to other types of faith. Table 7 and figure 5 summarize this data.

Table 7: Distribution of Respondents by Religion

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Roman Catholics	41	34.2	34.2	34.2
Protestants	33	27.5	27.5	61.7
Moslems	18	15.0	15.0	76.7
Pentecostals	20	16.7	16.7	93.3
Others	8	6.7	6.7	100.0
Total	120	100.0	100.0	

Figure 5:



4.2 Awareness of the LRA Case before the ICC

There were 119 valid responses in this subsection. All the 119 respondents, (100 percent) had heard of Joseph Kony and the LRA insurgence in northern Uganda. Respondents were asked if they had heard of Joseph Kony’s case before the ICC, 47 (39.5) responded yes. Majority of those who said yes, were aware of the fact that there was an international court that is looking for Kony and the senior LRA commanders, but did not know that it was called the ICC. Table 8 below analyses this data.

Table 8: Awareness of LRA case before ICC

	Frequenc	Percent	Valid Perce	Cumulativ Percent
Valid Yes	47	39.5	39.5	39.5
No	72	60.5	60.5	100.0
Total	119	100.0	100.0	

4.2.1 Kony and other Indicted LRA commanders Prosecution by the ICC

When it came to the question of whether Joseph Kony and his indicted senior commanders should be tried in Uganda, 61(51.3 percent) of the total respondents were supporting the idea and 58 (48.7 percent) opposed to it. This represents almost a stalemate in view of the perceived mechanism of pursuing justice for the indicted LRA commanders. Some of the respondents who supported the ICC trials of the top LRA indicted commanders expressed that, “For international law to be seen to bite, the likes of Kony should be tried by the ICC because his crimes are not only local but also international.”⁶⁵ Further more, “Considering that there are non-Ugandan victims and Uganda has ratified the Rome statute, ICC trial of the LRA is the best option of justice. The local option should also be given chance for the junior LRA commanders”⁶⁶ “The ICC trial of the LRA is a good idea because it provides a neutral ground for the application of justice.”⁶⁷ “The ICC is composed of experienced personnel with international reputation. It has the ability to protect the victims and witness.”⁶⁸ In a related line of argument, a Gulu University student from Ornyole, Lira district

⁶⁵ Interview, Key informant Makerere University-Kampala, Faculty of Arts, Philosophy department, 18th November 2005.

⁶⁶ Interview, Key informant Makerere University-Kampala, Faculty of Arts, M.A Human Rights Center, 18th November, 2005

⁶⁷ Focused Group Discussions, MA.Human Rights Class 2004/2006, September 12th 2005.

⁶⁸ Interview, Key Informant War Child-Canada, Gulu district, 12th January 2006

explained that, “Since the peace talks have failed, Kony and his chief commanders should be tried by the ICC.”⁶⁹

Those respondents opposed to the ICC proceedings argue that, “Acholis’ are not interested in the ICC business not because it is bad but it is not the best option for causing reconciliation. Before the ICC announcement many rebels were coming out of the bush through amnesty, but now the number of returnees has greatly reduced for fear of being taken to the world court. Instead they have continued to make more attacks, during the 1st of 2006 festivities, the rebel agents abducted 8 civilians near Gulu Municipal Headquarters”⁷⁰ They further contend that, “It would be wrong for the ICC to try Joseph Kony because he needs to seek forgiveness from those he wronged. This is not possible if he is being tried at The Hague.”⁷¹

A respondent who strongly believes in the philosophy of state sovereignty argued that, “It is not appropriate for the ICC to try Kony and his commanders because Uganda is a sovereign state, which should try its own criminals.”⁷² “People are interested in seeing the war coming to an end. For peace we do not support the trial of Kony and his commanders before the world court because we do not want to be seen as judges over them but we want reconciliation.”⁷³ Table 9 below gives a summarized analysis of these responses.

⁶⁹ Interview with key informant, at Oronyole, Lira district, February 7th 2006.

⁷⁰ Focused Group Interview with the Human Rights Focus, Gulu district, 11th January 2006

⁷¹ Focused Group Discussions at CRY-U, Kampala offices, 31st march 2006.

⁷² FGD with JYAK at Royal Impala Hotel Munyonyo- Kampala 25th April 2006.

⁷³ Interview with a key informant, senior counselor, World Vision-Child of war, Gulu, 14th January 2006

Table 9: Whether or not Kony Should be tried in Uganda

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	61	51.3	51.3	51.3
No	58	48.7	48.7	100.0
Total	119	100.0	100.0	

4.2.2 General Amnesty for Kony and his Commanders

On whether or not Joseph Kony and his indicted commanders should be totally forgiven (granted blanket amnesty) if they give up the war, 80 (67.2 percent) were opposed to the idea. Nevertheless, 39 (32.8 percent) were in support of total forgiveness. Those opposed to the idea of general amnesty for Joseph Kony and his indicted commanders argue that, "If they are forgiven, then it will create a bad precedent that will encourage the likes of him to come up and kill people and later hide under the amnesty."⁷⁴ A respondent supporting imprisonment for Kony and his commanders expressed that, "The law should be strictly followed; forgiving Kony and his commanders means bending the law and justice. They should face trial and if found guilty serve life imprisonment sentence. Children who were forcefully conscripted should be set free."⁷⁵ In a related view of argument, "Kony should be imprisoned for around 15 years and forced to pay a war penalty to compensate some of the lost property of the people in the war areas."⁷⁶

A respondent who described himself as being liberal explained that, "The penalty given to Kony and his senior indicted commanders should vary according to their response, if they deliberately refuse to adhere to the call for amnesty and happen to be captured in

⁷⁴ Interview with Key informant, HURINET-Kampala, 8th February 2006.

⁷⁵ Interview with key informant, UCRNN-Kampala, 17th March 2006.

⁷⁶ Response from a student of MA. Ethics Studies, Makerere University.

war action, they should face life imprisonment, however if they voluntarily withdraw from fighting they should be forgiven.”⁷⁷ “There is nothing that can pay for the lost lives of innocent people, who Kony and his commanders have killed. If captured they should be imprisoned for life under strict supervision, but the junior commanders should be forgiven if they surrender arms because they are under the influence of the high command of Kony and his top leaders.”⁷⁸ An infuriated respondent of Patongo, Pader district strongly felt that, “Kony and his commanders should not be forgiven at all because they have killed our people (in Pader), stolen our cattle, burnt our houses, and forced us out of our homes. They should be killed but after strong and hard torturing.”⁷⁹

Those supporting the general amnesty of Joseph Kony and his commanders argue that, “Considering that LRA Brigadiers’ Sam Kolo and Banya were forgiven when they surrendered the war, Kony and all LRA fighters should be equally forgiven if they give up fighting the government and torturing people.”⁸⁰

Along the same line of thought but using religion to explain contemporary justice, a respondent explained that, “All men are sinners and make various mistakes in life, Kony and his men should be forgiven if they ask for forgiveness and repent of their sins.”⁸¹ Table 10 below summarizes this data.

⁷⁷ Interview a senior administrator ARLPI-Gulu district, 11th January 2006.

⁷⁸ Interview with Key Respondent Patongo -Pader district, 19th January 2006.

⁷⁹ Ibid

⁸⁰ Interview senior lecturer, Faculty of Arts, MUK, 3rd February, 2006.

⁸¹ A born again respondent, MUBS- Nakawa, Kampala.

Table 10: **Whether or not Kony should be totally forgiven if he resigns**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	39	32.8	32.8	32.8
No	80	67.2	67.2	100.0
Total	119	100.0	100.0	

4.2.3 ICC Investigation of the UPDF

On the question of whether or not the ICC should investigate UPDF officers involved in this war, 97 (81.5 percent) supported this view. This big percentage of Ugandans is anticipating having some of the UPDF to be openly brought to justice. Those in favour of the UPDF prosecution by the ICC expressed that; “The ICC investigation and prosecution of the UPDF officers suspected to commit crimes against the people of northern Uganda will create confidence among the victims of this insurgency that no one in Uganda is above the law.”⁸² In the same way, a government sympathizer highlighted that, “The ICC should indeed investigate the UPDF to clear the rumor promoted by those who are politically opposed to the Ugandan government that the UPDF has participated in violating the rights of the same people it was meant to protect.”⁸³

Coupled with the above, “the ICC should investigate the UPDF officers and those found guilty should be punished because, human rights abuses are the same whether perpetrated by the government agents or the rebels. This will also serve as a warning to all national armies globally to respect human rights.”⁸⁴

⁸² Interview with a student of Gulu University, 14th January 2006

⁸³ Interview with an administrator OPM Acholi program-Gulu, 14th January 2006

⁸⁴ Respondent Refugee Law Project-Kampala, February 2006.

Respondents opposed to the ICC investigation of the UPDF expressed that, “If the ICC investigates and tries the UPDF officers, it will show that the State lacks the capacity to deal with its own army, therefore the ICC should leave the Ugandan government to carry out these investigations.”⁸⁵ Table 11 below presents a summarized analysis of these responses. Table 11

Whether or not UPDF officers should be investigated by ICC for human rights violations in Northern Uganda

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	97	81.5	81.5	81.5
	No	22	18.5	18.5	100.0
	Total	119	100.0	100.0	

4.3 Dealing with the Genocide Perpetrators in Rwanda

In many countries that have suffered a campaign of massive violations of human rights, the violence has been perpetrated mainly by military and political organizations associated with the regime, leaving the rest of society to go about its business with relatively clean hands. In striking contrast, the Rwandan atrocities were characterized by the deliberate attempt to force public participation on as broad a basis as possible, co-opting everyone into the carnage against Tutsis and moderate Hutus.

The militias were tightly organized throughout the country, inciting civilians to participate in the massacres. Many moderate Hutu and Twa were forced to choose between killing and being killed. As such, the option of justice suited to address the issue of justice and accountability that best suits the needs and aspirations of the genocide victims is very challenging. Responses from Rwanda during this study revealed that, the

⁸⁵ Respondent, Makerere University MA. Human Rights program finalist 2006.

ICTR is better positioned to convey a clear message that the international community will not tolerate such atrocities, deterring future carnage of this sort not only in Rwanda but worldwide--and notably in Burundi.⁸⁶

Too often in history has impunity prevailed and perpetrators have been left unpunished for the atrocities committed. Impunity has been the political price paid to secure peace. In the case of Rwanda, the International Criminal Tribunal for Rwanda (ICTR) was the response of the international community to end impunity.⁸⁷ In a related argument, the ICTR has a much greater chance than Rwandan courts of obtaining jurisdiction over the majority of senior officials involved in the genocide , who are no longer in Rwanda.⁸⁸ Alternative views from some respondents establish that, the Rwandan solution chosen to achieve justice, truth and reconciliation is the unique Gacaca system⁸⁹, which draws on traditional Rwandan justice where the interaction of the community is central.⁹⁰

4.3.1 Perception of Justice and Accountability in Rwanda

The impression of justice includes many things in Rwanda, and the perception of justice differs depending on whom you ask. A victim of the genocide who lost her family highlighted that, justice is reconciling the Rwandese and resolving their problems. People who are guilty should be punished, and those who are innocent should be released.⁹¹ Perceived from a historical perspective, an elder observed that If we account for all actions of all those who committed crimes in our history till today, it would be very

⁸⁶ Interview with a volunteer working at ICTR court in Arusha-Tanzania 20/9/2005

⁸⁷ Response from Deputy Head of Rwanda High commission to Uganda 4th /04/2006

⁸⁸ Ibid supra note 86.

⁸⁹ Each Gacaca court consists of judges elected from within the community and all community members from the particular areas where the court sessions are held are obliged to participate.

⁹⁰ Response from an community leader Kibuye-Rwanda

⁹¹ Response from a woman victim and widow at Kibuye, 14th/9/2005

difficult, perhaps no one would be left out, because all tribes in Rwanda have committed some crime against the other at one time, therefore all are accountable.⁹² As an alternative to having all the victims of the genocide aligned before national courts, the Gacaca courts were resurrected in Rwanda as an indigenous form of restorative justice.⁹³ It is envisaged in Rwanda that Gacaca represents a model of restorative justice because it focuses on the healing of victims and perpetrators, confessions, plea-bargains, and reintegration. It is these characteristics that render it a radically different approach from the retributive and punitive nature of justice at the ICTR and national courts.⁹⁴

Its restorative foundations require that suspects will be tried and judged by neighbors in their community. In the next chapter, an analysis of how comprehensive the Gacaca system of justice is, will be interrogated, taking into cognizance the fact that part of the fueling factors for the genocide, as observed in the pre-ceding chapters revealed a political-ethnic nexus. Based on this analogy, the role of ICTR will be mirrored into the whole situation of Rwanda, hence drawing conclusions on the extent of strength of the international law in dealing with complex human rights violations in Uganda's case.

4.3.2 Forgiveness and Reconciliation in Rwanda

The place reconciliation receives on the agenda of a transitional society depends on the particular conjunction of political, cultural, and historical forces. It is frequently said that reconciliation in post-genocide societies like Rwanda is not possible without justice. Forgiveness in the name of letting bygones be bygones at times leaves a lot of question

⁹² Interview with an Elder in Kigali-Rwanda, 21/09/2005

⁹³ Interviews with the Deputy Head of Commission of the Rwandan Embassy in Uganda

⁹⁴ Ibid supra note 93.

for the proponents, who seek to pursue retributive justice, as opposed to total forgiveness of gross human rights violators.

Any reconciliation process is a very delicate operation, but not to address the issues that in the first place fueled the gross violation of human rights, which reconciliation processes seek to redress, is by far the worst response to the respect and observance of the human rights norms. This is the point of departure between the international human rights and humanitarian law proponents, compared to those in support of total forgiveness, sought by those seeking for African solutions to African problems, including though not limited to dealing with persons involved in gross human rights violations.

To reflect these thoughts in the case of Rwanda based on the responses obtained during this study, in generic terms, at large the people of post genocide Rwanda decided to look past their violent history and seek reconciliation. The Rwandan government established the National Unity and Reconciliation Council in March 1999 to spear head total forgiveness and commitment to unity and reconciliation between all people and tribes in Rwanda.⁹⁵ The synonymy of the will for reconciliation in Rwanda is popularly tailored along the notion of adopting Gacaca court system. Gacacas' overriding goal is to promote reconciliation and healing by providing a platform for victims to express themselves, encouraging acknowledgements and apologies from the perpetrators and facilitating the coming together of both victims and perpetrators on the grass.

In conclusion, it is the ultimate interest of this study to provoke further thinking on the scope of mechanisms for accountability and justice from an African paradigm. Indeed the

⁹⁵ Ibid supra note 93.

revelations above from Rwanda on how the Gacaca court system does play out with the ICTR, provides basic debate that there is no an all size fit approach to dealing with those who have committed crimes against humanity and war crimes, a reason why this discussion needed to be extended to Uganda, to inform the ICC in anticipation of dealing with the indicted LRA commanders.

CHAPTER FIVE: DATA ANALYSIS

5.0 Introduction

The interviews conducted in the districts of Gulu, Lira, Pader and Kampala revealed the extent to which international justice promoted by the ICC in the case of Joseph Kony and the indicted LRA commanders is perceived and linked to the reality of the conflict in northern Uganda. To enhance this research, a study of the Rwanda ICTR and the Gacaca courts was conducted to borrow some of the approaches that were used to deal with those suspected for having carried out the 1994 Rwanda genocide.

It should be pointed out that this research distances itself from the interpretation of equating the causes and intentions of the northern Uganda war to those of the Rwanda 1994 genocide. It rather perceives the 1994 Rwandan genocide in terms of the nature of crimes committed, like, the obstinate human mass killings, irrespective of whether they were tribal inspired, the cases of the voluntary homicide, rape and sexual torture, and crimes against property committed in the Rwanda 1994 genocide, which are characteristics of the northern Uganda 20 years insurgency, and how the perpetrators of these genocide were and are handled in the wake of the ICTR and the Gacaca courts.

The Rwandan approaches above, of implementing justice are analyzed alongside the anticipated ICC justice, premised on its indictments of the senior LRA commanders in the northern Uganda situation. This analysis will hence add on the debate of whether or not international human rights and humanitarian laws add value in the pursuit of justice and accountability in Africa.

5.1 Social Demographic Analysis of the Respondents

Kampala district had the highest number of interviewees followed by Gulu, Lira and Pader districts. This trend of responses can be explained by the fact that Kampala is the biggest cosmopolitan and multicultural town of Uganda therefore was more feasible for this kind of elite study, considering that all the 56(100 percent) of its respondents had attained at least secondary education and above. It is also home to the many fore-cited NGOs' involved in the study.

For the other three districts of northern Uganda that formed part of this study, Gulu registered the highest number of respondent, because it was relatively peaceful than Lira and Pader.⁹⁶ It is also host of the various NGOs like World Vision-Children of War, ARLPI, GUSCO, UNICEF, War Child-Canada, which are handling the reception, rehabilitation, reintegration and reconciliation of the former rebels with their communities, areas that the research focused on.

It is imperative to note that respondents were obtained from all the regions of Uganda, East, west, south, central, and from the North. This was intentioned to capture and expose the various social cultural beliefs and perceptions of the northern Uganda war. I wish to express that this study equally represents religious interpretations on matters of justice considering that 97 percent of all the respondents identified themselves as either Christians or Moslems. It also represents mainly opinions of the youth on matters of international justice considering that 78 percent of the entire respondents were between 18 and 40 years.

⁹⁶ The field data was collected in late 2005 and early 2006 when peace was very elusive in other northern Ugandan regions save for Gulu district.

In the case of Rwanda, the researcher found it more value adding to talk to some of the workers at the ICTR based in Arusha, Tanzania, because in principle, they deal on a daily basis with the issues of justice for the individuals suspected to be behind the 1994 genocide in Rwanda. There responses were aligned with those of the victims and community members in the Rwandan towns of Kigali and Kibuye. This created a wider scope for interrogating the mechanisms of justice and accountability in Rwanda.

5.2 Perceptions on the Applications of International Law

It was observed that all the 119(100 percent) respondents were aware of the northern Uganda war of the LRA but only 47(39.5 percent) were aware of the ICC's case of LRA senior commanders. The July 2005 International Center for Transitional Justice and Human Rights Center report, *Forgotten Voices*, conducted in the northern Uganda districts of Gulu, Kitgum, Lira and Soroti, revealed that only 27 percent of the people had heard of the ICC.⁹⁷ The International Crisis Group policy briefing of 11th January on the northern Uganda crisis indicated a similar percentage that, 73 percent of the people in northern Uganda have no knowledge of the ICC and the remaining 27 percent mostly believe that it will contribute to peace and justice.⁹⁸

If compared to the 40 percent obtained during this study, it is right to acknowledge a growing public and victim's awareness about the ICC and its operations in Uganda. This increased awareness of the ICC was attributed to the 13th October 2005 ICC's release of

⁹⁷ ICTJ 2005 report, *Forgotten Voices*, University of California, Berkeley, p.32

⁹⁸ International Crisis Group Policy Briefing 11th January 2006, *A Strategy for Ending Northern Uganda's Crisis*, African Briefing No 32, Kampala/Brussels, p.9.

the warrant arrests for Kony and his four senior commanders, which became then a topic of dialogue and research by many scholars. Whereas a considerable number of the victims in both the case of Rwanda and Uganda, are increasingly becoming aware of the existence of the ICTR and ICC respectively, as options for justice, the greatest challenge is that of how their mandates and procedures of enforcing justice are concerned.

In the eyes of those behind the architecture of having international institutions to deal with war crimes and crimes against humanity, like the ICC and ICTR, to them, such institutions are perceived as a remarkable step to redress the war crimes, crimes against humanity and genocide. For the purpose of illustration, in a statement the day after the ICC indictments for the senior LRA rebels were made public, the then UN Secretary-General Kofi Annan said, the indictment will send a powerful signal around the world that those responsible for serious crimes against humanity will be held accountable for their actions.⁹⁹

What is very crucial to distinguish at this point is that there is undoubted increase within the UN system to focus more on human security, through bringing to justice all those who involve in gross human rights violations, those committing war crimes and crimes against humanity. Hence, the UN and international community support for the establishment of the ICTR in Rwanda, and the ICC, which in this study focus is placed on the indictment of the LRA top commanders in Uganda. This study revealed that 51 percent of the respondents from Uganda supported the indicted LRA commanders to be tried by the ICC. On this basis, one can say with confidence that the victims of the crimes

⁹⁹ UN News service, Annan Hails ICC's arrest warrants for five Ugandan Rebels, 17th October 2005.

that the ICC intends to redress by indicting the suspected perpetrators do acknowledge the role and value of international justice. There is a similar general appreciation in Rwanda of the ICTR mandate in dealing especially with those that were involved in fueling the genocide, but currently leaving in exile, in an attempt to escape justice and accountability for their crimes.

This study therefore acknowledges and salutes the good will of the international community and the UN in regard to their intervention against the above cited nature of human rights abuses and crimes. The main concern of this study is how this international will and the proposed international justice institutions do realize their intended ultimate goals of ensuring justice for the victims of these human rights abuses, and in this case focusing on Rwanda and the ICTR as well as Uganda and the ICC indictment of the top LRA commanders.

What seemed to come out clearly in the responses on the ICTR trials of the suspected persons behind the genocide as well as the anticipated trials of the LRA at The Hague is the issue of location of these courts trials. The basic point of contention is that these trials are conducted by parties who lack the contextual experience and reality of what in the first place caused the gross human rights violations. This is strengthened further by the fact that these trials are conducted from places far way from where the majority of the victims who want to see justice done to the perpetrators are.

Yet another question is the perceived adequacy of any punishment that the ICC or ICTR can offer, since internationally-conceived prison conditions are vastly different than what

prisoners could expect in Uganda or Rwanda respectively. Numerous additional logistical and legal questions surround the whole viability of the process. Ultimately, however, it is the people living in the conflict-affected regions, who will have to live with the decisions that are being made.

Ideally, the entire process of realizing the kind of justice muted by the ICC and ICTR is detached from the victims it intends to redress. Despite the good mandates of institutions like the ICTR and ICC to promote justice and accountability, in practical terms, it lacks comprehensive inclusion of the victims as witnesses and or observers of the justice, which seeks to address their aspirations. The idea of having some few witnesses testifying against the suspects only proves how partial the whole process gets, based on the fact that the war impact is not selective. Thus to many victims, it is designed to satisfy its architects and the international community, by exacting punitive measures against the criminals of the genocide, war crimes and crimes against humanity, on the basis

5.2.1 Retributive and Restorative Justice

In both cases of Uganda and Rwanda, the victims who formed part of the respondents, expressed the readiness and will to forgive those suspected to have committed gruesome atrocities on them and their families. Close to 35 percent¹⁰⁰ of the respondents in Uganda were in support of total amnesty, including total forgiveness for the top LRA if they give up fighting.¹⁰¹ What is very clear though is that there is a non divided call for total

¹⁰⁰ This percentage was tabulated from primary data obtained in 2005. The figure is likely to increase following the LRA and Uganda option for a peaceful solution to the insurgency, including signing of a cessation of hostilities agreement.

¹⁰¹ Refer to Table 10 in the chapter 4 of this study.

forgiveness for those, who were abducted and forced to commit atrocities in northern Uganda by the LRA.

In Rwanda, moderate Hutu were forced to make a choice between their lives of their victims. Based on the above situational challenge, the option of forming the National Unity and Reconciliation council in March 2003 is testimony that, both the victims and the perpetrators have the will to push for restoring the broken relations, which contributed to the occurrence of the genocide in Rwanda. On the basis of the above, one can conclude that majority of the victims of the gross human rights violations, war crimes, crimes against humanity and the genocide, do believe in the option of restorative justice, as opposed to the retributive justice that the ICC and ICTR seek to pursue in Uganda and Rwanda. This choice of the victims, which is rightly their choice, is grounded on the goals of the two mechanisms of justice above discussed.

The victimized communities of in the two cases under this study, perceive the goals of restorative justice as to repair the harm, heal the victims and community, and restore offenders to a healthy relationship with the community. Success is measured by the value of the offender to his/her community after reintegration and the level of emotional and financial restitution for the victim. The process emphasizes that crimes should be addressed in and by the community. Furthermore, restorative justice to the victims is part of the whole process of reconciliation, something very clear in Rwanda. The ICC, in its attempts to pursue justice for the top LRA commanders in Northern Uganda, falls short of engaging the victims on the issues of how to restore the victims and the perpetrators,

including the ultimate goal of facilitating reconciliation. On this basis, the application of international human rights and humanitarian laws in adjudicating in human rights violations in Africa still remains by far unpopular.

There has been a lot of discussion in northern Uganda on the option of *mato-oput*¹⁰², a traditional Acholi approach for conflict resolution as a choice the victims have opted for. These traditional systems have weaknesses as well, but they are the ones perceived to be just and healing from the victimized communities' view point of justice.¹⁰³ Important to analyze herein is that, it is important to understand both the genesis and application of what are commonly referred to as 'traditional' mechanisms.

Societies around the world developed and used a variety of instruments to resolve problems and conflicts, including native communities in North America, and across Africa and many other continents as well; each of Uganda's many ethnic communities traditionally used different forms of customary mechanisms to deal with conflict. And although in some instances these kinds of traditions have disappeared, subsumed by the Western model of retributive justice, in other places like Acholi sub region, which hosts my of the victims of the 20 years war in northern Uganda they are still an active part of community life. Therefore, the ICC failure to withdraw the indictments for the LRA only

¹⁰² This Acholi conflict resolution ritual of clan and family-centered reconciliation incorporates the acknowledgement of wrongdoing, the offering of compensation by the offender and then culminates in the sharing of symbolic drink.

¹⁰³ The 1995 Constitution of Uganda, which allowed for traditional or cultural leaders to exist in any part of Uganda, has led to the revival and celebration of cultural and traditional institutions in all parts of the country. Today, the *Rwodi* of all the Acholi clans have been reinstated and the *Lawi Rwodi* (head chief) has been elected by the other *Rwodi*. After years of conflict and marginalization, the chiefs, like most of their people have suffered the wrath of the 20 years conflict. However, the greatest asset of the chiefs – their political independence – gives them enhanced credibility in mediating reconciliation. The unique contribution of the *Rwodi* is through their mediation of the reconciliation process, *mato oput*, which many Acholi believe can bring true healing in a way that a formal justice system cannot

raises the question of whose justice they are pursuing beyond the victims justice, whose choice of justice is *mato-oput*.

The appreciation of the war victims to opt for what is socially understood to them as justice-the restorative option, as opposed to the retributive mechanism that the ICC aims to pursue for the same victims in northern Uganda is similar to the Gacaca¹⁰⁴ option by the genocide victims of Rwanda. Gacaca is intended to sanction the violation of rules that are shared by the community, with the sole objective of reconciliation, through restoring harmony and social order and reintegration of the person who was the source of the disorder.¹⁰⁵ This is the socially and widely acceptable form of justice in Rwanda.

To juxtapose the principles and procedures of Gacaca and *Mato-oput* with the ICTR in Rwanda and ICC in Uganda respectively is to contextualize the normative differences between the local-African and western paradigms of justice perceptions. The norms underlying Gacaca and *mato-oput* reflect both cultural traditions and the characteristics of restorative justice. The benefits that Gacaca and *mato-oput* bring to the reconciliation process are tied to the integrity of their indigeneity and its adherence to a restorative model of justice.

What international justice institutions and its proponents need to interface with in pursuing justice for victims of gross human rights violations in Africa, is the reality that restorative justice in the eyes of many human rights victims is draws upon their traditional customs and ideas in the administration of justice even in these modern times.

¹⁰⁴ Gacaca, meaning “judgment on the grass,” offers a pragmatic and community based solution.

¹⁰⁵ Interview with an Elder in Kibuye-Rwanda, September 2005.

Failure of the western justice models to embrace these principles, only keeps them more discredited by the human rights victims they intend to redress in Africa.

5.2.2 International Law and Investigations of State Actors

As earlier noted, close to 82 percent¹⁰⁶ of the respondents in Uganda supported the ICC investigations of the UPDF senior commanders, directly or otherwise, by commission or omission, involved in committing human rights violations against the people of northern Uganda during the 20 years conflict in Uganda. In Rwanda as well, while the genocide targeted the Tutsis, Tutsi refugees and Rwandan Patriotic Army (RPA), the military arm of the Rwanda Patriotic Front (RPF), committed extensive war crimes prior to the genocide that also positions them as perpetrators of violence.¹⁰⁷ Prior to the signing of the Arusha Accords to end hostilities between the RPF and Rwandan government forces, the RPF had forcibly overthrown Hutus, committing violations paramount to war crimes.¹⁰⁸

With some of the earlier studies conducted in both the case of Uganda and Rwanda, it is true that some of the government forces, which support the ruling governments in the two countries, are responsible for committing crimes worth investigation by the international justice institutions attempting to pursue justice therein, the ICC in Uganda and the ICTR in Rwanda respectively. Unfortunately at this point in time, the ICC has not issued any warrant of arrest for any UPDF officer after two and half years since they indicted the top five LRA suspects. The ICTR is equally silent about indicting some of the ruling

¹⁰⁶ Refer to Table 11, chapter four of this study.

¹⁰⁷ Human Rights Watch, *Solidarity Camps 2000*, www.hrw.org/reports/2000/rwanda/rwan004-13htm.

¹⁰⁸ Packer, George, (Spring 2002), *Justice on a Hill: genocide Trials in Rwanda*, *Dissent Magazine*, <http://www.dissentmagazine.org/archives/2002/sp02.packer.shtml>.

government RPA, former RPF in Rwanda.¹⁰⁹ With such gross oversight or deliberate reluctance of the international legal human rights and humanitarian institutions to take on the governments to make them equally accountable for gross human rights violations, which the victims can attest to, International human rights and humanitarian law by far remain biased, partial and inadequate to deal and satisfy the victims quest for justice.

In the earlier literature review of this study, an attempt was made to question the procedures of the international human rights and humanitarian law tribunals, especially on the issue of seeking state approval to carry out investigations, which in principle should include the state parties that invite them. The president of Uganda invited the ICC and as a national leader of Uganda facilitated the proceeds of the ICC pre-trial chamber to gather evidence to back up the ICC indictments of the top five LRA commanders. The nexus of the situation is the ICC close collaboration with the State leaders that they are meant to investigate and perhaps indict. One sees the ICC being compromised in such state procedures and unless this setting is reviewed immediately, it will continue to cripple and taint the gesture of applying international legal systems in the eyes of the victims that they intend to redress.

5.3 Other Options of Accountability and Conflict Resolution

Attempts towards the reconstruction of post genocide Rwanda are primarily focused on building inclusive governance structures for national unity and reconciliation. Unity and

¹⁰⁹The former Chief Prosecutor of the ICTR, Carla Del Ponte, initiated investigations into the crimes committed by the RPF. As a response, the Rwandan government barred witnesses from traveling to Arusha and disrupted the work of the Tribunal. There has been reluctance by the ICTR to pursue RPF to bring them to account.

reconciliation is the slogan of the government.¹¹⁰ The ultimate goal of this approach in post genocide Rwanda is the search for healing, right at the individual level but dependant upon and interrelated with the social-political context of the country's future. The Gacaca courts and Committee for National Unity and reconciliation already discussed, in essence are aimed at helping victims to acknowledge pain, speak out and participate in process of justice.

Such processes among other democratic institutional reforms in Rwanda¹¹¹ have been very good starting points and pre-conditions for creating a socio-political context that is conducive to healing of the genocide victims. Just as healing in Rwanda is dependent on the collective and political context, so too can individual and community healing strategies in the war affected northern Uganda bolster regional and national attempts to re-establish the 20 years war ravaged and marginalized northern Uganda. Based on this analysis, it is very clear empirically that ICTR in Rwanda as well as ICC in Uganda, in principle, have little to contribute to rebuilding the structures of the war torn communities, the agitated for position of this study, which is inclusion of the masses in tailoring a step by step grassroots based socio-political, as well as economic frame work to address the causes, not symptoms of the atrocities in the two case scenarios.

The government of Uganda after over 19 years of a militarized approach to flash out the rebels, who were mainly committing crimes against the innocent population of northern Uganda, opted for a peaceful end to the conflict. The peace talks mediated by southern

¹¹⁰ Interview with the Deputy Head of Rwandan High commission in Uganda, April 2006.

¹¹¹ In 2003, the first ever multi-party legislative and presidential elections were held. Since 2000, Paul Kagame, the former RPF commander, is President of Rwanda. He is now elected until 2010. Under his strong leadership, many Areas, including security, level of corruption and infrastructure, have improved

Sudan, which began on the 14th of July 2006, are perceived and anticipated to bring sustainable peace in northern Uganda. The search for peace in northern Uganda in principle has been upheld by the victims as the first form of justice they are experiencing. Anything that threatens the elusive peace that is being enjoyed in the region is by far an injustice towards their plight.

Unfortunately, the ICC is one of those perceived threats to the peace talks for northern Uganda. This thinking is backed up by some of the responses, which cited that, the ICC should consider that as Ugandans, we also have our different cultures, traditions, and the ICC must not operate outside that context, in which the war has been taking place as if they are just operating in a vacuum.¹¹² Being perceived as a possible spoiler of the peace talks, the ICC's intended prosecution of the top commander of the LRA in northern Uganda is by far very unpopular before the victims that ICC intends to redress. It is very important to note that the agenda of the Juba Peace talks between the Ugandan government and the LRA, which were ongoing by the time of compiling this report, agenda item number three was on the element of accountability and reconciliation. As such peace talks are perceived as an alternative to the ICC in the search for accountability by those involved in committing gross human rights violations.

It is thus very clear from the above analysis and discussions that victims of gross human rights violations including, though not limited to, victims of crimes against humanity, war crimes and genocide opted to have justice, tailored on their understanding of justice, which is the restorative approach.

¹¹² Response from a history professor, Makerere University Kampala, July 2006.

In conclusion, the researcher of this study is very certain that although the victims' options of Gacaca system in Rwanda as well as Mato-oput in northern Uganda signify a big step forward in providing victims with a remedy and combating impunity, they are not unproblematic. Problem areas include insufficient education or sensitization of the elders, who act as judges, practical access to justice for all victims, security for victims and witnesses, and reparation for moral damages, which the ICTR and ICC mandates in Rwanda and Uganda respectively seek to embrace. For Uganda and Rwanda to fulfill their legal obligation to provide victims of human rights violations with an effective remedy, improvements are necessary. The next chapter provides and suggests recommendations for the above improvements.

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

6.0 Summary of the Findings

In this concluding chapter, it is imperative to make these key areas of argument in the whole study very distinctive. The concept of justice, specifically in the context of post-conflict reconciliation as observed in Rwanda and Uganda respectively, which have formed case studies of this study, can have many descriptive qualifiers that denote different rules, procedures, and goals. Additionally, the retributive and restorative justice paradigms assign different parties to the roles of architects and beneficiaries of the judicial process. For the ICTR and Gacaca courts, as well as ICC and mato-oput, the architects of each system accord different notions of legitimacy to the process through various institutional and normative components. The point of agreement though, is that whatever kind of justice is perceived to be appropriate by the parties outside the conflict, this justice should be seen to be just before the eyes of the human rights victims they purport to represent. The following are facts of this research in line with the challenge of implementing international justice in the over 19 years LRA insurgency in northern Uganda as well as the ICTR justice mechanisms.

- The justice mechanisms appropriate for the war torn Northern Uganda has to represent the principles and practices, which are central to the support for reconciliation and amnesty within the communities of the affected people. The justice mechanisms ought to advocate for space to concede the past mistakes committed by the former LRA rebels onto their communities. Just like Rwanda, the post genocide communities opted for unity and reconciliation. The above

argument is a necessary ingredient for reframing the present unhelpful perceptions to ending the northern Uganda conflict.

- To envision a peaceful future, the war affected people in both cases of post genocide Rwanda and post LRA era in northern Uganda, the directly victimized communities ought to be supported to find ways to encounter themselves and their enemies, their hopes and their fear, hence the need of reconciliation.
- Some of the LRA rebels have committed crimes against humanity like mass murder; rape; sexual enslavement; and war crimes like, pillaging; willful attack against a civilian population; forced displacement of civilians; and forced enlisting of children as child soldiers. These crimes are punishable under the Ugandan laws, ICC and ICTR jurisdiction.
- It is also true that some of the LRA were forced to kill against their will and for the sake of their lives; they were compelled to commit some of the above-mentioned crimes, putting into considerations that some of them were born and have been raised in the LRA captive. A similar scenario happened in Rwanda where the moderate Hutu and Twa had to choose between their lives or those of their victims. The general opinion in addressing this nexus is to seek for reconciliation based on a restorative approach model as opposed to the punitive criminal justice dispensed by both the ICTR in Rwanda and ICC in Uganda.

- It is virtually true that the LRA insurgency in northern Uganda has generated children of war, those who have been directly involved with the armed groups, those born in captivity and orphans due to war and AIDS. This implies that the war region is currently faced by a very urgent HIV health concern that if not well responded to faster, may result into greater human loss in the region. This similar scenario is experience in the post-genocide Rwanda reconstruction, were the severely hit regions during the Genocide are now challenged of restoring economic-social structures for prosperity.
- It is equally true that some of the LRA rebels committed voluntary homicide, inflicted wounds with intent to kill or other serious violent acts without intent to kill, committed crimes against property, including such crimes as burning of civilians' huts, theft of their food and other forms of wealth. In the Rwanda context of those who committed similar crimes during the genocide, the traditional local courts the Gacaca are empowered by the ICTR and supported by the Rwanda government to handle their trial. In the case of Uganda, there is insufficient government support for similar cultural justice mechanism in the war affected region to fully support the ICC intention of justice in Uganda. This raises concern of whether the government perceives it as an alternative approach in fostering justice in the war torn northern Uganda.
- Many of the Ugandans up to now are not knowledgeable about the ICC operations and the validity of their justice in the case of northern Uganda. Just like in the case of the ICTR and the Rwandan public, the general public in Uganda is

unenthusiastic of whether the international justice mechanisms are necessary now, later or never.

- The epicenter of post-genocide Rwandan society and politics has been the need for reconciliation to assuage ethnic tensions and end a culture of impunity. The International Criminal Tribunal for Rwanda (ICTR) has yet to meet its goal of reconciliation in Rwanda. The failure of the tribunal goes beyond its institutional shortcomings and can be attributed the norms of international criminal law that render it an inappropriate response to criminalizing mass violence.
- There are many Civil Society Organization that are engaging in supporting the reconstruction of northern Uganda but them too are not well coordinated within themselves, and above with the government. As a result, there is a lot of duplication of similar services.
- There are very negative and dangerous perceptions of some Ugandans towards the war affected people of northern Uganda, like of perceiving them as violent war mongering warriors, hence some people blaming them for them for causing the war. These stereotypes unfortunately are transferred to the young generation through interactions with such elder members of these small communities. This has resulted into damaging the national identity in Uganda because some Ugandans perceive themselves as prosperous and others underprivileged tribes.
- It is uncontested that some UPDF officers have out of either commission or omission committed similar crimes like rape, killing against the same

communities that they were meant to protect. In Rwanda, the RPF, which is now RPA government forces are believed to have committed gross human rights violations towards the wake of the genocide. Unfortunately the Ugandan government, like its counterpart Rwanda, has not come out strongly in public to punish these officers, something that has created discontent to some of the human rights violations victims in the two cases.

- The presence of IDPs in the war torn northern Uganda region is testimony to the fact that the LRA succeeded in undermining the capacity of the government to protect its own people. Taking people to IDPs for security reasons was a fair approach. The biggest problem is the long overstay in these camps.
- The people of the war affected region of northern Uganda are among the most very poor in the country. There infrastructure in the region like schools, homesteads, roads and health services are very insufficient. This point to the fact that human security is still at stake in the region.
- The victims' options of Gacaca system in Rwanda as well as Mato-oput in northern Uganda signify a big step forward in providing victims with a remedy and combating impunity, they are not unproblematic. Problem areas include insufficient education or sensitization of the elders, who act as judges, practical access to justice for all victims, security for victims and witnesses, and reparation for moral damages, which the ICTR and ICC mandates in Rwanda and Uganda respectively seek to embrace.

6.1 Recommendations

The validity of this analysis is to express the facts that the ICC and ICTR as international mechanisms of justice in the case of the LRA rebels of northern Uganda and the those suspected to be behind the genocide in the case of Rwanda, is insufficient to cater for the fore mentioned categories of crimes against the civilian population of northern Uganda, as well as Rwanda. To redress the assessment gaps as identified by this study and for sustainable peace and justice to ensure in these conflicts affected regions, the various stakeholders need to reflect and borrow from some of the aforementioned recommendations.

- Justice to the northern Uganda war victims is permanently ending the war. There must be guarantees that war will end even after arresting and arraigning Joseph Kony and his indicted top commanders before the ICC. For this to happen, the government ought to fully commit itself to talk peace to LRA, and speedy the processes of granting amnesty especially fulfilling the packages that the returnees expect in this process. This is one of the guarantees that even if Kony and his indicted commanders are aligned to The Hague, there will be sustainable peace.
- The Ugandan government denial of the right information that portrays the right picture of the gravity of war will continue to divert the attention of the civil society and international community, which would have been vital to end the conflict. The government of Uganda therefore should become more committed in supporting research that is intended to expose the gravity of the violations committed by either the LRA or some UPDF officers; hence there is need for

more joint interventions and collaborations between the Ugandan government with the international, national and local stakeholders operating in the region.

- The government of Uganda in partnership with CSOs, Cobs, just like in Rwanda must pursue in a more committed manner an all inclusive national reconciliation agenda, were the concerned and victimized communities should be involved as partners and not as passive observers who have to take already agreed upon policies made from boardrooms in Kampala.
- There should be psychological and social support for the former LRA combatants, returnees, abductees and the traumatized communities. This exercise is ongoing in Rwanda. This implies that the psychological and social status of the former combatants and their victims must first be taken care of for meaningful reconciliation and justice to prevail.
- There is need to understand anticipated justice for northern Uganda as a part of national reconciliation. For most people in northern Uganda, justice only makes sense if it is part of a broader peace building process and reconciliation. The ICC intervention needs to understand and take account of this in considering the timing of its intervention, and the way in which it seeks to work alongside established local justice and reconciliation processes like those among the Acholi who are mainly the biggest victims of the war.
- Acholi tradition embodies the principles and practices which have been central to the support for reconciliation and amnesty within that community. Through the

mediation of the traditional chiefs (Rots), the Ugandan government should consult and jointly restructure the Acholi justice mechanism that embraces reconciliation basing on the fact that most of the war victims and perpetrators have been Acholis. This is similar to the arrangement that the ICTR based in Arusha has with the local Gacaca court systems within Rwanda.

- International human rights and criminal justice standards have provided substantial gains for women rights, such as bringing rape during war within the ambit of war crimes and crimes against humanity. These rights are ignored in African justice mechanisms. Women in the northern Uganda war just like during the Rwandan genocide have been the main witnesses to these crimes because the sexuality was been used as weapon of war through rape and sexual violence to frustrate their husbands. In Rwanda, this is the first time that they have been allowed to participate in the judicial process; both to give evidence and to sit as judges in the tribunals. The Ugandan situation ought to borrow a leaf from this situation to revise some aspects of traditional Acholi justice mechanism to develop the confidence and skills of women required to take part in the whole process.
- There is need to increase the understanding of ICC's role in northern Uganda. If the ICC is to operate effectively and make a meaningful contribution to justice, the people on whose behalf it claims to operate need to understand it properly. The ICC ought to deliver an effective communications strategy in Uganda, which the Ugandan government has to translate into the local languages of the many people

affected by the conflict, otherwise some will continue to wrongly believe that the ICC has its own means like to arrest and capture the rebels and that it is not committed to doing so.

- The issuing of ICC indictments generated a violent response from the LRA against the civilians with specific interest of white foreigners providing humanitarian services in the war region. The ICC needs to develop a clear strategy that will guarantee adequate security to victims and witnesses in a state of ongoing conflict where the perpetrators are still at large.
- The international community should encourage alternative and local forms of justice like Gacaca in Rwanda and the mato-oput to exist in cooperation, not competition, with international retributive processes. This should cut across in all African countries that are emerging from violent conflicts.
- Local forms of justice like mato-oput in northern Uganda and Gacaca court system of Rwanda should not be held to culturally inappropriate standards of criminal law and their indigeneity should be respected.
- Caution must be exercised with regard to the relationship between justice and political power. The rhetoric placing “unity” and “security” above in Uganda and Rwanda respectively can mask divisions within society that threaten a resurgence of violence.

- What we have learned from Rwanda is that reconciliation has many meanings with both individual and collective consequences. Mitigating impunity must be an assurance for the future and not a way to avenge the past.
- The viable way forward must ensure postwar reconstruction assistance in form of infrastructure especially houses that were burnt by the rebels, resettlement of the IDPs back into their communities where security is guaranteed, capacity building for institutions like schools and hospitals, support of agricultural production and trade, promotion of private enterprises, special district quota scholarships, and provision of gainful employment.

6.2 Areas for Further Research

- There is need to analyze how the issue of sovereignty impacts on the international intervention in responding to the immediate end of gross violations of human rights and how it applies.
- Research is also needed to analyze the new peacemaking, peacekeeping and conflict resolutions mechanisms that the UN and AU have developed to ensure human security especially in the developing countries in Africa.
- The effectiveness of peace talks as an intervention to redress justice concerns of victims of gross human rights violations, the case of Juba peace talks between Uganda government and the LRA can provide a very informative study.

The black strip in many of the African flags symbolizes the black African skin, spirit and oneness of being siblings under one skin. African nationalism and Pan Africanism is under a challenge to see to it that Africans' dignity of life and respect for one another is given greater priority. African politicians must resist being seduced to politicize the plight of their suffering masses because this has been the source of fermenting the sour and turbulent political moments on the beloved black continent. Failure to do so, many people worldwide may cry with Africans, yet they are crying for them, because they are yet to be swallowed by there own known political blunders.

For God and My Country

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Appendix 2:

Questionnaire on International Criminal Court Indictment in Uganda and the International Criminal Tribunal Trials in Rwanda: Lessons in Applying International Law and justice Mechanisms

Dear respondent, I am a student of Masters of Arts in Human Rights, Makerere University carrying out the above research. This questionnaire is intended for research purposes only. The responses will be treated with utmost confidentiality. Thank you for sparing your time to fill this questionnaire.

Tick (✓) the appropriate

1. Age: 18-30 31-40 41-60 Above 60
2. Sex of the respondents: Male Female
3. Marital status: Single Married Separated
4. Level of Education: Primary Secondary Diploma Degree Postgraduate
5. Distribution of respondents by religion: Catholic Protestant Moslems Pentecostal Others

Tick the appropriate responses in the boxes at the of every statement

	Questions	Yes	No
6	I have heard of the LRA war in northern Uganda		
7	I have heard of the indictment of the top LRA before the ICC		
8	Kony and other indicted LRA commanders should be tried in Uganda		
9	ICC should let the peace talks to resolve the conflict in northern Uganda		
10	If Kony and other indicted LRA commanders resign from war, they should be totally forgiven		
11	Ugandan government should investigate its officials suspected for committing human rights violation in the northern Uganda war		

Section B: Write your opinion about these questions using the space below

- 12. What crimes have been committed by the LRA in northern Uganda?
.....
.....
- 13. Should Kony and other LRA commanders indicted by the ICC be tried by the ICC? Give reasons for your response.
.....
- 14. What do you see as the strong points in the ICC trial of the LRA?
.....
.....
- 15. Should other LRA fighters, who have not been indicted by the ICC, be forgiven? Give reasons.
.....
- 16. What penalty should Kony and his indicted commanders' face?
.....
.....
- 17. What are the likely challenges that the ICC will face in trial of Kony and his indicted commanders?
.....
- 18. Should the UPDF be investigated and those suspected of human rights violation be tried for by the ICC? Give reasons.
.....

Appendix 3:

INTERVIEW GUIDE -UGANDA

1. What crimes have been committed by the LRA in northern Uganda?
2. Should Kony and other LRA commanders indicted by the ICC be tried by the ICC? Give reasons for your response.
3. What do you see as the strong points in the ICC trial of the LRA?
4. Should other LRA fighters, who have not been indicted by the ICC, be forgiven? Give reasons.
5. What penalty should Kony and his indicted commanders' face?
6. What are the likely challenges that the ICC will face in trial of Kony and his indicted commanders.
7. Should the UPDF be investigated and those suspected of human rights violation be tried for by the ICC? Give reasons

Appendix 4:

INTERVIEW GUIDE-RWANDA

1. Describe the nature of crimes committed during the 1994 genocide in Rwanda?
2. Identify the victims, perpetrators and other actors involved in the 1994 genocide?
3. Explain the role played by the various actors during the genocide.
4. How is justice and accountability perceived in post genocide Rwanda?
5. What do you see as the strong points in the ICTR trials of those suspected to have committed gross human rights violation during the genocide?
6. What challenges have been encountered by the ICTR in prosecuting those suspected to be behind the genocide?
7. How is forgiveness and reconciliation perceived in Rwanda?