

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

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Abstract

This article examines the existing post-war recovery framework of Uganda, in the light of Housing, Land and Property (HLP) rights' concerns during the 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 the Transitional Justice (TJ) aspects in relation to Housing, Land and Property (HLP) rights. This case study is particularly complex due to the intersection of different humanitarian and human rights issues, which also form the basis of this article-HLP rights, Internally Displaced Persons (IDPs), Children born of War (CBW) and TJ.

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 CBW is a terminology for children conceived out of 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 the TJ interventions and process in Northern Uganda, where we fit together our arguments for HLP rights for these vulnerable groups of people. The main argument that we make is that the realization of HLP rights for IDPs and CBW are 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. 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 to broader democratic objectives, as they tend to reproduce the old systems of domination and exclusion of the weakest from justice. This “bread for the poor”, which aim is to provide the needy with speedy, costless justice, and thus respond to the flaws of the formal judicial system, are also nothing less than the paternalistic expression of a reluctance to share the benefits of development and

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; Rene 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.

democratisation, as if the poor of the global South would have to, yet again, wait for another 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 is a perfect example to show the significance of local traditional cultures, but also 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 focus on TJ within these regions. Historically, traditional systems in both Lango and Acholi areas of Uganda were structured largely along lines of clan.⁷ For 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 remain subject to guidance from a democratically elected Council of Clan Elders, known as the *Ludito Kaka*. The elders exercised both judiciary 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 for the individual's 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 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: does TJ's frameworks provide appropriate redress across cultural and historical trajectories? This question is vital in TJ because of the often-contested

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 Ojera Latigo, 'Northern Uganda: Tradition-Based Practices in the Acholi Region' in Luc Huyse and Mark Salter, *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.

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

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, particularly, their methods of analysis and period 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. For the purpose of this article, the Northern region of Uganda (Northern Uganda) is used as a unit of analysis, due to the devastation caused by the Lord's Resistance Army (LRA) war.

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 in 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 fieldwork between 2016 and 2017 presents a good account of the discussions 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 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

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' (coalition of Civil Society Organisations for Peace in Northern Uganda (CSOPNU) 2004).

¹⁶ Sandra F. 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 James O. Latigo (n 8).

²⁰ Colin O'Reilly, '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.

more scholarly attention to such vulnerable victims. Overall, this article seeks to contribute to the literature on HLP rights, 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. A core component of this section is to provide the reader with a better, and more contextualised, understanding of TJ against the backdrop of a long-term ethno-social war, and 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 our 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 the conflict, together with the TJ mechanisms. Northern Uganda was engulfed in a civil conflict in 1987, that went on for a duration of 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 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

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

²³ See '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. Available at: <file:///C:/Users/Admin/Downloads/UG_940202_The%20Gulu%20Ceasefire.pdf> accessed 28 June 2022.

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 related to 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 in TJ.³¹ To Birjandian, the ICC intervention contributed to the narrow scope of problems prioritised in Uganda’s TJ policy.³² Generally, the implementation of TJ processes in Uganda is largely

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 Anna Macdonald, “In the Interests of Justice?” The International Criminal Court, Peace Talks and the Failed Quest for War Crimes Accountability in Northern Uganda’ (n 26) 629.

²⁹ See ‘Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, 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 20 June 2022.

³¹ Obiora Chinedu 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’ [2020] *E-International Relations* 5,27.

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. 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 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 on-going conflict, notably HLP rights.³⁴ Moreover, HLP issues are referenced as both humanitarian and human rights concepts.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 of TJ can present both conceptual and practical challenges. The case of Northern Uganda is particularly 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 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; resettlement of IDPs); (iii)

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 for instance, International Committee of the Red Cross (ICRC), 'Translating the Kampala Convention into Practice: A Stocktaking Exercise' (2017) 99 International Review of the Red Cross 365,418.

³⁵ 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' (Oslo: Norwegian Refugee Council (NRC), 29 April 2016) 5.

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

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 agreements on comprehensive solutions to the conflict, with recognition of the need for reconciliation and accountability.³⁸ This raised 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 idea of resettlement of IDPs.

On 19 February 2008, the Ugandan government and the LRA signed an important annex to 29 June 2007 Agreement on principles for accountability and reconciliation.³⁹ Theoretically, it reinforced the element of HLP rights, by providing for reparations, and the application of TJ mechanisms.⁴⁰ These mechanisms can both be considered positive elements for HLP reparations. In addition, victims' participation and reparations were outlined in both documents, as key elements within the wider TJ process.⁴¹

From a TJ perspective, the agreements outlined the recognized measures of: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁴² The element of reparations is in line with international standards that accord victims of IHL and IHRL violations the right to full and effective reparations.⁴³ Nonetheless, these theories are not entirely practical, within the context of IDPs and CBW victims in Northern Uganda. For example, guarantees of non-repetition by the State would not address other large-scale societal problems like 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.

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

³⁸ See 'Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the LRA/M (Addendum 4), 03/11/2007', n.d.

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 (Annex to June 29 Agreement), Juba, Sudan, June 29, 2007, February 19, 2008'.

⁴⁰ 'Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the LRA/M (Addendum 4), 03/11/2007' (n 38).

⁴¹ *Ibid.*

⁴² *Ibid* clause 9(1).

⁴³ UN General Assembly, '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' (2006), A/RES/60/147. [hereinafter UN Basic Principles 2005] principle 3.

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 had 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 Annex to the 2007 Agreement established a special division of the High Court of Uganda, 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 has been acknowledged by some researchers.⁴⁷ For IDPs and CWB in North 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 for example 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, Anna 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

⁴⁴ See 'Report of the High Commissioner for Human Rights on the Activities of Her Office in Uganda, U.N. Doc. A/HRC/4/49/Add.2, 12 February 2007' (n 37) 67.

⁴⁵ See 'Annex to the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement (Annex to June 29 Agreement), Juba, Sudan, June 29, 2007, February 19, 2008' (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) AFR 59/001/2008, 13.

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; Anna Macdonald, "'In the Interests of Justice?'" The International Criminal Court, Peace Talks and the Failed Quest for War Crimes Accountability in Northern Uganda' (n 26).

⁴⁹ Anna Macdonald, "'In the Interests of Justice?'" The International Criminal Court, Peace Talks and the Failed Quest for War Crimes Accountability in Northern Uganda' (n 26) 630.

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 in partly restricted by these controversies over culpability for civilians’ suffering during the war.

In June 2019, Uganda adopted a National Transitional Justice Policy⁵³, three months after the adoption of the African Union TJ Policy. The policy was founded upon the peace negotiations in Juba and the Agreement on Accountability and Reconciliation (AAR). Overall, the formulation of the TJ Policy demonstrates Uganda government’s commitment to pursuing TJ measures. It should be noted that despite this comprehensive TJ Policy, its successful implementation is an issue that requires more study. For example, the Parliament has not yet passed a law to give effect to the policy provisions.

The Policy does not explicitly recognize marginalized groups like CBW, yet these have 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 with IHL aspects for example HLP concerns of CBW and IDPs.

⁵⁰ Louise Mallinder, ‘Uganda at a Crossroads: Narrowing the Amnesty?’ [2009] Queen’s University Belfast 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 (OHCHR), Making Peace Our Own: Victims’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda, August 2007’.

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

⁵⁴ Sarah Kasande 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.

Reparation is one of the fundamental elements within TJ policies, due the social-economic effects of mass conflict. For example, forced displacement creates multiple social-economic losses for both victims and States,⁵⁵ thus creating a need for effective policies that centralize victims. By 2013, the Ugandan government had awarded over Uganda shillings 12 billion (2.5 million pounds) 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 a 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. 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 political change.⁵⁸ Yet, beyond the political transitions, local factors affect the legitimacy of TJ mechanisms.⁵⁹ Researchers are advised to analyze how political processes are informed by specific cultural concepts.⁶⁰

Uganda's TJ process was riddled with cultural and social narratives around HLP rights. To be able to come up with more viable remedial approaches for ensuring HLP rights and concerns are integral to TJ, 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

⁵⁵ Luis Eduardo 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.

⁵⁸ See Ruti G. Teitel (n 3).

⁵⁹ See generally, Pádraig 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* (Cambridge University Press 2018); Ruti G Teitel (n 3) 93.

⁶⁰ Barbara Meier (n 57) 31.

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 a 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 include as central the question of HLP rights, involving reparations and/or restoration of HLP.

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 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 between 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 he acknowledges these dynamic complexities between acholi culture and modern religion, Latigo observes the continued practice of traditional cultural beliefs among acholi people.⁶⁷ This reinvigorates the debate on the role

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

⁶⁴ *Ibid* 19.

⁶⁵ Barbara Meier (n 57) 35.

⁶⁶ Colette Harris (n 12)17.

⁶⁷ James O. Latigo (n 7)19.

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 TJ approaches with a tremendous focus on local based approaches,⁶⁸ taking local realities into account, during TJ. 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

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, ‘The 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.

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, Acholi scholar, Opiyo Oloya 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 to promote 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 within the peacebuilding process, the process allows for wider communal participation and unity, generates community-focused outcomes, high levels of

⁶⁸ Alexander Laban Hinton, ‘Introduction: Toward an Anthropology of Transitional Justice’ in Alexander Laban 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 instance, Adam Branch, ‘The Violence of Peace: Ethnojustice in Northern Uganda’ (2014) 45 *Development and Change* 608,618.

⁷¹ Opiyo Oloya (n 11).

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. Among them is the lack of flexibility, the absence of a clear, written structure, delays and challenges of compliance, inconsistency and lack of uniform among the different acholi clan communities.⁷⁷ Within the broader context of the LRA conflict, he observes a fundamental weakness of the application of *mato oput* as a remedy, that ‘it wrongly projects the LRA insurgency as a local acholi 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.

⁷² James O. Latigo (n 8) 112-113.

⁷³ Ibid.

⁷⁴ Barbara Meier (n 57). 40

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ James O. Latigo (n 8) 113.

⁷⁸ Ibid 114.

⁷⁹ Kimberley Armstrong (n 69) 604.

⁸⁰ Opiyo Oloya (n 11).

⁸¹ Ibid.

⁸² Ibid.

Socio-legal studies present contrasting views on the role 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, Barbara 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 (IDPS) and Children Born of War (CBW)

The previous section has revealed difficulties faced by formerly abducted people, due to cultural and social marginalization. There is also a gendered dimension among the returning IDPs, as womens’ 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 the customary ownership, that 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 conflict lasted for close to three decades. Moreover, there is empirical

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

⁸⁴ *Ibid.*

⁸⁵ Barbara Meier (n 57) 31.

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.*

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 relation to 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 childrens' understandings of family, home and identity. For children born in LRA captivity, Denov observed that in their conception 'the bush', was viewed as 'a place that held great significance, memories, meaning and contributed to identity formation'.⁹⁰ Their fragmented sense of family life impacted these child victims of war.

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 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 victims of the war, including CBW. To CBW, customary ownership of land in Northern Uganda adds another layer to their existing experiences of victimisation, during and after war. Since land inheritance and access is largely patrilineal and passed between adults, CBWs, especially if they are orphans, experience HLP rights violations on an on-going basis. Lack of access to land becomes a significant barrier in enabling young victims to restore their

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).

⁹⁰ Ibid 245.

⁹¹ Ibid 251.

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

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 the 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 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 'The 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

⁹³ Myriam Denov (n 89) 11.

⁹⁴ Sandra F. Joireman (n 5).

⁹⁵ See generally Myriam Denov (n 89).

⁹⁶ Jeff Andrew 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 Colin O'Reilly (n 20) 213.

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 having the relevant domestic legal framework, an important step towards achieving TJ by a State is the ratification of important international treaties that provide for accountability, while working towards the 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 the context of Northern Uganda, it would be important to explore the relationship between HLP rights and TJ, under the existing domestic and international legal regimes.

The realization of HLP rights is not just a priority for CBW and IDPs in Northern Uganda, but an important aspect of the country's commitment towards both domestic and international human rights laws. 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

⁹⁸ African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('Kampala Convention'), 23 October 2009.

⁹⁹ See for instance, '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, paras. 79-80.

¹⁰⁰ Juan E. Méndez, 'Accountability for Past Abuses' (1997) 19 Human Rights Quarterly, Johns Hopkins University Press 255.

¹⁰¹ Emma Charlene 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

to the theory of democratic transition, there is skepticism about the international promotion of TJ in conflict-affected regions like Northern Uganda, a different context from a country under democratic transition.¹⁰² 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 State 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 the 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 in Africa.¹⁰⁶ The findings published in 2019, indicate a gap between the theory and practice, coupled with a lack of technical expertise.¹⁰⁷ Nonetheless, we can observe a comprehensive normative framework for TJ, 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. In the case of *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v. Nigeria*, the Nigerian

180, 199; Anna Macdonald, "‘‘Somehow This Whole Process Became so Artificial’’: Exploring the Transitional Justice Implementation Gap in Uganda’ (n 18) 228.

¹⁰² Anna Macdonald, "‘‘Somehow This Whole Process Became so Artificial’’: Exploring the Transitional Justice Implementation Gap in Uganda’ (n 18) 230.

¹⁰³ See the Judicature Act (Cap 13), Revised Laws of Uganda 2000, s. 14(2)

¹⁰⁴ Constitution of the Republic of Uganda [Uganda], 22 September 1995 Art 287.

¹⁰⁵ See 'Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982),' (n.d.) Article 14 provides a right to property and Article 18 on right to family.

¹⁰⁶ See 'African Commission on Human and Peoples' Rights (the Commission), 235 Resolution on Transitional Justice in Africa - ACHPR/Res.235(LIII)2013' <<https://www.achpr.org/sessions/resolutions?id=261>> accessed 20 June 2022.

¹⁰⁷ African Commission on Human and Peoples' Rights, 'Study on Transitional Justice and Human and Peoples' Rights in Africa' (Banjul: African Commission on Human and Peoples' Rights, 2019) 65.

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 interesting, 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 ethno-social practices, as 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, in the context of the victims' vulnerability as a result of war and displacement in Northern Uganda. It is important not to lose sight of the other human rights violations associated with HLP. As has been observed in the previous sections, HLP concerns, although are directly a result of gross human rights violations.

Quantitative and qualitative studies highlight the aspect of 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 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

¹⁰⁸ *Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria (Communication No 155/96)* (African Commission on Human and People's Rights).

¹⁰⁹ *Ibid.*

¹¹⁰ African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('Kampala Convention') (adopted 23 October 2009, entered into force 6 December 2012).

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 for instance, United Nations High Commissioner for Refugees UNHCR, 'A Time Between: Moving on from Internal Displacement in Northern Uganda' (UN High Commissioner for Refugees 2010) 7.

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.

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 HLP approach relates to the remedial approach under the convention. It 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, within the context of displacement, to achieve justice and accountability.

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 are primarily based upon the State's obligations. In addition to punishing perpetrators 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 women 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; 'Everyone has the right to a standard of living adequate for the health and well-being of himself

¹¹⁴ Kampala Convention (n 111) Art.7(4).

¹¹⁵ Adama Dieng (n 114).

¹¹⁶ Kampala Convention (n 111) Art.12.

¹¹⁷ Kampala Convention (n 111) Article 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).

¹¹⁹ International Committee of the Red Cross (ICRC), 'Translating the Kampala Convention into Practice: A Stocktaking Exercise' (2017) 99 *International Review of the Red Cross* 386.

¹²⁰ African Union, 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).

¹²¹ *Ibid.* Arts 4(e) (f), 25.

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

and of his family, including food, clothing, housing'.¹²³ Ultimately, there is a strong 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 the customary land tenure systems in Northern Uganda, that are largely premised on patriarchal norms. These are further implicit in the succession and inheritance norms. 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 international humanitarian law and remedies under human rights law.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 with regard to housing needs of children.¹²⁸ Ultimately, there is a strong 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

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

¹²⁴ See Tim Allen et. al (n 87).

¹²⁵ See 'UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women,' (adopted 18 December 1979, entered into force 3 September 1981, 1249 UNTS, p. 13' (n.d.) Art.14(2) (g).

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

¹²⁷ See 'Organization of African Unity (OAU), 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 (1990)' Art.20(2) (a).

¹²⁸ See CRC, Art.27(3).

¹²⁹ See 'UN General Assembly, 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 (CESCR), General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions, 20 May 1997, E/1998/22', para. 3.

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.¹³¹The 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 international human rights 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, like 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.

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.

Like has been discussed, HLP issues are considered as both human rights and humanitarian issues. However, they are still generally excluded from post-conflict

¹³¹ See 'Convention on the Elimination of All Forms of Racial Discrimination Adopted and Opened for Signature and Ratification by General Assembly Resolution 2106 (XX)(adopted 21 December 1965, entered into force 4 January 1969) 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.

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. The most notable one is the bottom up approach towards TJ 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 Democratic Republic of Congo.¹³⁵ Recognising cultural roles entails engaging local leaders in the resolution of HLP disputes, since the formal courts are already back logged with cases. At the same time, an awareness of the cultural limitations also helps to inform HLP rights interventions for women.

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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' (*HELP library*, 15 March 2016), page 5, < <https://www.alnap.org/help-library/the-importance-of-addressing-housing-land-and-property-hlp-challenges-in-humanitarian>> accessed 28 June 2022.

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