

NGO influence in global governance: achieving transitional justice in Uganda and beyond

Tonny Raymond Kirabira
PhD Researcher, Portsmouth Law School, UK

This paper looks at the interface between Non-Governmental Organizations (NGOs) and international criminal justice, within the broader context of Transitional Justice (TJ). The unique case of Northern Uganda is used as an example to illustrate the role of NGOs in global governance. Due to the growing demand for criminal accountability as a form of TJ, it makes a qualitative assessment of NGO relationships at domestic and global levels. It illustrates how NGOs contribute to the legitimization of global norms and criminal accountability for international crimes. It reveals an organizational articulation of international criminal justice using victims' rights discourses and interventions. It is shown that the International NGOs assert a form of sociological legitimacy in support of the International Criminal Court. The paper concludes that there is still a compelling case to be made for the involvement of NGOs in global governance. The impact of this research serves to invite further reflection on the work of NGOs, uncovering their critical role in the domestic implementation of global norms within the context of TJ.

Keywords: *Global governance, non-governmental organizations, transitional justice, Uganda, international crimes, international criminal justice, legitimacy.*

1. INTRODUCTION

This paper asks, what are the roles of nongovernmental organizations (NGOs) in international criminal justice as a global enterprise? The focus is on NGOs working in the field of Transitional Justice (TJ), defined as redress for gross violations of human rights following periods of authoritarian rule or armed conflict.¹ These include criminal accountability, truth commissions, legal reforms and reconciliation. Post-war Northern Uganda is used as an example to illustrate how NGOs contribute to the legitimization of both domestic and international TJ mechanisms. This is an interesting case study for global governance due to the fusion of both domestic and international justice mechanisms.

Whilst internal armed conflicts can be perceived as issues of domestic governance and national sovereignty, their solutions lie at both domestic and international levels. There is thus a need for co-operation among both state and non-state actors. Moreover, international crimes and crimes against humanity transcend sovereign jurisdiction in this international legal order.² More importantly, the inadequacy of state responses in complex contexts like Northern Uganda calls for the imposition of global governance through international justice mechanisms.

Northern Uganda has been at the centre of both domestic and international debates since the start of the Lord's Resistance Army (LRA) war against the government in 1987. It was characterised by a series of gross violations of human rights like massacres, mutilations, massive abductions of people, and child soldiering.³ In 2005, the International Criminal Court (ICC) issued warrants of arrest for LRA leader Joseph Kony and his top commanders. Dominic Ongwen, one

1. Roger Duthie and Paul Seils (eds), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Center for Transitional Justice 2017) 119.

2. Frederic Megret, 'The Anxieties of International Criminal Justice' (2016) 29(1) *Leiden Journal of International Law* 197,213.

3. Adam Branch, 'Exploring the Root of LRA Violence: Political Crisis and Ethnic Politics in Acholiland' in Tim Allen and Koen Vlassenroot (eds), *The Lord's Resistance Army: Myth and Reality* (1st edn, Zed Books 2010) 24.

of the commanders, was subsequently charged at the ICC and convicted of crimes against humanity and war crimes on 4 February 2021.⁴ His prosecution elicited mixed views on the role of international criminal justice within the broader context, considering the fact that Ongwen was both a victim of the brutality of the LRA as well as a perpetrator of gross crimes.⁵ It is important to note that Ongwen was himself abducted at the age of nine years by the LRA, hence his recognition as a victim-turned perpetrator.

Despite the end of the war in 2008, the TJ process is still contested and incomplete. Within the Ugandan context, scholars, practitioners and experts have given different accounts of the TJ process. However, the role of NGOs in TJ is underexplored. Yet they are key stakeholders in these contested processes.⁶ This lack of scholarly attention is surprising because NGOs are more connected to victims and affected communities than are courts.

This paper departs from the existing scholarship that centres on state actors and the politics of the ICC intervention in Northern Uganda, by focusing on the work of NGOs as key actors. While previous research has examined the role of NGOs in peacebuilding, less attention has been given to NGOs in the conceptual framework of TJ. Quinn's research focuses on NGOs and traditional justice systems.⁷ Just like Ullrich, De Silva's work examines the relationship between the ICC and NGOs, contextualised as 'intermediaries'.⁸

While Lohne explores the role of NGOs in international criminal justice and the Ugandan context, she uses sociology of punishment as a theoretical orientation.⁹ This is the key point of departure for this paper, using the notion of TJ. This paper partly builds on Ullrich and Lohne's approaches but extends the analysis to the domestic prosecution at the International Crimes Division (ICD) of the High Court in Uganda. Clark's empirical engagement with NGOs in Uganda's field of TJ was done five years before the adoption of the new TJ Policy in 2019.¹⁰ Therefore, the paper takes a broader study, based on the existing policy and legal framework. It highlights the impact of NGOs on the pending legal framework of TJ. As will be revealed, the normalization of TJ in Uganda is largely an NGO driven project.

From a global governance perspective, the present-day world is characterised by increased interconnectedness between domestic and international NGOs (INGOs). Yet there is a contested relationship between 'local' and 'global' in TJ.¹¹ To further address the gaps within the scholarship, this socio-legal research focuses on the engagement and interaction between

4. International Criminal Court, 'Dominic Ongwen Declared Guilty of War Crimes and Crimes against Humanity Committed in Uganda' International Criminal Court (The Hague, The Netherlands, 4 February 2021) <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1564>> accessed 5 April 2021.

5. Adam Branch, 'Dominic Ongwen on Trial: The ICC's African Dilemmas' (2017) 11(1) *International Journal of Transitional Justice* 30,39; Erin K Baines, 'Complex Political Perpetrators: Reflections on Dominic Ongwen' (2009) 47(2) *The Journal of Modern African Studies* 163.

6. Jasmina Brankovic and Hugo van der Merwe (eds), *Advocating Transitional Justice in Africa: The Role of Civil Society* (Springer 2018) vii-xi; Math Noortmann, 'NGOs in International Law: Reconsidering Personality and Participation (Again)' in Thomas Davies (ed), *Routledge Handbook of NGOs and International Relations* (1st edn, Routledge 2019) 179; Noam Schimmel, 'International Human Rights Law Responsibilities of Non-Governmental Organizations: Respecting and Fulfilling the Right to Reparative Justice in Rwanda and Beyond' (2019) 8(1) *Cambridge International Law Journal* 104,120.

7. Joanna R Quinn, 'Madly Off in All Directions: Civil Society and the Use of Customary Justice as Transitional Justice in Uganda' in Jasmina Brankovic and Hugo van der Merwe (eds), *Advocating Transitional Justice in Africa: The Role of Civil Society* (Springer 2018) 135.

8. Leila Ullrich, 'Beyond the "Global-Local Divide": Local Intermediaries, Victims and the Justice Contestations of the International Criminal Court' (2016) 14(3) *Journal of International Criminal Justice* 543; Nicole De Silva, 'Intermediary Complexity in Regulatory Governance: The International Criminal Court's Use of NGOs in Regulating International Crimes' (2017) 670(1) *The ANNALS of the American Academy of Political and Social Science* 170; Nicole De Silva, 'International Courts' Socialization Strategies for Actual and Perceived Performance' in Theresa Squatrito and others (eds), *The Performance of International Courts and Tribunals* (Cambridge University Press (CUP) 2018) 288.

9. Kjersti Lohne, *Advocates of Humanity: Human Rights NGOs in International Criminal Justice* (Oxford University Press (OUP) 2019) 6.

10. Phil Clark, "'All These Outsiders Shouted Louder Than Us": Civil Society Engagement with Transitional Justice in Uganda' (2015) Working Paper SiT/WP/03/15 Security in Transition 1, 3 <http://www.securityintransition.org/wp-content/uploads/2015/11/CS-and-TJ-working-paper_Uganda.pdf> accessed 10 May 2021.

11. Ruti G Teitel, *Globalizing Transitional Justice. Contemporary Essays* (OUP 2014); Zinaida Miller, 'Embedded Ambivalence: Ungoverning Global Justice' (2020) 11(3) *Transnational Legal Theory* 353, 373.

domestic NGOs and INGOs. More specifically, it maps the approaches that they take, regarding the prosecution of international crimes at the ICC and ICD.

This paper builds on the scholarly concerns about the extensive involvement of NGOs in international criminal justice, due to socio-legal arguments regarding their perceived lack of legitimacy and accountability.¹² Haddad, for example, conceptualises NGOs as the ‘Hidden Hands of Justice’, while also demonstrating how they can be used to legitimise international institutions like the ICC.¹³ Similarly, INGOs tend to neglect traditional justice mechanisms, and specialise in legalistic approaches to TJ.¹⁴ More generally, critics of ‘global civil society’ question the legitimacy of global NGOs.¹⁵ I agree with Lohne’s criticism, since she contextualises NGOs as key actors in global governance using a spatial analysis from global to local sites of international criminal justice.

I argue that NGOs contribute to the legitimization of global governance structures under TJ in two ways. First, through transnational networks and coalitions, NGOs apply strategies that promote the work of international criminal tribunals. These networks create and shape discourses on TJ within the post-conflict affected communities. Second, NGOs use victim-oriented approaches and technical support to enhance the domestic prosecution of international crimes. The common victims’ rights discourse enables them to intervene in domestic TJ frameworks. With regards to the work of international organizations, legitimacy matters because of the wide audiences and fragmented structures of power.¹⁶ Dominik Zaum stresses the vital role played by NGOs in the diffusion of norms, arguing that they are ‘benchmarks against which different audiences assess the legitimacy of international organizations and their practices’.¹⁷

In light of this assertion, legitimacy is used as an analytical frame to examine the relationship between NGOs and the affected societies. It is important to distinguish between two forms of legitimacy. While normative legitimacy relates to institutions’ and courts’ moral authority to exercise legal functions over a particular case, sociological legitimacy relates to the acceptance of their political authority within the affected societies.¹⁸ This could be interpreted as also ‘based on the transnational regulation being perceived as legitimate by actors in the field’.¹⁹ I adopt the sociological approach that defines legitimacy as the ‘acceptance of the authority of the messages and narratives constructed within international criminal courts amongst different audiences’,²⁰ because it is relevant in the understanding of TJ among multiple audiences.

As will be revealed in this paper, both local NGOs and INGOs contribute to the legitimization of international criminal justice in the eyes of victims and affected communities.²¹ This is illustrated through a Critical Discourse Analysis (CDA) of their narratives. The rationale is that narratives play a crucial role in the interpretation of international law and other norms of global governance.²² The narratives are drawn from an analysis of NGO interactions with the

12. Florian Jessberger and Julia Geneuss, ‘“Litigating Universal Jurisdiction” — Introduction’ (2015) 13(2) *Journal of International Criminal Justice* 205, 206.

13. Heidi Nichols Haddad, *The Hidden Hands of Justice NGOs, Human Rights, and International Courts* (CUP 2018); Heidi N Haddad, ‘After the Norm Cascade: NGO Mission Expansion and the Coalition for the International Criminal Court’ (2013) 19(2) *Global Governance* 187, 189.

14. Eva Brems, Giselle Corradi and Martien Schotsmans, *International Actors and Traditional Justice in Sub-Saharan Africa: Policies and Interventions in Transitional Justice and Justice Sector Aid* (1st edn, Intersentia 2015) 4.

15. Lohne (n 9) 90.

16. Dominik Zaum, ‘Legitimacy’ in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (OUP 2016) 1122.

17. *ibid.*

18. Marlies Glasius and Tim Meijers, ‘Constructions of Legitimacy: The Charles Taylor Trial’ (2012) 6(2) *International Journal of Transitional Justice* 229, 231-232.

19. Louise Munkholm, Cecile Pelaudeix and Bettina Lemann Kristiansen, ‘Conclusion: Transnationalisation and Legal Actors: Legitimacy in Question’ in Bettina Lemann Kristiansen and others (eds), *Transnationalisation and legal actors: Legitimacy in question* (Routledge 2019) 230.

20. Barrie Sander, ‘The Expressive Turn of International Criminal Justice: A Field in Search of Meaning’ (2019) 32(4) *Leiden Journal of International Law* 851, 857.

21. Birju Kotecha, ‘The International Criminal Court’s Selectivity and Procedural Justice’ (2020) 18(1) *Journal of International Criminal Justice* 107, 112.

22. Julia Otten, ‘Narratives in International Law’ (2016) 99(2) *KritV, CritQ, RCrit. Kritische Vierteljahresschrift Für Gesetzgebung Und Rechtswissenschaft / Critical Quarterly for Legislation and Law / Revue critique trimestrielle de jurisprudence et de législation* 187.

international criminal prosecutions across local, domestic, and international spaces. Local means the places where the victims reside, while domestic means the ICD. On the other hand, international spaces refers to places where the INGOs are headquartered, together with the ICC in the Hague.

Methodologically, this paper is based on a combination of methods in empirical legal research. Interview is used as a data collection method, analysed through CDA and document analysis. This data rests primarily on qualitative interviews with a range of actors in Ugandan TJ: NGO representatives, victim representatives, prosecutors, judges, academics, and a defence lawyer. The primary goal was to understand how NGO policies and interventions feed into the work of the ICC and ICD. It also aimed to identify the common themes that pervade their work. The participants were selected on the basis of their work in Uganda's TJ process. In addition to the empirical data, I reviewed secondary information from NGO documents and reports. The primary goal was to understand how NGO policies and interventions feed into the work of the ICC and ICD. It also aimed to identify the common themes that pervade their work. I also draw on my observations at the ICC in The Hague, during my work as a visiting professional between March and August 2020. I also add reflections based on my experience as a legal practitioner in war-affected communities in Uganda, working with Uganda Law Society and International Justice Mission between 2012 and 2018.

Due to the COVID-19 disruptions, the interviews were conducted through a mixture of telephone and online via video technology. Salmon's Qualitative e-Research framework was used as a tool for organizing and designing the interviews.²³ The University of Portsmouth ethical guidelines and usual ethical principles guiding socio-legal research applied during the entire process. This was vital in order to have verifiable research participants and provide informed consent before participating in the online interviews.²⁴ The paper also relies on an extensive review of secondary sources regarding the TJ process. The findings were analysed systematically, to identify the discursive elements that relate to international criminal justice.

The paper consists of four main sections. Following this introduction, Section 2 links global governance to international criminal justice institutions and the work of NGOs, in the broader context of TJ. It identifies contestations within the Global South, and concerns about NGO work within these contested spaces. Next, Section 3 turns to the case study of Northern Uganda, giving empirical perspectives of NGO work in TJ. It reveals the strategies adopted by NGOs that contribute to the legitimacy of the TJ mechanisms at both domestic and international levels. Finally, in Section 4, the paper concludes that there is still a compelling case to be made for the involvement of NGOs in global justice and TJ. It also identifies potential avenues to further advance the global governance structures that resonate with domestic realities.

2. GLOBAL GOVERNANCE IN CONTESTED SPACES

This section considers global governance as a contested space that requires legitimization. The basis of this assertion is premised on the pluralist conceptions of justice and perceptions about roles of global institutions at local, domestic, and international levels.²⁵ This assertion will be unpacked by analysing global governance through the prism of international criminal courts and NGOs.

2.1 Global governance through international criminal justice

Global governance has had significant influences in the doctrinal areas of international law, due to interactions between different legal orders and disciplines. According to Teitel, the evolving

23. Janet Salmons, *Doing Qualitative Research Online* (SAGE Publications 2016).

24. Cf Janet Salmons, 'Designing and Conducting Research with Online Interviews' in Janet Salmons (ed), *Cases in Online Interview Research* (SAGE Publications 2012) 8.

25. Sarah M H Nouwen and Wouter G. Werner, 'Monopolizing Global Justice' (2015) 13(1) *Journal of International Criminal Justice* 157,164.

normative shift from state-centric to the individual represents what she calls ‘humanity law’.²⁶ Thus, the new focus on individual criminal responsibility has expanded the global legal order.²⁷ It is also linked to the growing demands for accountability for gross violations of human rights across national jurisdictions.²⁸

Theoretically, global governance is also associated with ‘the turn to anti-impunity’: the pursuit of global polices to fight impunity in international human rights law.²⁹ It is argued that the turn to anti-impunity contributed to the normalization of individual accountability under the Rome Statute.³⁰ Additionally, it triggered transformations in the practices of other regional and international institutions and NGOs.³¹ Karen Engle further attributes the global fight against impunity to the rise of neoliberalism following the end of the Cold War, leading to more international criminal justice-focused remedial approaches.³²

Global governance can also be linked with international criminal justice. This paper endorses Mégret’s definition of international criminal justice as the ‘the operation of a pluralist international legal system based on liberal values that entail the peaceful coexistence of sovereign entities’.³³ This is exemplified through the establishment of ad hoc international tribunals for the former Yugoslavia and Rwanda in 1993 and 1994. Similarly, it is linked to the proliferation of hybrid tribunals. Beyond the classical role of courts as legal actors, international criminal courts also act as social agents, in what Carsten Stahn describes as ‘the construction of legacies’.³⁴ In essence, this suggests that international criminal justice institutions are concerned with much more than juridical work, but also long lasting legacies within the affected communities.

From a normative perspective, global governance can also be seen through the prism of the notion of universal jurisdiction, derived from the prosecution of grave breaches under international instruments like the four Geneva Conventions of 1949³⁵. Nonetheless, the notion of universal jurisdiction is also problematic among many states, because of the exercise of sovereignty. As an ICC judge pointed out, ‘It is quite a hard sale to get a country to engage in universal jurisdiction’.³⁶

However, the way in which domestic and global institutions interact raises instrumental questions regarding implementation of TJ, for instance, in the legal interpretation of United Nations (UN) agreements with states for domestic prosecution of war crimes. Nouwen notes an ambiguity with the use of the notion ‘mandate from the “international community”’ in hybrid tribunals, suggesting a need for a more concrete interpretation of the customary law on immunities.³⁷

International law scholars raise concerns about the growing use of international criminal law as a path for global justice, in what they refer to as the ‘monopolization of justice’.³⁸ Their argument is that tribunals created to serve such justice do not necessarily further the aims of

26. Ruti Teitel, ‘Humanity Law: A New Interpretive Lens on the International Sphere’ (2008) 77 *Fordham Law Review* 667, 667-668.

27. *ibid* 668.

28. Interview with David M. Crane, Founding Chief Prosecutor of the Special Court for Sierra Leone, 1 March 2021.

29. Hani Sayed, ‘The Regulatory Function of the Turn to Anti-Impunity in the Practice of International Human Rights Law’ (2019) 55(1) *Stanford Journal of International Law* 1.

30. *ibid* 4.

31. Karen Engle, ‘Anti-Impunity and the Turn to Criminal Law in Human Rights’ (2015) 100 *Cornell Law Review* 1070, 1072.

32. *ibid*.

33. Mégret (n 2).

34. Carsten Stahn, ‘Legacy in International Criminal Justice’ in Margaret M. de Guzman and Diane Marie Amann (eds), *Arcs of Global Justice: Essays in Honour of William A. Schabas* (OUP 2018) 278.

35. Antonio Cassese, ‘The Role of Internationalized Courts and Tribunals in the Fight Against International Criminality’ in Cesare P.R. Romano, André Nollkaemper and Jann K. Kleffner (eds), *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia* (OUP 2004) 3.

36. Interview with ICC judge, 4 March 2021.

37. Sarah Nouwen, ‘Return to Sender: Let the International Court of Justice Justify or Qualify International-Criminal-Court Exceptionalism Regarding Personal Immunities’ (2019) 78(3) *Cambridge Law Journal* 596, 604.

38. .Nouwen and Werner (n 25) 157.

international criminal law,³⁹ thus the need for more nuanced and contextual approaches. In addition, there are different conceptions of justice at both regional and international levels.⁴⁰

Critics of universal jurisdiction argue for more differentiated degrees of criminal responsibility for mass atrocities like in Uganda, and the application of what is termed ‘non-Western perspectives of accountability’.⁴¹ From criminological and sociological perspectives, Lohne raises concerns regarding the orthodox emphasis on individual retribution for mass atrocity crimes, with an assertion that penalty is a global justice project.⁴² This is also observed in Clarke’s legal anthropology, in what she terms the ‘international criminal law (ICL) impunity gap’.⁴³

Whilst he recognises the limitations of national courts in rendering justice following large scale violations of human rights by state agents, Cassese asserts that they are the most appropriate mechanisms for the prosecution of international crimes.⁴⁴ Regarding the notion of universal jurisdiction, Cassese is critical of the establishment of international criminal tribunals by the Security Council, as they are highly politicised.⁴⁵ What emerges clearly from Cassese’s criticism is a need for an examination of the institutional interests of international justice institutions like the ICC, in order to understand how global governance works. For instance, Barrie Sander illustrates the work of the ICC using a theory that he terms ‘strategic expressivism’ in the broader field of international criminal justice. He argues that expressive avenues like victim-oriented discourses improve the sociological legitimacy of international criminal courts.⁴⁶ This expressive turn is observed in the Ugandan case at the ICC against Dominic Ongwen, because it did not clearly fit the victim-perpetrator binary.⁴⁷

The UN Mission in Kosovo (UNMIK) represents another example of the nuanced relationship between domestic and global governance, under the rubric of international justice. While scholarly evaluations of the UNMIK show the relevance of international justice following gross violations of human rights, inter-ethnic violence, and war crimes, they reveal a need for complementarity through building the local capacities of judges and lawyers.⁴⁸ Conversely, this suggests that ‘internationalised’ justice is not always a one size fit all, but rather, requires the careful consideration of unique domestic contexts.

Similarly, the Extraordinary Chambers in the Courts of Cambodia (ECCC) exemplifies the nuanced relationships between global and domestic institutions regarding accountability. The UN and the Cambodian government agreed on the legal procedures, including the definition of international crimes and recognition of amnesty.⁴⁹ More generally, the agreement was regarded as a difficult compromise due to the parties’ initial disagreements about the composition of the court.⁵⁰ The above challenge is an indication of the limitations of global governance structures in

39. *ibid* 160.

40. Ronald C Slye, ‘Reflections on Africa and International Criminal Law’ in Ronald C Slye (ed), *The Nuremberg Principles in Non-western Societies: A Reflection on their Universality, Legitimacy and Application* (International Nuremberg Principles Academy 2016) 234.

41. Liana Georgieva Minkova, ‘Expressing What? The Stigmatization of the Defendant and the ICC’s Institutional Interests in the Ongwen Case’ (2021) 34(1) *Leiden Journal of International Law* 223, 229; cf Branch (n 5) 40.

42. Kjersti Lohne, ‘Penal Welfarism “Gone Global?” Comparing International Criminal Justice to The Culture of Control’ (2021) 23(1) *Punishment & Society* 3.

43. Kamari Maxine Clarke, ‘Refiguring the Perpetrator: Culpability, History and International Criminal Law’s Impunity Gap’ (2015) 19(5) *The International Journal of Human Rights* 592, 593.

44. Cassese (n 35) 4.

45. *ibid* 5.

46. Sander (n 20) 867.

47. Minkova (n 41) 225.

48. Jean-Christian Cady and Nicholas Booth, ‘Internationalized Courts in Kosovo: An UNMIK Perspective’ in Cesare PR Romano, André Nollkaemper and Jann K Kleffner (eds), *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia* (OUP 2004) 59, 77.

49. Ernestine E Meijer, ‘The Extraordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed by the Khmer Rouge: Jurisdiction, Organization, and Procedure of an Internationalized National Tribunal’ in Cesare P Romano, André Nollkaemper and Jann K Kleffner (eds), *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia* (OUP 2004) 214.

50. *ibid* 219, 231.

such complex contexts. Moreover, states are increasingly drawn towards the implementation of international criminal law norms through enactment of national implementing legislation.⁵¹

Besides Cambodia, studies on other hybrid tribunals in East Timor and Sierra Leone reveal that this ‘internationalised justice’ is a viable, yet problematic form of TJ.⁵² It is important to note that there were two parallel TJ institutions Sierra Leone: the Truth and Reconciliation Commission and the Special Court for Sierra Leone. This context thus begs a question of how to evaluate global governance and responses to domestic TJ processes when hybrid mechanisms are employed.

Just like in Cambodia, the Special Tribunal was created following an international agreement between Sierra Leone and the UN. Procedural aspects of the Tribunal were derived from those of the International Criminal Tribunal for Rwanda (ICTR).⁵³ The Special Tribunal had a very good relationship with NGOs and needed their support, particularly the Office of the Prosecutor.⁵⁴ NGOs were influential in the interpretation of the Special Court Agreement (Ratification) Act of 2002, with regard to the contested legal relationship between the Tribunal and the Truth and Reconciliation.⁵⁵ Schabas is critical of the legal interpretations given by the UN and NGOs like the International Crisis Group, Human Rights Watch and No Peace Without Justice, in what he terms ‘intellectual and political energy’.⁵⁶ Kendall’s study further illustrates the implications of the extensive involvement of non-state actors like donors in global governance, using the case of the Special Court for Sierra Leone.⁵⁷

2.2 Global governance through NGOs

Following the criticisms against non-state actor roles in international criminal justice, it is imperative to examine the role of NGOs in global governance. In recent years, NGO work has expanded rapidly in national governance as well as at the international level. In order to explore these developments, it is important to clarify the core terms: NGOs and global governance. The latter relates to ‘a complex of rules and regulatory institutions that apply to transplanetary jurisdictions and constituencies’.⁵⁸ The term NGOs is synonymous with civil society organizations (CSOs), operating separately from the state and political parties.⁵⁹

NGOs have become critical actors in the international justice work, in what Stahn regards as ‘advocates and voices of judicial action’.⁶⁰ A list of 138 NGOs were also involved in the drafting and eventual adoption of the Rome Statute in 1998.⁶¹ According to an ICC judge, ‘NGOs may be the principal force in pushing for universal jurisdiction’.⁶² To David Crane, the founding Chief Prosecutor of the Special Court for Sierra Leone, the rise of grassroots efforts by NGOs is a key element in the age of accountability.⁶³ Their influences in global governance are also observed in

51. Daley J Birkett, ‘Twenty Years of the Rome Statute of the International Criminal Court: Appraising the State of National Implementing Legislation in Asia’ (2019) 18(2) *Chinese Journal of International Law* 353,355.

52. Chandra Lekha Sriram, *Globalizing Justice for Mass Atrocities A Revolution in Accountability* (1st edn, Routledge 2005)80.

53. William A Schabas, ‘Internationalized Courts and Their Relationship with Alternative Accountability Mechanisms: The Case of Sierra Leone’ in Cesare P Romano, André Nollkaemper and Jann K Kleffner (eds), *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia* (OUP 2004) 174.

54. Interview with David M. Crane, Founding Chief Prosecutor, 1 March 2021.

55. Schabas (n 53) 166,174,175.

56. *ibid*, 179.

57. Sara Kendall, ‘Donors’ Justice: Recasting International Criminal Accountability’ (2011) 24(3) *Leiden Journal of International Law* 585.

58. Jan Aart Scholte, *Building Global Democracy?: Civil Society and Accountable Global Governance* (CUP 2011).

59. Riva Krut, ‘Globalization and Civil Society: NGO Influence in International Decision-Making’ (United Nations Research Institute for Social Development 1997) Discussion Paper No. 83, April 1997, pp.11-12<<https://www.files.ethz.ch/isn/28982/dp83.pdf>> accessed 29 April 2021.

60. Stahn (n 34).

61. Peter Brett and Line Engbo Gissel, ‘Explaining African Participation in International Courts’ (2018) 117(467) *African Affairs* 195, 206-207.

62. Interview with ICC judge, 4 March 2021.

63. Interview with David M. Crane, Founding Chief Prosecutor, 1 March 2021.

the contexts of Kenya and Sri Lanka, where they use different strategies that legitimise or delegitimise accountability mechanisms under international law.⁶⁴

Besides international tribunals, impacts of global governance are revealed through the practices of International Commissions of Inquiry.⁶⁵ It is argued that NGOs also legitimise different actors and mechanisms including Commissions of Inquiry, within contested spaces of TJ.⁶⁶ For example, the United Nations Fact-Finding Mission on the Gaza Conflict (Goldstone Commission) report caused a backlash on local NGOs in Israel and the Occupied Palestinian Territory, that were perceived as biased against Israel.⁶⁷ The Kenyan situation is not different, as NGOs were pivotal in the work of the Truth, Justice and Reconciliation Commission (TJRC) of 2008. Scholars observe the 'often ambiguous role [of NGOs] in determining a truth commission's impact – both real and perceived – through collective and personalized agendas, reactive responses to government signals and unintended consequences'.⁶⁸ More generally, NGO roles in Kenya's TJ were largely influenced by local political actors and international pressure.⁶⁹

It is clear from the above experiences that there is a need to explore the nuanced relationships between NGOs and affected communities, within the context of TJ. This would also help to clarify why there are often contested conceptions of justice by different actors, including non-state actors. It is important to note that questions relating to the role of NGOs in international criminal justice go beyond traditional domains of international law and international criminal law. Interdisciplinary scholarship reveals how NGO participation in global governance institutions is shaped by 'incentives and pressures at global and national levels' involving domestic politics and overseas aid.⁷⁰

Following the above controversies, crucial questions arise with respect to how global governance systems are implemented, and how they resonate with affected communities at the domestic level. Besides shaping the global norms, both state and non-state actors also challenge their legitimacy through their engagement in international human rights law.⁷¹ Therefore, questions related to impact of NGOs and the legitimacy of the TJ mechanisms should be central, within discourses on global governance.

Peter van Tuijl, Executive Director of the Global Partnership for the Prevention of Armed Conflict (GPPAC), poses an important question: 'do the increasing numbers of NGOs and NGO networks represent hope and building blocks for a system of global governance that will enforce human rights more effectively?'⁷² His answer is affirmative, based on the quality of the relationships and networks that they have across local, domestic, and international fora.

Crucially, there is a need for comprehensive conceptualisation of the role that NGOs play in these contentious processes. Given the proliferation of global governance institutions, this paper endorses the views of Gready and Robins on the need to structure the modalities for NGO interactions at domestic and global levels.⁷³ The paper thus draws on a specific analytical framework that illustrates how NGOs strategise and work.

64. Thomas Obel Hansen and Chandra Lekha Sriram, 'Fighting for Justice (and Survival): Kenyan Civil Society Accountability Strategies and Their Enemies' (2015) 9(3) *International Journal of Transitional Justice* 407,412; Nihal Jayasinghe and Daley J. Birkett, 'A War Crimes Tribunal for Sri Lanka?: Examining the Options Under International Law' (2014) 46(3) *Case Western Reserve Journal of International Law* 567,573-574.

65. Michael A Becker and Sarah M H Nouwen, 'International Commissions of Inquiry: What Difference Do They Make? Taking an Empirical Approach' (2019) 30(3) *European Journal of International Law* 819,841.

66. *ibid* 837.

67. Hala Khoury-Bisharat, 'The Unintended Consequences of the Goldstone Commission of Inquiry on Human Rights Organizations in Israel' (2019) 30(3) *European Journal of International Law* 877, 887.

68. Lydiah Kemunto Bosire and Gabrielle Lynch, 'Kenya's Search for Truth and Justice: The Role of Civil Society' (2014) 8(2) *International Journal of Transitional Justice* 256, 258.

69. Hansen and Sriram (n 64) 426.

70. Laura A Henry et al, 'NGO Participation in Global Governance Institutions: International and Domestic Drivers of Engagement' (2019) 8 *Interest Groups & Advocacy* 291.

71. Munkholm, Pelaudeix and Kristiansen (n 19) 230.

72. Peter van Tuijl, 'NGOs and Human Rights: Sources of Justice and Democracy' (1999) 52(2) *Journal of International Affairs* 493, 511.

73. Paul Gready and Simon Robins, 'Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and "New" Civil Society' (2017) 21(7) *The International Journal of Human Rights* 956,970.

There are two types that need to be considered in order to analyse the role of NGOs in global governance: demand and supply driven NGOs.⁷⁴ According to Chesterman, while some NGOs are primarily motivated by supply in terms of pursuing an agenda, others are driven by a demand following an objective assessment of need.⁷⁵ This is somewhat similar to Krut's typology of NGO work: charitable model and the transformative model,⁷⁶ and Peter van Tuijl's classification of 'operational' and 'advocacy' NGOs.⁷⁷ Within the context of TJ, Gready and Robins use five typologies to analyse NGO work: 'comparative advantage; task allocation; mechanism-specific; evidence-based; and transnational advocacy'.⁷⁸

In order to effectively capture the relations between locally based and INGOs within the context of TJ, this paper uses the fifth typology that views NGOs as transnational advocates. Using Chesterman's typology, the emphasis is on NGOs that supply or issue driven NGOs. One notable example relates to NGOs under the Coalition for the International Criminal Court. These are intricately linked to the broader notion of global governance.

Following this discussion on global governance through the prism of international criminal justice and NGOs, the next section will utilise empirical legal research on the case study of Uganda to identify the constructive role that NGOs play in global governance. The analysis will be under the broad framework of TJ.

3. NGOs AND THE TRANSITIONAL JUSTICE AGENDA: THE UGANDA EXPERIENCE

The Uganda case study will show that NGOs contribute to the legitimization of global governance under the framework of TJ. This impact will be revealed through the work of transnational networks and coalitions that promote the international criminal justice mechanisms. Another way is through the creation and shaping of discourses on TJ within the post-conflict affected communities. It will also highlight how the NGO work delegitimises traditional justice mechanisms.

3.1 Legitimization of the ICC: power of transnational networks

The intervention of the ICC in Uganda presents polemical insights about NGO influence in global governance. The initial relationship between the Ugandan government and the ICC, had been perceived as a 'marriage made in heaven'.⁷⁹ However, all was not smooth, as the court navigated its way through the affected communities and other stakeholders, including NGOs.

The Registrar of the court met with religious and cultural leaders from Northern Uganda, exchanging 'views on matters of mutual concern' regarding the situation.⁸⁰ Some of the local NGOs involved in the ICC work, including community leaders and victims' representatives, could be categorised as 'Intermediaries' of the ICC.⁸¹ However, this categorization is problematic when used within the context of TJ, as many of the NGOs, do not solely depend on the ICC for their existence and mandates. Therefore, NGOs are analysed as independent stakeholders within the TJ process in Northern Uganda.

74. Henry et al (n 70) 293.

75. Simon Chesterman, 'How "Public" Is Public International Law? Toward a Typology of NGOs and Civil Society Actors' (2018) 24 *Global Governance* 159, 164.

76. Krut (n 59) 18.

77. Peter van Tuijl (n 72) 499.

78. Gready and Robins (n 73) 961.

79. Joe Oloka-Onyango, 'Unpacking the African Backlash to the International Criminal Court (ICC): The Case of Uganda and Kenya' (2020) 4(1) *Strathmore Law Journal* 41, 47.

80. See ICC Press Release, 'Delegation from Uganda Holds Talks with the Registrar of the ICC' International Criminal Court (The Hague, The Netherlands, 18 March 2005) <<https://www.icc-cpi.int/Pages/item.aspx?name=delegation+from+uganda+holds+talks+with+the+registrar+of+the+icc>> accessed 12 April 2021.

81. See Ullrich (n 8).

Nonetheless, it can be argued that NGOs have a stake in the work of this global justice institution. NGO work also has an impact on the legitimacy of the court before the affected communities. The ICC Outreach programme worked directly with victims within the affected communities, with the support of local NGOs that had been involved in the documentation of the LRA atrocities in Northern Uganda. Of particular importance to the court's initial field work, were a group of local NGOs, most notably, the Justice and Reconciliation Project (JRP) and the Refugee Law Project (RLP). JRP was particularly involved in the understanding of traditional justice processes, but also engaged extensively in the documentation of atrocities and re-integrating former LRA combatants within the societies in northern Uganda.⁸² Local NGOs also assisted victims to fill out application forms to participate in the ICC case, before the appointment of victims' lawyers.⁸³

As the ICC strengthened its presence within the affected communities, it was faced with a huge hurdle: the Peace vs Justice debates. The ICC intervention was viewed as an impediment to the peace negotiations between the LRA and the Ugandan government in 2008.⁸⁴ The Peace vs Justice dilemmas are revealed through an informativeset of NGO narratives during the ICC intervention in Uganda. Initially, there were strong voices of dissent by local NGOs against the ICC intervention in Uganda. This created an intimidating environment for domestic NGOs, as ICC proponents and some INGOs were critical of the local peace initiatives. As observed from discussions during the Review Conference of the Rome Statute in 2010, the Peace vs Justice debate polarised the engagements among the different TJ stakeholders.⁸⁵

One NGO staff member put this way: 'Many NGOs found themselves in a position where they didn't have a concrete position'.⁸⁶ Another recalled the tense environment, noting: 'some of us were accused of undermining ICC work [sic]'.⁸⁷ This ambivalence affirms similar observations made by Clark that noted a gradual change of approach among local NGOs, aligned towards the ICC.⁸⁸ This invites a critical analysis of the outreach activities as a source of legitimization of the Court.

As the ICC intervention emanated from a self-referral by the Ugandan government, the prosecutor and the latter had close working relationships. However, it also had an impact on the sociological legitimacy of the court before the affected communities. As recalled by one NGO staff, 'when the ICC centred their work around the president, this undermined their legitimacy in Northern Uganda'.⁸⁹ The local NGOs were therefore the voice of the affected people. Therefore, the court had to work more with the affected communities with lesser engagement with the government. It was noted that 'NGO criticisms strengthened the way the ICC approached it...'⁹⁰

Benjamin Gumpert QC, the lead prosecutor in the case against Dominic Ongwen, reveals a mixed experience regarding the prosecutor's engagement with NGOs, noting:

Some NGOs were supportive and prepared to provide information and assistance, since they believed this would be for the benefit of their clients. Others were defensive and uncooperative. They did not always give reasons. My feeling was that it depended very much upon the pre-formed attitudes of influential NGO staff to the ICC and its work in Uganda.⁹¹

Nonetheless, the legitimization of the ICC intervention is highlighted in the work of local NGO coalitions. The Northern Ugandan Transitional Justice Working Group (NUTJWG) is a coalition

82. See JRP's website: <<https://www.justiceandreconciliation.org/>> accessed 11 April 2021.

83. Interview with a legal representative for victims in the Dominic Ongwen case, 18 March 2021.

84. Line Engbo Gissel, *The International Criminal Court and Peace Processes in Africa: Judicialising Peace* (Routledge 2018) 44.

85. Lucy Hovil, 'The ICC's Engagement in Uganda from a Local NGO Perspective' (paper presented at a panel discussion held by the Open Society Justice Initiative and the International Refugee Rights Initiative at the Review Conference of the International Criminal Court, Kampala, 31 May–11 June 2010).

86. Interview with NGO founder, 26 February 2021.

87. Interview with NGO founder, 26 February 2021.

88. Phil Clark (n 10) 8.

89. Interview with NGO founder, 26 February 2021.

90. Interview with NGO founder, 26 February 2021.

91. Interview with Benjamin Gumpert QC, 6 May 2021.

of over sixty NGOs formed in 2008 to engage with TJ mechanisms.⁹² Workshops convened under the auspices of NUTJWG aimed at ‘Building consensus among civil society in northern Uganda to promote collective and collaborative engagement on issues of transitional justice.’⁹³ NUTJWG, in collaboration with local NGO RLP, hosted consultative dialogues within the affected communities to reflect on indicted LRA commander Dominic Ongwen’s ‘Justice Dilemma’, emphasizing the importance of both the ICC and domestic justice mechanisms.⁹⁴

Another notable coalition is the Uganda Victims' Foundation (UVF) that worked with victims of the LRA in Northern Uganda.⁹⁵ It is important to note that due to the sensitivity about ICC intervention, UVF operated under a broad coalition of NGOs named Uganda Victims' Rights Working Group (U-VRWG). A founding member of UVF noted, ‘There were fears from retaliation when talking about the ICC in the North...’⁹⁶

The Ugandan Coalition for the International Criminal Court (UCICC) was formed in 2004 and hosted by the Human Rights Network Uganda (HURINET – U). It was envisioned as a broad network of key players in civil society, government and the international community to pursue criminal accountability for the victims in Northern Uganda,⁹⁷ There were contestations among local NGOs regarding who should host the UCICC, in a competition for resources.⁹⁸

Another critique of the work of the coalition as the ICC case progressed concerned the nature of local NGO interventions. According to one of its former coordinators, ‘the coalition was just implementing activities, yet it was supposed to be synergizing NGO efforts’.⁹⁹ This concern shows a disappointed expectation on the part of NGOs in relation to their work in TJ.

During the Review Conference of the Rome Statute that took place in 2010 in Uganda, the UCICC directly engaged with ICC staff and delegations. Among other goals, they aimed ‘to bring ICC closer to the people affected’ In addition, organised local events aimed at changing the perception of the ICC that was considered by some political actors as biased against African countries.¹⁰⁰ This discourse suggests a particular language of TJ, aligned towards the ICC. It is not surprising that NUTJWG’s work gradually diminished as the ICC case progressed.

According to an NGO representative, ‘the Northern Uganda TJ Group is as good as dead.’¹⁰¹ The inactivity of the coalition can be attributed to loss of interest among NGOs following new donor priorities that shifted from the ICC to the domestic prosecution of international crimes. As Stephen Oola explains:

[W]hen the ICC bill was passed and enacted into law and the review conference ended, donor interest faded away from Uganda because some international funder[s] look[ed] at the Uganda War Crimes Division and conclude[d] that justice shall be done.¹⁰²

92. See Justice and Reconciliation Project Annual Report 2009, 7 <http://justiceandreconciliation.com/wp-content/uploads/2009/01/JRP_AnnualReport_2009-SM.pdf> accessed 11 April 2021.

93. *ibid* 9.

94. IFAIR, ‘Ongwen’s Justice Dilemma’ (Berlin, 18 March 2015) <<https://ifair.eu/2015/03/18/ongwens-justice-dilemma/>> accessed 12 April 2021.

95. See UVF website <<http://www.vrwg.org/about-vrwg/uvf/>> accessed 12 April 2021.

96. Interview with founding member of UVF, 12 March 2021.

97. See UCICC statement <https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-NGO-UCICC-ENG.pdf> accessed 04 August 2021.

98. Interview with a former coordinator of the UCICC, 2 March 2021.

99. Interview with a former coordinator of the UCICC, 2 March 2021.

100. Coalition for the International Criminal Court (CICC), ‘ICC Challenges: Perspectives from Uganda’s Student Community’ Coalition for the International Criminal Court’ (27 September 2017) <<https://www.coalitionfortheicc.org/news/20170927/icc-challenges-perspectives-ugandas-student-community>> accessed 12 April 2021.

101. Interview with NGO representative, 2 March 2021.

102. Stephen Oola, ‘The Coalition for Reconciliation in Uganda (CORU): Important Lessons for Proactive Civil Society Engagement in Catalyzing Transitional Justice Discourse’ (African Transitional Justice Research Network Workshop, Johannesburg, 30–31 August 2010) <https://peaceinsight.s3.amazonaws.com/media/images/wp-content/uploads/2010/09/Stephen-Oola_TJ-Advocacy-in-Uganda.pdf> accessed 13 May 2021.

From a normative perspective, the UCICC was instrumental in the ratification and domestic implementation of the Rome Statute in Uganda.¹⁰³ At the time of writing this paper, the UCICC was technically not in operation. Two reasons are provided for this. First, its operations were largely done by one NGO, HURINET – U, which created conflicts among member NGOs.¹⁰⁴ The other relates to funding. As explained by a former coordinator, ‘The priorities of donors changed along the way...There were some serious challenges’.¹⁰⁵ This is akin to Kendall’s observation regarding the Special Court for Sierra Leone, in what she terms ‘donors’ justice’.¹⁰⁶

Besides local NGOs and coalitions, the work of INGOs impacted positively on the ICC’s legitimacy in Uganda. The most notable INGOs within the TJ context are the International Center for Transitional Justice (ICTJ) and Avocats Sans Frontières (ASF), with country offices in Uganda’s capital city, Kampala. ICTJ has operated in the country since 2005, mainly offering technical support and capacity building.¹⁰⁷ ASF’s work is mostly targeted towards victims and reparations under the TJ process.¹⁰⁸ Both organisations have direct relationships with domestic NGOs in their thematic areas of work. Whilst both are engaged in technical capacity building, some international NGO initiatives are akin to donor–beneficiary relationships. For example, domestic NGOs received financial support from their ‘partners’ to carry out specific activities.¹⁰⁹ It can thus be argued that this has some influence on local NGO priorities. Beyond the formal working relationships between these global and domestic actors, their narratives raise key questions about TJ within contested spaces.

Erin Baines, a co-founder of JRP narrates a dramatic response towards Human Rights Watch (HRW), following the ICC intervention in Northern Uganda, noting:

When the ICC announced its intention to investigate the LRA, HRW celebrated, but the local Ugandan partners objected: why would Kony negotiate a peace deal only to return and be arrested? It also sparked a heated debate about the relevance of an international judicial approach versus a locally based solution.¹¹⁰

As the Dominic Ongwen case progressed, INGOs further engaged in support for international criminal justice-oriented elements of TJ. For Redress, an important aspect relates to the issue of reparations for victims. The organisation does not operate a country office in Uganda. However, they work with local intermediaries to build capacity to promote domestic accountability for international crimes.¹¹¹ This intervention somewhat overlaps with that of ASF and ICTJ.

In sum, the power of transnational NGO networks cannot be underestimated in an era where global governance is expanding. As asserted by Howard Morrison, a judge in the Appeals Chamber of the ICC, ‘NGOs may be the principal force in pushing for universal jurisdiction’.¹¹² Crucially, the Uganda case illuminates an influential role of NGO networks and the interaction between local and international NGOs in the global enterprise of promoting international criminal justice.

103. Interview with a former coordinator of the UCICC, 12 March 2021. The country adopted the International Criminal Court Act (ICC Act 2010) in June 2010.

104. Interview with a former coordinator of the UCICC, 2 March 2021.

105. Interview with a former coordinator of the UCICC, 12 March 2021.

106. Kendall (n 57).

107. See ICTJ-Uganda website <<https://www.ictj.org/our-work/regions-and-countries/uganda>> accessed 10 April 2021.

108. See ASF Policy Brief : Reflexions on victim’s participation before the International Crimes Division in Uganda, <<https://www.asf.be/wp-content/uploads/2019/11/Policy-Brief-Victims-participation-in-Uganda-1.pdf>> accessed 06 August 2021.

109. Interview with NGO Representative, 20 March 2021

110. Baines (n 5) 166.

111. For a detailed analysis, see Redress, ‘Not with Us: Strengthening Victim Participation in Transitional Justice Processes in Uganda’ (Redress 2020) <<https://redress.org/wp-content/uploads/2020/07/Not-Without-Us-Report-for-Web.pdf>> accessed 27 August 2020.

112. Interview, 5 March 2021.

3.2 Legitimization through victim-oriented work and technical capacity building

Apart from ICC cases, it is important to note that the domestic implementation of the Rome Statute led to the creation of a hybrid court – ICD. This also presented a ground for NGO involvement in the domestic prosecution of international crimes. Just like the case of Dominic Ongwen, the trial of Thomas Kwoyelo before the ICD is an important marker in Uganda’s TJ. The ICD was set up in 2008 to prosecute international crimes under the ICC Act of 2010, the Geneva Conventions Act 1964 and Ugandan criminal law.¹¹³

Kwoyelo was a commander under the LRA that was arrested and prosecuted at the ICD for atrocities he committed in Northern Uganda. His trial was also seen as an implementation of the ICC complementarity regime.¹¹⁴ The trial has had numerous delays due to legal procedural and technical capacity challenges.¹¹⁵ Another cause of the delays is premised on the Uganda government’s lack of interest in criminal prosecution as a TJ approach.¹¹⁶ This created a need for external intervention in order to pursue justice for victims.

A key institutional challenge of the ICD stems from the perception that it is an international court meriting special support, unlike other courts in Uganda. A lawyer in the Director of Public Prosecutions (DPP) was critical about the allocation of huge financial resources towards one case.¹¹⁷ A similar challenge was observed by a former Registrar of the ICD, noting how ‘some people argue that the ICD is just a Division of the High Court like any other Division and not an international “court”’.¹¹⁸ The above concerns were raised during a conference organised by ASF and UCICC in 2012.

Domestic and INGOs thus play an essential role in both the operations of the ICD and the prosecution of Kwoyelo. ASF and ICTJ helped in the drafting of the court’s rules of procedure and in technical capacity building through the training of judges and lawyers. Justice Rapid Response provides direct technical support to the prosecutors,¹¹⁹ while Redress supported the victims’ lawyers to collect additional evidence.¹²⁰ This work was implemented through its local intermediaries Emerging Solutions Africa (ESA) and the UVF. As Oola explains:

It was evident at this stage that all transitional justice initiatives were geared at satisfying the complementarity test. Legal experts were flown in from New York to guide JLOS through the content of the ICC domesticating bill and to set up the special war crimes division.¹²¹

An NGO representative pointed out that, ‘at times, we help the court to do the outreach...’. It is important to note that when Kwoyelo’s trial commenced, there were no rules to govern how victims would participate in the case. Against this background, ASF, together with ICTJ and Victim Support Initiative (VSI) developed criteria for who would be considered a victim in 2018.¹²² Nonetheless, there were debates about the role of victims in this new hybrid system. According to Kwoyelo’s lead lawyer, this debate has never been settled.¹²³ Nonetheless, court

113. See the High Court (International Crimes Division) Practice Direction, Legal Notice No. 10 of 2011, Section 6(1).

114. Luke Moffett, ‘Complementarity’s Monopoly on Justice in Uganda: The International Criminal Court, Victims and Thomas Kwoyelo’ (2016) 16(3) *International Criminal Law Review* 503; Anna Macdonald and Holly Porter, ‘The Trial of Thomas Kwoyelo: Opportunity of Spectre? Reflections from the Ground on the First LRA Prosecution’ (2016) 86(4) *Africa* 698,711.

115. Interview with former judge of the ICD, 4 March 2021.

116. Interview with criminal lawyer, 3 March 2021.

117. Interview with criminal, 3 March 2021.

118. Asimwe Tadeo, ‘Effecting Complementarity: Challenges and Opportunities: A Case Study of the International Crimes Division of Uganda’ (Regional Forum on International and Transitional Justice organised by Avocats Sans Frontières-Uganda Mission and the Uganda Coalition of the International Criminal Court, Entebbe, 30 July 2012) 8-9.

119. Justice Rapid Response, ‘Uganda: Victims Are Central to Prosecuting Mass Atrocity Crimes’ (Geneva, 12 December 2019) <<https://www.justicerapidresponse.org/uganda-victims-are-central-to-prosecuting-mass-atrocity-crimes/>> accessed 13 April 2021.

120. Interview with NGO Representative, 26 March 2021.

121. Oola (n 102) 9.

122. Interview with NGO Representative, 20 March 2021.

123. Interview with Caleb Alaka, Kwoyelo’s lead lawyer, 6 March 2021.

outreach and engagement with victims enhances the sociological legitimacy of the court in the affected communities, as highlighted in Sierra Leone.¹²⁴

Central to the NGO discourses on TJ is the issue of victims' rights and justice. In an interview with an NGO representative, he stressed "In all my engagements, I speak about victims and survivors".¹²⁵ Both domestic and international NGO reports detail the needs of victims including reparations.¹²⁶ For HRW, it is important for the court to fund both outreach and victim participation activities, including fees for their legal representatives.¹²⁷

In line with the discourse on victims' participation, domestic NGOs are actively involved in the work of the ICD. Joseph Manoba, one of the legal representative for victims, co-founded UVF and the Victim Support Initiative (VSI). Besides field activities, the latter participates in meetings of the Assembly of States Parties (ASP) to the ICC.¹²⁸ More importantly, the NGO facilitates ICC-ICD dialogues and 'Victim Empowerment Training'.¹²⁹ These activities are part of a wider and global Victims' Rights Working Group (VRWG) under the auspices of the CICC, hosted by Redress.¹³⁰

It can be argued that the victim-oriented work had a direct influence on how victims and affected communities viewed the global justice institution. As one victim representative noted:

Other NGOs like the DRC, Refugee Law project and others that I cannot remember now came to us and trained us on our human rights and also the different processes that take place in a court hearing. They also told us that if Ongwen is found guilty then we will be compensated.¹³¹

Another important intervention is illustrated from the operations of the Trust Fund for Victims (TFV) in Northern Uganda. The Fund has an office in Uganda where they implement their assistance mandate, together with domestic NGO implementing partners.¹³² This also created an opportunity for domestic NGOs to engage in issues of victims' support. According to an NGO representative, 'NGOs had to strategize their activities and work around the ICC...'.¹³³ Crucially, it can be argued that victim-oriented work enhanced global interventions in the TJ and impacted positively on the sociological legitimacy of international criminal justice mechanisms.

Following numerous NGO interventions, Uganda adopted a formal TJ policy in 2019.¹³⁴ While some NGOs applaud it as a positive step towards a victim-oriented justice,¹³⁵ others are

124. Interview with David M. Crane, Founding Chief Prosecutor, 1 March 2021.

125. Interview with NGO representative, 16 March 2021.

126. See, for example, Okot Benard Kasozi, 'Does the International Criminal Court's Verdict Offer Psychological Relief for Dominic Ongwen's Victims in Northern Uganda?' Refugee Law Project (Kampala, 8 April 2021) <https://refugeelawproject.org/index.php?option=com_content&view=category&id=27&Itemid=101> accessed 13 April 2021; Avocats Sans Frontières, 'Reflections on Victim Participation before the International Crimes Division in Uganda' (Avocats Sans Frontières 2019); Sarah Kasande Kihika and Eva Kallweit, 'Building Blocks for Reparations: Providing Interim Relief to Victims Through Targeted Development Assistance' (International Center for Transitional Justice 2020), pp.15-18 <https://www.ictj.org/sites/default/files/ICTJ_Report_Uganda_InterimRelief_Web.pdf> accessed 21 November 2020; Justice Rapid Response (n 119).

127. Human Rights Watch, 'Who Will Stand for Us? Victims' Legal Representation at the ICC in the Ongwen Case and Beyond' (Human Rights Watch 2017) <<https://www.hrw.org/report/2017/08/29/who-will-stand-us/victims-legal-representation-icc-ongwen-case-and-beyond>> accessed 13 April 2021.

128. Interview with a legal representative for victims in the Dominic Ongwen case, 12 April 2021.

129. TrustAfrica, 'Strengthening Victim Participation in Accountability Processes: Learning from the Experiences of the Victim Support Initiative (VSI)' TrustAfrica (Dakar, 5 August 2019) <<https://www.trustafrica.org/en/resource/news/item/3435-strengthening-victim-participation-in-accountability-processes-learning-from-the-experiences-of-the-victim-support-initiative-vsi>> accessed 12 April 2021.

130. See the VRWG website <<http://www.vrwg.org/about-vrwg/who-we-are>> accessed 13 April 2021.

131. Interview with local victim representative, 14 April 2021.

132. See TFV website <<https://www.trustfundforvictims.org/en/locations/northern-uganda#:~:text=The%20TFV%20has%20been%20implementing,6%2C006%20direct%20beneficiaries%20in%202018>> accessed 13 April 2021.

133. Interview with NGO Representative, 26 February 2021.

134. Margaret Ajok, 'Special Report: The National Transitional Justice Policy' (The Justice, Law and Order Sector Secretariat 2019). In an interview held on 23 March 2021, an NGO representative noted, 'If it weren't for civil society, the government would have abandoned the TJ agenda long time ago...'

135. Redress, 'Passing of the Long Awaited Transitional Justice Policy in Uganda Is a Welcome Step. Now, It Must Be Implemented Quickly and Effectively' Redress (The Hague, 19 June 2019) <<https://redress.org/news/passing-of->

concerned about some normative aspects. One INGO representative noted, ‘We are concerned with the TJ Policy...It is [sic] shallow on elements on criminal accountability’.¹³⁶ This highlights the impact of NGOs in TJ.

It can also be argued that NGOs legitimised international criminal justice through their engagement with two elements of TJ in Northern Uganda: amnesty and traditional justice. The latter means ‘alternative dispute resolution as grounded in the customs of a particular society or social group where it has been practised for some time’.¹³⁷ Prosecutorial accountability is a prevalent feature despite the recognition of Acholi traditional justice mechanisms and amnesty within some sections of the affected community.¹³⁸

One INGO representative points out, ‘We know that we cannot pursue criminal accountability alone to solve the issues. However, we believe in addressing impunity...We are pursuing reparations...’¹³⁹ Nonetheless, Boniface Ojok, a co-founder of domestic JRP emphasises the relevance of traditional justice, noting, ‘Ongwen may escape the heavy sentence on the basis that there is a traditional mechanism that would help to re-integrate him in society’.¹⁴⁰ This affirms Clark’s observation about international NGO pressure and lack of a coherent voice on TJ among domestic NGOs in Uganda.¹⁴¹

In sum, the empirical legal research described here reveals how NGOs contribute to the legitimization of global governance structures under TJ. NGO interventions in the Ugandan context embody a legitimization of authority of international justice, akin to what Gissel calls ‘normalisation’ of TJ.¹⁴² Transnational networks and coalitions were pivotal in the work of the ICC in Uganda, as they created and shaped local engagement on TJ within the post-conflict affected communities. These NGO networks also mobilised domestic support for the implementation of international criminal justice. Through a critical discourse analysis, the section has also highlighted how the subject of victims’ rights impacted the current TJ framework in Uganda.

4. CONCLUSION

The paper has applied the sociological theory of legitimacy to examine the close relationship between global criminal justice and NGOs. Theoretically, it has argued that global governance is an enterprise within contested spaces that requires legitimization. This assertion has been unpacked by looking at global governance through the prism of international criminal courts and NGOs. I submit that global governance institutions like the ICC need to engage more broadly with the constituencies that they serve, in order to enhance their legitimacy. Perhaps more important for the Court’s legitimacy, is the matter of how NGOs relate with the affected constituencies within the purview of outreach and victims’ support.

This empirical study has revealed that NGOs contribute to the legitimization of global governance structures under TJ in two ways. First, through transnational networks and coalitions, NGOs apply strategies that promote the work of international criminal tribunals. These networks create and shape discourses on TJ within the post-conflict affected communities. Second, critical discourse analysis has revealed how NGOs use victim-oriented approaches and technical support

the-long-awaited-transitional-justice-policy-in-uganda-is-a-welcome-step-now-it-must-be-implemented-quickly-and-effectively/> accessed 13 April 2021.

136. Interview with international NGO Representative, 3 March 2021.

137. Susanne Buckley-Zistel, ‘Transitional Justice’ in Chris Brown and Robyn Eckersley (eds), *The Oxford Handbook of International Political Theory* (OUP 2018) 160.

138. For a more elaborate analysis on the existing TJ mechanisms, see Grace Akello, ‘Reintegration of Amnestied LRA Ex-Combatants and Survivors’ Resistance Acts in Acholiland, Northern Uganda’ (2019) 13(2) *International Journal of Transitional Justice* 249.

139. Interview with international NGO Representative, 26 February 2021.

140. Interview, 26 February 2021.

141. Clark (n 10) 3.

142. Line Engbo Gissel, ‘Contemporary Transitional Justice: Normalising a Politics of Exception’ (2017) 31(3) *Global Society* 353, 356.

to enhance the domestic prosecution of international crimes. It has also highlighted the relations between domestic NGOs and INGOs, highlighting how they navigate contested spaces in TJ.

Despite the limitations of domestic NGOs and coalitions, their engagement with affected communities in response to the post-war recovery in Northern Uganda has had significant impact. The findings of the Uganda case study have shown that NGOs have the capacity to engage in global governance through the work of institutions that engage with post-war or atrocity affected communities. There is a need to examine whether the findings outlined in the Ugandan case are replicable in other contexts as a way of achieving global governance. This paper seeks to contribute empirical data to the existing knowledge base and to frame questions that encourage further enquiry into global governance policies and responses to post-atrocity situations.

It is my hope that this paper will not only contribute empirical data to the existing knowledge base, but also to encourage further enquiry into global governance policies and responses to post-atrocity situations.

Special thanks to Line Engbo Gissel, the reviewers and editors for their helpful comments on a draft of this paper. I remain responsible for all the errors.