

Uganda's Post-war Transitional Justice Process: Have Housing, Land and Property Rights been Restored?

Tonny Raymond Kirabira

Portsmouth Law School, University of Portsmouth, Portsmouth, United Kingdom; Research Affiliate, Refugee Law Initiative, University of London, London, United Kingdom

tonny.kirabira@port.ac.uk

Leïla Choukroune

Professor of International Law and Director of the Inter-faculty Research Theme in Democratic Citizenship, Portsmouth Law School, University of Portsmouth, Portsmouth, United Kingdom

leila.choukroune@port.ac.uk

Abstract

This article examines the existing post-war recovery framework employed in Uganda to address concerns with housing, land and property (HLP) rights, particularly in Uganda's post-war recovery period. It explores the integration of special categories of victims, i.e., internally displaced persons (IDPs) and children born of war (CBW), with a key focus on how HLP rights are integrated into – or left out of – the transitional justice (TJ) process. HLP rights fit within the broader pictures of customary practices and TJ, since they enable IDPs and CBW to integrate into the post-war communities. Our findings from the Uganda case study cast some doubt on the current process and aim to influence future interventions by emphasising that progress with securing HLP rights for those affected by war and violence is an integral part of any legitimate post-war recovery process and TJ interventions.

Keywords

Uganda – post-war – housing, land and property rights – transitional justice – internally displaced persons – children born of war

1. Introduction and background

This article focuses on the experiences of victims of the Lord's Resistance Army (LRA) in post-war Northern Uganda. Specifically, it maps out how transitional justice (TJ) and its

frameworks may relate to housing, land and property (HLP) rights. As the article explains, Northern Uganda is a particularly complex case study due to the intersection of different humanitarian and human rights issues; in addition to its impact on HLP rights, the LRA insurgency also had an acute effect on the specific groups of internally displaced persons (IDPs) and children born of war (CBW).

IDPs are persons forced to leave their homes without crossing internationally recognised State borders due to natural or man-made disasters like armed conflicts.¹ The term CBW refers to children conceived from non-consensual relationships in the context of armed conflict.² On the other hand, TJ refers to a range of judicial mechanisms such as prosecutions and inquiries, as well as non-judicial mechanisms e.g. mediation, implemented to deal with legacies of gross human rights abuses.³ The article responds to scholarly calls for TJ to ‘broaden its scope to include processes and measures to engage with present day conflict, human rights and humanitarian crises’.⁴

This article makes links and intersections among the main characters – HLP, IDPs, CBW and TJ – by exploring the case study of Uganda. The article’s narrative is based on TJ interventions and processes specifically employed in Northern Uganda, where the authors fit together arguments for HLP rights for these vulnerable groups of people. The main argument that the authors make is that the realization of HLP rights for IDPs and CBW is an important aspect of TJ. To most civilians living in Northern Uganda, access to land is vital for their survival, since they cultivate food crops. However, HLP issues add further uncertainty to the TJ process. Apart from the State-initiated redevelopment schemes, the victims’ expectations often conflict with customary land ownership systems. Yet, ‘control over land defines power’ in this post-conflict setting.⁵

TJ is criticised for borrowing dispute resolution mechanisms from a recreated past.

¹ Nils Geissler, ‘The International Protection of Internally Displaced Persons’ (1999) 11 *International Journal of Refugee Law* 451, 454; Roberta Cohen and Megan Bradley, ‘Disasters and Displacement: Gaps in Protection’ (2010) 1 *Journal of International Humanitarian Legal Studies* 1.

² Ingvill C Mochmann, ‘Children Born of War - A Decade of International and Interdisciplinary Research’ (2017) 42 *Historical Social Research / Historische Sozialforschung* 320; René Provost and Myriam Denov, ‘From Violence to Life: Children Born of War and Constructions of Victimhood’ (2020) 53 *New York University Journal of International Law and Politics* 1.

³ For a more elaborate explanation on TJ, see Ruti G Teitel, ‘Transitional Justice Genealogy’ (2003) 16 *Harvard Human Rights Journal* 69. See also Roger Duthie and Paul Seils (eds), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Center for Transitional Justice 2017).

⁴ Jeremy Sarkin, ‘Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises’ (2016) 7 *Journal of International Humanitarian Legal Studies* 294.

⁵ Sandra F Joireman, ‘Intergenerational Land Conflict in Northern Uganda: Children, Customary Law and Return Migration’ (2018) 88 *Africa* 81.

Generally regarded as a success by international donors and local authorities, TJ can also become the mere expression of second-rate justice. While its solutions can bring some social cohesion at the local level, they do not necessarily participate in broader democratic objectives, as they tend to reproduce old systems of domination and exclusion of the weakest from justice. This “bread for the poor” approach aims to provide the needy with speedy, costless justice, and thereby respond to the flaws of the formal judicial system. In this regard, such an approach is also nothing less than the paternalistic expression of a reluctance to share the benefits of development and democratisation, as if the poor of the global South would have to, yet again, wait for further political emancipation in order finally to obtain justice. Scholars and practitioners emphasise the relevance of locally driven dispute resolution mechanisms in TJ, including the handling of land-related conflicts.⁶

The case study of Uganda perfectly exemplifies both the significance of local traditional cultures and also the limitations of formal judicial processes when implementing TJ in the post-war affected communities. It is important to note that the LRA war was concentrated in the Lango and Acholi sub regions of Northern Uganda, hence the authors’ focus on TJ within these regions. Historically, traditional systems in both the Lango and Acholi areas of Uganda were structured largely along lines of clan.⁷ In Acholi, traditional governance was led by spiritually appointed chiefs known as the *rwodi moo*.⁸ The chiefdoms were based on the coming together, or conglomeration, of different clans and their leaders. The chiefs’ powers were not absolute, however, as they remained subject to guidance from a democratically elected Council of Clan Elders, known as the *Ludito Kaka*. The elders exercised both judicial and legislative functions.⁹ To emphasize the communal governance structure and relationship among the Acholi, scholars draw close attention to the belief in and practice of consensus among the elders, as opposed to the Western, liberal bias that favours individual decision making.¹⁰

One notable cultural practice is the *Gwooko Dog Paco*, a central element of the Acholi ethnocultural identity. It is a belief in communal responsibility for defending homesteads, with

⁶ See for example, Dustin N Sharp, ‘Crisis, Faith, and Transformation in Transitional Justice’ in Matthew Evans (ed), *Beyond Transitional Justice Transformative Justice and the State of the Field (or non-field)* (1st edn, Routledge 2022) 26; Theodore Mbazumutima, ‘Land Restitution in Post conflict Burundi’ (2021) 15 *International Journal of Transitional Justice* 66.

⁷ Teddy Atim and Keith Proctor, ‘Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango’ (Feinstein International Center, Tufts University 2013).

⁸ James O Latigo, ‘Northern Uganda: Tradition-Based Practices in the Acholi Region’ in Luc Huyse and Mark Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (International Institute for Democracy and Electoral Assistance 2008) 102.

⁹ *ibid* 103.

¹⁰ Charles Amone and Okullu Muura, ‘British Colonialism and the Creation of Acholi Ethnic Identity in Uganda, 1894 to 1962’ (2014) 42 *The Journal of Imperial and Commonwealth History* 242.

an emphasis on self-preservation.¹¹ However, most of the traditional and cultural practices were grossly disrupted with the introduction of British colonial rule between 1894 and 1910.¹² An important question then arises: do TJ's frameworks provide appropriate redress across cultural and historical trajectories? This question is vital in TJ because of the often-contested relationship between statutory and indigenous customary laws.¹³

Key empirical findings from this article relate to the most influential studies of reintegration in Northern Uganda, and particularly their methods of analysis and periods of research. First, these works are relevant as they illuminate the nature of conflicts among the post-war affected communities. Secondly, they also show the TJ gap in Northern Uganda.

As the relationship between HLP rights and TJ is still evolving,¹⁴ the article adds a new angle of analysis to the existing empirical studies. For example, Adoko and Levine collected data in 2004, when more than a million people were living as IDPs.¹⁵ With the return of people to their communities, findings from the subsequent studies supplement their conclusions, but present a longer duration of victims' experiences. Political scientist Joireman conducted interviews in 2015.¹⁶ These interviews are significant because the goal was to identify the nature of disputes involving vulnerable groups and specific issues surrounding their property rights.¹⁷ Birjandian's twelve months of fieldwork between 2016 and 2017 presents a good account of the discussions which were held during the drafting of Uganda's TJ policy. Her analysis mirrors the work of Macdonald's critical scholarship, also based on long-term qualitative fieldwork in Uganda.¹⁸ Ugandan scholar Ojera Latigo's wealth of knowledge in the traditional practices and culture of the Acholi people offers a unique contextual account of the humanitarian aspects in TJ.¹⁹

An alternative lens is presented through the work of economist O'Reilly's quantitative study on the impact of displacement on household consumption and consumption growth in

¹¹ Opiyo Oloya, *Child to Soldier: Stories From Joseph Kony's Lord's Resistance Army* (University of Toronto Press 2012) 43.

¹² Colette Harris, 'Some Gender Implications of the "Civilising Mission" of the Anglican Church for the Acholi Peoples of Northern Uganda' (2017) 8 *Religions* 6.

¹³ Jon D Unruh and Musa Adam Abdul-Jalil, 'Housing, Land and Property Rights in Transitional Justice' (2021) 15 *International Journal of Transitional Justice* 1, 2.

¹⁴ *Ibid.*

¹⁵ Judy Adoko and Simon Levine, 'Land Matters in Displacement: The Importance of Land Rights in Acholiland and What Threatens Them' (CSOPNU 2004).

¹⁶ Joireman (n 5).

¹⁷ *ibid.*

¹⁸ Anna Macdonald, "'Somehow This Whole Process Became so Artificial": Exploring the Transitional Justice Implementation Gap in Uganda' (2019) 13 *International Journal of Transitional Justice* 225.

¹⁹ Latigo (n 8).

Northern Uganda.²⁰ This is important because the limited literature on the path of TJ from internal displacement is largely qualitative in nature. Similarly, research on CBW has received less attention compared to that on the protection of children in armed conflict.²¹ This begs for more scholarly attention to such vulnerable victims. Overall, this article seeks to contribute to the literature on HLP rights, international humanitarian law (IHL), customary law and TJ in the context of IDPs and CBW in Uganda.

The analysis in this article proceeds as follows: First, after this introduction, section 2 traces the two-decade war in Northern Uganda. It then enters a substantive discussion about the different TJ mechanisms involved. This section aims to provide the reader with a more contextualised understanding of TJ against the backdrop of a long-term ethno-social war, as well as the various forms of ongoing conflict. Next, section 3 discusses the cultural and social narratives around HLP rights. Section 4 seeks to demonstrate the history of TJ dialogues among IDPs and CBW, paying particular attention to the experiences and views of these unique categories of victims. This is to help situate the authors' understanding and critique of different TJ mechanisms as they operate in Northern Uganda. In section 5, the article discusses the existing legal framework for the realisation of HLP rights. Finally, section 6 concludes by identifying potential avenues to advance the HLP framework within contemporary TJ.

2. The search for Holistic Transitional Justice in Northern Uganda

Forced displacement, integration of CBW and TJ all have direct impacts on HLP rights in Northern Uganda. In order to explore these linkages, it is important to understand the history of conflict in Northern Uganda, together with the TJ mechanisms. Northern Uganda was engulfed in a civil conflict in 1987 that persisted for more than a decade. The LRA, a rebel movement under the command of Joseph Kony often attacked civilian locations, causing massive devastation and gross human rights violations. These included acts of sexual violence, murder and recruitment of children as soldiers. It is estimated that about 20,000 children were abducted and recruited into the military by the LRA between 1987 and 2002.²² In addition, these actions resulted in massive internal displacement of more than 440,000 persons in

²⁰ Colin O'Reilly, 'Household Recovery from Internal Displacement in Northern Uganda' (2015) 76 *World Development* 203.

²¹ Elina Almila, 'Protecting Children from Sexual Violence in Armed Conflict under International Humanitarian Law: Discrepancies between Conventions and Practice of International Criminal Courts and Tribunals' (2019) 10 *Journal of International Humanitarian Legal Studies* 217.

²² See 'Child Soldiers Global Report 2004 - Uganda, 2004' (Child Soldiers International, 2004).

Northern Uganda.²³ Efforts to sign a peace agreement were carried out in 1994, 2006 and 2008, between the government of Uganda and the LRA.²⁴ However, these failed, and the Ugandan government opted for a military operation to end the insurgency.

One notable TJ mechanism related to amnesty. The Ugandan government enacted an Amnesty Act in 2000 that offered immunity and resettlement packages to LRA fighters who surrendered. Consequently, over 26,000 people in the whole country responded positively and returned home.²⁵ However, the situation changed in 2004, when the government reduced the amnesty period from six to three months, and further ended its application towards the LRA commanders. An intensive military drive named ‘Operation Iron Fist’ exerted pressure on the LRA.²⁶ However, it also escalated the number of IDPs to over 800,000 at the end of 2003.²⁷

Another key TJ mechanism employed following the conflict in Northern Uganda was the use of international criminal justice. One year after the International Criminal Court (ICC) commenced its work in 2002, the Ugandan government referred the conflict to the ICC for investigation. Subsequently, arrest warrants relating to crimes against humanity and war crimes were issued for the LRA’s top five commanders in 2005.²⁸ Dominic Ongwen, one of LRA’s top commanders, surrendered in 2015, and his trial before the ICC commenced in 2016.²⁹ Between 2012 and 2017, the LRA were significantly weakened and forced to retreat to the Democratic Republic of Congo (DRC) and the Central African Republic (CAR). In 2017, the Ugandan government formally ended its military offensive against the LRA.³⁰

Just like in many African countries, there are competing and contested approaches to TJ in Uganda. The most notable debates relate to the legitimacy of the ICC and its central role

²³ See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, ‘The Lord’s Resistance Army and Children’ (Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 2012) <<https://childrenandarmedconflict.un.org/2012/06/the-lords-resistance-army-and-children/>> accessed 19 June 2022.

²⁴ See Agreement between the Uganda Government and the Lord’s Resistance Army (LRA) (Gulu Ceasefire) 2 February 1994 <<https://www.peaceagreements.org/viewmasterdocument/397>> accessed 28 June 2022.

²⁵ See Conciliation Resources, ‘Undermining the LRA: Role of Uganda’s Amnesty Act’ (*Conciliation Resources*, August 2012) <<https://www.c-r.org/news-and-views/comment/undermining-lra-role-ugandas-amnesty-act>> accessed 27 June 2022.

²⁶ Anna Macdonald, “‘In the Interests of Justice?’ The International Criminal Court, Peace Talks and the Failed Quest for War Crimes Accountability in Northern Uganda’ (2017) 11 *Journal of Eastern African Studies* 631.

²⁷ Kevin C. Dunn, ‘Uganda: The Lord’s Resistance Army’ (2004) 31 *Review of African Political Economy* 139,141.

²⁸ Macdonald, ‘In the Interests of Justice’ (n 26) 629.

²⁹ See Fatou Bensouda, ‘Statement of the Prosecutor of the International Criminal Court Following the Surrender and Transfer of Top LRA Commander Dominic Ongwen’ (*ICC*, 21 January 2015) <<https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-following-surrender-and>> accessed 28 June 2022.

³⁰ See Frederic Musisi, ‘The End of Joseph Kony?’ (*Daily Monitor*, 7 May 2017) <<https://www.monitor.co.ug/uganda/magazines/people-power/the-end-of-joseph-kony--1699942>> accessed 28 June 2022.

in TJ.³¹ To Birjandian, the ICC intervention contributed to the narrow scope of problems prioritised in Uganda's TJ policy.³² In essence, as the Policy problems were derived from the Peace vs Justice debates following the LRA war, it might not resonate with the diverse TJ contexts outside Northern Uganda. This view is not without merit, especially if TJ is considered to address the legacies of atrocities committed in the country since independence, by both State and Non-state actors. The practice and implementation of TJ are gradual processes, which require close examination. Generally, the implementation of TJ processes in Uganda is largely dependent on the work of non-governmental organisations.³³

Within TJ discourse, it is thus imperative to examine the different remedial approaches for HLP rights, in order to evaluate its impact onto vulnerable groups. One question could be: how do (ethno-social) questions of culture inform HLP rights and TJ approaches in the context of IDPs and CBW? The TJ mechanisms of amnesty and international criminal justice do not have a direct link to or impact on HLP rights. However, there is a direct link between the TJ aspect of traditional justice or reconciliation and the experiences of IDPs, which suggests that remedial approaches cannot be divorced from land and property.

An understanding of the peace negotiations and agreements existing at the time helps to explore the role of HLP rights, customary law and TJ in the context of IDPs and CBW in Northern Uganda. There is a growing emphasis on peace agreements that contain specific provisions addressing and solving existing IDP-related problems, especially more intractable issues that give rise to ongoing conflict, notably HLP rights.³⁴ Moreover, HLP issues can be characterized as both a humanitarian and a human rights topic.³⁵ Considering the challenges of the Northern Uganda context, the peace agreement should have contained some durable solutions regarding HLPs. More importantly, these have to be formulated with a victim-centred approach in mind.

Whilst they sound quite compatible, reconciling the goals of peace and TJ can present both conceptual and practical challenges. The case of Northern Uganda is particularly

³¹ Obiora C Okafor and Uchechukwu Ngwaba, 'The International Criminal Court as a "Transitional Justice" Mechanism in Africa: Some Critical Reflections' (2015) 9 *International Journal of Transitional Justice* 90.

³² Saghar Birjandian, 'Uganda's Transitional Justice Policy Development Process and the International Criminal Court' (E-International Relations 2020) <<https://www.e-ir.info/2020/04/21/ugandas-transitional-justice-policy-development-process-and-the-international-criminal-court/>> accessed 12 January 2023.

³³ Tonny R Kirabira, 'NGO Influence in Global Governance: Achieving Transitional Justice in Uganda and Beyond' (2021) 10 *Cambridge International Law Journal* 280.

³⁴ See e.g., International Committee of the Red Cross, 'Translating the Kampala Convention into Practice: A Stocktaking Exercise' (2017) 99 *International Review of the Red Cross* 365, 418.

³⁵ Norwegian Refugee Council and International Federation of Red Cross and Red Crescent Societies, 'The Importance of Addressing Housing, Land and Property (HLP): Challenges in Humanitarian Response' (Norwegian Refugee Council, 29 April 2016) 5.

interesting, due to the application of peace and TJ mechanisms simultaneously. Inevitably, tough compromises, including amnesty, were made. In this regard, an important question relates to the role of victims during peace processes. Does the Agreement on Accountability and Reconciliation (AAR) provide viable remedies to victims within the context of HLP? This question links well with the situation of IDPs and CBW.

In 2006, peace talks between the Ugandan government and the LRA were held in Juba, South Sudan.³⁶ The negotiations were based on five key elements: (i) cessation of hostilities; (ii) a comprehensive solution (including participation in national institutions and life, economic and social development of Northern and Eastern Uganda, and the resettlement of IDPs); (iii) accountability and reconciliation; (iv) demobilization, disarmament and reintegration; and (v) a formal ceasefire agreement.³⁷ On 2 May 2007 and 29 June 2007, the parties signed the AAR, committing to provide comprehensive solutions to the conflict, with recognition of the need for reconciliation and accountability.³⁸ This increased the momentum of peace talks, whilst maintaining a focus on post-war justice. More importantly, there was recognition that HLP rights and concerns would be an important element in the peace process, through the broad ambition of IDP resettlement.

On 19 February 2008, the Ugandan government and the LRA signed an important annex to the AAR and its principles for accountability and reconciliation (AAR Annex).³⁹ Theoretically, the AAR Annex reinforced HLP rights by providing for reparations and the application of TJ mechanisms,⁴⁰ both positive developments from an HLP perspective. This built on the fact that victims' participation and reparations had been outlined in the AAR and the AAR Annex as key elements within the wider TJ process.⁴¹

From a TJ perspective, the AAR outlined the recognized measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁴² The element of reparations accords with international standards that grant such a remedy to victims of IHL and

³⁶ Kamilo Tafeng, 'LRA Optimistic on Peace Talks' (*New Vision*, 16 June 2006).

³⁷ See Report of the High Commissioner for Human Rights on the Activities of Her Office in Uganda (12 February 2007) U.N. Doc. A/HRC/4/49/Add.2.

³⁸ See Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the LRA/M, 29 June 2007 <<https://peacemaker.un.org/uganda-accountability-reconciliation2007>>; Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the LRA/M (Addendum 4), 3 November 2007.

³⁹ See Annex to the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, 19 February 2008.

⁴⁰ Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the LRA/M (n 38).

⁴¹ *ibid.*

⁴² *ibid* clause 9(1).

international human rights law (IHRL) violations.⁴³ Nonetheless, these theories are not entirely practical within the context of IDPs and CBW in Northern Uganda. For example, guarantees of non-repetition by the State would not address other large-scale societal problems like the HLP rights of returning IDPs and CBW. Ultimately, there is need for a more specific approach towards HLP rights within this TJ context.

Similarly, criminal accountability and court awarded reparations do not necessarily impact on the HLP rights of IDPs and CBW. Whilst one could argue that TJ processes of accountability are an integral part of wider peace processes, it is equally important to think about the long-term experiences of the victims residing within the post-war communities. Within the Northern Uganda context, the rationale for criminal accountability has been to ensure that the rights of the victims are not entirely forgotten.⁴⁴ Keeping victims at the centre of TJ would also mean that they are properly re-integrated into the post-war communities.

The simultaneous application of two strands of justice in Northern Uganda has a direct link with IHL and HLP rights. The two strands are the traditional, community-based justice on the one hand, and the supposedly (but not always) complementary element of formal legal criminal proceedings. Traditional justice is hinged on the customary law and cultural-ethnic aspects of reconciliation in the post-war period. The 2008 Annex established a special division of the High Court of Uganda, empowered to try individuals who were alleged to have committed serious crimes during the conflict.⁴⁵ Procedurally, the legislation establishing the court allowed for '[t]he recognition of traditional and community justice processes in proceedings'.⁴⁶

The provision is rather vague and presents a procedural dilemma regarding the specific role of community justice practices in relation to the operations of contemporary courts. This dilemma also points towards a need for a comprehensive TJ process that addresses the nuanced victims concerns.⁴⁷ For IDPs and CBW in Northern Uganda, it remains to be seen how formal High Court proceedings would address their HLP concerns.

Proponents of international criminal justice in Northern Uganda do not always deal with the concerns of victims outside the courtroom, i.e. those not formally recognised by courts

⁴³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147, 16 December 2005, principles 19- 23.

⁴⁴ See Report of the High Commissioner for Human Rights on the Activities of Her Office in Uganda (n 37) 67.

⁴⁵ See Annex to the Agreement on Accountability and Reconciliation (n 39) clause 7.

⁴⁶ *ibid* clause 9.

⁴⁷ See Amnesty International, 'Uganda: Agreement and Annex on Accountability and Reconciliation Falls Short of a Comprehensive Plan to End Impunity' (*Amnesty International*, 2008) 13.

like IDPs and CBW. As also affirmed by other scholars, international criminal justice played a key role during peace negotiations in Northern Uganda, as the ICC processes partly shaped the political dynamics of negotiating parties in Juba.⁴⁸ Regarding the issue of accountability, Macdonald argues that both the Ugandan government and the LRA perceived the ICC as ‘a perplexing intervention that needed to be contained’, a shared distrust that perhaps allowed more cooperation during the peace talks than would otherwise have been possible.⁴⁹ Crucially, criminal prosecution can also limit discussions during peace talks on more contextual and local issues of importance to victims, notably on HLP rights of the IDPs and CBW.

The already vast literature on the war in Northern Uganda focuses on the culpability of the LRA as perpetrators of crime, and most of these studies hardly consider the atrocious crimes committed by the Ugandan army and other government agents during the war, including crimes against livelihoods, land, cattle and housing. This ‘blind spot’ is acknowledged by Maliinder, in her discussion on the Ugandan army’s military campaigns against the LRA.⁵⁰ In addition to reports of ethnic marginalization of the Acholi,⁵¹ qualitative research carried out by the United Nations Office of the High Commissioner for Human Rights (OHCHR) shows that the people in Northern Uganda broadly believe ‘that both the LRA and the Government – and specifically their leaders – should be held accountable for the harms they have caused during the conflict’.⁵² Attention to the need for restitution and reparation for HLP-related harm and rights violations is partly restricted by these controversies over culpability for civilians’ suffering during the war.

In June 2019, Uganda adopted a national TJ policy (TJ Policy),⁵³ three months after the adoption of the African Union’s own policy on TJ. The policy was founded upon the peace negotiations in Juba and the AAR. Overall, the formulation of the TJ Policy demonstrates Uganda government’s commitment to pursuing TJ measures in a more structured manner. It should be noted that despite this comprehensive TJ Policy, its successful implementation is an

⁴⁸ Line Engbo Gissel, ‘Legitimising the Juba Peace Agreement on Accountability and Reconciliation: The International Criminal Court as a Third-Party Actor?’ (2017) 11 *Journal of Eastern African Studies* 367; Macdonald, ‘In the Interests of Justice’ (n 26).

⁴⁹ Macdonald, ‘In the Interests of Justice’ (n 26) 630.

⁵⁰ Louise Mallinder, ‘Uganda at a Crossroads: Narrowing the Amnesty?’ (2009) *Beyond Legalism: Amnesties, Transition and Conflict Transformation Working Paper* 1, 13.

⁵¹ See Olara Otunnu, ‘The Secret Genocide’ (*Foreign Policy*, 19 October 2009) <<https://foreignpolicy.com/2009/10/19/the-secret-genocide/>> accessed 28 June 2022.

⁵² UN Office of the High Commissioner for Human Rights, ‘Making Peace Our Own: Victims’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda’ (OHCHR August 2007).

⁵³ See Uganda National Transitional Justice Policy (NTJP 2019).

issue that requires more study. For example, the Ugandan Parliament has not yet passed a law to give effect to the policy provisions.

The TJ Policy does not explicitly recognize marginalized groups like CBW, which face specific challenges within the post-war communities. Organisations working on TJ are also concerned about the ‘emerging socio-economic issues affecting the lives of victims that were not considered during the formulation of the policy’.⁵⁴ It is therefore vital for the TJ policy to link the tenets of IHL with, *inter alia*, the key HLP concerns of CBW and IDPs.

Reparation is one of the fundamental elements of TJ policies due the socioeconomic effects of mass conflict. For example, forced displacement creates multiple socioeconomic losses for both victims and States,⁵⁵ thus creating a need for effective policies that address victims’ concerns. By 2013, the Ugandan government had awarded over UGX 2 billion (GBP 2.5 million) as compensation to LRA victims for loss of animals and property under the Acholi War Debt Claimants Association (AWDCA).⁵⁶ However, this assistance does not address the HLP concerns of CBW and IDPs.

In sum, the section has explored the various TJ approaches in Northern Uganda, showing how they link with CBW and IDPs. It has also shown that the search for holistic TJ is incomplete unless HLP rights are equally considered. The next section will delve deeper in the case study, to show how culture links with TJ and HLP rights.

3. Cultural and social narratives around HLP Rights

Cultural dimensions are often overlooked during liberal TJ processes, due to the Western liberal underpinnings of the institutions like formal courts and Commissions of Inquiry. This highlights a gap within legal and anthropological discourse on TJ.⁵⁷ Furthermore, the conception of TJ as a response to democratic transitions also limits the role of cultural narratives. A number of scholars conceptualise TJ with a keen focus on transitional periods of

⁵⁴ Sarah K Kihika, ‘Beyond Symbolism: Translating Uganda’s Transitional Justice Policy into Real Changes in the Lives of Victims’ (*International Center for Transitional Justice*, 7 December 2019) <<https://www.ictj.org/news/beyond-symbolism-translating-uganda%E2%80%99s-transitional-justice-policy-real-changes-lives-victims>> accessed 28 June 2022.

⁵⁵ Luis E Pérez Murcia, ‘Social Policy or Reparative Justice? Challenges for Reparations in Contexts of Massive Displacement and Related Serious Human Rights Violations’ (2013) 27 *Journal of Refugee Studies* 191.

⁵⁶ Sam Lawino, ‘War Debt Claimants Paid Shs5b’ (*Daily Monitor*, 29 April 2013) <<https://www.monitor.co.ug/News/National/War-debt-claimants-paid-Shs5b/688334-1761862-bjlx2ez/index.html>> accessed 12 June 2022.

⁵⁷ Barbara Meier, ‘“Death Does Not Rot”: Transitional Justice and Local ‘Truths’ in the Aftermath of the War in Northern Uganda’ (2013) 48 *Africa Spectrum* 25, 30.

political change.⁵⁸ Yet, beyond the political transitions, local factors affect the legitimacy of TJ mechanisms.⁵⁹ Researchers are advised to analyse how political processes are informed by specific cultural concepts.⁶⁰

Uganda's TJ process was riddled with cultural and social narratives around HLP rights, such as conflicts over ancestral burial grounds in the post-war Northern Uganda. To devise more viable remedial approaches to HLP rights, and to integrate HLP concerns into TJ processes, it is important to understand the ethno-social context of victims. As already shown in the introduction, Northern Uganda is mainly inhabited by the Acholi and Langi people, who reside in Acholi and Lango sub regions respectively. As the LRA war was predominantly in the Acholi sub region, the Acholi traditional approach to justice and reconciliation is considered in more depth than that of the Langi.

As in many parts of the world, ethnicity and identity are key factors within public political discourses, and this is also common in Uganda.⁶¹ However, historical studies show how close the Lango and Acholi tribes have been historically.⁶² Within the context of reconciliation, therefore, inter-ethnic hostilities between the Acholi and Lango are also to some extent intra-cultural tensions.⁶³ This suggests the need to analyse the narratives and assumptions around cultural identities within the TJ process in Northern Uganda. Cultural identities will play a direct part in making it possible to provide remedies that give emphasis to the question of HLP rights, such as through either reparations and/or the restoration of HLP itself. The vast majority of IDP camps and CBW were in the Acholi sub-region of Northern Uganda, hence the focus on the local customs and traditional justice mechanisms of the Acholi people. Similarly, the Lango cultural approaches would not be appropriate in dealing with HLP concerns among CBW and IDPs in Acholi.

Apart from traditional cultural beliefs and structure, most of the Acholi people practice Christianity. One could argue that Christianity and British colonial rule diminished the Acholi traditions. To some extent, this could be true, given the changing societal norms. Evidence

⁵⁸ See Teitel (n 3).

⁵⁹ See e.g., Padraig McAuliffe, 'Transitional Justice, Institutions and Temporality: Towards a Dynamic Understanding' (2021) 21 *International Criminal Law Review* 1; Dustin N Sharp, *Rethinking Transitional Justice for the Twenty-First Century Beyond the End of History* (CUP 2018); Teitel (n 3) 93.

⁶⁰ Meier (n 57) 31.

⁶¹ Charles Amone, 'Constructivism, Instrumentalism and the Rise of Acholi Ethnic Identity in Northern Uganda' (2015) 13 *African Identities* 129.

⁶² Godfrey N Uzoigwe, 'The Beginnings of Lango Society: A Review of Evidence' (1973) 6 *Journal of the Historical Society of Nigeria* 397.

⁶³ Shilpi Shabdita and Okwir I Odiya, 'Mapping Regional Reconciliation in Northern Uganda: A Case Study of the Acholi and Lango Sub-Regions' (*Justice and Reconciliation Project* 2015) 23.

based research highlights these changing societal norms, with respect to aspects of gender and culture.⁶⁴ Despite these developments, cultural narratives are still relevant within conflict and peace processes.

Another unique practice is observed through the intersection of Christianity and customary practices. This is highlighted by ethnographic literature within the TJ discipline. While most Acholi are Christians,⁶⁵ ethnographic studies indicate that these religious beliefs still co-exist with their customary rituals.⁶⁶ While Latigo acknowledges these dynamic complexities between Acholi culture and modern religion, for instance, he observes the continued practice of traditional cultural beliefs among Acholi people.⁶⁷ This reinvigorates the debate on the role played by traditional justice mechanisms in dealing with the legacy of mass conflict and HLP concerns.

Besides Guatemala, Timor Leste and Rwanda, the Ugandan case was one of the first instances where TJ displayed a tremendous focus on local-based approaches.⁶⁸ Acholi traditional leaders promoted traditional cultural ceremonies as a means of pursuing justice. Furthermore, anthropologists observe dominant cultural and religious discourses in the arguments against ICC intervention in the Northern Uganda conflict.⁶⁹ Acholi systems of justice were said to promote reconciliation and not retribution, which was also consistent with religious frame works that highlight forgiveness and mercy.

The most widely discussed ritual is the *mato oput* or ‘bitter root’ ceremony, which affirms the *rwodi moo*, or traditional elders’ roles in conflict resolution. As also viewed by other scholars, ‘[t]he principle of conflict resolution in Acholi is to create reconciliation which brings the two sides together’, with elements of compensation for harm done through the *mato oput*.⁷⁰ This view presents a firm account of the traditional authority structure of the Acholi elders and traditional justice as a cultural approach to TJ. The key question is whether such an approach provides any meaningful remedial approaches to HLP concerns.

⁶⁴ *ibid* 19.

⁶⁵ Meier (n 57) 35.

⁶⁶ Harris (n 12) 17.

⁶⁷ Latigo (n 8) 19.

⁶⁸ Alexander L Hinton, ‘Introduction: Toward an Anthropology of Transitional Justice’ in Alexander L Hinton (ed), *Transitional Justice: Global Mechanisms and Local Realities After Genocide and Mass Violence* (Rutgers University Press 2010).

⁶⁹ Kimberley Armstrong, ‘Justice without Peace? International Justice and Conflict Resolution in Northern Uganda’ (2014) 45 *Development & Change* 589, 601.

⁷⁰ See for example Adam Branch, ‘The Violence of Peace: Ethnojustice in Northern Uganda’ (2014) 45 *Development and Change* 608, 618.

The treatment of former child soldiers of the LRA presented a cultural dilemma regarding their reintegration. In order to encourage former child combatants to return home, Opiyo Oloya, an Acholi scholar, advocated for the revival of another Acholi cultural practice of *dwoogo paco*, translated as ‘returning home’.⁷¹ Juxtaposing this reconciliatory literature with the orthodox TJ notion of accountability, one can observe a sharp disconnect between reconciliation and liberal theories of sanctions and reparations. The voluntary return of former combatants in society shows a nexus between TJ and IHL and how they interact in the course of post-war reintegration.

Generally, cultural approaches to TJ can facilitate the necessary communal dialogue for the realization of other rights for IDPs and CBW, including HLP. To this end, Latigo observes several strengths of the traditional justice mechanisms in Northern Uganda. Besides the inclusiveness and dialogue fostered by the peacebuilding process, the process allows for wider communal participation and unity, generates community-focused outcomes and creates high levels of compliance.⁷² He further places an emphasis on the unique role of traditional leaders and elders as significant actors in the peacebuilding process in Northern Uganda.⁷³ This process allows an interaction of victims and allows for communal approaches towards HLP concerns.

Despite the positive attributes of the Acholi traditional justice system, scholars are concerned about some contextual and structural dilemmas, which limit its effectiveness. For example, there is no practical way for combatants to provide compensation to victims and yet ‘from their point of view, reconciliation cannot proceed without some form of compensation being provided’.⁷⁴ Furthermore, ‘each Acholi clan is involved both as victim and perpetrator in numerous different cases’.⁷⁵ Therefore, the clan elders expect the State to provide the necessary compensation to the victims.⁷⁶

Similar to Meier’s views, Acholi scholar Latigo observes a host of weaknesses associated with the traditional justice system, including: a lack of flexibility; an absence of a clear and written structure; delays and challenges of compliance; inconsistency; and a lack of uniformity of application among the different Acholi clan communities.⁷⁷ Within the broader context of the LRA conflict, Latigo observes a fundamental weakness of the application of *mato oput* as a remedy, namely that ‘it wrongly projects the LRA insurgency as a local acholi

⁷¹ Oloya (n 11).

⁷² Latigo (n 8) 112-113.

⁷³ *ibid.*

⁷⁴ Meier (n 57) 40

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ Latigo (n 8) 113.

affair'.⁷⁸ Within the specific context of HLP, this raises uncertainty regarding the adjudication of cases.

Other scholarly debates hover over questions of whether or not the Acholi were actually as forgiving as proclaimed by local leaders.⁷⁹ To Opiyo Oloya, Acholi society experienced severe cultural trauma,⁸⁰ and the self-healing capacity of Acholi culture was devastated by the war.⁸¹ Based on these weaknesses, he concluded that the traditional practice approach lacked the capacity to support returning combatants due to culturally constructed identities.⁸² There is strong merit in his view, as many of the post-war victims have had to undergo psychological rehabilitation. The limitation of traditional justice also shows that a cultural dilemma that transcends the disciplines of peacebuilding and reconciliation.

Socio-legal studies present contrasting views on the efficacy of normative concepts of traditional justice, forgiveness and reconciliation in Northern Uganda. While anthropologist Meier emphasizes the specific cultural contexts, Macdonald argues they played a diminished role in the post-conflict interactions between LRA and the community.⁸³ Instead, she argues that LRA rebels engaged in peace programs due to 'political economies of survival' and not traditional justice, forgiveness or reconciliation initiatives.⁸⁴ Without being cynical, Meier recommends for research that analyses how political processes are informed by specific cultural concepts.⁸⁵ The contestation surrounding the aspects of reconciliation suggests that traditional justice may not be perfectly suited to address HLP concerns.

Overall, the section has explored the cultural and social narratives around TJ in Northern Uganda. It has also shown that the local traditional justice mechanisms do not necessarily provide effective avenues for all categories of victims. Following this foundation, the next section will explore the post-war HLP dilemmas of IDPs and CBW in Northern Uganda.

4. HLP dilemmas among Internally Displaced Persons and Children Born of War

The previous section has revealed difficulties faced by formerly abducted people, due to

⁷⁸ *ibid* 114.

⁷⁹ Armstrong (n 69) 604.

⁸⁰ Oloya (n 11) 161.

⁸¹ *ibid* 164.

⁸² *ibid*.

⁸³ Anna Macdonald, 'Transitional Justice and Political Economies of Survival in Post-Conflict Northern Uganda' (2017) 48 *Development and Change* 286.

⁸⁴ *ibid*.

⁸⁵ Meier (n 57) 31.

cultural and social marginalization. There is also a gendered dimension among the returning IDPs, as women's HLP rights are not adequately protected. For example, 'for returned girls, access to land is contingent on their current husband's relatives or their father's and brother's relatives allowing access'.⁸⁶

The second barrier for female IDPs is hinged on the land tenure system. In Northern Uganda, the dominant form of tenure is that of customary ownership, which involves extended patrilineal family, referred to as *dogola or kaka*.⁸⁷ This limits the rights of victims that do not have clear affiliations with their families, especially the women. It is even more difficult for those that spent long durations of their lives living in camps or LRA locations. It is important to note that the LRA insurgency lasted for close to two decades. Moreover, there is empirical evidence that reveals a link between the length of time that victims spent with the LRA and their access to ancestral land.⁸⁸

For CBW in Northern Uganda there is a unique challenge in securing their HLP rights after the end of the war. Denov's empirical studies in Northern Uganda between June 2015 and December 2017 highlight challenges faced by children in the post-war period.⁸⁹ One important element to note relates to children's understandings of family, home and identity. For children born in LRA captivity, Denov observes that in their conception 'the bush', was viewed as 'a place that held great significance, memories, meaning and contributed to identity formation'.⁹⁰ A fragmented sense of family life, therefore, had significant impacts on the lives of these children.

Western approaches to TJ have not taken into consideration customary perspectives on HLP rights, especially in the case of former combatants or CBW and IDPs. Going forward, more attention to HLP rights would require a more culturally sensitive approach; one that would be more likely to gain wide acceptance within the local society and among victims, including children who have little say in what happens collectively.

To make matters worse, the post-war stigmatisation and marginalization suffered by CBW means that they have limited access to remedial HLP provisions, if any, within the wider TJ process.⁹¹ For example, they are not able to exercise individual or communal ownership of

⁸⁶ Tim Allen et al., 'What Happened to Children Who Returned from the Lord's Resistance Army in Uganda?' (2020) 33 *Journal of Refugee Studies* 663, 673.

⁸⁷ *ibid.*

⁸⁸ *ibid* 774.

⁸⁹ Myriam Denov, 'Children Born of Conflict-Related Sexual Violence within Armed Groups: A Case Study of Northern Uganda' in Mark A. Drumbl and Jastine C. Barrett (eds), *Research Handbook on Child Soldiers* (Edward Elgar Publishing 2019) 240.

⁹⁰ *ibid* 245.

⁹¹ *ibid* 251.

land without explicit recognition by the communities. Their exclusion by family and community members are often motivated by land-related desires, as well as this social stigma. As revealed by Baines and Oliveira in their empirical finds on CBW in Northern Uganda, some families are reluctant to accept CBW, in order to avoid land related wrangles in the future.⁹²

The land tenure systems in Northern Uganda have shown quite limited flexibility in integrating war victims like CBW. To CBW, customary ownership of land in Northern Uganda adds another layer to their existing experiences of victimisation, both during and after war. Since land inheritance and access is largely patrilineal and passed between adults, CBWs, especially those who are orphaned, experience HLP rights violations on an ongoing basis. Lack of access to land becomes a significant barrier in enabling young victims to restore their livelihoods and economic security.⁹³ Similar findings are echoed by Joireman, who observed the difficulties faced by children in accessing land under customary tenure and allocation systems in Northern Uganda.⁹⁴

Succinctly, there remains a gap between the HLP concerns of CBW and TJ policies. Development organisations and partners apply contrasting policy interventions. For example, while humanitarian actors maintain the invisibility of children born of conflict-related sexual violence as a way of limiting social stigma, other researchers argue for specific interventions for these children as an identifiable group of victims.⁹⁵ Whatever the case, there is certainly a need to mitigate the barriers which CBW face in accessing distributive justice after war. A more nuanced understanding of the range of possible TJ responses to CBW would be helpful, and part of this would involve effective HLP remedial approaches that take CBWs' specific needs into account.

A notable challenge for most returning IDPs is the unending land disputes and conflicts within the post-war communities. Field reports also evidence the difficulties in the resettlement of IDPs, as one Acholi clan leader was quoted to say that:

When we returned from camps [IDP camps], we found squatters on our land. It became difficult for us as clan leaders to send away these people because they were homeless too. We only encourage rightful owners and encroachers to share the land with these encroachers and live in

⁹² Erin Baines and Camile Oliveira, 'Securing the Future: Transformative Justice and Children "Born of War"' (2020) 30 *Social & Legal Studies* 341, 352.

⁹³ Denov (n 89) 11.

⁹⁴ Joireman (n 5).

⁹⁵ See generally Denov (n 89).

harmony.⁹⁶

The above observation invites an assessment in regards to the impact of internal displacement on HLP. O'Reilly uses quantitative data to assess the impacts of internal displacement on displaced households in Northern Uganda. His findings illustrate a negative impact of displacement on household welfare, noting that '[t]he initial gap in assets is consistent with static studies that estimate a negative impact of displacement'.⁹⁷

On a more positive note, Uganda is at the forefront of regional and international IDP guidelines, notably through its efforts to adhere to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).⁹⁸ Uganda's involvement in the Global Protection Cluster (GP20) Plan of Action and the work of the UN Special Rapporteur on the Human Rights of IDPs represent significant steps forward in this respect.⁹⁹ This platform was created in 2016 to consider the concerns of IDPs within TJ mechanisms and HLP remedial processes at the global level.

The section has explored the difficulties faced by CBW and IDPs in the resettlement process in Northern Uganda. More specifically, it has revealed the challenges concerning their HLP rights due to social stigmatisation and unending land disputes. Against this background, the next section will explore the existing normative and policy framework in Uganda, in order to examine whether it provides adequate remedies for HLP rights concerns.

5. The legal framework for the realization of HLP rights

Effective implementation of TJ, including HLP rights for CBW and IDPs, requires an enabling legal environment. Besides the existence of a relevant domestic legal framework, an important step towards achieving TJ by a State is the ratification of important international treaties that provide for accountability, and the actual implementation of relevant provisions. Scholars make strong legal arguments for treaties as sources of affirmative State obligations.¹⁰⁰ Crucially, we cannot underestimate the role of international treaties and legal framework in achieving TJ. For

⁹⁶ Jeff A Lule, 'Land Wrangles Account for 80% of Cases in Northern Uganda' (*New Vision*, 12 November 2014) <<https://www.newvision.co.ug/news/1314754/land-wrangles-account-80-northern-uganda>> accessed 20 June 2022.

⁹⁷ O'Reilly (n 20) 213.

⁹⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012).

⁹⁹ See e.g. UN Human Rights Council, Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons (12 June 2019) A/HRC/41/40/Add.1, [79]-[80].

¹⁰⁰ Juan E Méndez, 'Accountability for Past Abuses' (1997) 19 *Human Rights Quarterly* 255.

the context of Northern Uganda, it is important to explore the relationship between HLP rights and TJ under both existing domestic and international legal regimes.

The realization of HLP rights is not just a priority for CBW and IDPs in Northern Uganda, but also links to the State's commitments under domestic and international laws. In particular, the protection and promotion of the rights of children and vulnerable groups like IDPs. However, like was shown in section 3, cultural dimensions are often overlooked during liberal TJ processes. Looking at the Ugandan context, there are scholarly concerns about the normalization of TJ using international standards of accountability, with little regard to the cultures of the war affected communities.¹⁰¹ In regards to the theory of democratic transition, there is scepticism about the international promotion of TJ in conflict-affected regions like Northern Uganda, a different context from a country under democratic transition.¹⁰² In essence, it becomes counterproductive to apply retributive justice for a particular context like Northern Uganda, when the conflict was politically driven and also involves State actors who are directly part of the TJ process. In view of these debates, it is important to understand the legal framework for TJ in Uganda. A mapping of the relevant laws also helps to situate how best to encompass HLP concerns of CBW and IDPs.

Regional and international treaties are key precursors of TJ processes, as they contain specific obligations for States parties. In terms of domestic applicability, international treaties are not explicitly recognised as a source of law in Uganda, as they need to be domesticated through Acts of Parliament.¹⁰³ Nonetheless, Uganda's Constitution obliges the State to observe its international treaty obligations ratified prior to the enactment of the constitution in 1995.¹⁰⁴ In summary, regional and international treaties provide a firm foundation for TJ in Uganda.

The African Charter on Human and Peoples' Rights provides key normative foundations for TJ mechanisms. It has a unique articulation of substantive rights (economic, social and cultural rights).¹⁰⁵ This is important because TJ processes address these categories of rights, in addition to civil and political rights. For vulnerable groups like IDPs and CBW, economic and social rights are necessary for the ownership of land and other property. In 2013, the African Commission on Human and Peoples' Rights (Commission) initiated a study on TJ

¹⁰¹ Emma C Lubaale, 'Legal Pluralism as a Lens through Which to Appreciate the Role and Place of Traditional Justice in International Criminal Justice' (2020) 52 *Journal of Legal Pluralism and Unofficial Law* 180, 199; Macdonald, 'Transitional Justice Implementation Gap in Uganda' (n 19) 228.

¹⁰² Macdonald, 'Transitional Justice Implementation Gap in Uganda' (n 18) 230.

¹⁰³ See Judicature Act (Uganda), 17 May 1996, s. 14(2)

¹⁰⁴ Constitution of the Republic of Uganda, 22 September 1995, art 287.

¹⁰⁵ See African Charter on Human and Peoples' Rights (adopted 1 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (art 14 provides a right to property and art 18 a right to family).

in Africa.¹⁰⁶ The findings published in 2019 indicate a gap between theory and practice as regards TJ in the many African contexts, coupled with a lack of technical expertise.¹⁰⁷ Nonetheless, one can observe in the Commission's study a comprehensive normative framework for TJ, one that can be implemented in contexts like Northern Uganda.

Another unique feature relates to the recognition of HLP violations committed by non-State actors. Apart from armed groups, HLP violations committed by corporations during conflict can be adjudicated by the Commission. For example, in the case of *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v. Nigeria*, the Nigerian government was held responsible for violations which resulted from the actions of its agents and those of a private company.¹⁰⁸

According to the Commission, the implied right to housing includes protection from forced eviction. In addition, the express rights to property and family include the protection from destruction of housing. More interestingly, the destruction of crops violates the duty to respect and protect the implied right to food.¹⁰⁹ Once applied in the context of TJ, the African Charter provides a key normative source of HLP remedial approaches.

Article 22 of the Charter creates a unique approach to redistributive justice, as it provides for the right to development. The recognition of cultural rights is important within the context of Northern Uganda, due to the interaction of the ethno-social practices outlined in the previous sections. These provisions give expression to both remedial approaches and policy approaches within TJ.

Victims within the context of displacement have special protection under the Kampala Convention.¹¹⁰ This is an important instrument for accountability, especially in the context of victims' vulnerability arising from war and displacement in Northern Uganda. It is important not to lose sight of the other human rights violations that occur within the context of forced displacement. As has been observed in the previous sections, besides HLP related concerns, there are other human rights violations within IDP communities, for instance Sexual and Gender Based Violence. Moreover, quantitative and qualitative studies highlight the aspect of

¹⁰⁶ See African Commission on Human and Peoples' Rights, Resolution on Transitional Justice in Africa, ACHPR/Res.235(LIII)2013 (adopted during 53rd Ordinary Session from 9 April 2013 to 29 April 2013).

¹⁰⁷ African Commission on Human and Peoples' Rights, 'Study on Transitional Justice and Human and Peoples' Rights in Africa' (Report, African Commission on Human and Peoples' Rights, 2019) 84 <https://www.achpr.org/public/Document/file/English/ACHPR%20Transitional%20Justice_ENG.pdf> accessed 20 June 2022.

¹⁰⁸ *Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria* (Communication No 155/96, ACHPR/COMM/A044/1, 27 May 2002).

¹⁰⁹ *ibid.*

¹¹⁰ Kampala Convention (n 98) Articles 3 and 7(4).

human rights violations, among the key political dimensions of internal displacement in Uganda.¹¹¹ Until 2006, more than 1.1 million people were displaced into hundreds of IDP camps.¹¹² This necessitates a review of the underlying protection for IDPs, while exploring their HLP-related concerns.

There is a global normative gap regarding the protection of IDPs, a fact acknowledged by Adama Dieng.¹¹³ In a novel, the Kampala Convention holds non-State actors like rebel movements liable for human rights violations leading to displacement and requires States to exercise criminal liability.¹¹⁴ According to Adama Dieng, it serves as a basis for a more comprehensive international instrument for the protection of IDPs.¹¹⁵

The other notable dimensions of the Kampala Convention that pertains to HLP is its remedial approach. Specifically, the Kampala Convention creates an expansive remedial approach to victims within IDPs that includes compensation.¹¹⁶ In addition, it provides protection to special protection for vulnerable groups like persons with disabilities (PWDs), women and the elderly.¹¹⁷

Despite the normativity and increased accountability for internal displacement, scholars are concerned about the lack of effective implementation of the Kampala Convention.¹¹⁸ It is noted that there are limited criminal prosecutions relating to crimes under the Kampala Convention.¹¹⁹ This limits the ability of victims of HLP violations to achieve justice and accountability within the context of displacement.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is a sound basis for the development of gender equitable approaches towards TJ.¹²⁰ Just like other treaties, the approaches contained in the Maputo Protocol are primarily based upon a State's obligations. In addition to punishing perpetrators

¹¹¹ Joseph K Kamara, Sheila Cyril and Andre M N Renzaho, 'The Social and Political Dimensions of Internal Displacement in Uganda: Challenges and Opportunities – a Systematic Review' (2017) 76 *African Studies* 444, 463.

¹¹² See e.g. United Nations High Commissioner for Refugees, 'A Time Between: Moving on from Internal Displacement in Northern Uganda' (Report, UNHCR, 2010) 7 <<https://reliefweb.int/report/uganda/time-between-moving-internal-displacement-northern-uganda>>.

¹¹³ Adama Dieng, 'Protecting Internally Displaced Persons: The Value of the Kampala Convention as a Regional Example' (2017) 99 *International Review of the Red Cross* 263, 270.

¹¹⁴ Kampala Convention (n 98) art 7(4).

¹¹⁵ Dieng (n 113).

¹¹⁶ Kampala Convention (n 98) art 12.

¹¹⁷ Kampala Convention (n 98) art 9.

¹¹⁸ Mike Asplet and Megan Bradley, 'Strengthened Protection for Internally Displaced Persons in Africa: The Kampala Convention Comes into Force', *American Society of International Law ASIL Insights*, 6 December 2012) See also ICRR (n 34).

¹¹⁹ ICRC (n 34) 386.

¹²⁰ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, (adopted 1 July 2003, entered into force 25 November 2005).

of violence against women, States are obliged to establish mechanisms for reparations and remedies like rehabilitation for victims of violence against women.¹²¹

With regards to the situation of women and children in armed conflict, the African Commission expounded on the notion of accountability to include ‘the right to just and equitable reparation to victims in all forms (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition)’.¹²² These provisions give female victims of HLP violations the right to remedies and reparation as a form of accountability.

The Universal Declaration of Human Rights (UDHR) recognizes HLP rights. Article 17 provides an explicit right to property, while Article 25 recognises the right to housing, stating: ‘[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing’.¹²³ Ultimately, there is a firm legal basis for the protection of HLP rights of IDPs in Northern Uganda.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contains an important TJ measure. As observed in the previous sections, women and children are particularly vulnerable during conflict.¹²⁴ This vulnerability is also reflected in Northern Uganda’s customary land tenure systems, which are largely premised on patriarchal norms – the same norms which are also implicit in the country’s succession and inheritance structures. CEDAW provides States with a responsibility to ensure that women ‘have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes’.¹²⁵ What this means for TJ in Northern Uganda, is that the HLP rights of women need to be protected.

In the context of child victims, the *Convention on the Rights of the Child* (CRC) provides for protection of child victims of violence through reference to rules of IHL and remedies under IHRL.¹²⁶ At the regional level, the African Charter on the Rights and Welfare of the Child requires States to support housing needs of children.¹²⁷ The CRC provides similar measures, requiring States to take appropriate measures and support programmes attuned to the

¹²¹ *ibid*, arts 4(e)-(f), 25.

¹²² African Commission on Human and Peoples’ Rights, Resolution on the Situation of Women and Children in Armed Conflict, ACHPR/Res.283(LV)2014 (adopted during 55th Ordinary Session from 28 April 2014 to 12 May 2014).

¹²³ Universal Declaration of Human Rights (adopted 10 December 1948) 217 A (III).

¹²⁴ See Allen et al. (n 86).

¹²⁵ See Convention on the Elimination of All Forms of Discrimination Against Women, (adopted 18 December 1979, entered into force 3 September 1981, 1249 UNTS 13, art 14(2)(g)).

¹²⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, arts 38-39.

¹²⁷ See African Charter on the Rights and Welfare of the Child (opened for signature 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49, art 20(2)(a).

housing needs of children.¹²⁸ Ultimately, there is a strong legal basis for helping CBW in Northern Uganda to re-integrate within the communities.

International human rights frameworks for economic, social and cultural rights provide an expansive protection for HLP concerns. First, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides a good framework for HLP.¹²⁹ Since mass conflicts involve mass displacement, it is important to address issues related to forced evictions. In this respect, the ICESCR obliges States to use ‘all appropriate means’ to promote the right to adequate housing and ‘refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions’.¹³⁰

Secondly, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) recognises the right to housing, among the economic, social and cultural rights.¹³¹ The HLP remedial framework is strengthened by standards under the International Covenant on Civil and Political Rights (ICCPR)¹³² which affirms the right to remedies and reparation, as important aspects of accountability. What CERD means for the realization of HLP rights is the equal protection for IDPs, including women.

However, besides the rights of indigenous people and women, there is no explicit right to land within the IHRL framework.¹³³ Yet, violation of land rights threatens the enjoyment of a number of fundamental human rights. For example, access to land enables people to exercise rights to culture, food and family. Within the TJ process, victims need access to land in order to reintegrate within the society, after periods of displacement or abduction, as observed in previous discussions. It is therefore imperative for the TJ regimes to recognise access to land as a fundamental element of related rights. This will have reciprocal benefit for the TJ discipline, especially when dealing with contexts like those of CBW and IDPs.

¹²⁸ See Convention on the Rights of the Child (n 127) art 27(3).

¹²⁹ See International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 11(1).

¹³⁰ See UN Committee on Economic, Social and Cultural Rights, General Comment No. 7: ‘The Right to Adequate Housing (Art.11.1): Forced Evictions’ (20 May 1997) E/1998/22, [3].

¹³¹ See Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 5(e)(iii).

¹³² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 2.

¹³³ See Elisabeth Wickeri and Anil Kalyan, ‘Land Rights Issues in International Human Rights Law’ (2010) 4 Malaysian Journal on Human Rights 16.

6. Conclusion

The article has made a case for addressing HLP rights for IDPs and CBW, as they fit within the broader pictures of customary practices and TJ within post-war communities. As the case study of Northern Uganda has shown, full implementation of HLP rights of IDPs might not be possible, due to the nexus between custom and land ownership. Similarly, it is impossible to grant all CBW ownership over communally held property. However, the efforts to reintegrate these vulnerable people back into the communities should also support them to attain financial empowerment. In turn, it will be easier for the returning IDPs and former CBW to acquire their individual property, instead of fuelling the already unending land conflicts.

As has been discussed, HLP issues are considered as both human rights and humanitarian issues. However, they are still generally excluded from post-conflict peacebuilding processes. Therefore, a comprehensive TJ framework can inform future disaster and conflict response, enhancing protection for vulnerable victims like IDPs and CBW.¹³⁴ Given how vital HLP rights are for livelihoods in post-war societies like Northern Uganda, it is important for TJ mechanisms to address such issues as the source of most local disputes and conflicts.

Based on some of the evidence discussed in this article, it is possible to identify some elements that would inform a successful approach to addressing HLP rights and TJ in the context of IDPs and CBW in Uganda. Of these, the most notable is the bottom-up approach which prioritises the needs of the conflict affected communities during planning and implementation of TJ,¹³⁵ and recognition of cultural roles. This is especially important due to the limited access to formal justice in Northern Uganda. Similar approaches have also been recommended for the Great Lakes regions of Burundi, Rwanda and the DRC.¹³⁶ Recognising cultural roles entails engaging local leaders in the resolution of HLP disputes, since the formal courts are already backlogged with cases. At the same time, an awareness of the cultural limitations also helps to inform HLP rights interventions for women.

¹³⁴ Norwegian Refugee Council (NRC) and International Federation of Red Cross and Red Crescent Societies (IFRC), 'The Importance of Addressing Housing, Land and Property (HLP): Challenges in Humanitarian Response' (*ALNAP HELP Library*, 15 March 2016) 5 <<https://www.alnap.org/help-library/the-importance-of-addressing-housing-land-and-property-hlp-challenges-in-humanitarian>>.

¹³⁵ Chris Huggins, 'Peacekeeping and HLP Rights in the Great Lakes Region of Africa: Burundi, Rwanda, and DR Congo' in Scott Leckie (ed), *Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations: A Comparative Survey and Proposal for Reform*. (Cambridge University Press, 2009) 219.

¹³⁶ Chris Huggins, 'Peacekeeping and HLP Rights in the Great Lakes Region of Africa: Burundi, Rwanda, and DR Congo' in Scott Leckie (ed), *Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations: A Comparative Survey and Proposal for Reform* (CUP 2009) 219.

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