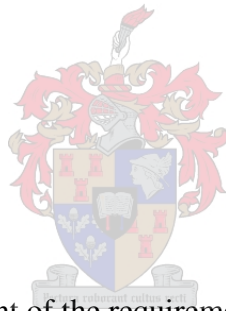


Transcending the ‘peace vs. justice’ debate: a multidisciplinary approach to transitional justice (sustainable peace) in Northern Uganda after the International Criminal Court’s involvement in 2004

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March 2010

Declaration

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the owner of the copyright thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

Date: 02 November 2009

Abstract

Based on the work of leading theorists within peace and conflict studies, this thesis develops a theoretical framework in order to analyse the seemingly deadlocked 'peace vs. justice' debate to explore the possibility of expanding the perspectives in a combined approach. It finds that the debate is based on a narrow perception of both concepts, where they are perceived as negotiations and punishment respectively. Only through applying such a combined approach is it thereby possible to move beyond this current situation. This theoretical framework is then applied on the case of the ongoing conflict in Northern Uganda, where the empirical aspects of this debate have lasted for the longest period of time since the International Criminal Court's involvement in 2004. With basis in the Juba peace agreement from 2008 that would have balanced retributive and restorative forms of justice, this study finds that the only way to create sustainable peace is by striking a balance between the transitional justice mechanisms of the ICC, conditional amnesties and more traditional forms of justice in the affected communities in Northern Uganda.

Opsomming

Op grond van die werk van voorste teoretici op die gebied van vrede- en konflikstudie, ontwikkel hierdie tesis 'n teoretiese raamwerk vir die ontleding van die oënskynlik vasgevalle debat tussen vrede en geregtigheid, ten einde die moontlike verbreding van perspektiewe met behulp van 'n gekombineerde benadering te ondersoek. Die studie bevind dat die debat tussen vrede en geregtigheid op 'n baie eng opvatting van dié twee konsepte berus, naamlik dié van onderhandeling en straf onderskeidelik. Slegs deur 'n gekombineerde benadering toe te pas, is dit dus moontlik om die huidige toedrag van sake te bowe te kom. Die teoretiese raamwerk van die studie is vervolgens op die voortslepende konflik in Noord-Uganda toegepas, waar die empiriese aspekte van dié debat steeds sedert die betrokkenheid van die Internasionale Strafhof in 2004 voorkom. Met die Juba-vredesooreenkoms van 2008 as uitgangspunt, wat veronderstel was om 'n balans te vind tussen vergeldende en herstellende vorme van geregtigheid, bevind dié studie dat volhoubare vrede slegs bereik kan word deur 'n gebalanseerde kombinasie van die Internasionale Strafhof se oorgangsgeregtigheidsmeganisme, voorwaardelike amnestie, en meer tradisionele vorme van geregtigheid in die geaffekteerde Noord-Ugandese gemeenskappe.

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Any remaining faults are my responsibility alone.

Magnus Rynning Nielsen
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Abbreviations and acronyms

AI:	Amnesty International
ARLPI:	Acholi Religious Leaders' Peace Initiative
AU:	African Union
CAR:	The Central African Republic
CPA:	Comprehensive Peace Agreement
CIVHR:	Commission of Inquiry into Violation of Human Rights in Uganda
CRTR:	Commission for Reception, Truth and Reconciliation in East Timor
DDR:	Demobilisation, disarmament and resettlement
DRC:	The Democratic Republic of Congo
GoSS:	The Government of Southern Sudan
GoU:	The Government of Uganda
HSM:	The Holy Spirit Movement
HRW:	Human Rights Watch
ICC:	International Criminal Court
ICG:	International Crisis Group
ICJ:	International Court of Justice
ICTJ:	International Centre for Transitional Justice
ICTR:	International Criminal Tribunal for Rwanda
ICTY:	International Criminal Tribunal for the Former Yugoslavia
IDEA:	The International Institute for Democracy and Electoral Assistance
IDP:	Internally Displaced Person
IMT:	International Military Tribunal
JLOS:	Justice, Law and Order Sector
LRA:	The Lord's Resistance Army
MONUC:	The United Nations Mission in the Democratic Republic of Congo
NGO:	Non-Governmental Organisation
NRA:	National Resistance Army (later renamed UPDF in 1995)
NRM:	National Resistance Movement
NUPI:	Northern Uganda Peace Initiative
RLP:	The Refugee Law Project
SC:	The United Nations Security Council
SCSL:	The Special Court for Sierra Leone
SDHC:	Special Division of the Ugandan High Court

SPLA: Sudan People's Liberation Army
TC: Truth Commission
TRC: Truth and Reconciliation Commission
UN: United Nations
UNHCR: United Nations High Commissioner for Refugees
UPDA: Uganda People's Democratic Army
UPDF: Uganda People's Defence Forces

1 Introduction

1.1 Background to the study and identification of the research topic

Ever since the seminal work of Johan Galtung (1969), peace and conflict studies have evolved from a very small field into a variety of different perspectives and multidisciplinary approaches. They range from disciplines as disparate as the social sciences, economics and international law, which are all dealing in different ways with the challenges involved in the process of creating sustainable peace in conflict zones (Lederach, 1997; Mani, 2002, 2005; Mendeloff, 2004; Miller, 2008; Nielsen, 2008).

One of the multidisciplinary subfields of peace and conflict studies addressing these challenges is known as transitional justice. The concept of transitional justice refers to a number of mechanisms, stretching from amnesties, truth and reconciliation committees (TC/TRCs), international proceedings and local justice procedures. These various transitional justice mechanisms are used by states and the international community to deal with both massive human rights abuses and war crimes after a violent conflict or oppressive rule has ended, in order to create a stable and peaceful future (Kritz, 1995; Oomen and Marchand, 2007; Teitel, 2000).

A large amount of theoretical and empirical research has been conducted in this sub-field concerning how, when and which transitional justice mechanisms should be applied in order to address these challenges in the best possible way. The result is the debate known as 'peace versus justice', where the arguments range from how justice through national and international proceedings will contribute to peace, or whether justice must be put aside in favour of amnesty laws and local healing procedures in order to achieve peace. After the International Criminal Court (ICC) was established in 2002, this debate became more complicated and intensified with the prospects of the Court charging and prosecuting those individuals seen as most responsible for human rights abuses and war crimes (Nielsen, 2008; Oomen and Marchand, 2007). Until now the ICC has been preoccupied with four African conflicts in the Central African Republic (CAR), the Democratic Republic of Congo (DRC), Sudan and Uganda. The Court is currently in the process of prosecuting the warlord Tomas Lubango Dyilo for using child soldiers in the DRC and charged Sudan's President Omar Hassan al-Bashir for alleged war crimes in Darfur in March 2009 (Clark, 2008:39; HRW, 2009; New African, 2009). It is however in Northern Uganda that the ICC has been involved

for the longest period of time and where the Court's presence can be said to be mostly disputed (Nielsen, 2008).

In the region known as Acholiland¹ in Northern Uganda, a conflict has been ongoing for more than two decades between the Government of Uganda (GoU)² and a rebel group known as the Lord's Resistance Army (LRA). In the course of this conflict, the LRA has been accused of crimes against humanity and war crimes, having committed numerous atrocities against civilians, resulting in an unknown number being killed, molested or abducted. The conflict has also forced between one and two million people away from their homes into Internally Displaced Person's (IDP) camps with appalling living conditions, thereby further intensifying the immense suffering to the population living in the region. Several attempts have been initiated both by local and international mediators in order to engage the warring parties in peace talks that would ideally bring an end to the conflict with one of the most promising so far taking place at Juba in Southern Sudan between July 2006 and April 2008. These have apparently been unsuccessful in achieving this until now, as none of them has had any major breakthroughs resulting in an end to the hostilities. Furthermore, the GoU has on numerous occasions launched military offensives against the LRA. Although it thereby has been able to force the guerrilla movement out of Northern Uganda and into the territories of neighbouring countries, the LRA's military capabilities have never been fully neutralised, thereby allowing it to reorganise and return to spread great havoc repeatedly (Bøås, 2004; Doom and Vlassenroot, 1999; ICG, 2004, 2008; Latigo, 2008; Oomen and Marchand, 2007; Van Acker, 2004).

After the ICC became involved by charging the LRA's top five leaders for crimes against humanity and war crimes in 2005, the 'peace versus justice' debate can be said to have gone from being purely theoretical to include more empirical aspects as well. In this case, the practical side to the debate has centred around which transitional justice mechanisms are best suited to help bring an end to over twenty years of violent conflict in Northern Uganda, namely: neo-traditional justice procedures aimed at reconciliation and conflict resolution; amnesty laws, or; international proceedings (Oomen and Marchand, 2007:161).

¹ Acholiland consists of the three districts of Gulu, Kitgum, and Pader, which is the region in Northern Uganda where the ethnic tribe known as the Acholis live (see appendix A and B).

² The abbreviations GoU, National Resistance Army (NRA) and Uganda People's Defence Force (UPDF) in this study refer to Museveni and the central authorities in Kampala.

Now in 2009, 4 years after the charges against the LRA's leadership became known, the conflict has yet to be solved, and the prospects for peace seem distant. This is not only illustrated by the ICC's failure to bring them to justice, but it also stems from the several unsuccessful attempts to end the conflict that have been undertaken by local and international mediators, as well as the GoU's military offensives.

However, what has been described as the second generation of scholars and activists within transitional justice all seems united in a goal to overcome this current deadlock on a more theoretical level (Simpson, 2008; Nielsen, 2008; Oomen and Marchand, 2007). In various ways they argue that in order to properly address the challenges involved with achieving some sort of sustainable peace in conflict zones, it is necessary to combine elements from both perspectives by looking at how the various mechanisms can be optimised to work together in a joint approach. The combined approach proposed by this new literature in transitional justice therefore appears to be a possible solution to the deadlock created by the current 'peace versus justice' debate. But at the same time it also raises some important questions concerning what the future of this field holds, both with regards to the general theoretical development and its empirical implications. As scholars engaged within this new school of thought ponder: is it possible to overcome the existing deadlock by using a theoretical framework to analyse the strengths and weaknesses of the various transitional justice mechanisms debated over, in order to come up with a joint approach that can contribute to sustainable peace? Or is it nothing more than a flawed attempt, meaning that the current debate will remain the same? Assuming that this joint approach actually turns out to solve the academic side of the 'peace vs. justice' debate, how will it fare when contrasted with being practically applied by implementing it in conflict zones in order to create sustainable peace?

This thesis is inspired by the prospects of how this second generation of literature within transitional justice can solve the current deadlock created by the shortcomings in the more established literature, but it also remains critical to what the outcome might be. This study will therefore place itself in the middle between the more established and the new studies to analyse this phenomenon. On a general level it will, by using the works of leading theorists within peace and conflict studies, such as Johan Galtung (1969, 1996) and John Paul Lederach (1997), seek to develop a theoretical framework that can be used to look at the prospects of combining these two different perspectives in a joint approach. More

specifically, this study will apply this theoretical framework in the case of the ongoing conflict in Northern Uganda. By doing so, the purpose is to analyse how relevant the contribution of a combined approach will be in attempts to bring an end to violent conflicts.

1.2 Significance of study and research theme

As the process of gathering information and doing research about this topic of interest started, it soon became clear that over the last two decades, since the Cold War ended, the ‘peace vs. justice’ debate has occurred at four different periods of time. What is evident about the way it has appeared in one form or another throughout all of these time periods illustrates a debate that remains in a stalemate, as the same arguments are used repeatedly.

These arguments in the debate over whether justice through trials would contribute to or prevent peace first came about with Neil J. Kritz’s publication of his seminal work *‘Transitional Justice: how emerging democracies reckon with former regimes’* in 1995. This was also the period when the international criminal tribunals were established after the conflicts in the former Republic of Yugoslavia (ICTY) and Rwanda (ICTR). Thereafter, it reoccurred for the second time, which can be identified with the Rome Treaty of 1998, leading up to the establishment of the ICC in 2002, coupled with the prominent cases against Chile’s former dictator Augusto Pinochet and the Liberian warlord Charles Taylor (Teitel, 2000, 2006:1; New African, 2009). The intensity of the debate increased with the ICC becoming involved in the CAR, the DRC and Uganda by making charges against LRA’s leadership and the prosecution of the Congolese warlord Tomas Lubango Dyilo between 2003 and 2008 (Clark, 2008; Nielsen, 2008). The fourth and so far last wave in this debate came very recently in March 2009, when the ICC became officially involved in the Sudanese conflict with its charges against President al-Bashir for alleged war crimes in Darfur (New African, 2009). With the Sudanese case these arguments were repeated once again with the well-known African scholar Mahmoud Mamdani (Mail and Guardian, 2009a) accusing the ICC of being nothing more than a politicised venue for a Western human rights dictatorship. On the other side were the supportive arguments made by Amnesty International (AI) and Human Rights Watch (HRW), illustrated by HRW’s (2009) claim that ‘the ICC’s issuance of an arrest warrant for President al-Bashir of Sudan signals that even those at the top may be held to account for mass murder, rape and torture’.

Despite the large amounts of theoretical and empirical research conducted within both perspectives on local, national and international levels by perspectives as disparate as international law and social anthropology, this has resulted in a situation where the debate is locked on a general theoretical level and where its implications, albeit being very important, are at risk of becoming just another element that must be taken into consideration when describing ongoing African conflicts. In empirical aspects this is especially evident with regards to the case of Northern Uganda, where this debate has been most intense and lasted for the longest period of time (Nielsen, 2008; Oomen and Marchand, 2007).

This falls within the logic behind Galtung's (1969, 1996) notion that peace and conflict studies cannot be linked exclusively to one discipline or level only, since the result would be losing out on a rich variety of different perspectives. In other words, the demarcation between different academic disciplines, such as international law and the social sciences is not a foolproof and consistent demarcation, which appears to be particularly evident as a thin borderline in the 'peace vs. justice' debate. Nevertheless, in a situation where there are no simple and straightforward answers, but rather one where these opposing perspectives ideally should be optimised to solve the problems together, the reality is something totally different.

It was not until recently that some studies briefly started to explore the possibility of combining these two opposing perspectives in a joint approach as an attempt to develop the field further by unlocking this debate (see Waddel and Clark, 2008; Mani, 2002, 2005; Nielsen, 2008; Oomen and Marchand, 2007; van Zyl, 2005). Although this perspective is slowly gaining some ground, it is seemingly surrounded by great uncertainty with regards to whether it is able to fully solve the present situation or if the outcome will merely be a return to the status quo. However, only a few studies have analysed this approach by using the works of Galtung (1969, 1996) and Lederach (1997) within peace and conflict studies as a starting point, and even fewer, like Nielsen (2008), have applied them to the case of Northern Uganda, where the debate in its present form arguably has lasted for the longest period of time. Uganda as a case study therefore seems very apt, given that much research is yet to be undertaken to explore this protracted debate and identify potential solutions to break the stalemate.

This thesis is inspired by this uncertainty in the existing literature, especially with regards to Northern Uganda, where this debate has been most intense. By analysing the strengths and weaknesses of various transitional justice mechanisms using the work of Galtung, Lederach

and other prominent writers, it generally aims to explore the possibility of how the combined approach might work. By doing so, this study more specifically seeks to address their possible impact, in terms of how they can contribute to the creation of sustainable peace in Northern Uganda. Limiting the research to just one discipline or level would therefore result in a very narrow and limited understanding of this specific conflict's background and how to create sustainable peace, and this thesis will therefore be multidisciplinary in order to avoid missing important perspectives.

Thus, as this section has illustrated, a substantial amount of studies have been undertaken in this field concerning how certain transitional justice mechanisms can contribute to the creation of sustainable peace in conflict zones. Even if this is the case, very little of this research has actually been looking at how those various mechanisms can be combined in order to achieve this, illustrated by the deadlocked 'peace vs. justice' debate. It is therefore important to continue by following up on the initial work made by Nielsen (2008) and Simpson (2008) by exploring this combined approach even further to determine whether it represents the solution to solve this debate. The selection of this theme as the research topic for this study is therefore aimed at making a theoretical and empirical contribution by outlining some recommendations for how to solve the ongoing conflict in Northern Uganda. Thereby, it can hopefully contribute with something unique to this field and inspire more of a similar kind of research in other conflict zones, such as Sudan and the DRC.

1.3 Identification of the research problem

This section will outline the problem statement of this thesis serving as a guideline to how this study will seek to address the topic of interest in terms of the two central theoretical and empirical research questions. In one of the next subsections these questions will be further specified within the theoretical framework as more specific research sub questions.

1.3.1 Problem statement

Following the logic of Todd Landman (2003:247) many case and comparative studies use particular parts of the world to test out the empirical relevance of general theories developed elsewhere. Thus, regional case and comparative studies can contribute to more general theories in various disciplines of the social sciences, thereby making sure that the insights from both communities can inform each other (Landman, 2003:247). This has not been the

situation in transitional justice before the second generation of literature was introduced a few years ago, meaning that this important link between theoretical and empirical studies was missing.

In this field, the general perspectives were seemingly without any common overarching goal, but on the contrary appeared to be opposing each other by focusing on very different perspectives of peace and justice (Nielsen, 2008). The result of this seems to be that the 'peace vs. justice' debate has evolved into the current stalemate. Not only have the general perspectives been affected, but also the more empirical oriented case and comparative studies have been influenced as well, most notably in the African context after the establishment of the ICC in 2002. This is also the situation with regards to the Ugandan conflict, where the debate has been most intense between those who favor local reconciliatory approaches against those who uphold the international option with the ICC's charges against the LRA leaders. However, the second generation of transitional justice scholars all attempt to overcome this empirical and theoretical deadlock in various ways, ranging from Nielsen (2008), Oomen and Marchand (2007) and Waddel and Clark (2008).

Thus, the motivation behind this thesis is to analyse what impact the second generation of literature might have on the field of transitional justice by solving the current deadlock created by the existing literature. The purpose of this study is therefore to look at the relevance of this new approach with regards to whether it is able to solve this situation, or if the implications will merely be a return to the current status quo after the initial turbulence has been settled.

In order to assess how the various transitional justice mechanisms in general can be combined in a joint approach, a theoretical framework will be used to analyse their strong and weak elements. To test out the relevance of this joint approach, this combination will be applied in the case where the 'peace vs. justice' debate has been most intensive, namely Northern Uganda.

1.3.2 Research questions

Based on the problem statements, two primary research questions, the first theoretical and the other empirical, will serve as a central overarching guideline to the subject that this study will attempt to answer. These primary research questions will accordingly in the following be

fitted into the theoretical framework outlined below as more specific research sub-questions in the next section. The main theoretical (1) and empirical (2) research questions guiding this study are:

- (1) To what degree is it possible to reconcile the two opposing perspectives in the ‘peace vs. justice debate’ through a combined approach?
- (2) How can such an approach help create sustainable peace in the case of the ongoing conflict in Northern Uganda?

Other questions of a more peripheral, but still important, character that this thesis will try to answer as the study advances include: Does transitional justice work in societies deeply divided over social issues or ethnicity? Based on all the experiences that can be drawn from previous empirical and theoretical research conducted on transitional justice, is it possible to make generalisations that can be applied in different cases, or should they all be interpreted individually because of their unique complexities? Can a study like this thesis partially or fully address this gap in the existing literature, or inspire further similar and more thorough research in the future? What are the strong and weak aspects of the various transitional justice mechanisms that are available to bring an end to, and create sustainable peace in conflict zones? Furthermore, how can the positive aspects of a specific mechanism, like amnesties, be optimised, and the negative excluded in a joint approach? How can the positive aspects of different transitional justice mechanisms available be highlighted and applied in a common framework with the goal of creating sustainable peace in Northern Uganda? *What* are the strong sides of various transitional justice mechanisms that in turn can be combined in a joint approach to create sustainable peace in conflict zones? *How* can this joint approach be used to create sustainable peace in Northern Uganda?

Thus, the central assertion that this study will test out is that the existing perspectives are wholly inefficient in addressing transitional justice in conflict zones, as their attempts have clearly failed due to a number of deficiencies, and will continue to fail, unless a combined holistic approach is applied instead.

1.4 Theoretical framework

This thesis will, in order to properly answer the research questions guiding the study, utilise the key theoretical framework developed by Galtung (1969, 1996). By applying his work as

the main theoretical framework to fully achieve this, the goal is to advance from a negative towards a positive understanding of justice to highlight the flaws in the current 'peace vs. justice' debate. The intention behind this is to give a well-reasoned critique of the highly inefficient existing theoretical approaches that have informed the debate until now, in order to build the case for a combined approach.

Although Galtung's theoretical perspective in certain aspects highlights the flaws in the debate, it is by itself both too broad and vague to fully address them all, and this will be reflected on in one of the next subsections concerning how it can be equated with the much wider processes of demobilisation, disarmament and resettlement (DDR). As a consequence of this, it is necessary to look at and include the theoretical contributions from other leading theorists within peace and conflict studies. Only then is it possible to gain a holistic understanding of the structural aspects behind the flaws in the existing 'peace vs. justice' debate in order to provide a well substantiated critique, which in turn also illustrates why a combined approach is needed to solve it. Such a holistic understanding is also more in line with the aim of peace and conflict studies elaborated on under section 1.2. Thus, as they contribute with important aspects to fully answer the research questions, this study's theoretical framework will therefore also draw on the works of other leading theorists within peace and conflict studies, such as Lederach's (1997) typology of actors and their agendas.

The first step in this process is by using Galtung's notion of justice in peace building to widen the narrow dichotomy used in the current 'peace vs. justice' debate. The goal is thereby to move beyond this debate's current focus on a negative understanding of justice with only the absence of violence in mind, towards a positive one, where this is extended to include processes of demilitarisation, democratisation, development and justice. In sum, his notion of justice seeks to address not only one, but the whole range of challenges associated with building sustainable peace (Galtung, 1969, 1996:112; Nielsen, 2008).

The next step in this process of outlining the theoretical framework is by using Lederach's (1997) actor oriented typology in peace building to identify the actors involved at the different stages, from the local, via the national towards the international level. This will also be used to highlight the strategies they employ to achieve the goals on their agenda. Whereas the local levels often favour the neo-traditional justice procedures, the national level looks towards amnesties and the international levels in the direction of the ICC as the solution for dealing

with those individuals perceived as most responsible for atrocities committed during a conflict. It is, however, important to stress that these are often, but not always uniform and distinct groups, as locals might favour the ICC and the nationals local healing.

After using Galtung's (1969,1996) notion to advance from a negative towards a positive understanding of justice and this has been coupled with Lederach's (1997) typology within peace building at the core of its theoretical framework, the third step in the process is to describe the two opposing perspectives and the combined approach. The goal with this is to illustrate the actors involved and their arguments. The 'justice' perspective consists of authors and actors ranging from Neil J. Kritz (1995), Ruti Teitel (2000) and Tim Allen (2005, 2006, and 2008) towards various non-governmental organisations (NGOs), such as Amnesty International (AI), Human Rights Watch (HRW) and the International Crisis Group (ICG). Their opponents in the 'peace' camp are represented by scholars and activists such as Zachary Lomo, Lucy Hovil and Joanna Quinn (2004, 2005) from the Refugee Law Project (RLP) at the Faculty of Law at Makerere University in Kampala, the Ugandan lawyer Adam Branch (2005) and James Ojera Latigo (2008) from the Northern Uganda Peace Initiative (NUPI) and the International Centre for Transitional Justice (ICTJ) writing for the International Institute for Democracy and Electoral Assistance (IDEA), and numerous NGOs in the civil society in Northern Uganda, to mention a few. The combined approach will include authors and their arguments ranging from Nielsen (2008), Simpson (2008), Oomen and Marchand (2007).

Since this combined approach can be said to represent an ideal model, this study will furthermore, by testing it out on a specific conflict as a fourth step in chapter three, seek to confirm or disprove its relevance. As the empirical implications of the 'peace vs. justice' debate that this thesis will seek to address have been most significant in Northern Uganda, it therefore seems most appropriate to apply this approach on that specific conflict as the fourth step. Thus, the more specific empirical research sub-question that will be examined is:

How can the positive aspects of different transitional justice mechanisms available be highlighted and applied in a common framework with the goal of creating sustainable peace in Northern Uganda?

This leads up to the fifth and final step in the theoretical framework guiding this study's attempt to confirm or disprove the possibility of a joint approach on the general level in

transitional justice. These various transitional justice mechanisms that will be analysed at this stage with basis in item three, concerning accountability and reconciliation, in the Juba peace agreement and which also are identified within the literature as the leading mechanisms to address human rights abuses or war crimes. They range from amnesties, Truth Commissions or Truth and Reconciliation Commissions (TC/TRCs), neo-traditional justice mechanisms like the Gacaca courts in Rwanda and Mato Oput³ healing procedures in Uganda, national courts and international procedures like the ICC (Oomen and Marchand, 2007). Thus, to achieve this, the more specific theoretical research sub-question will be put forward:

What are the strong and weak aspects of the various transitional justice mechanisms that are available to bring an end to, and create sustainable peace in conflict zones? Furthermore, *how* can the positive aspects of a specific mechanism, like amnesties, be optimised, and the negative excluded in a joint approach?

To answer these questions, the various transitional justice mechanisms will be analysed by looking at their historical development, foundation in theory, how they have been applied and relate to various empirical cases. From this, their strengths and weaknesses will be derived to decide on their relevance in the present context in Northern Uganda.

1.5 Methodological aspects

No study is complete without a section reflecting on the strengths and weaknesses of the methodological aspects, such as data gathering methods and sources, as well as proper reasoning for why a certain research design was chosen over another one. This section will describe the methodological aspects of this thesis.

1.5.1 Data gathering methods and sources

This study is mainly conducted as a desk study, where it will rely on resources made available through the library at Stellenbosch University and electronic sources from the Internet in terms of the gathering and processing of data for the analysis. Thus, the study will thereby limit itself to be based primarily on secondary literature sources. At first glance, this can be said to represent a disadvantage compared to studies that are able to gain access to first hand primary evidence through sources based on field research. However, this study also contains

³ Mato Oput is an Acholi word referring to one of the ceremonies associated with the Acholi tribe living in Northern Uganda's neo-traditional system of justice (ICG, 2004).

elements of primary sources as well, since it will rely on studies based on field research and draw upon their findings throughout the analysis. This aspect is addressed more thoroughly later in this section.

But for now, with a closer look, for this thesis the disadvantages associated directly with conducting field based research clearly outweigh the advantages. These disadvantages include that primary sources will not always guarantee accuracy, meaning that the researcher often must crosscheck all the material gained from interviews and other forms of direct data gathering. Field research also often includes personal interviews, which means that the researcher either must know the local language(s) that can take years to learn, or rely on an interpreter. With participatory observation, the researcher can without knowing it influence the behaviour of the observed, which in turn will affect the findings that further analysis is based upon. Furthermore, field research can also mean long periods living under adverse conditions to which the researcher is unaccustomed (Grønmo, 2004; Landman, 2003: 30-32).

Before starting the process of analysing the data material gathered from one of the many possibilities that are available to obtain information from today, it is important to treat them with a certain degree of scepticism in order to avoid possible pitfalls (Grønmo, 2003:121-123). First and foremost, before analysing the material obtained, one must be sure of that the source is not a false one. Secondly, a source found to be reliable must also be independent, which means that the author presenting the information shall not be influenced by someone else. Thirdly, the source used must not be biased, meaning that the source is intentionally distorted, resulting in the reader not being given a correct understanding of the reality. In the concluding remark on the criticism of sources, Grønmo (2004:123) argues that if possible an independent source shall prevail over a dependent, a primary source over a secondary, a contemporary over a previous one, and last but not least, a neutral over a biased one.

Another typical feature of case studies based on peace and conflict studies like this one, is that they rely on multiple sources of evidence in order to reach a holistic understanding of the topic studied (Babbie and Mouton 2001:282-283; Grønmo, 2004: 90-91; Landman, 2003:215, 231). Based on that, this thesis should be able to demonstrate the important skill of how the knowledge obtained from the secondary literature sources has informed the research questions, methodology and analysis. With this in mind, in order to get a thorough understanding of the topic, the thesis started off by studying all relevant empirical and

theoretical material, based on the following four types of data sources: (1) Academic works in books and journals; (2) NGO reports from AI, HRW and ICG; (3) official documents, such as primary sources of the United Nations (UN) and ICC documents; (4) works of 'high journalism', meaning a combination of scholarly works and news reports derived from articles in magazines such as the Economist or the South African newspaper Mail and Guardian.

By dealing with the available literature at hand in this way during the gathering and processing of data with the purpose of further analysis, it was possible to study the most relevant aspects about this topic of interest. This stretches from NGO material, news reports and journal articles, which all give a lot of important information about the root causes of the conflict and how it has evolved until now. Furthermore, books and articles related to peace and conflict studies about transitional justice contribution to solving the challenges associated with peace building gave a good insight into the 'peace vs. justice' debate.

1.5.2 Demarcation of the study

This study largely draws upon already existing literature on transitional justice. Due to the fact that this literature is quite broad in itself, it has therefore not been possible to go into detail on every available source and cover all possible aspects on the subject matter. Hence, concerning the purely theoretical aspects of transitional justice, the focus has instead been directed towards the literature that is most often quoted in academic books and articles in journals, and therefore is perceived as the most central works in this field, such as Kritz (1995) and Teitel (2000). With regards to the empirical case study of Northern Uganda, in addition to the aforementioned criteria, this thesis will focus almost exclusively on literature covering the time period from ICC's charges against the LRA leadership in 2005 until present time in 2009, exemplified by authors such as Allen (2005, 2006 and 2008) and Waddel and Clark (2008). However, in order to give an understanding of the entire conflict situation, some basic standpoints from the historical background have been provided. In the process of achieving this briefing papers on the topic, such as the '*List of literature on transitional justice*' from the Peace Research Institute in Oslo, Norway (PRIO, 2008), Siri Gloppen's article (2002) '*Reconciliation and democratisation: outlining the research field*', Dorota Gierycz work (2008) '*Transitional Justice – Does It Help Or Does It Harm?*', Paul Van Zyl's (2005) '*Promoting Transitional Justice in Post-Conflict Societies*' and the cross comparison with the title '*Traditional Justice and Reconciliation after Violent Conflict: Learning from*

African Experiences' edited by Luc Huyse and Mark Salter (2008) from the International IDEA, have all given much valuable and insightful information.

Another challenge is represented by the fact that the 'peace vs. justice' debate that this study seeks to address also contains other important ongoing cases involving the ICC in the CAR, the DRC and Sudan (Clark, 2008:39-42; HRW, 2009; New African, 2009). Including them in this study would unfortunately have made it too broad, and although these cases will be touched upon on several occasions throughout this study, they have therefore been excluded from this study.

As mentioned above, this study is therefore further limited to one specific case, namely Northern Uganda, where the 'peace vs. justice' debate in its present empirical form started, and is still taking place after the ICC in 2005 indicted five of the LRA leaders (Allen, 2006; Nielsen, 2008; Oomen and Marchand, 2007). But even at this level there are many important aspects that could have been covered, but which is impossible within the limited time frame of this study. This study is therefore based on item three in the Juba peace agreement concerning accountability and reconciliation, limited to what the debate has centred on in terms of which transitional justice mechanism is best suited to help bring an end to over twenty years of violent conflict, namely: neo-traditional justice procedures, amnesty laws or international proceedings (Latigo, 2008; Oomen and Marchand, 2007). For an excellent assessment of the LRA, please see Kevin C. Dunn (2007:137-146), who in his article '*Uganda: The Lord's Resistance Army*' lists five main theories used to explain and understand the LRA insurgency: (1) Kony as Madman; (2) The Legitimate Complaints of the North; (3) Sudanese Hired Gun? The Regional Geopolitical Dimension; (4) Museveni Doesn't Want Peace, and; (5) The Political Economies of Violence'. The time and space available makes it impossible and beyond the scope of this thesis to go into all of these different explanations of the LRA's insurgency.

In this study, Galtung's work (1969, 1996) is used as the central guiding theoretical framework. By utilising his theory in order to gain a comprehensive understanding of the whole issue surrounding transitional justice mechanisms with regards to their impact on solving a conflict, this goal would ideally be achieved through a comparison between several conflicts by covering them from the outbreak of hostilities towards the employment of transitional justice mechanisms, especially the ICC option. However, the ICTR and ICTY are

coming to an end in their respective proceedings and can more or less be perceived as the motivation behind establishing the ICC, whereas the Taylor case is being dealt with in a tribunal known as the Special Court for Sierra Leone (SCSL), which is not directly affiliated with the ICC, although the SCSL uses the Court's facilities in The Hague for security reasons (New African, 2009). In the Sudanese case with its origins dating back to the Darfur region in 2003, research about what the full impact of the charges made against al-Bashir will be is still at an infant stage (Clark, 2008). With regards to the situation in the DRC case, this is simply an overwhelming task with dozens of guerrillas and crosscutting alliances which is enough to cover entire books about the topic. The conflict in Northern Uganda is clearly not a straightforward matter either, as it is currently being the longest lasting conflict on the African continent. It is nevertheless the place where the whole 'peace vs. justice' debate in its present form has lasted for the longest period of time since the establishment of the ICC in 2002.

To further clarify and highlight the topic of interest, this study is therefore limited to after the ICC became directly involved in Northern Uganda with the indictments against the LRA's leadership in 2005, by looking at how neo-traditional justice procedures, amnesty laws and international proceedings as transitional justice mechanisms can be used in a combined approach to bring an end to the conflict. As pointed out by critics of Galtung's (1969, 1996) work, such as Roland Paris (quoted in Miller, 2008:267) and David Mendeloff (2004), a clear weakness associated with applying his theory and notion of positive peace is that it by being very wide encourages rather than discourages the coverage of what is known as the processes of DDR. This study is in this regard no exception from this criticism as it uses Galtung's theory (1969, 1996), but instead of including all possible aspects, such as DDR, a deliberate choice has therefore been made by using his work and notion to primarily look at the aspects associated with how transitional justice contributes to or hinders the establishment of sustainable peace in a society torn apart by war. How this weakness will be dealt with, is more thoroughly described in the theoretical framework and in the second chapter.

1.5.3 Research design

In all scientific studies a decision must be made on which type of research design to apply in order to give a best possible response to the research questions (Babbie and Mouton, 2001:72-104). This selection of an appropriate research design in a study relates to whether it meets the demands arising from the different forms of validity and reliability in an acceptable way (Grønmo, 2004:220-221). These are concepts that will be defined more thoroughly as they are

described in the following. In this part, the first subsection describes the research design of this study, while the second part will look at whether it meets the demands that are made by the criteria of reliability and validity in a satisfying way.

1.5.3.1 Single case study

Robert K. Yin (2003:19) defines research design as being ‘the logic that links the data to be collected (and the conclusions to be drawn) to the initial questions of the study’. This relates to the construction of the research design and whether to apply a statistical quantitative, or a more qualitative oriented design, or if both should be combined through triangulation of methods.

Selecting the right method to properly achieve the main objectives put forward in the research questions furthermore largely depends on the theoretical background of the study and what the purpose of the research is (Babbie and Mouton, 2001:72-104). Based on peace and conflict theories, this study is focusing upon how both the theoretical and empirical side of the ‘peace vs. justice’ debate can be solved in the ongoing conflict in Northern Uganda, where it in its present form has been taking place for the longest period of time. Since this study is based on one unit of analysis, the focus is on a relative low number of independent variables, in terms of the various transitional justice mechanisms mentioned elsewhere in this chapter. They in turn have a major impact on the dependent variable, which is how to achieve sustainable peace in Northern Uganda. In a multidisciplinary study like this one, it is therefore necessary to operate with a certain degree of flexibility during the gathering and processing of data information for further research and analysis of these variables, even if this means that the more precise formulation of the methodology chosen can take quite some time. Qualitative designs are used in studies where one or relatively few units are analysed through a low number of variables in order to get a more thorough and comprehensive understanding of the phenomenon being questioned (Grønmo, 2004: 123-124). This is therefore the appropriate one to apply in this study. More specifically, the use of a flexible single case study as the research design guiding this study seems to give the most appropriate results in order for it to fully achieve its goals and objectives by answering the problem statement put forward in the research questions (Babbie and Mouton, 2001:282).

A case study is defined as ‘an empirical study that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context

are not clearly evident' (Yin, 2003:13). In these where the research question guiding it is of an explanatory character, and focus on causal mechanisms in terms of how or in what way the phenomenon of interests unfolds, the use of a case study design is useful in order to create a better understanding of it. According to Yin (2003:9), the use of a case study research design is the best solution in studies where a 'how or why question is being asked about a contemporary set of events, over which the investigator has little or no control'.

This study has such a focus on the causal mechanisms of how various transitional justice mechanisms contribute to the creation of sustainable peace in Northern Uganda by asking the following what and how questions (in a shortened version of the research questions of this study): *What* are the strong sides of various transitional justice mechanisms that in turn can be combined in a joint approach to create sustainable peace in conflict zones? *How* can this joint approach be used to create sustainable peace in Northern Uganda?

Single case studies are divided into two different types. The first type focus on the aspects that make the case unique, but without seeking to generalise from the findings made. Whereas the second type also takes the unique aspects into account, it departs from the other, as it is also an example of phenomenon(s) that there already exists some knowledge about in a broader theoretical framework. This latter type of single case studies can be further divided into two other and more precise sub-categories, namely theoretical interpretive and theoretical developing. In order to get a proper understanding of the phenomenon(s) studied, the first of them relies on applying an existing theoretical framework onto the case being questioned. The second of them is, by making generalisations aiming at contributing to further development of existing theory, based on the findings made from studying the phenomenon(s) being questioned (Yin, 2004:39-46).

Although this study has certain ambitions of achieving both, it is however primarily of a theoretically interpretative character. By making its departure from already existing peace and conflict theories embedded in transitional justice, the knowledge about the phenomenon being studied here clearly exists in a broader theoretical framework. This is in terms of what impact various transitional justice mechanisms have on the creation of sustainable peace in conflict zones. The unique aspect here is however that very few studies have looked at how they can be combined in a joint approach to achieve it. Based on these theories, this study is analysing the prospects of creating sustainable peace with this approach in the ongoing conflict in

Northern Uganda. Nevertheless, this study also seeks to contribute in further developing the existing theories, even if it in this regard has a more limited impact. In order to get a better understanding of what impact the findings made through the research in this study might have on the wider field of transitional justice, it is necessary to take the aspects of validity and reliability into consideration, that will be dealt with in the following subsection.

1.5.4 Reliability and validity

1.5.4.1 Validity

Achieving an acceptable level of validity in this thesis can best be described as pursuing its accuracy. In general the concept of validity refers to how accurate and trustworthy the instruments used, data gathered and findings made in the research are. The study should, in other words, be measuring what it is intended to measure in terms of that the empirical investigation must be correlated with the theoretical level (Babbie and Mouton, 2001:122; Grønmo, 2004: 221, 233). In the following, this section will have a closer look at the various forms of validity that is likely to have an influence on and possibly could challenge this study.

In order to determine to what extent this study contributes to developing theory in peace and conflict studies as mentioned in the previous sub-section, the external validity must be assessed. The external validity of a study refers to whether its findings can be generalised beyond the immediate case study (Babbie and Mouton, 2001:219-221; Grønmo, 2004:233; Yin, 2003:37). According to Yin (2003:10) ‘case studies like experiments are generalisable to theoretical propositions and not to populations or universes’. In other words, only based on the findings made by this single case study in itself, it is highly unlikely to make a lasting impact on the wider field of peace and conflict studies concerning the direction transitional justice has taken in the ‘peace vs. justice’ debate. It will however present some important findings concerning how such a combined transitional justice approach might work in theoretical and empirical terms. Thereby it can hopefully contribute to the development of theory by serving as an inspiration for further research that can further develop this field through more detailed enquiries of a similar kind in the future.

Another form of validity that also can be questioned here is the internal validity of this study, since it is of an explanatory character by being interested in causal mechanisms (Babbie and Mouton, 2001:217-219; Grønmo, 2004:219). According to Yin (2003:34), the internal validity of a study can be determined by looking at whether the study is ‘establishing a causal

relationship, whereby certain conditions are shown to lead to other conditions, as distinguished from spurious relationships'. To make sure that this aspect is acceptable, it is important to take into consideration other variables that possibly could influence the creation of sustainable peace in Northern Uganda. As such, this study is fully aware of this shortcoming represented by other variables that are not included in this study might have an unexpected influence by creating spurious effects. In order to address that challenge, this study will therefore briefly consider other factors that might influence the situation in Northern Uganda, for instance the wider regional context including Sudan and the DRC.

Construct validity, refers to whether or not a study measures the phenomenon being questioned in a reliable way to reach a satisfying level of understanding (Babbie and Mouton, 2004:123; Grønmo, 2004:232). The construct validity in this study refers to whether the theoretical variables have been properly operationalised so that they measure what they are meant to. As the name of the debate 'peace vs. justice' in transitional justice indicates, there are obviously more than one possibility that can be used by this study in order to measure what impact the various transitional justice mechanisms have on creating sustainable peace in conflict zones. In order to deal with this problem, this study measures their relevance by weighing them up against the theoretical framework developed based on the works of Galtung (1969, 1996), Lederach (1997) and others. Thereafter, it discusses how significant the impact of the different variables are, based on a study of how they affect the phenomenon in question, namely the ongoing conflict in Northern Uganda.

Most of the findings made in this study are based on written secondary sources. This study has therefore not fully achieved Yin's (2003:97) criterion of 'triangulating from multiple sources of evidence', and its construct validity could clearly have been strengthened by triangulating more between primary and secondary sources of evidence. In this thesis, the secondary sources used have, however, been coupled with information gathered through quite reliable sources of a more primary character. The secondary sources based on academic books, articles and electronic sources provide the reader with the historical background to the conflict. Primary sources, on the other side, give an insight into the more recent events unfolding in the conflict. They are based on scholarly reports and newsletters from various UN organs, NGO reports, such as those made by AI, ICG and HRW, newspaper articles and analysis from the Economist and Mail and Guardian. In this thesis, Yin's criterion is partly

met, as primary sources are used interchangeably with secondary, and therefore to a certain extent can be said to have been triangulated.

1.5.4.2 Reliability

Another weakness affecting nearly all forms of qualitative research relates to the concept of reliability. Reliability is a factor determined by how precisely the data information used in the research of a study have been collected and processed, as it refers to whether a specific technique based on the findings made would produce the same results. This means that the answer should ideally be the same independently of who conducted the study or where and when it takes place (Babbie and Mouton, 2001:119-121; Grønmo, 2004:228-229). This is a major problem which is common for qualitative research projects in the social sciences, as they unfortunately often have limited levels of reliability, and this study is no exception in that regard (Grønmo, 2004:228-229).

The problem with the reliability of this study relates to how the social sciences are mainly concerned with problems coming about right 'here' and 'now'. For researchers this is a serious challenge, as it therefore can be difficult to secure a desired level of reliability in the research, since the probability that other researchers have gathered exactly the same data and interpreted them in a similar way is rather low (Grønmo, 2004:6, 28-57; Landman, 2003:10-16). That means that if this study were to be repeated in a few years time it could be problematic as the answers would differ substantially due to changes in time and society.

The research conducted by this study is therefore most likely to have a reliability that is not only rather low, but also of a limited character, resulting in that this study cannot empirically prove its findings. This is also most likely the case, since conflict situations tend to be fluctuating, which is underlined by the fact that despite of the current situation with relative peace in Northern Uganda, the conflict is still ongoing and things could change rapidly (ICG, 2007, 2008).

This implies a very high level of sensitivity with regards to making definitive generalisations of any kind, as it would be difficult for someone else to achieve the same results by coming to the same conclusions in five years time. But as reflected on in this section, by being critically aware of these methodological weaknesses inherent in the research of this study, it is nevertheless possible to make some concluding remarks of what the outcome is likely to be in the end. These remarks may also hopefully serve as an inspirational guideline for further

theory development on this subject, usually an aim for explorative case research (Yin, 2003:5).

1.6 Focus and structure of the thesis:

This chapter has first described the background to the study in terms of how the ‘peace vs. justice’ debate remains locked with regards to both theoretical and empirical aspects. Its significance is evident by its contribution to the field of transitional justice through looking for ways to overcome this debate, and by the utilisation of the works of leading theorists within peace and conflict studies in order to develop a theoretical framework analysing the strengths and weaknesses of various mechanisms in order to come up with a combined approach. Furthermore, the weaknesses associated with such an approach have also been reflected on. The research questions that will be asked about how to achieve this and critical reflections of the methodology have also been assessed. As this debate also has a more practical and empirical side to it, a case study is necessary to determine the relevance of this combined approach. The Northern Ugandan conflict was selected, as this is where this aspect of the debate has lasted for the longest period of time, since the ICC’s involvement in 2004. Although this study will touch briefly on other cases and include different transitional justice mechanisms, it is further limited to the Court’s involvement in Northern Uganda from 2004 onwards, and will with basis in item three concerning accountability and reconciliation in the failed Juba peace agreement analyse the strengths and weaknesses of neo-traditional justice, amnesty and the ICC.

The second chapter of this thesis will look into the historical background of transitional justice, and provide a thorough definition of the concept by using authors such as Teitel (2000, 2006), the UN (2004) and Oomen and Marchand (2007). Furthermore, the two opposing perspectives and arguments made by the ‘justice’ and ‘peace’ camps respectively, as well as the more empirical debate taking place in Africa, will all be presented to illustrate the need for advancing towards a combined approach. After this, the chapter will describe how the combined approach can serve as a model to advance from this current negative understanding of peace and justice towards a positive notion of both concepts based on the work of both Galtung (1969, 1996) and Lederach (1997), but also describing the weaknesses associated with applying such an approach (Mendeloff, 2004). Furthermore, the central role of transitional justice within the wider processes associated with peace building in post-conflict societies is identified and described in more detail. Based on this reconceptualisation of peace

and justice and location of transitional justice within peace building, the last part of the second chapter illustrates how the combined approach appears in theory.

The third chapter will describe the two decades long conflict taking place in Northern Uganda by analysing key events such as the country's violent history from independence onwards, the failure of successive peace negotiations in 1994, 1996 and 2004 between the GoU and the LRA, and consecutive military counterinsurgencies by the government and counterattacks by the guerrilla movement against the civilian population in Northern Uganda in retaliation, which all forms part of the critical backdrop to the current situation. Other aspects will also be touched upon briefly, like the conflict in neighbouring Southern Sudan, the LRA's targeting of and indiscriminate use of violence associated with mutilations, killings and forced recruitment of children through abductions to serve as child soldiers committing atrocities against their next of kin in Northern Uganda, and the GoU counterinsurgency tactic by forcing the civilian population into IDP camps with appalling living conditions. Based on item three on the agenda for the Juba peace talks that began in July 2006 concerning accountability and reconciliation, the main focus will, however, be on the introduction and use of the transitional justice mechanisms associated with the 'peace vs. justice' debate in Northern Uganda at various stages, namely the ICC, amnesty and neo-traditional justice. Unfortunately, the prospects of a final peace agreement collapsed with the warring factions returning to the battlefield after the negotiations at Juba had ended in April 2008, but if it had been successful, agenda item number three would have resulted in a balance between these three transitional justice mechanisms. The last section concludes by briefly describing how the conflict has developed since then.

The fourth and penultimate chapter will be based on agenda item number three in the Juba peace agreement. It will first by assessing the ICC, the Amnesty Act and the neo-traditional justice system analyse the relationship between them, as well as the strength and weaknesses of these three transitional justice mechanisms in order to determine whether and to what extent they can be utilised in a combined approach.

With basis in the research questions guiding this thesis, the fifth and final chapter will draw the conclusions about how these three transitional justice mechanisms used together in a combined approach can strengthen the prospects for a lasting and sustainable peace in

Northern Uganda, but also touch briefly upon what needs to be done in other areas and reflect on this study's impact on the 'peace vs. justice' debate in transitional justice.

1.7 Conclusion

This chapter has presented an overview of the background of this study, its significance, the research questions that will be asked and the methodology used. The background to the study describes how the 'peace vs. justice' debate remains locked in terms of how the advocates for peace and proponents of justice perceive them in two completely different ways. Shortly after its establishment in 2002, the ICC was involved as a transitional justice mechanism in the CAR, the DRC, Sudan and Uganda. The result of this has been that implications of the debate are not only affecting theoretical, but also hampering more empirical aspects concerning how to solve conflicts and create the conditions conducive for peace worldwide. This is especially with regards to Northern Uganda, where the ICC has been involved for the longest period of time after issuing arrest warrants for the LRA rebel leader Joseph Kony and four of his commanders in 2005.

What can best be described as a second generation of activists and scholars within transitional justice, like Nielsen (2008), Oomen and Marchand (2007), Simpson (2008) and van Zyl (2005), are all in different ways looking for venues to overcome this current situation and advance the field further in a more open and inclusive direction through a combined approach where elements from both perspectives are included.

This thesis is situated in the middle between this new school of thought and the current 'peace vs. justice' debate, as it seeks to assess whether it is possible to come up with a new and combined theoretical approach, or if it is a flawed and futile attempt and everything will remain the same. Based on Nielsen (2008) and Simpson (2008), who utilises Galtung's (1969, 1996) theoretical contribution within peace and conflict studies, this study takes this one step further by using Galtung's contribution and those of other leading theorists within this field, like Lederach (1997). It will thereby develop a theoretical framework to analyse the current 'peace vs. justice' debate to illustrate its inherent flaws, as peace is equated with negotiations and justice with punishment only. After having substantiated the need for such a combined approach, this study's significance is to contribute with an analysis of how this can come to affect the conflict in Northern Uganda, where the more practical and empirical implications of this debate currently have lasted for the longest period of time after the ICC

arrest warrants against the top five LRA leaders in October 2005. Based on item three in the Juba peace agreement this will be done by analysing the strength and weaknesses associated with the three transitional justice mechanisms of the ICC, amnesty procedures and neo-traditional justice in chapter four.

2 From a negative to a positive understanding of justice when building sustainable peace: A theoretical and conceptual framework

2.1 Introduction

This chapter will outline the first, second and third steps in the theoretical framework that will be utilised throughout this thesis, namely how to advance from a negative towards a positive understanding of the notion of peace and justice. In order to achieve this outcome, this chapter will first describe the historical background of transitional justice before looking at the definitional aspects of the concept.

After having illustrated how transitional justice has evolved as a phenomenon in a historical context and by defining the contents and characteristics of the concept, the next part will take a closer look at the two opposing perspectives. By doing so, the aim is not only to gain a more thorough understanding of what this debate is about, but also to illustrate that although they seemingly perceive peace and justice in fundamentally different ways, it is nevertheless based on the same negative interpretation of both concepts. A brief illustration of the more ‘African’ version of this debate is also given. This is done in order to be able to move beyond this reductionist interpretation to a positive understanding of these concepts based on Galtung’s theories (1969, 1996).

By utilising Galtung’s work in this manner, the goal is therefore to describe the combined approach and illustrate how it can serve as a model to move from a negative towards a positive understanding of peace and justice, to create sustainable peace in conflict zones. As his perception of these concepts is criticised on several grounds for being too broad and vague, it is in order to illustrate how this goal can best be achieved, and therefore it is necessary to include and use the work of other scholars writing in the Galtung tradition, such as Lederach (1997), as they have further developed these concepts more precisely.

However, describing what the concepts of peace and justice constitutes in theory is one thing, but how they best can be achieved in practice a totally different one. The next part in this process of moving from a negative to a positive understanding of peace and justice will be to explain the concept of peace building and illustrate how transitional justice also forms a central part of peace building. After having described how it is possible to advance from a

negative towards a positive understanding of peace and justice as concepts in theory and how they can be used in practice through peace building, the last section will look at how all of these elements meet in and can be utilised through the combined approach. This is necessary in order to illustrate how this can be done before moving on to look at the conflict in Northern Uganda in chapter three and the different transitional justice mechanisms that have been used in this context to bring about an end to the war stretching from the ICC, amnesties and the Acholis neo-traditional justice procedures, like the Mato Oput reconciliation ceremony. Chapter four will with basis in item three, concerning accountability and reconciliation, in the Juba peace agreement, assess strength and weaknesses, but also the relationship between these three mechanisms, in order to analyse the possibility for applying such a combined approach.

2.2 The historical background of transitional justice

Good reviews of the transitional justice literature can be found elsewhere Gierycz, 2008; Gloppen, (2002); Huyse and Salter, (2008); Oomen and Marchand, (2007); PRIO, (2008), and as it is both beyond the scope and not the intention of this study to provide such an exhaustive literature review, this cannot and will not be attempted or repeated here. But in order to locate this study within the wider historical context in this field of transitional justice, a brief account of the broader historical development within this field will be outlined. Here it is possible to distinguish between three different historical periods concerning transitional justice; (1) the interwar years; (2) post-1945, and; (3) the post-Cold War (Elster, 2004; du Plessis, 2005:174-178; Teitel, 2000).

2.2.1 The interwar years

Until World War One from 1914 to 1918, the idea of bringing a head of state or political leaders of a country to justice was perceived as totally unheard of. Yet, nearly one century later, the situation is the other way around, with a large number of political leaders either being indicted or facing the threat of indictments, going from Slobodan Milosevic, Saddam Hussein, Augusto Pinochet, Charles Taylor, Alberto Fujimori and Omar al-Bashir (Economist 2009a; du Plessis, 2005: 174; New African, 2009; Teitel, 2000, 2006:1).

To understand why this fundamental change in the perception of bringing such leaders to justice has happened, it is necessary to look at a process that started with the Versailles Treaty. It dictated the conditions for Germany's surrender after World War One, and had provisions that would have made it possible to establish an international tribunal conducting

criminal prosecutions against this country's political leaders and head of state, since they were seen as responsible for the mayhem unfolding over these four years. However, the German emperor escaped to the Netherlands, which consequently refused to extradite him on the grounds that he as a head of state enjoyed immunity and that an eventual indictment would be based on retroactive justice. As a result, only a handful of Germans faced national sham trials where they were given relatively short sentences (Elster, 2004; du Plessis, 2005:174; Teitel, 2000).

Nevertheless, throughout the 1920s and 1930s, in the period known as the 'interwar years', the UN's predecessor, the League of Nations tried to establish an 'high court of international justice' dealing with both individual and state responsibility. Because of massive resistance from the member states it only succeeded in establishing the International Court of Justice (ICJ) concerning state responsibility, meaning that individuals such as heads of states and political leaders of a country would still enjoy impunity for decisions made prior to and during wars (Elster, 2004; du Plessis, 2005: 174-175; Teitel, 2000).

2.2.2 Post-1945

Even if the origins of transitional justice can be traced back to World War One and the interwar years, its full impact only came about in the aftermath of the Second World War. With the establishment of the International Military Tribunals (IMT) in Nuremberg and Tokyo in the post-war period after 1945, a new trend had emerged in international criminal justice. Reacting against the holocaust genocide and other heinous war crimes, these tribunals convicted those German and Japanese leaders perceived as most responsible for committing these acts during the war, based on their individual responsibility (Allen, 2006:5-7; du Plessis, 2005:175; Teitel, 2000).

Although these IMTs later have been criticised for representing the 'victor's justice' with rather selective and politicised prosecutions resulting in retroactive punishments, it cannot overshadow the fact that they were the first attempt ever to establish an international criminal court dealing with individuals. These tribunals served to illustrate that the character of certain grave acts, such as crimes against humanity and genocide, are of such a serious matter that they simply cannot be ignored by the international community. Where no other means or options were available, the justice of international criminal law would therefore as a solution of last resort be able to reach out and prosecute the individuals responsible for such crimes,

independently of whether they had committed them in the capacity as serving heads of state, political leaders of a country or individual citizens. This meant that under certain conditions state sovereignty could be put aside, with national laws and domestically lawful orders overruled as unlawful (Allen, 2006:5-7; du Plessis, 2005:175).

2.2.3 Post-Cold War

Despite these milestones being achieved in the aftermath of the Second World War, the field of transitional justice was, however, largely neglected and further developments in the direction of a universal human rights regime upheld by an international criminal court stalled for nearly five decades during the Cold War period. As a consequence of the rivalry unfolding between the major powers in their competition for dominance and power on a global scale throughout the Cold War, many countries and armed groups in Asia, Africa and Latin America were supported directly or indirectly from one of the sides. This created a situation where perpetrators responsible for committing various human rights violations independently of being a political leader or a serving head of state issuing an order, as well as the soldiers obeying them enjoyed impunity, without facing any kind of consequences at all. But it also resulted in a stalemate serving as a lid that kept many of the conflicts in this period under a certain form of control, giving them the distinction of being proxy wars fought with low intensity. As that era came to an end with the collapse of the Soviet bloc in the early 1990s, this lid was removed and resulted in that many of these conflicts exploded in full scale warfare (Allen, 2007:5-9; Bøås and Dunn, 2007:17-20; du Plessis, 2005; 175-176).

Nevertheless, several of these conflicts raging throughout the 1990s have now come to an end, and many of these countries have in recent years become what is known as ‘transitional societies’ situated somewhere between war and peace, offering new and in many ways unique possibilities of capturing and punishing perpetrators for the crimes they have committed against humanity in these conflicts. The international community was in two of these cases faced by the massive crimes against humanity committed in the wars in Rwanda and former Yugoslavia, and responded by establishing the two ad hoc tribunals ICTR and ICTY to deal with the individual perpetrators perceived as most responsible for committing them (Allen, 2006: 9-15; du Plessis, 2005:175-176).

Motivated by the results of the work made by ICTR and ICTY in upholding international criminal law to guarantee justice in the proceedings against the responsible perpetrators, led

the international community to initiate multilateral negotiations, resulting in the Rome Treaty of 1998 and finally the creation of the ICC in 2002. The ICC's establishment was intended to send out a clear signal to existing and prospective perpetrators to restrain themselves, as the practice of impunity for them through amnesties or exile had come to a definitive end, since the international community would no longer remain passive by accepting it, with this Court prosecuting them instead (Allen, 2006:16-24; du Plessis, 2005:176-178).

The American human rights lawyer Charles T. Call (2004:101) argues that because of this development, transitional justice has made a significant contribution to international criminal justice by creating an 'array of innovative and evolving instruments to expose and punish human rights abusers', and it will thereby have an 'unexpected influence on state sovereignty and on hopes for global justice'.

Despite Call's optimism, the result has also been the 'peace vs. justice' debate where the focus of concern for the international community, human rights activists, legal practitioners and social science scholars alike has been about whether to deal with previously oppressive rulers or brutal guerrillas through amnesties with impunity or through prosecution with trials throughout the phase of transitional justice in order to secure the transition to a more peaceful future. Transitional justice has as such been given widespread attention and considered to be a subfield of peace and conflict studies both addressing and dealing with past human rights abuses through the use of both judicial and non-judicial mechanisms (Huyse, 2008; Nielsen, 2008; van Zyl, 2005).

2.3 Definitional aspects of transitional justice as a concept

As outlined above in the previous section describing the historical background, transitional justice is not a new phenomenon, even if it returned after the Cold War in the early 1990s. The field has constantly developed ever since alongside these historical events throughout the 'peace vs. justice' debate, both in terms of the general academic development of theory about what the concept actually constitutes, to the practical implications concerning which transitional justice mechanism should be applied when in order to create sustainable peace in conflict zones worldwide, ranging from Africa, Asia, Europe and Latin-America (Huyse, 2008; Nielsen, 2008; Oomen and Marchand, 2007; van Zyl, 2005).

But as a consequence of its relatively newfound role, which is seemingly confirmed by the fact that many authors like Mani (2005), PRIO (2008), Gierycz (2008), Gloppen (2002), and also includes most of those mentioned in the following, such as Järvinen (2004), Oomen and Marchand (2007), all have despite their differences in common that they refer to Kritz's (1995) contribution as representing the seminal work in transitional justice. This implies that the theoretical and practical development within this field in its present and modern form is constantly evolving, inasmuch as no common overarching definition being agreed upon exists, and whereas some scholars and practitioners define the concept in broad terms, others define it more narrowly. It has thereby gone from being perceived in a narrow perspective purely as a legal matter to the broadest and most inclusive perception, where it is seen as being a political process as well. The concept now comprises the full range of judicial and non-judicial mechanisms (UN, 2004; van Zyl, 2005:209), where some of the most recent definitions includes a combination going from prosecuting individual perpetrators perceived as most responsible for committing human rights violations in a conflict through national and international trials, as well as dealing with the needs and grievances in the society at large through TRCs and neo-traditional justice procedures aimed at reconciliation and conflict resolution (Oomen and Marchand, 2007:162).

To fully understand these nuances in the terminology used to describe this concept, it is necessary to examine some of the most central definitions encompassing these elements, going from the narrowest judicial one to the widest covering political aspects as well.

Seen from a legal perspective, Teitel (2003:1) defines transitional justice as the 'conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoing of repressive predecessor regimes'. From her point of view, transitional justice refers to how a new and democratic regime emerging after the downfall of an undemocratic regime pursues certain legal measures in order to properly address the human rights violations committed by the latter in the past (Teitel, 2003:1).

This definition can be criticised for putting too much emphasis on how to respond in a legal manner, as it by entirely focusing on how to deal with the past through judicial mechanisms like prosecutions ignores the importance of how other non-judicial mechanisms, such as TRCs, contribute to the process as well. Furthermore, as she is seemingly assuming that the process of transitional justice only unfolds with the alternation of power between oppressive

regimes and their democratic successors, it leaves out political transition from conflict to peace in war-torn societies, and thereby neglects the need for such a process in these situations (Call, 2004; Newman quoted in Järvinen, 2004:37).

The other end of the spectrum, with transitional justice being defined at its broadest is represented by Call (2004:101). According to him, it ‘refers to how societies transitioning from repressive rule or armed conflict deal with past atrocities, how they overcome social divisions or seek reconciliation, and how they create justice systems so as to prevent future human rights violations’ (Call, 2004:101). Call’s definition is seemingly able to overcome the shortcomings in Teitel’s more narrow definition by offering a perspective that incorporates both the past and the future, armed conflict and how to overcome social divisions. But in terms of ‘the creation of a justice system’ he is still presenting transitional justice as if it was merely a legal process. His definition should therefore be seen in accordance with Edward Newman’s (quoted in Järvinen, 2004:37) argument about it being a political process as well. In addition to the elements mentioned by Call, his definition also takes into consideration whether the political environment is conducive or hostile, as this important aspect is more than likely to have an influence on post-conflict or post-authoritarian settings. According to Newman (quoted in Järvinen, 2004:37), transitional justice is both a political and a legal process being affected by political compromises and practical constraints that are not necessarily evident in a ‘normal’ societal situation.

The UN Secretary-General report ‘*Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*’ (2004: 4,12), occupies the middle ground between these two extremes by providing a thorough definition where it is seen as being:

The notion of ‘transitional justice’ (...) comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. (...) Similarly due regard must [also] be given to indigenous and informal traditions for administering justice or settling disputes to help them to continue their often vital role and to do so in conformity with both international standard and local tradition.

Oomen and Marchand (2007:162) have in one of the most recent definitions continued that trend by using this middle ground as a starting point to describe this concept. They argue that as a term, transitional justice describes the various judicial and non-judicial institutions used to assist societies in the transition they undergo away from a period dominated by human rights violations into one with sustainable peace and respect for human rights instead. In institutional terms, the notion is comprised of international tribunals, TRCs, vetting of former government officials, amnesty procedures, but also neo-traditional justice procedures aimed at reconciliation and conflict resolution. This last institution mentioned here is maybe the most important in this regard, as it has not been acknowledged and taken into consideration by being mentioned in previous definitions, although it has played an important role in this process with Gacaca courts in Rwanda and the Mato Oput procedures in Northern Uganda. Such customary mechanisms are based on traditional values and teachings, which in many instances resembles the same type of mechanisms that existed in pre-Western times before the introduction of colonialism. In other instances they are, however, modeled after old institutions and necessary changes are made to them in order to make them more relevant in the current and changed circumstances, hence they become ‘neo-traditional’ institutions⁴ (Batanda, 2009; Hovil and Quinn, 2005:23; Ogora, 2009; Oomen and Marchand, 2007:162). Based on these various definitions examined here it is possible to conclude on how transitional justice relates to a number of mechanisms, going from trials, TRCs, vetting, institutional reforms and neo-traditional justice procedures aimed at reconciliation and conflict resolution, which is available for transitional societies in their endeavors made at addressing and thereby coming to terms with human rights violations of the past, whether it was caused by oppressive rule or conflict (Järvinen, 2004:36-37; Oomen and Marchand, 2007:162; van Zyl, 2005). As this thesis deals with Northern Uganda as a post-conflict society striving for sustainable peace (ICG, 2008), the transition away from oppressive to democratic rule has, despite its importance, deliberately been left out of further discussion, as it is not relevant here.

Various societies undergoing this process of transitional justice have chosen different ways to deal with a difficult past. But what unites them all is how they have experienced it as being the product of a political tradeoff between what is sometimes conflicting demands for

⁴ For practical reasons, throughout this thesis, ‘neo-traditional’ refers to such mechanisms irrespectively of whether they are being practiced like they were in the past or as they appear in present time.

development, justice, peace, stability and truth. This process is thus a delicate balance where important decisions have to be made about whether justice can be served through pardon, investigations and prosecutions, or whether it all must be put aside temporarily or permanently for the sake of a fragile peace (du Plessis, 2005:193-195; Järvinen, 2004:36-39; van Zyl, 2005). If it is possible to serve justice for the human rights violations of the past, they must furthermore decide about whether to pursue individual or collective accountability or a combination of both, by identifying and providing reparations for the victims, with investigations and prosecutions of the perpetrators, as well as collective pardon and/or forgiveness. When being performed at its best, the process of transitional justice is able to strengthen the peace in a post-conflict society. At the opposite end, in a worst case scenario various transitional justice mechanisms, whether they are trials or TRCs, are either projected randomly without properly addressing the root causes of a difficult past, or deliberate with the purpose of revenge, thereby laying the foundations for new conflicts in the future (Järvinen, 2004:36-39; van Zyl, 2005).

2.4 Presentation of the opposing perspectives and arguments used in the ‘peace vs. justice’ debate

After illustrating the historical development of transitional justice as a phenomenon and defining it as a concept, this section will look at the two opposing perspectives and their arguments, in order to substantiate the need to move away from the negative interpretation of peace and justice that this debate is centred around towards a positive understanding based on the Galtung tradition in peace and conflict studies.

2.4.1 The ‘justice’ approach

The justice approach is dominated by legal theorists and practitioners, as well as human rights activists from various international NGOs, such as AI and HRW (Huyse, 2008:5; Järvinen, 2004:37-38).

The foundations of the ‘justice’ approach are based on the principles of universal justice and individual accountability derived from international criminal law that have evolved throughout the history of transitional justice, as illustrated in the historical section of this chapter. According to international criminal law, states are obliged to provide justice for the victims of human rights violations taking place on their territories (du Plessis, 2005; Järvinen,

2004; van Zyl, 2005). Under normal circumstances this would imply that the affected state initiated criminal investigations of the alleged perpetrators accused of committing such crimes and resulted in punishment with prosecutions against them in an entirely domestic setting through national courts. But in situations where states for various reasons prove to be unable or unwilling to do so themselves, there was previously very little that could be done about this situation. It is hoped that the renewed emphasis and focus in recent years on further development of the legal human rights regime in international criminal law will eliminate such loopholes. This gives third party countries both a right and a duty to prosecute alleged perpetrators staying or living on their respective territories to prevent them from turning into safe havens for such persons. But if everything else fails, the consequences of this are that the international community will have to get involved with international criminal prosecutions, as happened through the ad hoc tribunals ICTR and ICTY, or hybrid courts like the SCSL, and more recently with the establishment of the ICC as a permanent criminal court at the international level. This will, over time, result in a strengthening of this legal version of transitional justice primarily based on prosecution, thereby bringing about a definitive end to the acceptance and practice of impunity through various amnesty procedures as an alternative transitional justice mechanism (du Plessis, 2005:156-159; Elster, 2004; Kaufman, 2005:66; Teitel, 2000).

In what is described as the ‘retributive argument’, the advocates of this approach perceive individual accountability and universal jurisdiction as the two cornerstones serving several important purposes with regards to past human rights violations at both the individual and societal levels in post-conflict societies. The main assumption of this approach is how the only relevant transitional justice mechanisms, when it comes to achieve a successful transition from war to peace in a post-conflict society, are legal mechanisms, as it will require individual accountability for perpetrators responsible for committing human rights violations in the past by bringing them to justice through investigations, prosecution and punishment (Järvinen, 2004:38; du Plessis, 2005:156-159).

At the individual level, justice is meant to serve individual victims by assigning individual accountability and thereby holding individual perpetrators criminally accountable for the crimes they have committed. This is seen as crucial as it serves as a deterrence, not only preventing them from doing it again, but also forces prospective perpetrators to reflect on the

consequences of committing such crimes, thereby avoiding a repetition with similar violations of human rights from taking place elsewhere (Järvinen, 2004:38).

However, the focus of this approach goes way beyond merely assigning accountability to individual perpetrators by convicting them for the crimes they have committed through criminal trials, as it is also concerned about wider societal matters and issues (Järvinen, 2004:38). In order to avoid the curse of collective guilt and a resulting indiscriminate search for revenge in the affected society, trials also have an important effect in this regard, by preventing it from happening through assisting in the process of identifying and putting the guilt where it rightfully belongs, namely on those individuals who are to blame for instigating and committing crimes in the name of ethnicity or nationalism on behalf of a larger group (Chopo, 2007:24; Järvinen, 2004:38; van Zyl, 2005).

Furthermore, in the aftermath of prolonged conflicts, the authorities responsible for upholding the necessary respect for the rule of law and human rights, like the judicial system or the police and army, which are seen as the pillars in a functioning society, are often either non-existent or have simply collapsed, thereby increasing the potential risk of a return to violence. The only way to avoid this throughout the transitional stage is by breaking the cycle of impunity for violence through prosecution and punishment of alleged perpetrators responsible for committing human rights violations, as well as strengthening these societal institutions, so that the society operates properly on a daily basis (Järvinen, 2004:38; Kamali, 2001). This will help assist in the attempts made to legitimise the existence of peace in a post-conflict society, and serve as an illustration of the continuous efforts being made by such societies to come to terms with their past by upholding or creating the necessary respect for the rule of law and human rights as they are perceived as the pillars supporting attempts to build a peaceful future society where such rights are respected (Järvinen, 2004:38; Kamali, 2001).

A failure to do so could therefore have the opposite effect than intended, by creating an intolerable situation where the practice of impunity for past crimes becomes accepted in some form or another, whether it is deliberate by not prosecuting based on a political compromise or lack of engagement to undertake such a demanding procedure. If, because of this, influential persons realise that they have something to gain from committing such crimes, with no costs attached to it, they might at some stage in the future bring a post-conflict society back to the days when violence was the rule and not the exception. Thus, if these societies for

whatever reason fail or choose not to establish a practice of punishing extreme violations of human rights, this will later come back to haunt them (Järvinen, 2004:38; Kamali, 2001).

Reducing the important role that legal forms of transitional justice should play to such a subordinate position must therefore be strongly discouraged as it not only wreaks havoc on these attempts being made to create peace in post-conflict societies, but as it also undermines the international legal regime put in place to combat such procedures by protecting and promoting human rights and the rule of law instead. Because of this, the proponents of the 'justice' approach therefore tend to favour judicial proceedings at the national or international level, and be similarly hostile to, if not outright dismissive of, all other alternative forms of transitional justice mechanisms of a non-judicial character (Järvinen, 2004:38; Kamali, 2001).

As can be understood from the above discussion, the main reason for why non-legal forms of transitional justice, such as TRCs and neo-traditional justice mechanisms giving out conditional amnesties or blanket amnesties being issued through a decree, are perceived in such a negative way is because of the fact that these, in the past, have been used to cover up crimes against humanity and war crimes, which according to international law cannot be amnestied (du Plessis, 2005:193-195; van Zyl, 2005). Amnesty procedures in one form or another will therefore give the wrong impression to perpetrators that they can get away with their actions, thereby creating a possible precedence for further abuses in the future with impunity being an accepted practice. Based on this they argue that the international community will no longer tolerate the practice of blanket amnesty issued by decree for perpetrators accused of committing the worst kind of atrocities imaginable, such as the LRA (Allen, 2005, 2006 and 2008; du Plessis, 2005:193-195; Järvinen, 2004:38).

With regards to amnesties being handed out by TRCs, it is perceived as discrediting the international fight against impunity through the ICC by letting the worst perpetrators off the judicial hook, as it thereby creates an intolerable situation where crimes against humanity become accepted one way or another. TRCs are therefore heavily criticised by the 'justice' approach on the grounds that this mechanism has an inherent flaw that cannot be overlooked, represented by the fact that it, by accepting the practice of impunity through amnesties in many instances, have proved to be completely unable to create a genuine peace process that actually lasts (du Plessis, 2005:193-195; van Zyl, 2005).

In terms of neo-traditional justice mechanisms dealing with this issue, such as the Gacaca courts in Rwanda and Mato Oput healing procedures in Northern Uganda, these are perceived as lacking foundations in legal theory and practice, and relevance concerning how this process should be performed, who it should be targeting, and a limited capacity to handle the scale of atrocities. There are also accusations being raised about how NGO's with their own agenda are financing and creating such a local notion of neo-traditional justice that was previously non-existing (Allen, 2005, 2006 and 2008; Huyse, 2008). These are aspects that will be analysed in chapter four.

2.4.2 The 'peace' approach

The other side in this 'peace vs. justice' debate consists of a wide group ranging from social scientists, NGOs, as well as religious and traditional leaders in the civil society of the local communities affected by an ongoing conflict (Allen, 2006; Järvinen, 2004:38-39).

They acknowledge that transitional justice is an important and necessary component in the peace building process taking place in post-conflict societies, but it does not automatically imply that justice can only be served by performing formal judicial proceedings alone, as this can also be achieved through non-judicial mechanisms (Chopo, 2007:2; Kaufman, 2005:66).

In these situations proponents of the 'justice' approach have a tendency to focus exclusively on how to establish and serve the rights and interests of the individual victims by punishing individual perpetrators for the crimes they have committed against them through trials in national courts and international tribunals. They are thereby only able to uncover and establish the partial truth about the past. Unlike them, the advocates of this approach argue that the need for social cohesion in a post-conflict society must be properly addressed to overcome the crimes and injuries of the past, making it necessary to apply forward looking strategies associated with truth-telling, forgiveness, reconciliation and rehabilitation instead of backward looking punishment only. Proponents of the 'peace' approach are therefore hostile towards judicial proceedings, as they are seen as having a divisive effect by only taking the bits and pieces into consideration, without looking into the needs of the whole society to come to terms with what happened in the past and how to be able to move on into a stable and peaceful future (Chopo, 2007:2; Kaufman, 2005:66).

A deliberate distinction is therefore made between retributive and restorative justice. Whereas the 'justice' approach is perceived as exclusively focusing on retributive justice, which is adversarial and past oriented, only focusing on guilt and blame, thereby delivering pain and suffering, the restorative justice of the 'peace approach' is, on the contrary, participatory and future oriented, by focusing on the needs and obligations by trying to heal and resolve the problems (Chopo, 2007:2; Hovil and Lomo, 2005; Hovil and Quinn, 2005; Zehr, quoted in Järvinen, 2004:39). Based on this they criticise the perception of their opponents in the 'justice' camps perception of judicial proceedings through prosecution as being the only solution to properly deal with massive human rights violations in the aftermath of disastrous conflicts, as this is not necessarily desirable and often much less possible to achieve for several reasons (Hovil and Lomo, 2005; Hovil and Quinn, 2005; Järvinen, 2004:39).

First and foremost, prosecution is more often than not a rather costly and time consuming procedure creating an unnecessary delay in the final settlements of the accounts in the transitional stage, and many societies struggling with coming to terms with their past while undergoing this process are therefore simply not in the position where they have the necessary power, popular support, legal mechanisms or conditions that are conducive to effectuate prosecutions (Aukerman, 2002). Furthermore, where a conflict has turned into a stalemate and a transitional society with prospects for peace is slowly emerging, any attempts being made to prosecute alleged perpetrators in such situations could instigate a feeling of revenge and result in a return to violence (du Plessis, 2005:193-195; van Zyl, 2005).

But also in opposite cases, if trials take place in situations with already existing peace processes that are unstable or on the brink of collapse they would touch upon such delicate political matters and might thereby have the potential to push them over the edge by increasing rather than decreasing the probability of renewed conflict. Amnesty for violations of human rights is in many situations therefore the only viable solution guaranteeing that what would normally be a highly problematic political transition from war to peace can develop in a peaceful manner. In these situations, the only way to protect a newly won peace or an existing peace process is therefore not with prosecutions, but through amnesty and reconciliation (du Plessis, 2005:193-195; Hovil and Lomo, 2005; Hovil and Quinn, 2005; van Zyl, 2005).

Reconciliation processes with amnesties are, as such, preferred over legal proceedings, as these, rather than by merely punishing perpetrators for the sake of individual victims, instead seek to address the societal needs and grievances by establishing the whole truth about past atrocities through dialogue, communal healing and renewal of community relationships between the warring factions (Järvinen, 2004).

In order to achieve the goal of creating sustainable peace in a post-conflict society, these non-judicial transitional justice mechanisms are in this process serving as a tool that gives a ruling authority of some kind in the affected society the option of using it either to hand out conditional or unconditional amnesties to perpetrators for offences they have committed in the past (Kaufman, 2005:63). Unconditional amnesties usually do not require the establishment of a TRC or any other non-legal forms of conflict resolution procedures as they are in most situations primarily based on how the ruling authority issues a general blanket amnesty to alleged perpetrators without them having to give a thorough and detailed testimony of the atrocities they have committed in return or with any other conditions attached to it (Kaufman, 2005:63). Conditional amnesties are on the other hand only given to perpetrators by a TRC or similar institutions if they in return give an honest testimony of their actions in the past, but if their testimonies are either perceived as, or later turn out to be, incomplete or dishonest, the consequence will be that they face a prosecution instead at a later stage (Kaufman, 2005:63).

In this regard, the South African TRC is perceived as the most distinguished example illustrating the practical application of this approach, as it has also served as a model for the establishment of similar commissions elsewhere, as for instance in Sierra Leone and East Timor. This TRC was acknowledged as an institution with the authority to give amnesties to alleged perpetrators for the atrocities taking place under apartheid, where they in return were required to testify in a public inquiry with cross examination about the political motivation behind the crimes they had committed and give a complete account of the facts surrounding it. Although the TRC thereby took precedence over a legal proceeding to achieve the objective of a peaceful transition from a warlike situation to peace in South Africa, those perpetrators who failed to meet these two conditions were nevertheless faced by the threat of a judicial prosecution instead of amnesty (Chopo, 2007:10; du Plessis, 2005:194-195; Järvinen, 2004:39).

Even if the advocates of this approach's various perspectives differ somewhat concerning whether amnesties should be given conditionally or unconditionally, from a TRC or through

neo-traditional justice procedures, they all have in common that they perceive international legal proceedings through the ICC as a top down ‘one-size-fits-all’ approach based on a Western understanding of justice. By abolishing the amnesty option once and for all, rebels and dictators alike will refuse to put down their arms or give up power out of fear of being prosecuted. This approach therefore represents a serious obstacle, threatening the prospects for negotiating peace in war-torn societies, as well as undermining already fragile peace processes. Instead they propose this more local bottom-up perspective providing amnesties that are either based on TRCs or neo-traditional justice procedures with a healing aspect for the whole society, or a combination of both to guarantee that justice is served (Hovil and Lomo, 2005:37; Mani, 2005:29; New African, 2009).

As this serves as an illustration of the debate on a more general level, the next subsection will therefore in the following illustrate the more empirical version of this debate in Africa.

2.4.3 The African version of the ‘peace vs. justice’ debate

The magazine ‘*New African*’ which portrays itself as ‘the best selling pan-African magazine’ represents the African version of this debate, with relatively strong arguments in favour of dismissing the perception of a universal human rights regime based entirely on an ‘Western’ understanding of justice, expressed by AI and HRW and enforced by the ICC. Barely two months after the charges against Sudan’s president al-Bashir were made known in March 2009, the magazine published the 33 page special report ‘*Targeting Africa: The case for and against the ICC*’ consisting of a number of articles in the May 2009 edition. Here the editors of the *New African* (2009:20) argue that:

Prosecuting presidents and rebels in Africa has huge implications for reconciliation, national stability and future peace. The SCSL and the ICC may not be compatible with reconciliation processes and amnesties for those accused of human rights abuses as part of peace agreements. Why would a dictator give up power if he knows that he will end up in The Hague? Why would rebel leaders come to roundtable talks if they think that such talks might just be a trap to arrest them and send them to The Hague?

By comparing the cases against al-Bashir in Sudan and Taylor in Liberia in the magazine’s special report, the editors’ answers these questions in the following way:

In Taylor's case, the charges against him were deliberately made public at the same time as he met his counterparts from neighbouring countries in Ghana to negotiate his conditions for stepping down by going into exile (Kaufman, 2005:69-71). According to David Crane, the former chief prosecutor of the SCSL, his intention by doing so was to 'humble and humiliate Charles Taylor before his peers, the leaders of Africa, and to serve notice to Taylor and others that the days of impunity in Africa were over' (New Africa, 2009:13). Although Taylor reluctantly stepped down and went into exile in Nigeria, this resulted in a two-year long man hunt between 2004 and 2006, when Nigeria allegedly relented to massive US pressure and extradited him to face justice at The Hague in the Netherlands (Kaufman, 2005:69-71). The editors of 'New African' argue that this was a case with a genuine African solution to adequately deal with the root causes and the more imminent problems caused by an African conflict. This solution stood against a narrow 'Western' response to the whole situation that was only concerned with punishing the individual perpetrators seen as most responsible, and where this latter and much more influential position unfortunately took precedence. The ongoing trial against Taylor is therefore perceived as merely being a politically motivated showcase to satisfy the demands from this 'Western' human rights regime that completely ignores local attempts to negotiate a settlement and create peace in such conflicts (New African, 2009:10-13, 18).

Similar accusations are also made in the case against al-Bashir about how the whole process was instigated by the USA and the UK, using the ICC as a stick with which to hit China, India and Malaysia in order to gain full control over Sudan's vast oil resources. They hope that the charges against al-Bashir will sooner or later result in a situation where he is ousted from the presidency, handed over to the Court and leading to the establishment of a new regime being friendlier towards the West, especially when it comes to awarding their companies with oil contracts. Contrary of these expectations, by excluding the previous solutions with exit possibilities through amnesty or exile, as was done in Taylor's case, with the pursuit, arrest and prosecution of him instead, al-Bashir will neither surrender nor step down, but rather dig in and hang on to power by all means possible (New African, 2009: 14-15, 22-29).

The editors of the magazine 'New African' (2009:17-19) therefore clearly have a valid point when asking, and in their answer, as to whether the bigger question facing Africans today are:

Why are the indictments mainly against African leaders and/or rebels? Africa does not have a monopoly on atrocities. (...) What comes out of all of this is what most Africans see as organised hypocrisy, selective justice, orchestrated double standards, and a refusal by the Western world to see and treat Africans as equals and responsible'.

They are thereby able to illustrate how their opponents in the 'peace vs. justice' debate demonstrate a narrow one-sided belief in the ICC as the only solution to achieve peace in conflict zones. Unfortunately, when it comes to other parts of their response with possible alternatives concerning how justice best can be served in a transitional society when dealing with massive human rights violations in the aftermath of a conflict, this seems to be rather unrealistic (New African, 2009:20):

If in the end justice has to be dispensed, then it has to be done in Africa by Africans. To that end (...) an African Union Supreme Court [must] take over the jurisdiction of the ICC and any ad hoc courts in Africa, such as the Rwanda and Sierra Leone special courts. It must be justice done in Africa by Africans. We need African solutions for African problems.

The ICC represents the incarnation of legal theory and practice in international criminal justice for nearly a century. But as this Court, unlike previous tribunals, also happens to be a permanent international criminal court, it will not be a simple straightforward matter to disperse it by handing over its jurisdiction and cases to another court on the African continent as the argument made above implies. This rhetoric can in many ways be said to make the same flawed assumptions demonstrated by their counterpart, as their alternative with an 'African solution for African problems' seems rather vague (du Plessis, 2005:556-568; Mail and Guardian, 2009b).

The African Union (AU), which is comprised of all of the 53 independent African states except for Morocco, has already put in place a number of instruments to address human rights on the continent. In 1981, the '*African Charter on Human Rights and Peoples' Rights*' came into existence, and is now ratified by all of AU's member states. An oversight body, the '*Commission on Human and Peoples' Rights*' was established in 1987 to guarantee that the Charter is respected by the member states (du Plessis, 2005:556-565). The Commission enforces the Charter through state reports and complaints by individuals or NGOs, but the track record of submissions is however poor, as only 23 countries have given reports to the

Commission until now. Its work is therefore almost entirely based on complaints, and even then the acceptance of its recommendations largely depends on the goodwill of member states. In 1998 the then Organisation for African Unity (OAU), now the AU since its official launch in July 2002, adopted the '*Protocol on the African Court of Human and Peoples' Rights*' to complement the Commission, but like the Commission it has not been able to fully enforce its mandate, since anyone who bring a complaint to it needs the acceptance of the member state accused of breaking its obligations to proceed with the case (du Plessis, 2005:556-568; Siballa in Mail and Guardian, 2009b). By pointing to these and a number of other Protocols implemented by the AU in his article 'The People vs. their leaders', Humphrey Siballa therefore argues that; '(...) this is Africa's paradox. We have arguably the world's finest human rights laws, but have done very little to implement it' (Siballa in Mail and Guardian, 2009b).

With its member states lacking the will to fully implement the Protocols agreed upon and much less respecting the decisions that its organs make, the AU has yet to become the powerful continental organisation it was intended to be. It therefore seems highly unlikely that it will be able to establish such an independent African court with the strength and resources necessary to make judgments that go against the interests of the member states any time soon. For all its flaws and weaknesses, the ICC is therefore so far the only functioning alternative to properly deal with individual perpetrators responsible for committing crimes against humanity and war crimes in Africa and elsewhere.

But whereas this most recent part of the debate focus on state leaders, exactly the same arguments have been made before with regards to guerrilla leaders, which is the point of focus in this thesis. Some few years ago, when the 'peace vs. justice' debate about ICC's charges against LRA's leaders took place exactly the same arguments as has been outlined above here were put forth in publications such as those from the RLP researchers Hovil, Lomo and Quinn with titles like '*Peace First, Justice Later: Traditional Justice In Northern Uganda*' (2005), or the Norwegian researchers Morten Bøås and Kathleen M. Jennings in their feature article '*To Catch a Monster*' (Dagbladet, 2007). Thus, these arguments being expressed by both sides in the 'peace vs. justice' debate can now be said to have made a full circle. The time therefore seems ripe to break it and move beyond this simple and narrow understanding of whether justice hinders or contributes to peace by actually looking at *how* the different

mechanisms' associated with transitional justice can best be optimised to achieve the opposing perspectives common goal of creating sustainable peace in conflict zones.

2.5 Reconceptualising peace and justice

As can be understood from the previous discussion, these two opposing perspectives in this debate are seemingly fundamentally at odds with each other. The main issue in this debate about transitional justice is seen as a dilemma about either making peace or doing justice between advocates for 'justice' favouring judicial mechanisms, known as retributive justice, and proponents of 'peace' favouring non-judicial mechanisms, known as reconciliatory or restorative justice. Whereas those favouring 'justice' argue that international justice must prevail in order to end impunity and deter future crimes, their counterparts in the 'peace' camp oppose this on the grounds that indictments must be dropped in favour of peace negotiations to achieve peace in post-conflict societies (Nielsen, 2008; Järvinen, 2004:36-39).

The common misperception on both sides revolve around the view that there must be a trade-off between them, either with peace sacrificed in favour of justice or the other way around, meaning that different societies in transition are forced to make a deliberate choice between one of the two approaches in order to come to terms with the truth about and enable them to attain some form of accountability for human rights violations in the past to lay the foundations for the creation of a stable and peaceful future (Nielsen, 2008; Simpson, 2008; van Zyl, 2005).

The perception of how a dichotomy exists between the concepts of peace and justice, and that they because of this are fundamentally at odds with each other has clearly dominated the broader theoretical debate about 'peace vs. justice'. However, after the establishment of the ICC and its involvement in Northern Uganda and elsewhere, this has not only intensified, but also added this dichotomy as a practical element to the already ongoing debate about what is the best way to achieve peace and justice in post conflict societies. As a consequence of the ICC becoming more involved in conflicts it will, to a much larger extent, be faced by this daunting challenge and it is therefore imperative to look for solutions to solve it (Nielsen, 2008).

By yielding Galtung's theories it is, according to Nielsen (2008) and Simpson (2008), possible to understand how the underlying driving force fuelling this debate where peace and

justice are seen as fundamentally at odds with each other is based on a very narrow understanding of both concepts, as peace is merely perceived as the absence of war and equated with peace negotiations, while justice is understood to be retributive justice with punishment through ICC prosecutions respectively.

By moving away from a negative to a positive understanding of both concepts, this would turn the whole dilemma superfluous. The combination of the best aspects from both perspectives in one makes it possible to build the case for an alternative approach to deal with these issues concerning transitional justice more appropriately, by reconstructing the truth about the past massive human rights violations through prosecuting those individual perpetrators deemed most responsible for committing them, and reconciling the warring parties through conditional amnesty and neo-traditional justice procedures aimed at healing and reconciliation in order to create the foundations for a peaceful future (Nielsen, 2008; Oomen and Marchand, 2007; Simpson, 2008).

This is in other words to ask for the link between peace and justice. But with these concepts currently being perceived as fundamentally at odds with each other, in order to build the case for *how* such a combined model actually might work by incorporating the best elements from both sides, it is therefore necessary to deconstruct their common misperceptions of both concepts, in order to be able to broaden them and reconceptualise the perspectives in this debate to gain a deeper and more thorough understanding (Nielsen, 2008; Simpson, 2008). Before returning to the main research questions guiding this thesis about how the various transitional justice mechanisms, such as the ICC, amnesty and Mato Oput ceremonies best can be optimised to contribute to the creation and building of a self-sustaining peace in the Northern Ugandan context, they must, for now, be treated analytically as two distinctively and different concepts in order to do so. This will subsequently be done in the next subsections in order to be able to use them interchangeably in the following chapters. In the following, this section will outline the third step in the model for a combined approach by moving from a negative to a positive understanding of peace and justice through the use of Galtung's (1969, 1996) theoretical framework. As his approach can be criticised on several grounds for being too broad and vague, Lederach's (1997) theoretical contribution to the Galtung tradition is subsequently used to avoid these weaknesses.

2.5.1 Reconceptualising peace

The proponents of the justice approach take a top-down perspective concerning how peace should be achieved, assuming that this international legal human rights regime expressed by the ICC prohibiting impunity through amnesties with prosecution of the most responsible perpetrators instead, will no matter what contribute to creating the conditions conducive for peace in post-conflict societies undergoing the transitional stage worldwide (Huysse, 2008; Järvinen, 2004, Nielsen, 2008).

Advocates of the ‘peace’ approach consider such assumptions about how legal forms of justice will contribute to peace in a global context accordingly to be something totally unrealistic. That said, their more bottom-up assumption about peace negotiations being the magic formula to create peace can also be perceived in the same manner as rather naive (Allen, 2008; Nielsen, 2008).

However, this dichotomy between the two perspectives concerning what the concept of peace actually implies relies on a very limited understanding, by merely assuming that it means the absence of direct or physical violence in any given society (Nielsen, 2008). Graeme Simpson (2008:74-75) has, because of this current obsession with peace negotiations, argued that it ‘undermines attempts to address the deeper underpinnings of violence or to anticipate some of the fault lines for its potential re-emergence’. For those who try to overcome it, this has clearly been unsatisfactory and it is therefore, according to them, the first common misunderstanding that must be broken down in order to create the conditions conducive for conflict transformation from war to peace through a combined approach (Nielsen, 2008; Simpson, 2008).

Based on the pioneering work of Galtung, the inventor of and also a prominent scholar within the discipline of peace and conflict studies himself, other scholars who have followed in his footsteps have now started to seriously challenge this misperception by offering a much more inclusive interpretation of peace instead (Lederach, 1997; Mani, 2002, 2005; Nielsen, 2008; Simpson, 2008).

In the late 1960s, Galtung (1969) in the article ‘*Violence, Peace and Peace Research*’ introduced his conflict triangle, suggesting that a conflict is moving between the triangle’s three corners. In corner A, Galtung refers to conflicting attitudes, in corner B to conflict

behaviour, and in corner C to the conflict or contradiction itself, meaning the incompatibilities. The conflict originates in one or several corners and is reinforced by the others. Hence, it can and must be resolved in the originating corner (Galtung, 1969).

With basis in this conflict triangle, it is, according to Galtung (1969:169, 171, 175) possible to make a distinction between a 'negative' reductionist and an expansive 'positive' interpretation of peace. Whereas the former merely implies the absence of the more direct and physical forms of actor-generated violence, such as violent conflicts and war, it fails to take the deeper and underlying root causes of conflicts into consideration (Galtung, 1969:169, 171, 175).

Galtung therefore argues that it is necessary to move away from this strictly negative point of view, by instead perceiving the concept through the lenses of positive peace, as this perspective, in addition to actor-generated violence, incorporates this latter aspect in terms of what he describes as 'structural violence'. Unlike these more direct forms of actor-generated violence associated with negative peace, structural violence originates from the structures and institutions dominating the cultural, economic, social and political aspects of everyday life in all societies. Not only does it result in inequality that effectively hinders people from meeting their basic needs, but also creates unequal distribution of power, preventing them from realising their full potential (Galtung, 1969:169,171,175). Examples of such structures and institutions symbolising 'structural violence' can be anything from colonialism, racism, aggressive capitalism and sexism, but also endemic socioeconomic and cultural racial, ethnic and religious inequalities (Galtung, 1969:183; Mani, 2002, 2005; Nielsen, 2008:39). Positive peace is therefore not only about the absence of the more direct and physical forms of actor-generated violence associated with negative peace, although it requires the establishment of physical security. It also requires the absence of these more indirect forms of 'structural violence', meaning the absence of formal and informal discrimination, with respect for human rights and the rule of law instead (Galtung, 1969:183).

What can be derived from this more 'positive' and dynamic understanding of the concept is that if there are no direct or structural forms of violence, there must be peace. That said, by this understanding, 'positive peace' is not about banning conflicts by trying to create a situation where they are not merely avoided, but effectively rendered obsolete. It is, on the contrary, about transforming them, as conflicts are necessary for any given society, under the condition that it is able to transform them in a nonviolent manner. The fulfilment of this

necessary precondition for conflicts to be transformed non-violently depends upon the economic, cultural, political and social structures that exist within any given society (Galtung, 1969; Lederach, 1997). In other words, these structures and institutions must be analysed in order to determine their capacity and capability when it comes to transforming conflicts within a society in a nonviolent way (Galtung, 1969). In this thesis, that refers to analysing nonviolent means to end conflicts like the ICC, the Ugandan Amnesty Act and the Acholis neo-traditional justice.

Since ‘positive peace’ is not a concept that can be explained in a consistent and straightforward manner, much less quantified or easily operationalised, it is acknowledged from the onset here that Galtung’s (1969) perception of the concept can be criticised for being both too wide and vague because of this (Nielsen, 2008:39). Lederach’s (1997) theoretical contribution to the Galtung tradition is subsequently used to avoid these weaknesses in Galtung’s work.

As another scholar writing in the Galtung tradition, Lederach (1997) offers a possible solution to this impasse with a more comprehensive understanding of peace than Galtung himself, which is utilised here in order to avoid these weaknesses pointed out by the criticism. The essence of his understanding can be summarised as: The concept of peace is preserved to characterise a more or less specific type of societal and political state that over a certain period of time proves to be of a sustainable character. It is not always clear which factors will create the conditions conducive for a sustainable peace in every single case, but no matter how it is defined, peace must somehow exist in altered relationships. But how and in which ways these societal relations must be altered depends upon the more specific context being analysed (Lederach, 1997:20-30).

By perceiving peace in this more formalised manner, it is possible to avoid mixing up a unique societal political phenomenon with the different factors coming in advance and paving the way for it, meaning that peace is not necessarily the same thing as the way in which it was achieved. In the following, some of the criticism that can be raised against the notion of ‘positive peace’ will be illustrated.

Other scholars, who have also written extensively on this subject, most notably Roland Paris (quoted in Miller, 2008:267), criticise Galtung’s use of the term ‘structural violence’ as it has

been defined in such broad and vague ways that it, as a result, has become both conceptually and empirically indeterminate with regards to what it actually contains.

Similarly, David Mendeloff (2004), who in his article *'Truth-Seeking, Truth-Telling, and Post-conflict Peace building: Curb the Enthusiasm?'* raises objections against what he describes as the 'truth telling' literature, but which can be expanded to other who also writes in the Galtung tradition on 'positive peace', can serve as an useful example of why the use of 'negative peace' so far has remained in place instead.

Mendeloff (2003:363-364) criticises the use of such an expansive 'positive' definition as it raises the larger issue of defining and measuring peace itself by requiring social, racial and economic equality, the absence of poverty or discrimination, intergroup harmony and cooperation through fully functioning social institutions. According to him, although these are valuable and important aims to strive for achieving in a society, they are not necessarily the same as peace, and this 'wish list' approach to peace is instead obfuscating analytically distinct concepts such as peace and democracy, peace and reconciliation, and peace and human rights (Mendeloff, 2004:363-364). In contrast to this definition, Mendeloff (2004:363-364) instead offers what he describes as a modified minimal definition of peace: 'the absence of large scale organised violence or war and the extremely low probability of the resumption of war'. This definition is situated somewhere in between the two extremes by using a 'negative' position as a starting point with peace meaning the absence of war, but that it also incorporates some 'positive' elements through the use of certain minimum qualitative indicators of peace. The latter means that certain practices and institutions that are needed for the nonviolent resolution of conflicts and preventing the return to war have been established and are functioning in a stable way (Mendeloff, 2004:363-364).

Although it is necessary to have these aspects in mind, being critically aware of the possible weaknesses in the main theoretical foundations of this thesis is however not the same as dismissing them once and for all, as this move from a negative to a positive understanding of peace is seemingly the only possible way forward in order to overcome this dichotomy in the 'peace vs. justice' debate.

Despite this criticism that can be raised against it because of this understanding being very broad, the use of the 'positive peace' approach in this thesis has, according to the logic of

Nielsen's argument (2008:39), clearly several benefits attached to it compared with the negatively loaded reductionist perception of peace that has come to dominate within the debate. Whereas this dominating 'negative' perception of peace is treating negotiations that might at the best result in a negative peace where only physical violence is absent as the only relevant way forward in a peace process, a positive approach would in comparison not only be preoccupied with this aspect, but also be concerned with building a sustainable peace by addressing the underlying root causes of the violence. Thus, any attempts being made at creating sustainable peace must therefore begin long before any negotiations can be undertaken, but also continue a long time after their conclusion, which serves as a recognition of how the process is just as important as the final outcome (Nielsen, 2008:39).

2.5.2 Reconceptualising justice

Whereas peace has only been associated with negotiations, justice has, in a similar way in the current 'peace vs. justice' debate, merely been assumed to mean legal prosecutions either through national courts or the ICC (Nielsen, 2008:39-40; Simpson, 2008). Not only does this limited perception of justice fail to acknowledge the fact that the retributive form of justice pursued by the ICC is only one among several other mechanisms at disposal to achieve the same thing (Nielsen, 2008:39-40; Simpson, 2008; van Zyl, 2005).

It also fails to take into consideration for whom justice actually is made for, the victims or an international legal regime put in place to punish the perpetrators in these affected post-conflict societies, as the obsession with criminal prosecutions to uphold it by punishing alleged perpetrators has resulted in that this pursuit of making justice through prosecutions instead of being a means to achieve an end thereby has become an end to achieve in itself (Nielsen, 2008:39). This lack of understanding for whom this justice actually is made for can be illustrated with a brief example from the conflict in Northern Uganda that will subsequently be discussed over the next chapters. Many of the victims of the atrocities committed by the LRA in Northern Uganda, especially with regards to the Acholi people, who have borne the brunt of violence throughout more than two decades of conflicts, have clearly expressed their support for using neo-traditional justice mechanisms, such as the Mato Oput aimed at healing and conflict resolution, instead of prosecution and punishment (Nielsen, 2008:39-40). Whereas the ICC's focus is solely on punishment and imprisonment, this puts it in a sharp contrast compared with the Mato Oput's strong emphasis on reintegration, forgiveness and reconciliation instead (Allen, 2008:47-49; Nielsen, 2008:39-40). That said, this is far from

arguing that the only form of justice worth pursuing in order to achieve this would be in a neo-traditional and restorative manner, as both this and the ‘Western’ retributive form of justice pursued by the ICC has serious flaws that the ‘current peace vs. justice’ debate has clearly failed to address. This would to the contrary be nothing more than a mere repetition of the misleading polarisation dominating until now and would only result in yet another dead end (Nielsen, 2008:40).

Nielsen (2008) and Simpson’s (2008) criticism of both perspectives for only focusing on retributive or restorative forms of justice respectively, and their search for a much more inclusive perspective with an acceptance for and incorporating different ways and forms of doing justice other than merely these two, is met by Mani (2002, 2005).

As a scholar writing in the Galtung tradition of peace and conflict studies, Mani (2002, 2005) argues that justice is clearly needed in the pursuit of achieving positive peace in post-conflict societies. This tradition puts an emphasis on justice being a multi-dimensional concept where retributive and restorative forms of justice are included as elements among cultural, economic, political and social forms of justice. Accordingly, in Mani’s approach (2002:17, 2005) each of these dimensions of justice correlates to ‘an area of positive peace building’.

Nevertheless, the very same objections raised against extending the concept of peace from a negative to a positive understanding can also be used against the Galtung tradition with regards to reconceptualising the concept of justice. Following Mani’s approach (2002, 2005), every single aspect of what constitutes a society can be included in some kind of justice, resulting in that the concept not only becomes confusing, but also too wide and vague concerning what it actually constitutes.

The main problem with Mani (2002, 2005) and other scholars writing in the Galtung tradition of peace and conflict studies in this regard is that the perception of ‘cultural, economic, political and social’ justice and ‘positive peace’ are two sides of the same coin, as they mean exactly the same thing (Mendeloff, 2004; Paris, quoted in Miller, 2008:267).

Following this tradition, ‘positive peace’ is only reached if the institutions and structures encapsulating structurally defined violence in terms of cultural, economic, political and social inequalities are reformed or removed altogether, which in other words is only meaning that

these forms of justice is coming into existence (Galtung, 1969; Mani, 2002, 2005; Mendeloff, 2004:363-364). But in opposite situations, where ‘positive peace’ for some reason is missing, and with the threshold for what it contains made extremely low, this can mean anything from a situation where economic policies deliberate or unintentionally creates some form of social injustice with inequalities against one or more groups in a society, to situations where such grievances have resulted in the outbreak of a violent conflict. Taken literally to an extreme point, there has never existed peace in a true and genuine sense of the word and ‘positive peace’ as a concept should therefore be dismissed in favour of more precise benchmarks and a more accurate understanding of justice (Mendeloff, 2004:363-364).

That said, the intention behind this combined approach to transitional justice does, however, neither exclude retributive nor restorative forms of justice, but requires a negotiation over whether, which and to what extent these accountability mechanisms associated with them should be employed in order to achieve this objective in transitional societies (Nielsen, 2008). Thus, a much more productive and inclusive interpretation would therefore instead be if those responsible for initiating and undertaking these processes to take into consideration that they ultimately belongs to the victims of such heinous atrocities, where mechanisms associated with restorative and retributive forms of justice must be pursued on a parallel track in order to achieve this objective (Nielsen, 2008).

In other words, justice cannot be properly achieved if it is either rushed or forced through without taking into consideration if it is actually serving the interests of the victims (Nielsen, 2008). This process must therefore be owned genuinely by those who are supposed to benefit from it in order for justice to be done in such a way that it not only supports the victims and reduces impunity for perpetrators responsible for committing these human rights violations against them, but that it also helps building sustainable peace (Nielsen, 2008).

2.5.3. Peace and justice as central elements within reconciliation

This much more thorough analysis of the two concepts illustrates how justice when being properly applied by using the multitude of transitional justice mechanisms at disposal can serve as an important contribution to efforts aimed at peace building, rather than compromising and leading them to a certain failure (van Zyl, 2005; Nielsen, 2008).

Based on all of this, it can be concluded that the two concepts are far from being fundamentally at odds with each other, but that the negative reductionist misinterpretation of peace and justice which is common in both camps not only created, but has also served to continue this misperception of incompatibility between the two until recently (Nielsen, 2008:40).

One aspect that has not been taken properly into consideration until now is that whereas the justice approach is past oriented, and the peace approach is concerned with the future, both are clearly needed and must be used interchangeably in order for the warring factions to be able to overcome the difficult and troublesome past and build a stable, peaceful and prospective future together (van Zyl, 2005:212).

In his work, Lederach (1997:27) takes this assumption one step further, by suggesting that peace and justice meets in reconciliation. According to him, this concept addresses both aspects, as it 'represents a place, the point of encounter where concerns about both the past and the future can meet'. He further elaborates on this argument (Lederach, 1997:29) by explaining how these two paradoxes of peace and justice, in addition to truth and mercy, meets within reconciliation, where these four elements are perceived as:

Truth is the longing for acknowledgement of wrong and the validation of painful loss and experiences, but it is coupled with mercy, which articulates the need for acceptance, letting go, and a new beginning. Justice represents the search for individual and group rights, for social restructuring, and for restitution, but it is linked with peace, which underscores the need for interdependence, well-being and security.

As an important component of the broader process of peace building, the concept of reconciliation is essentially about a permanent restoration of relationships by terminating past cruelty thereby facilitating the reaching into a cooperative future. Reconciliation is therefore perceived as being both a goal to reach in itself and as a much wider process that is necessary to undertake in order to successfully overcome and transform the hostilities that has developed during violent conflicts to create a situation where the conflicting parties can live peacefully side by side (Lederach, 1997).

Thus, a precondition for ‘positive peace’ to come into existence in a post-conflict society, thereby allowing the victims to realise their full potential in the future, an important first step for them to take in order to achieve this, is reconciliation with the past through the mechanisms of transitional justice, where these are optimised so that justice is done by serving their interests in a best possible way (Nielsen, 2008:40).

2.6 Peace building

Discussing peace and justice as theoretical concepts is one thing, but how this best can be achieved in practice a totally different one, as there is always a certain risk of returning to the previous situations associated with violence and conflict in the transitional stage going from war to peace. After having reconceptualised peace and justice, the following section will therefore take a closer look at how transitional justice strategies and mechanisms are not only related to, but also form a central part of post-conflict peace building efforts in transitional societies, as the former will most often than not have a significant impact on the latter (van Zyl, 2005).

2.6.1 Building sustainable peace

As was discussed in the previous sections of this chapter, based on his conflict triangle, Galtung (1969) made a deliberate distinction between ‘negative peace’ and ‘positive peace’. In a later work with the title *Peace by peaceful means: Peace and Conflict, Development and Civilization* he further elaborates on this distinction between them (Galtung, 1996). ‘Negative peace’ roughly equates the objects of peacekeeping and peacemaking respectively. Whereas peacekeeping is about reducing the level of destructive behaviour, peacemaking is intended to change the existing attitudes through mediation, conciliation and negotiation. Contrary to this position, that only results in the mere absence of physical violence, ‘positive peace’ refers to peace building, which is intended to create a kind of ‘self sustaining peace’, by properly addressing and transforming the root causes of the conflict through the means of DDR, development and justice (Galtung, 1996:112). As stated in the introductory chapter, this thesis will primarily look at the justice element. Thus, the overall goal with peace building then is to constructively transform conflicts by properly addressing the underlying structural issues and the long-term relationships between the conflicting parties in order to create an environment conducive for sustainable peace (Galtung, 1969; 1996:112).

Based on Galtung's work, in his book '*Building Peace: Sustainable Reconciliation in Divided Societies*', Lederach (1997:20) offers a more specific understanding of peace building by defining it as: 'A comprehensive concept that encompasses, generates and sustains the full array of processes, approaches and stages needed to transform conflict towards a more sustainable, peaceful relationship'.

The basic idea behind Lederach's work (1997:63) is based on this to develop a theory illustrating how peace building as a process that is intended to solve conflicts is made up of several different functions and roles. This is important, since one of the central aims of this thesis is to examine how the functions and roles of various transitional justice mechanisms can assist in such a process.

In his theorising about peace building, Lederach (1997:ch.3) argues that to be able to create a viable and well functioning peace process in deeply divided societies or in situations with internal armed conflict, this will require a practically-oriented framework. Based on this, Lederach draws a deliberate distinction between what he sees as peace building being a top-down problem-solving perspective applying mechanical 'one-size-fits-all' strategies and solutions to solve conflicts, versus peace building as a frame of reference that instead put an emphasis on focusing on the restoration and rebuilding of relationships in order to solve conflicts (Lederach, 1997: ch.3).

Lederach furthermore claims that the concept is treated and used in such a way as if it was merely about implementing a rather common and clearly defined set of activities in every post-conflict society in order to create sustainable peace (Lederach, 1997:63). As a direct consequence of this, the result has been that international peace operations have a clear tendency to be guided by this problem-solving, rather than the conflict transformation approach. These operations arrive from the outside and impose their own conditions for how peace should be achieved without necessarily taking into consideration the need and aspirations of the local populations they are intended to assist, thereby resulting in that their intentions are not always shared by them. As these operations follow a specific timeline for when to start and be concluded, where every possible aspect of peace building has to be achieved in between, this results in a checklist mentality with 'quick fix' solutions that often collapse as soon as the operation is coming to an end (Lederach, 1997:ch.3). Furthermore, with the international presence, the existing social conflicts are often temporarily put on hold

by being either suspended or hidden, but unless constructive and effective ways and channels to deal with conflicts in a war torn society are found or developed, these conflicts will emerge again sooner or later (Lederach, 1997:ch.3).

The reality is, however, often something completely different, as the more specific details and exact procedures for building peace adds up to form a rather complex and multifaceted endeavour to undertake that most often than not will vary significantly in different settings (Lederach, 1997:63).

In sharp contrast to the problem-solving approach towards peace building, Lederach on the other hand therefore stresses the importance of transforming the destructive processes that led to the outbreak of violence in the first place, or grew out of the dynamics of conflict (Lederach, 1997:63). This form of peace building requires fundamental changes in the attitudes and perceptions originating from a legacy of violence, by using the existing channels to deal with conflicts in a society in a more peaceful way. A major problem in post-conflict societies is unfortunately that these channels either tend not to function adequately if they happen to exist at all. Another requirement will thus often be to create an institutional framework, responsible for establishing reconciliation mechanisms, functioning justice systems, democratic and accessible political participation mechanisms, which all serve as such channels for building peace in post-conflict societies (Lederach, 1997:ch.3). This will, however, require sustained intervention by these local, national and international actors operating on several different levels in a well orchestrated effort, with a comprehensive set of short, medium and long term strategies that must not be obsessed with only dealing with the gruesome events of the past, but also be future oriented in order to prevent the recurrence of conflict and abuse from happening again at a later stage (Lederach, 1997; van Zyl, 2005).

Over the last two decades, peace processes that were intended to end violence between the warring factions in a conflict have seldom been concluded without some kind of assistance or involvement from the international community's side. With this internationalisation of conflict settlements, which to a larger degree has come to involve the international community has as a result given it a leading role in deciding how much and what kind of transitional justice should be applied in post-conflict peace building. The ICTR and ICTY, the hybrid courts in Sierra Leone and East Timor, as well as the ICC, can thus all be said to represent this form of transitional justice over the last decade (Järvinen, 2004; Lederach,

1997:ch.3; van Zyl, 2005). The international community has unfortunately had a tendency to perceive transitional justice in post-conflict peace building purely from a legalistic top-down perspective and demonstrated a tendency to dismiss the more local bottom-up mechanisms abilities and capacities to assist in or achieve the same thing, resulting in that the various actors at these levels have reacted by treating the international response with a similar disdain (Järvinen, 2004; van Zyl, 2005).

As has been discussed throughout this chapter, this has formed part of the creation of the current debate, where peace and justice are treated as loggerheads dividing these various actors' involved in peace building over whether transitional justice enhances peace or increases the risk of a return to violence (Järvinen, 2004:36-39; Nielsen, 2008). This somewhat different approach also reflects the need to solve another pressing challenge that must be dealt with sooner or later in war-torn societies, namely how to build a sustainable peace through transitional justice in post-conflict peace building after a violent conflict with massive and/or systematic human rights abuses (van Zyl, 2005).

As peace is a multi-dimensional objective to achieve, where several different tasks must be paid attention to and done simultaneously, this means that the objective of achieving transitional justice in all of this is only one among several important tasks to undertake in a peace building process. Nevertheless, transitional justice is beyond doubt one of the most important preconditions for sustainable peace (Järvinen, 2004; Nielsen, 2008; van Zyl, 2005).

Transitional justice in peace building providing victims with justice means undertaking a broad process that involves addressing the root causes of the conflict by seeking redress for the social injustice that has been allowed to unfold deliberately or unintentionally, but also to address the more direct and imminent consequences caused by conflict both through restorative and retributive forms of justice by initiating investigations, inquiries and trials in order to identify and prosecute the perpetrators perceived as most responsible and by promoting TRCs and other forms of reconciliation processes. However, as transitional justice strategies are quite often being crafted and deployed in situations where peace is fragile or perpetrators are in possession of bargaining power as possible spoilers of peace, they must carefully balance the demands for justice with what can be achieved in the short, medium and long term perspectives (du Plessis, 2005:194-195; van Zyl:209-210).

Unlike this flawed debate, in a different and changed approach that occupies the middle ground post-conflict transitional justice is perceived as an crucial and important component in post-conflict peace building, but only as long as the mechanisms associated with it are being combined in order to be able to fully address the victims needs and grievances by promoting and supporting a combination of various reconciliation processes through TRCs, judicial proceedings, amnesties and various local justice procedures (Lederach, 1997:ch.3; Nielsen, 2008; van Zyl, 2005).

In order to achieve such a coordinated post-conflict transitional justice effort in peace building, each of these elements will have to be carefully coordinated, integrated and matched with an appropriate political, operational and financial support from a range of stakeholders (van Zyl, 2005). It is this the last subsection of this chapter now will turn to.

2.7 A combined approach in theory

Based on this discussion about the two approaches in the current ‘peace vs. justice’ debate with their differing perspectives and opposing arguments concerning what transitional justice embodies in terms of different strategies and mechanisms at disposal, whether, to what extent and under which circumstances it should be applied, if at all, they are as a consequence widely perceived to be two loggerheads with little if anything in common. A transitional society moving from war to peace must therefore deliberately choose one over the other in order to stabilise and avoid a recurrence of violence (Haldemann, 2008; Järvinen, 2004; Nielsen, 2008; van Zyl, 2005).

There is however no magic formula with a specific combination of transitional justice mechanisms that can be applied in all of the different transitional societies going from war to peace, and depending on the circumstances they might express a wish to use either retributive or restorative justice or a combination of both (Aukerman, 2002:45). This means that as long as different transitional societies want to achieve different things by undergoing a process of transitional justice and while legal proceedings is perceived by some of them as the most efficient way to reach these goals, it cannot automatically be assumed that all other transitional societies would or should do the same thing (Aukerman, 2002:45). However, as serious human rights abuses are, contrary to normal crimes, not only offences committed against transitional societies, but crimes against humanity as a whole, the international

community's stake and interest in influencing the decision-making process concerning which transitional justice mechanisms to apply cannot be neglected (Aukerman, 2002:47).

As being part of the essence in the current deadlocked 'peace vs. justice' debate, this decision over which transitional justice mechanisms to apply is far too important to be made entirely by the international community or the local society alone (Aukerman, 2002:47). Nevertheless, this third and different approach being elaborated on here has in recent years challenged and made an attempt to overcome this fallacious gap between these two perspectives by offering an possible alternative route by occupying the middle ground between them (Nielsen, 2008; Oomen and Marchand, 2007; Simpson, 2008; van Zyl, 2005).

Based on this, some authors argue that the only solution to achieve a sustainable and lasting peace is by broadening the concepts used and incorporating the various perspectives and approaches to transitional justice that exists, in order to be able to include restitution, acknowledgement, apology, forgiveness and equality in addition to retributive characters of justice (Chopo, 2007:31). Other proponents of this alternative approach argue that when these affected societies are selecting judicial or non-judicial transitional justice mechanisms, this will largely depend on what they want to achieve by undergoing such a process by addressing the past and preventing it from happening again (Aukerman, 2002:45). Transitional societies should therefore neither have to nor be forced to choose one approach over the other, but rather be encouraged to use both restorative and retributive forms of justice through carefully balancing them in an appropriate manner in order to achieve the goal of a prosperous future with sustainable and lasting peace (Kamali, 2001).

In a combined approach, when undergoing the process of transitional justice, the decision about which mechanisms to apply in the process must therefore be informed by the needs and desires of the victims, as well as what the political realities are in the affected society, but also acknowledging that the international community has a role to play (Aukerman, 2002:47; Newman, quoted in Järvinen, 2004:37; Nielsen, 2008; van Zyl, 2005). This approach is therefore intended to combine the different forms of retributive and restorative forms of transitional justice in order to achieve peace. Whereas TRCs and more local neo-traditional justice procedures are intended to be used for low- to mid-level officers and the rank and file combatants by giving them conditional amnesty and forgiveness from their victims and a return to society, prosecutions must be undertaken against those individual perpetrators who

committed the most heinous crimes during a conflict, such as leaders of a guerrilla movement, or as was done in the South African case against those who for some reason failed to step forward by asking for amnesty in return for full disclosure of the crimes they committed (du Plessis, 2005:193-195; Järvinen, 2004; Kamali, 2001).

This form of transitional justice should therefore not merely be understood as primarily concerned with the past like the ‘justice’ approach or forward looking as the ‘peace’ approach, but as a combination of both; by taking the interest of the victims into consideration by revealing the truth about the past through TRCs and other reconciliatory transitional justice mechanisms, but also by prosecuting those individual perpetrators found most responsible for committing crimes in this period, as well as addressing and transforming violent conflicts in a peaceful manner in order to avoid a return to violence at a later stage by laying the foundations for channels where both individual citizens and a larger group can express their needs and grievances (Posener and Vermeule, 2004:766).

This alternative offers a more comprehensive approach to transitional justice, where peace and justice are not fundamentally at odds, but to the contrary two mutually and reinforcing elements that meet through the concept of reconciliation, and where each of the transitional justice mechanisms addresses a specific part of the victims needs and grievances, but also takes the society as a whole into consideration (Armstrong, 2006:3; Nielsen, 2008; Simpson, 2008).

The intention behind this theoretical discussion has therefore not been to favour either the peace or the justice approach. To the contrary, by highlighting how their contributions to and differences in the current debate have been based on a narrow misinterpretation of these concepts, it is intended to illustrate that only a third and alternative approach can adequately address these inherent flaws.

In this combined perspective, the two approaches to transitional justice and the various mechanisms associated with them are far from being perceived as opposing, but to the contrary complementary. Based on this discussion, the next chapter will discuss the conflict in Northern Uganda by assessing the key events and illustrating at what stage the various transitional justice mechanisms were introduced in the process to bring about an end to the conflict leading up to the Juba peace talks between July 2006 and April 2008, and the signing

of item number three concerning accountability and reconciliation on this agenda that would have regulated the relationship between them. The fourth chapter will be based on chapter two and three, and will analyse the strengths and weaknesses of these three transitional justice mechanisms to determine how what can be seen as their possible positive impact in Northern Uganda can enable the local civilian population there to adequately deal with its past, while at the same time allowing them to create the foundations for a prosperous future with sustainable and lasting peace.

2.8 Conclusion

This chapter has provided a brief summary of the history behind transitional justice from World War One, the interwar years, the IMTs at Nuremberg and Tokyo in the aftermath of World War Two, the struggle during the Cold War and the development in the 1990s with the ICTR and ICTY leading up to the establishment of the ICC in 1998. Furthermore, transitional justice is defined as a concept that has evolved from a narrow legal reductionist perspective to a broad process where judicial and political aspects encompasses both legal and more unconventional mechanisms like TC/TRCs, amnesty, and neo-traditional justice aimed at reconciliation and conflict resolution. The following subsections describe what the ‘peace vs. justice’ perspectives and their respective arguments are about. This illustrates how they are totally dismissing each other, by treating justice as if it was merely about prosecution and punishment of alleged perpetrators in front of the ICC or another court. For its part, peace is primarily being concerned with bringing about an end to conflicts through negotiations (Nielsen, 2008). As these reflects the more theoretical aspects of this debate, the more empirical and practical oriented version of this debate unfolding in Africa expressed through the magazine ‘New African’ is also included. Concerning the empirical parts of this debate unfolding in Africa, ‘New African’ (2009) clearly has a valid point with regards to how the ICC has only targeted Africans until now, but unfortunately their alternative with ‘an African solution for African problems’ seems rather unrealistic given the AU’s current lack of independence to make decisions that go against the interests of its member states (du Plessis, 2005; Siballa in Mail and Guardian, 2009b).

After having illustrated the weaknesses in the current debate, with these flaws in mind, the following subsections mainly based on Galtung (1969, 1996) and Lederach’s (1997) work, have first deconstructed the current understanding of what peace and justice implies, before reconstructing and extending the contents in the concepts. Whereas ‘justice’ is extended

beyond merely being concerned with retribution to include aspects like socioeconomic justice, 'peace' is reinterpreted from meaning negotiations only resulting in absence of violence to address the deeper and underlying factors, like the structural violence inherent in all societies, such as economic inequalities. As there are clearly weaknesses associated with applying such an approach, critical reflections of applying such an approach are included, but it is however argued that being critically aware of these weaknesses associated with this approach is not the same as dismissing them once and for all, as this combined approach is seemingly the only way out of the current impasse.

The penultimate subsection reflects on how transitional justice forms part of the much wider processes of DDR associated with peacemaking, peacekeeping and peace building respectively, based on Galtung (1969, 1996) and Lederach (1997). Whereas the international community over the last two decades has become more involved in these processes, they have unfortunately applied it as some sort of 'one-size-fits-all' solutions irrespective of the differences between post-conflicts societies, resulting in clearly specified timelines for when these operations begin and end. Not only does this result in 'quick fix' solutions that often collapse after the disengagement by the international community, but it often push aside existing cleavages for the time being, which re-emerges in the aftermath. Furthermore, the international community has had a tendency to treat local transitional justice mechanisms with disdain by instead applying a purely legal response, as was done with the ICTR, ICTY, and SCSL and more recently the ICC, resulting in that the proponents of these more local bottom-up approaches to transitional justice appears to be equally hostile to the international legal response. According to Lederach (1997), Järvinen (2004) and van Zyl (2005), what is needed is therefore a more inclusive approach where elements from both perspectives are incorporated in order to deal with the challenges in a transitional society.

Based on this, the last main subsection illustrates how such a combined approach appears in theory. In such a combined approach, a transitional society is given more leeway to choose between retributive and restorative justice, while at the same time maintaining a balance between the obligations to international criminal law and interest of the international community with the needs and aspirations of war-torn societies to come to terms with a troublesome past to be able to move on to a prosperous future with sustainable and lasting peace. This approach will thereby require a thorough examination of the grievances and root causes that led to violent conflict in the first place in order to address them and a careful

negotiation between the various stakeholders involved in the process about how and with kind of transitional justice mechanisms to address them.

With a basis in this theoretical discussion, the next chapter will assess the case of Northern Uganda by analysing key events and at what stage the three transitional justice mechanisms associated with the empirical debate there concerning the ICC, amnesty and neo-traditional justice were introduced. This leads up to the Juba peace talks between 2006 and 2008, where item three in the agreement, if it had been successful, would have resulted in such a balance as discussed in this chapter.

3 The historical background and developments in the Northern Ugandan conflict

3.1 Introduction

The war in Northern Uganda has been described by many activists and scholars as a completely forgotten, although brutal conflict, since the fighting between the LRA and the Uganda People's Defence Forces (UPDF) only occasionally received international attention until some very few years ago. That changed when the former UN undersecretary Jan Egeland visited Northern Uganda in 2003 and described the conflict as 'the biggest forgotten, neglected humanitarian emergency in the world today' (Oomen and Marchand, 2007:164; Ruaudel and Timpson, 2005:2). Following the issuing of ICC arrest warrants against the LRA top leadership in 2005, Northern Uganda has also been the scene of a local version of the 'peace vs. justice' debate concerning whether the ICC, amnesty or neo-traditional justice procedures is the best transitional justice mechanisms to end this conflict. After this, the attention from national and international human rights organisations, researchers and the media, who all have been expressing their deep concern about the situation, have literally skyrocketed. As a consequence, the outside world is now aware of the IDP camps, the LRA's forced recruitment of child soldiers, as well as its horrendous mutilation and indiscriminate killing of Acholi civilians (Oomen and Marchand, 2007:164-166; Ruaudel and Timpson, 2005:1-2).

The history behind this conflict between the GoU and the LRA does however go further back in time, as its root causes can be found both in the colonial era and pre-colonial times, and is also related to the civil war in Sudan between the central authorities in Khartoum and the Sudan People's Liberation Army (SPLA) (Oomen and Marchand, 2007:164-166). It is in this regard therefore imperative to have a full understanding of the historical context in which this conflict has unfolded in order to analyse this local version of the debate, as well as the strengths and weaknesses of the transitional justice mechanisms associated with it. This chapter will give a thorough background understanding of the conflict by presenting the main

events combined with a short analysis, to illustrate how it has evolved throughout the years and the different ways of dealing with and trying to solve it.

The first subsection will look at the history of Uganda, mainly from independence in 1962 onwards, whereas the second subsection will describe the coming into existence of the LRA and what its insurgency is about. In the third subsection, the Acholis' difficult position with continued attacks by the LRA and the harsh treatment they receive by the UPDF in the IDP camps with appalling living conditions will be discussed. The remaining subsections leading up to the Juba peace talks in 2006 will briefly describe and analyse peace negotiations in 1994 and 2004 respectively, the Sudanese influence on the conflict, failed military counterinsurgencies like Operation Iron Fist in 2002, as well as the introduction of these three transitional justice mechanisms at various stages with the Acholis' neo-traditional justice aimed at reconciliation and conflict resolution in 1997, the Amnesty Act in 2000 and the ICC in 2004/2005 respectively. The Juba peace talks between July 2006 and April 2008 will be thoroughly described in the last main subsection, especially with regards to item three on the agenda concerning accountability and reconciliation balancing the relationship between these three transitional justice mechanisms. The last subsection will briefly touch upon the development since the negotiations at Juba ended in April 2008 to stress the need for finding a permanent solution to this conflict.

3.2 Contextual background of the conflict in Northern Uganda

The official start of the current conflict taking place between the GoU and the LRA in Northern Uganda is by many commentators thought to be in 1986, when the current president, Yoweri Museveni, and his National Resistance Army (NRA) came to power after capturing the capital Kampala. But as stated in the introduction of this chapter, the deeper underlying root causes of this conflict, which helps to explain the perception among the Acholi people of being marginalised, are found in an ethnic division between the north and the south of the country, that can be traced back to before both independence in 1962 and the colonial era, to pre-colonial times (see appendix C) (Bøås, 2004: 285-286; Doom and Vlassenroot, 1999:7-10; ICG, 2004:2; Oomen and Marchand, 2007:164-166).

Uganda is a country separated by an ethnic and linguistic divide between the north and the south. Whereas the people living in the north are Nilotic speakers, who before the introduction of colonialism mostly consisted of small groups of hunters and gatherers, the

southern Bantu speaking parts were in comparison dominated by four highly centralised kingdoms (Bøås, 2004:285-286; Oomen and Marchand, 2007:164-166). When the British colonisers arrived and established their administration in the south, they utilised a divide and rule form of politics to avoid a unified revolt against the exploitation of their territory, by treating the northern and southern tribes differently. The kingdoms in the south were industrialised and the people from this region received formal education, to be later recruited into the bureaucracy as civil servants. In comparison, those tribes living in the north became soldiers in the colonial army, mainly drawn from the Acholi tribe, but also provided a steady supply of cheap labour to plantations producing cash crops for the south (Bøås, 2004:285-286; Doom and Vlassenroot, 1999; ICG, 2004:2; Oomen and Marchand, 2007:164-166; Van Acker, 2004).

The result was that at the end of colonialism, the people from the south had received most of the infrastructure and socioeconomic development, whereas the majority of the soldiers in the colonial army came from the north. This divide is still present today, as the introduction of these ethnic divisions under colonialism resulted in the present manifestation of the cultural, economic and political cleavages between the Bantu dominated south and the northern Nilotic part of Uganda, and later served as a practical tool for successive post-colonial regimes to maintain their power by deliberately manipulating this imbalance. With independence in 1962, the people from the north were, because of their military skills, able to counterbalance what they lacked in economic strength and absolute numbers of the total population. Successive Ugandan post-colonial rulers like Milton Obote, who ruled Uganda for two periods between 1962 and 1971 and again from 1980 to 1985, Idi Amin from 1971 to 1979, and Tito Okello for six months between 1985 and 1986, all had in common that they as northerners could rely on a loyal army. This came to an end in 1986, when Museveni, as a southerner, and his NRA overthrew Okello (Bøås, 2004:285-290; Hovil and Lomo, 2004; ICG, 2004:2; Oomen and Marchand, 2007:166-167; Ruaudel and Timpson, 2005).

The main reason behind the Acholis grievances in the present is in all of this according to Bøås (2004:286-289) and Dunn (2007:139), a combination of both colonial and post-colonial experiences resulting in a feeling of betrayal. The first time it occurred was in 1913, when the colonial administration confiscated and destroyed all firearms among the Acholis and subsequently undermined their power and influence. Amin was personally responsible for the second round of betraying the Acholis, as he immediately after coming to power in 1971

ordered the massacre of the large number of Acholi soldiers in his predecessor and enemy Obote's army. The third and decisive round of betrayal came in 1986, when Okello's regime in its last desperate attempt against Museveni's NRA recruited large numbers of Acholis, by promising them great rewards if they defeated the enemy in battle. Because of their lack of training and experience, the Acholi soldiers suffered heavy losses and eventually a total defeat against a superior NRA (Bøås, 2004:286-289; Dunn, 2005:139; ICG, 2004:3; Ruaudel and Timpson, 2005). While the economic, political and military power had belonged to northern ethnic groups for more than two decades after independence, the military defeat meant that the northerners now had lost their only real competitive advantage over other southern based ethnic groups. This complete concentration of power and patronage in the south under Museveni's rule almost immediately resulted in a collective insecurity with a sense of total betrayal and complete marginalisation, which served to fuel the grievances among the people in the north, especially with regards to the Acholis (ICG, 2004:3-4; Ruaudel and Timpson, 2005).

Shortly after gaining power in 1986, Museveni accused the Acholis of being responsible for atrocities committed throughout the war and demanded that they should surrender. The majority of the former Acholi soldiers refused to do so, as they instead fled back into the north in response to the new government's demand, and 'the fear of a repetition of the massacre of 1971-1972 led many men to keep their weapons and take to the bush to join resistance movements such as the Holy Spiritual Movement and [later] the LRA' (Bøås, 2004:288; Doom and Vlassenroot, 1999:13; ICG, 2004:4; Van Acker, 2004:339-340).

Since the late 1980s this has resulted in three major successive violent insurgencies originating in the north, primarily from within Acholiland, that all were aimed at overthrowing Museveni before he could consolidate his power, by retaking the capital and the presidency (ICG, 2004:4; Ruaudel and Timpson, 2005:3).

The first rebel group became known as the Uganda People's Democratic Army (UPDA), as it was made up of former Acholi soldiers that had fled back into Acholiland. This inexperienced group did, however, soon crumble under the military pressure from the NRA, and after two years the rebellion ended with a peace agreement between them in 1988 (Bøås, 2004; Doom and Vlassenroot, 1999:14-15; ICG; 2004:4; Ruaudel and Timpson, 2005; Van Acker, 2004)

In late 1986 the Holy Spirit Movement (HSM) was established under the leadership of Alice Lakwena, who took over the UPDA's position by recruiting many of its remaining forces. As Lakwena was a so-called spiritual messenger, who claimed to have been possessed by several spirits that had not only given her healing powers, but also the ability to guide and lead military forces into action, her HSM has later been described as an Acholi millennial movement based on a mixture of Christian and traditional beliefs (Allen, 2006:33-37; Bøås, 2004:289; Doom and Vlassenroot, 1999:15-22; Ruaudel and Timpson, 2005:3; Van Acker, 2004:346-350). Lakwena exploited the Acholis' grievances by claiming that their society would now experience a complete marginalisation as their dominance had disappeared with the recent defeat of the national army in the battles against Museveni's NRA. The only solution to overcome these challenges was therefore an Acholi uprising under Lakwena's leadership that would lead to a return to power. As Lakwena promised to address what the Acholis perceived as their grievances and marginalisation by fighting the NRA government, the HSM enjoyed large popular support and was able to gather a large group of followers (Allen, 2006:33-37; ICG, 2004:4; Ruaudel and Timpson, 2005:3). The NRA seriously underestimated this opponent, which allowed the HSM to march all the way to the town of Jinja (see appendix A and B), just one hundred kilometres outside Kampala, before being totally defeated there in 1987 (Allen, 2006:36; Bøås, 2004:289; Doom and Vlassenroot, 1999:15-22; Dunn, 2007:132-134; ICG, 2004:4; Ruaudel and Timpson, 2005:3; Van Acker, 2004:346-350).

3.3 The coming into existence of the LRA

It was in this context described above that Joseph Kony emerged in late 1987. By proclaiming himself as a mystic prophet possessed by the holy spirits of the Acholi people, which had provided him with healing powers, Kony mobilised fellow Acholis to establish his own movement that started its insurgency with the same name and objectives as Lakwena's HSM had done one year earlier (Doom and Vlassenroot, 1999:20-24; Dunn, 2007:134-136). Kony's rebel movement⁵ was therefore competing directly with the HSM by offering the same kind of spiritual cleansing of the Acholi people and by making the same political claim of providing an opportunity for frustrated Acholis to fight against Museveni, who at this stage feared that

⁵ Although some analysts, like Prunier (2004:366), have claimed that the reason behind the similarities between Kony and Lakwena's movements was the result of them being cousins or close relatives, this has not been proved, but what is known is that Kony unsuccessfully tried to forge an alliance with Lakwena (Allen, 2006:38; Dunn, 2007:134).

the rise of the southerners dominance under him would result in them ceasing to exist as a ethnic group (Allen, 2006; Bøås, 2004:289; Doom and Vlassenroot, 1999:20-22; ICG, 2004:4; Van Acker, 2004).

With the HSM out of the way, Kony's movement filled this power vacuum shortly after, as its remaining forces quickly joined ranks with his troops to continue their struggle and was further strengthened in 1988, when most of the UPDA's fighters also went over to join him after their leaders had signed a peace agreement with the NRA (Allen, 2006:38). The LRA is therefore clearly the successor to the two former rebel movements, as it began its insurgency in the same period as they were defeated by the NRA (Bøås, 2004:289; Prunier, 2004:365-366). It was also at this stage that his group became known under its present name as the LRA, which illustrates how Kony by 1990 had consolidated his position as the leader of the only rebel movement remaining in Acholiland (Allen, 2006:39; Bøås, 2004; Dunn, 2007; Doom and Vlassenroot, 1999; Van Acker, 2004).

Although it is easy to dismiss the LRA, as its leader Joseph Kony is behaving like an irrational madman, and the rebels' indiscriminate use of violence to subdue the Acholis, it is important to be aware of that the insurgency in the beginning had a clear political objective⁶ (Dunn, 2007:137-138). As described in the previous subsection, the background and root causes of the LRA's political struggle can be found in its perception of how the Acholi society has suffered throughout history in colonial and post-colonial times, with grave atrocities and massacres taking place under both Amin and Museveni's rule (Bøås, 2004:286-290; Doom and Vlassenroot, 1999; Van Acker, 2004). Fuelled by this long history of ethnic marginalisation and exploitation, the LRA perceives itself 'as fighting to free the Acholis from an oppressive government dominated by ethnic groups determined to exclude the Acholis permanently from the spoils of state power' (Bøås, 2004:289). This political objective behind LRA's insurgency was, and to a certain extent still is genuine, which helps to explain why the rebels initially enjoyed a substantial amount of popular support from their fellow

⁶ Although Ruaudel and Timpson (2005:12) claims that most analysts now interpret the LRA's political objective to embarrass the GoU by terrorising the Acholis, no common agreement exists with regards to what it actually consists of. Whereas some, such as ICG (2004) argues that the LRA has no political agenda whatsoever, others have claimed that it has been lost after so many years of seemingly purposeless fighting (Doom and Vlassenroot, 1999), and yet others again that documents making claims of the end to IDP camps, Acholi genocide and the rebels being fully reintegrated into the society after a negotiated settlement of the conflict actually means that it has a political agenda (Bøås, 2004; Dunn, 2004, 2007).

Acholis because of their complete lack of trust in Museveni's southern based government. But despite this early approval by the Acholis of the insurgency against the NRA, this support was gradually reduced to nothing (Bøås, 2004:290; Doom and Vlassenroot, 1999; Ruaudel and Timpson, 2005; Van Acker, 2004). This and other aspects that have continued to fuel this conflict over more than two decades will be analysed in the following subsections.

3.4 The Acholis' difficult situation

There are several interrelated explanations as to why the LRA gradually started to change its focus and tactics away from fighting against the NRA by instead through violent attacks targeting the very same people whose cause it claimed to be fighting for. This subsection will describe how the LRA started out as the latest manifestation of the several attempts made by the Acholis to address the deeper underlying root causes of their sense of betrayal, but ended up becoming the very reason for why its own people is still experiencing continued marginalisation, as they are placed in a very difficult situation between the LRA and the GoU (Bøås, 2004:290).

Seen in a historical perspective, the ideological foundation of the LRA's violent rebellion was seemingly the same as its predecessors, by articulating the religious and political objectives that the UPDA and the HSM had done before it, respectively (Bøås, 2004:289-290). But Kony would, however, soon distinguish himself with an even more extreme millennial belief in spiritual symbolism than Lakwena had, by declaring that he was chosen by God to create a 'new' Acholi society based on the Biblical Ten Commandments, which had to be punished and cleansed through violence (Doom and Vlassenroot, 1999; ICG; 2005a:3; Ruaudel and Timpson, 2005:4; Van Acker, 2004). Allen (2006:40) points to how the LRA, because of this, has utilised extremely violent methods as some sort of sacred tool in order to remove the unholy and impure Acholis from the 'new' generation of pure and holy.

Compared with the HSM's military offensives mainly against the NRM, the LRA unleashed violent attacks especially aimed at targeting their fellow Acholis (Ruaudel and Timpson, 2005:4). The pursuit of Kony's idea of a 'new society' was given as a reason by the LRA to legitimise the abduction of children to serve as fighters in his rebel movement that would indoctrinate them into this 'new society'. This violent strategy has also been used to explain why the LRA has especially targeted Acholi elders worshipping traditional beliefs that represents a threat against their 'new society' by killing or mutilating them (Ruaudel and

Timpson, 2005:3; Van Acker, 2004). As the whole notion of spiritual cleansing through killing and violence goes against everything that the Acholis traditional beliefs, norms and values stand for, the elders has dismissed Kony as a false prophet (Hovil and Lomo, 2004).

In 1991, the NRA government launched the military offensive 'Operation North' which failed to defeat the LRA insurgency, and it was at this stage that the Acholis' complete dismissal of the LRA became obvious, as many Acholis participated on the government's side against the LRA in local militias (Ruaudel and Timpson, 2005:4; Hovil and Lomo, 2004). This was eventually the event that 'finally drove Kony over the edge' as he began accusing the Acholis of grave betrayal by abandoning the cause he fought for, as it was they who in the first place had given the LRA its blessings to fight against the NRA on their behalf (Bøås: 2004:290; Doom and Vlassenroot, 1999:24-25). Since the LRA could no longer rely on the Acholis' support in the insurgency, Kony argued that it was necessary for the LRA to target its own people to have access to a steady flow of supplies and new fighters by forcibly recruiting children through abductions (Allen, 2006; Branch, 2005; Hovil and Lomo, 2004; Van Acker, 2004). This indicated a total change in tactics, strategy and policy, as the LRA from now on turned its weapons against its very own people (Branch, 2005; Bøås, 2004:290; Doom and Vlassenroot, 1999:24-25; Hovil and Lomo, 2004).

One of the most effective ways for the LRA to make sure that the Acholi population is prevented from supporting the UPDF is by abducting their children (Allen, 2006; Branch, 2005; Doom and Vlassenroot, 1999:25-26; Van Acker, 2004). This abduction of children has not only become a central element in the LRA's strategy to terrorise the Acholis, but also proved to be an effective solution for the LRA to deal with the lack of a steady flow of voluntary recruits, and by now it is relying on forcibly recruiting children through abductions. If the LRA had not utilised abduction of children and by turning them into child soldiers as a mechanism, it would soon have been completely undermined, and one of the main descriptions of the LRA has therefore been the use of child soldiers throughout its insurgency (Branch, 2005; Doom and Vlassenroot, 1999; ICG, 2004; Oomen and Marchand, 2007:165; Van Acker, 2004). According to a study conducted by Pham *et al* (quoted in Oomen and Marchand, 2007:165), at least 20,000 children have been abducted and trained by the LRA to commit atrocities against their own communities.

Another reason behind this change of tactics was that, by joining the militias and taking up the fight against the LRA, the Acholis had shown their support to the government, and this move

was clearly perceived by the rebels as a betrayal of their common cause. It was therefore at this stage that the LRA began their infamous atrocities through reprisal attacks with a massive use of violence by spreading fear and terror among the Acholi civilians to prevent them from taking the government's side ever again. The militias are therefore partly to blame for the change in the tactics from a war mainly being fought between the LRA and the UPDF to increased targeting and use of violence by the rebels against the civilians (Allen, 2006; Branch, 2005; Bøås, 2004:289-290; Doom and Vlassenroot, 1999:23-24; Hovil and Lomo, 2004; Van Acker, 2004).

A unique aspect about the war in Northern Uganda compared to conflicts elsewhere is how the LRA, through its insurgency, has targeted its very own people, as the majority of the rebel fighters are Acholi children, who after being abducted are forced to take part in the violence against their own people or risk being killed themselves. Estimates by Annan *et al* (quoted in Oomen and Marchand, 2007:165) have indicated that the amount of violence related to the war has affected most people living in Northern Uganda either directly or indirectly. Even if more precise numbers are difficult to come by because of inaccurate and unsystematic reports, throughout the conflict tens of thousands of civilians have been targeted by both sides and resulted in them being killed, mutilated or otherwise affected and that these atrocities are often committed by close relatives, who are themselves forced to do this against their parents, siblings and extended clan members (Oomen and Marchand, 2007:164-166).

But if this was not bad enough, in September 1996 the GoU launched a new military counterinsurgency strategy to defeat the LRA, by forcibly removing the Acholis from their villages in their thousands all over Northern Uganda into 'protected villages' (Bøås, 2004:286; Doom and Vlassenroot, 1999:30-31; Bøås and Hatløy, 2005; Van Acker, 2004). The main intention behind this new strategy was allegedly to protect them from continued rebel attacks, by denying the LRA's easy access to supplies in the villages, as well as isolating them from any potential supporters they still had left (Bøås, 2004:290; Bøås and Hatløy, 2005).

After that, these 'protected villages', better known as IDP camps, were established all over Acholiland until they totalled more than 200, and although they were intended to provide shelter and protection as a temporary solution, they have, after more than a decade, become a permanent institution in Northern Uganda, as the amount of people living in them has

constantly increased ever since (Bøås and Hatløy, 2005; Doom and Vlassenroot, 1999; Dunn, 2007; Van Acker, 2004). Since their establishment in 1996, between 75 and 90 percent of the Acholis, almost the entire Acholi population, or somewhere between one and two million, have for various reasons been moving into the IDP camps⁷ (Oomen and Marchand, 2007:164; Ruaudel and Timpson, 2007). Here they experience appalling living conditions with a combination of constant hunger and sickness, as a result of being forced to live cramped together in extremely squalid and unhygienic conditions (Ruaudel and Timpson, 2005), and the ICG (2004:14-15) argues that because of this ‘many of the humanitarian problems facing the population living in the conflict area result from displacement’. This is a consequence of how the GoU forced the Acholis into these IDP camps in a rushed and unplanned manner, with no basic plan for how to run them, resulting in the camps lacking even the most basic infrastructure, such as water, food and sanitation, thereby making their inhabitants totally dependent on voluntary food aid from organisations like the World Food Programme (WFP) (Allen, 2006; Branch, 2005; Gosling and Prendergast and Pham *et al* quoted in Oomen and Marchand, 2007:164; Hovil and Lomo, 2004; Ruaudel and Timpson, 2005:4). As such, this permanent displacement symbolises an enormous humanitarian disaster to the Acholis instead of providing them with an end to the conflict in the foreseeable future (Bøås, 2004: 290).

Unfortunately for the Acholi people, this counterinsurgency strategy has not benefited them at all, as they have not received the much needed protection in these IDP camps. By being put so close together without any kind of effective protection by the UPDF has offered the LRA an easy target (Ruaudel and Timpson, 2005). The result of this is that these IDP camps have not served their original purpose, by instead becoming the very symbol of the UPDF’s complete inability to protect their inhabitants (Bøås and Hatløy, 2005; Dunn, 2007; ICG, 2004). As the villages were emptied, the LRA perceived the IDP camps as their new resource base, resulting in that the Acholis are still experiencing abductions, mutilations and killings, as the camps have become main targets for the rebels who frequently attack them (Bøås and Hatløy, 2005; Dunn, 2007; ICG, 2004:15).

Few, if any, Acholis any longer support or sympathise with the cause of the LRA’s brutal insurgency against Museveni’s policies and the complete political dominance by his ruling

⁷ Another study quoted by Ruaudel and Timpson (2005:2) reports that internal displacements now affects even more than 90 percent of the total population in the Acholi districts, as the number of people living in IDP camps increased from 500,000 to 1,3 millions when the fighting spread into new areas between 2002 and 2003 in the aftermath of Operation Iron Fist, which is discussed below.

elite in the south. But neither do they trust the government either, as they also disapprove of the way national politics is run in Uganda through the exclusive ethnic basis of Museveni's regime (Bøås, 2004:289). This is coupled with the fact that after 1996, Museveni sent a large number of troops to fight against the LRA in Northern Uganda, but according to Baker (quoted in Bøås, 2004:289-290), numerous reports have documented a worrying trend about how the UPDF as the main representative of the GoU in the north, who are supposed to protect the population against the LRA in the IDP camps, are instead accused of 'extrajudicial killings, irregular arrests and detention, torture and displacement'. The Acholis are thereby being placed in a very difficult position, in the sense that in addition to fearing the constant threat of LRA attacks, they also have to face the harsh treatment of the UPDF.

3.5 Peace talks in 1994

Betty Bigombe, an influential Acholi woman, served as a member of the Ugandan Parliament between 1986 and 1996. In 1988 she was appointed Minister of State for Pacification of Northern Uganda by Museveni, where her job was to convince the LRA leaders that the insurgency was a lost cause and that the only reasonable thing to do in this situation was to end their struggle by laying down their arms (Allen, 2006:44-47; Doom and Vlassenroot, 1999:24-25). Almost at the end of 1993, she was finally able to initiate contact with Joseph Kony. This resulted in a ceasefire shortly thereafter, with several rounds of peace talks led by Bigombe taking place between high ranking members of the LRA and the NRA. In February 1994, the LRA rebel leaders declared their willingness to end their struggle and be reintegrated into the Acholi society by receiving amnesty upon their return. Kony did however argue that he needed an additional six months to regroup all of his fighters (Bøås, 2004; Doom and Vlassenroot, 1999:24-25; Dunn, 2007). The NRA refused to give in to an enemy they believed they had defeated, and according to Kaiza (quoted in Dunn, 2007:143), the first rounds of peace talks led by Bigombe disintegrated because of President Museveni's 'lack of seriousness' when he gave the LRA an ultimatum of surrendering or be annihilated by military means (Allen, 2006:48). In the words of Bøås (2004:290): 'The peace attempt in 1994 could have succeeded. Kony clearly indicated that he wanted to come out of the bush with all of his fighters (...)', but the negotiations ended 'when the NRA commanders insisted that the only thing to negotiate was the total surrender of the LRA'. Museveni's lack of interest in negotiating with the LRA rebels has also been confirmed by Doom and Vlassenroot (1999:24-25), Dunn (2007:144), Van Acker (2004) and Mwaniki *et al* (2009:7).

As a consequence, the negotiations collapsed completely and the ceasefire came to an abrupt end with the LRA returning to the bush and crossing the border into Southern Sudan to establish military bases. They soon returned stronger than ever, thanks to Khartoum's military assistance, as they now were in possession of more sophisticated weapons, such as landmines (Bøås, 2004; Doom and Vlassenroot, 1999; Van Acker, 2004:337-338). Bigombe is however not the only one who made attempts to engage the parties in a dialogue. In 1996, a group of Acholi elders unsuccessfully tried to engage with the LRA by launching a new round of negotiations that ended in disaster, as two of them were killed since the rebel leaders suspected them of being government spies (Allen, 2006:50; Behrend, quoted in Dunn, 2007:144; Mwaniki *et al*, 2009:7; Ruaudel and Timpson, 2005:10).

As will be illustrated throughout the following subsections, the 1994 peace talks, and to a certain extent the 1996 incident, served as a catalyst for several interrelated events, stretching from lobbying by the civil society in Northern Uganda for the introduction of an national amnesty law for the LRA, the revival of neo-traditional Acholi justice and the LRA receiving financial and military support from the central authorities of Sudan in Khartoum.

3.6 Lobbying for amnesty and revitalisation of the Acholis' traditional justice

Following the failure of the 1994 peace talks led by Bigombe and the 1996 incident, the Acholis began mobilising at the grassroots level to push for a peaceful end to the conflict through a comprehensive blanket amnesty to give the LRA an incentive to lay down their arms. As this pressure gradually increased, it resulted in the establishment of an ecumenical NGO known as the Acholi Religious Leaders' Peace Initiative (ARLPI) in 1998, where the Catholic, Orthodox, Anglican and Muslim religious leaders within the Acholi society formalised their increased cooperation about peace issues (Allen, 2006:78; Dunn, 2007; Ruaudel and Timpson, 2005:10). Although the ARLPI was not able to initiate renewed talks between the LRA and the GoU, it was influential as one of the leading forces who continuously lobbied for an Amnesty Act (Allen, 2006:78; Dunn, 2007).

According to Allen (2006:74) 'following persistent lobbying from various activists and overcoming outright opposition from President Museveni himself, the Amnesty Act passed into Ugandan law in November 1999 and was enacted in 2000'. It offers amnesty to all Ugandan rebels, including the LRA, and has to a certain extent undermined the guerrilla movement as many of its fighters, including several senior commanders, such as Kenneth

Banya and Sam Kolo, have laid down their arms in return for amnesty. This Amnesty Act has, however, not been successful in bringing about an end to the fighting, as the LRA leaders do not believe that it will prevent Museveni from prosecuting and punishing them instead once they come out of the bush and lay down their arms. This is evidenced by the fact that even if Museveni eventually had to give in, he has not supported this offer of amnesty, by repeatedly declaring his preference for a military solution as the only way to end the conflict and deal with the problems caused by the LRA, which is illustrated by Operation Iron Fist, that will be discussed in one of the next subsections (Allen, 2006; Dunn, 2007:144; Van Acker, 2004:356).

The lobbying for the Amnesty Act towards 2000 coincided with Dennis Pain's report 'The Bending of Spears' from 1997. Pain argued that the Acholis have advanced systems and rituals for conflict mediation and resolution, which enabled them to neutralise disputes between their clans and other ethnic groups rather effectively. Although there are punishments and accountability in this local form of Acholi criminal justice system, it has, unlike the western form of justice, no provision for death penalties and prison sentences, as it is rather intended to work as a reconciliation and conflict resolution mechanism (Pain, 1997). His work is therefore perceived by many other researchers and activists concerned with Northern Uganda, like Allen (2005, 2006 and 2008) and Hovil and Quinn (2005) as instrumental for understanding how the Mato Oput and other neo-traditional justice procedures were introduced to and became a central part of the debate concerning what is the best way to end the war and the mechanisms to achieve this. But what was perceived as something vague and indefinable back then eventually became fully accepted a decade later as the Juba peace agreement and, if it had been successful, would have fully incorporated this element alongside legal proceedings, meaning that the complementarity between international justice and local perceptions of justice would have been guaranteed (Batanda, 2009; Latigo, 2008; Mwaniki *et al*, 2009; Ogora, 2009). In this sense, justice would not be perceived purely in a narrow way only based on arresting and prosecuting the perpetrators, but also have included other and much broader elements, such as socioeconomic justice (Ruaudel and Timpson, 2005). These are aspects that will be thoroughly analysed in the next chapter.

3.7 The Sudanese influence

In the first round of peace negotiations led by Bigombe from November 1993 to February 1994, the LRA commanders clearly expressed their willingness to return to and be

reintegrated in Acholiland in return for receiving amnesty and forgiveness (Allen, 2006; Dunn, 2007). This could have meant that the LRA had realised its defeat, as its leaders only made demands concerned with avoiding prosecution and punishment before returning from the bush. It is, however, difficult to draw any conclusions about what would have been the final outcome if the negotiations had been successful and the LRA had accepted amnesty, as Museveni's unrealistic demand of complete surrender within two weeks completely undermined the process (Bøås, 2004:290; Dunn, 2007:144).

Other facts nevertheless suggest that the LRA only pursued peace talks to buy precious time, as they were simultaneously communicating with Khartoum about arms supply (Quaranto, 2007:5). This is evidenced by the fact that around 1993 the LRA had, according to Gerard Prunier (2004:366-367), lost so many fighters that it had been reduced to around 300 rebels, but after the negotiations had failed it 'was suddenly up to over 2,000 well-equipped troops by March 1994, and was in a position to raid the whole of Northern Uganda'. The reason for this connection is that Ugandan authorities in Kampala and its Sudanese counterpart in Khartoum have for many years been mutually hostile towards each other, which have resulted in their assistance to rebel groups in their respective territories in an attempt to destabilise each other (Bøås, 2004:289; Dunn, 2007:141-143; Doom and Vlassenroot, 1999:24-25; ICG, 2004:7 and 2006:14; Prunier, 2004; Van Acker, 2004). The result of this is that 'in many ways Sudan and Uganda have been running an undeclared war on their common border since 1986, [where] Sudan has been supporting (...) the (...) LRA, which is still fighting the Museveni regime in northern Uganda. Meanwhile, Kampala has progressively given increased help and facilities to the (...) SPLA, which is fighting the Khartoum regime in the southern Sudan' (Prunier, 2004:359).

It was, however, not until sometime after 1993 or 1994 that Khartoum was able to establish connections with the LRA, but as a direct consequence of this official support from Sudan to the rebels, a new and much more complicated regional dimension to the conflict was introduced, as the rebels' operational and military capacities increased substantially because of the Sudanese providing them with financial and military support. The LRA could now retreat back into Southern Sudan, by using it as a safe haven, where they could regroup after military losses, turn their newly abducted children into child soldiers and get medical treatment for combat wounds, but most importantly receive a steady flow of arms and ammunition, which included antitank mines, at least until the end of 2002 (Doom and

Vlassenroot, 1999:24-25; Dunn, 2007:141-143; Mwaniki *et al*, 2009:7; Prunier, 2004:366-367; Ruaudel and Timpson, 2005:4-5; Van Acker, 1999:337-338).

Before his death in a helicopter accident in 2005, the late SPLA chairman John Garang expressed that the removal of the LRA would have to be given priority, as an autonomous Southern Sudan experiencing peace and prosperity was depending on making its territory inhospitable for the LRA. That had not been the situation until then, as the LRA, after having established formal connections with Khartoum, who supplied them with a steady flow of weapons, also gave the rebels unlimited access to the border between Sudan and Uganda, where they could launch violent attacks in both countries. This made the LRA a force to be reckoned with in the wider region throughout the mid-1990s onwards and continued at least until 1999, when both countries signed an agreement to end their assistance to the LRA and the SPLA respectively. But despite this, the LRA still received support from parts of Khartoum, even if this was only a small fraction of what it received in the 1990s (Doom and Vlassenroot, 1999; Dunn, 2007:141-143; ICG, 2005b, 2006:8; Mwaniki and Wepundi, 2007:2; Prunier, 2004; Ruaudel and Timpson, 2005:11; Van Acker, 2004:352).

Nevertheless, in 2005 the central authorities in Khartoum and the SPLA signed the Comprehensive Peace Agreement (CPA) that officially marked the end of the war between them and of all support to the LRA given by Khartoum, the establishment of the Government of Southern Sudan (GoSS) with autonomy from Khartoum, and a possible referendum over independence by 2011 (ICG, 2005b:4, 2006; Quaranto, 2007:6).

With Khartoum's influence over Southern Sudan gradually being reduced, this weakened and finally ended the covert support Khartoum had continued to give to the LRA despite of the 1999 agreement, and made it possible for the SPLA under the new leadership of Salva Kiir, who took over in office after Garrang, to threaten the LRA with the use military force to remove it from its territory (Ruaudel and Timpson, 2005:11).

This was done by presenting the LRA with three different options: (1) agree to search for a peaceful solution to the conflict, or; (2) leave Southern Sudan once and for all, or; (3) be faced with a military solution, where the GoSS military forces would remove it by force and eventually defeat it (ICG, 2006:16; Mwaniki and Wepundi, 2007:3). The LRA was now faced with a situation where it either could agree to find a peaceful solution to the conflict with the

GoSS as a mediator between it and the GoU, or face the use of force to remove and possibly annihilate it once and for all. This three layered ultimatum towards the LRA was, however, not unproblematic, as the SPLA at that stage had yet to be reorganised from a guerrilla force to become the armed forces of the GoSS and had because of this, a rather low morale and limited capacities to face the LRA (ICG, 2006; Quaranto, 2007:6).

However, the GoSS slowly gained military strength and as will be illustrated throughout the rest of this chapter, together with a number of other factors it forced the LRA to take a seat at the negotiation table at Juba (Mwaniki and Wepundi, 2007; Mwaniki *et al*, 2009:5).

3.8 Operation Iron Fist

Museveni has neither supported the Amnesty Act providing amnesty to all rebels who surrender nor the Acholis' neo-traditional justice system aimed at reconciling the victims with the former rebels. Since the beginning of the conflict he has been convinced of and remained focused on a military solution to end the conflict once and for all. This is evidenced by the way in which he, independently of these offers put in place, launched Operation Iron Fist in March 2002 (Allen, 2006; Bøås, 2004; Dunn, 2007; ICG, 2004:15; Ruaudel and Timpson 2005; Van Acker, 2004).

This military offensive marked the beginning of a new counterinsurgency strategy, where more than 10,000 Ugandan troops entered Sudanese territory for the first time after an agreement with the central authorities in Khartoum. By pursuing the rebels over the border into Southern Sudan the intention behind this military campaign was to search for and destroy the LRA bases, hunt down and kill the rebels wherever they could be found, and ultimately eliminate the threat it represented once and for all (Allen, 2006:51; Dunn, 2007:136,141-143; ICG, 2004:15; Mwaniki *et al*, 2009:7-8; Ruaudel and Timpson 2005; Van Acker, 2004)

The UPDF claimed that the main objective behind Operation Iron Fist, to flush out the rebels from their bases in Southern Sudan and crush them, had been a success, as it had dealt the LRA a decisive blow with several military victories where numerous rebels had either been killed, captured or defected. The only thing that the UPDF really achieved by this was to cut off and push the large majority of the LRA fighters away from their resource bases in Southern Sudan. After this, the rebels reorganised into smaller units, retreated back into Northern Uganda where they retaliated by launching more ferocious attacks and committed

numerous atrocities against the Acholis. The consequences of this was a sharp increase in the number of abductions, killings, lootings and mutilations, but also in the number of people living in the IDP camps scattered all over Northern Uganda, resulting in a further deterioration of the overall humanitarian situation in the region as a whole (Dunn, 2007:136,141-143; Hovil and Lomo, 2004; Mwaniki *et al*, 2009:7-8; Ruaudel and Timpson 2005; Van Acker, 2004; Quaranto, 2007:3).

This situation reached an all time low by the summer of 2003, as the LRA had increased its operational area by blocking all major roads leading into the region, and by bringing the fighting to areas previously untouched by the conflict, as well as launching even more attacks aimed at replacing its losses by abducting children to serve as combatants (Dunn, 2007:136,141-143; Hovil and Lomo, 2004; ICG, 2004; Ruaudel and Timpson 2005; Van Acker, 2004; Quaranto, 2007:3). It was in this situation that Museveni referred the situation in Northern Uganda to the ICC, as will be described in the following subsection.

3.9 Enter the ICC

In December 2003, Museveni submitted a formal referral of the situation concerning the LRA to the ICC, and already on January 29th 2004, he and the Court's Chief Prosecutor Luis Moreno-Ocampo held a press conference in London, where they announced together that the ICC would initiate a formal investigation into the crimes allegedly committed by the LRA (Allen, 2006; Dunn, 2007; RLP, 2004). On July 8th, 2005, the ICC issued its first ever arrest for the LRA's leader Joseph Kony, his deputy Vincent Otti, and the LRA commanders Raska Lukwiya, Okot Odhiambo and Dominic Ongwen by charging them with crimes against humanity and war crimes⁸. As these arrest warrants had been filed under seal, they were first made public on October 7th, 2005 (Allen, 2006; Ruaudel and Timpson, 2005). The result of this was that the ICC indictments in terms of how they came to influence the LRA rebel commanders, as well as whether and to what degree they have had an impact on the ongoing conflict between the LRA and the GoU is now at the core of the local 'peace vs. justice debate' in Northern Uganda, which will be analysed in the next chapter.

⁸ Kony's four accomplices have at various stages after the arrest warrant against them were issued either been killed in combat or ordered killed by Kony himself, like his deputy Otti in 2007, most likely because he had become too powerful and challenging for Kony's undisputed authority within the rebel movement (ICG, 2008; Mwaniki *et al*, 2009).

3.10 The 2004 round of peace talks

As previously mentioned, throughout the period following the failed 1994 peace talks there were sporadic attempts made at launching peace talks again in 1996, 2001 and 2003, but all of them have failed utterly by collapsing almost as soon as they started, since none of the parties seemed to be committed to pursuing a dialogue in good faith because of their mutual suspicion towards each other. This meant that hopes for a peaceful solution to the conflict were seemingly crushed once and for all (Allen, 2006:50; Dunn, 2007:136; ICG, 2005a).

Betty Bigombe had, however, throughout this period been able to maintain the contact with the LRA rebel leaders. In 2004 hopes for another round of serious peace talks leading to a negotiated settlement of the protracted conflict were renewed as the LRA, through Brigadier Samuel Kolo, expressed their renewed interest in talks with the government officials and urged Bigombe to be their mediator once again (Allen, 2006:50; Dunn, 2007:136,141-143; ICG, 2005a).

In mid-November 2004 Museveni therefore declared a seven day ceasefire that was extended several times, and with his acceptance, Bigombe launched a new round of peace talks between the parties. The chances of a final peace agreement was this time strengthened as Bigombe led the talks, as she enjoyed mutual confidence from both sides, and was thereby able to establish the seemingly impossible link between the government and the rebels (Allen, 2006; Dunn, 2007; ICG, 2005a; Ruadel and Timpson, 2005). But in her efforts to create peace in 2004, Bigombe could also rely on her previous experience in dealing with the LRA, as she in 1993-1994 explored ways to end the war between them and the GoU. Back then, she had been able to initiate talks that resulted in a ceasefire in February 1994, but which was broken shortly after and subsequently undermined a final peace agreement because of Museveni's unrealistic two weeks deadline for the LRA to surrender (Ruadel and Timpson, 2005). This time the delegations came even closer to a final peace agreement than in 1994, and in late December 2004, only a few days before the final deadline on January 1st 2005, a meeting took place in the bush in Northern Uganda. Bigombe's peace team had, before this meeting, written a final peace agreement and all that was missing was Kony's signature (Ruadel and Timpson, 2005).

The LRA's chief negotiator, Sam Kolo, did however ask to extend the deadline with three more days, as he was unable to communicate effectively with Kony over radio because of

logistical problems. He would therefore have to walk for these three days to Kony's current base in Southern Sudan and personally give the papers to him for a final signature (ICG, 2005a; Ruaudel and Timpson, 2005). Even if it this final peace agreement was ready to be signed, Museveni had at this stage seemingly had enough of the rebels and refused to extend the already given deadline. Rather he argued that it was nonnegotiable for resulting in a final peace agreement and that after this there would be no more possibilities for negotiating a settlement with the rebels (Ruaudel and Timpson, 2005). Museveni and the GoU's lack of commitment to a negotiated outcome to the conflict was therefore demonstrated once again, ten years after the first round of Bigombe led negotiations in 1994, as the 2004 round of peace talks were likewise thwarted and resulted in a total collapse of the ceasefire when he announced an end to it, with the UPDF returning to the battlefield by attacking the former ceasefire areas in January 2005 (Allen, 2006; Dunn, 2007:136,141-143; ICG, 2005a; Ruaudel and Timpson, 2005).

But in addition to this aspect, and unlike 1994, what finally undermined this second round of peace talks led by Bigombe and illustrated Museveni's reluctance against supporting a negotiated outcome to this conflict was his referral of the situation concerning the LRA case to the ICC. After its involvement he also urged the Court to prepare arrest warrants for a number of its leaders, which the Court soon after issued against Kony and four of his commanders (Allen, 2006; Dunn, 2007:136, 144; ICG, 2005a). By becoming involved in the process, the ICC had come in the way as a major stumbling block, and according to Dunn (2007:136), this time 'the peace talks collapsed (...) after the [ICC], at President Museveni's urging, announced that it was preparing arrest warrants for Kony and four of his commanders'.

Whether the LRA wanted a genuine dialogue or just a breathing space to regroup is impossible to say for sure, but what seems certain is that the 1994 and 2004 negotiations could both have resulted in a permanent peace agreement (Ruaudel and Timpson, 2005).

3.11 The Juba peace talks between 2006 and 2008

The LRA was at this stage between 2005 and 2006 literally caught between a rock and a hard place. Among these numerous factors that together challenged the LRA, it is possible to identify pressure at the international, regional, national and more local levels. At the international level, the ICC arrest warrants against the LRA leadership served as an ever

increasing threat against them (Allen, 2006; Dunn, 2007; ICG, 2007, 2008; Mwaniki and Wepundi, 2007; Mwaniki *et al*, 2009:9-10). But although the ICC was partly responsible for strengthening the pressure against them, this must also be seen in relation to the regional challenge in the shape of the GoSS three layered ultimatum (ICG, 2006). As the GoSS had gained military strength and coupled with the CPA, which meant a definitive end to the arms supply from Khartoum in 2005 and Southern Sudan as a safe haven, the LRA had to find a new hiding place in the Garamba National Park in the easternmost part of the DRC (see appendix A). This dramatic reduction in alternative hideouts has also resulted in a significant limitation of their manoeuvring space. Even in the DRC they were feeling the heat at their new hiding place at Garamba, because of the nearby presence of the UN Mission in the DRC (MONUC), that was deployed there as a peacekeeping force. The LRA eventually ended up encountering and killing eight of its personnel to make its presence felt. Although this demonstrated their skills in guerrilla warfare, it also serves as a symbol of their vulnerability in the DRC (ICG, 2007, 2008; Latigo, 2008:93; Quaranto, 2007:2). Furthermore, the UPDF threatened to pursue the LRA over the border from Uganda and into the DRC in a similar way as they had in Southern Sudan during Operation Iron Fist in 2002 (ICG, 2007; Mwaniki *et al*, 2009:4-5; Quaranto, 2007:2). Last, but not least, the recent collapse in the second round of Bigombe led peace talks had left the LRA leaders without any possibility for negotiations through a mediator they could trust (Allen, 2006; Dunn, 2007; Ruaudel and Timpson, 2005).

Nevertheless, this changed in the middle of 2006, as the vice-president of Southern Sudan, Riek Machar, offered to mediate between the LRA and the GoU, while maintaining the three layered ultimatum towards the rebels. As GoSS offer to mediate this time around was clearly positive, as a sustainable peace would gain both Southern Sudan and Northern Uganda, by taking into consideration that both countries are already struggling with more than enough internal problems on their own to have another and wider regional problem to deal with in addition (ICG, 2007, 2008; Latigo, 2008:98; Mwaniki and Wepundi, 2007:2-3; Mwaniki *et al* 2009; Quaranto, 2007).

These peace talks, also referred to as the Juba talks, were a series of negotiations taking place between the GoU and the LRA from July 2006 to April 2008, concerning the conditions for a ceasefire and a possible final peace agreement between them. On a five point agenda in this agreement, the third point dealing with accountability and reconciliation, and hence the issue of peace and justice by regulating the relationship between the ICC indictments, the amnesty

procedures and the Acholis' neo-traditional justice system through Mato Oput is clearly the most important in this regard for this study (ICG, 2007, 2008; Mwaniki *et al*, 2009; Ogora, 2009; Oomen and Marchand, 2007). In the following, this subsection will describe what this peace agreement sought to achieve, before moving on to the next chapter, with a basis in point three concerning accountability and reconciliation, will discuss the strengths and weaknesses of these three transitional justice mechanisms being mentioned here.

The first round in the Juba talks began on July 14th 2006 (Batanda, 2009; Latigo, 2008:98; Mwaniki *et al*, 2009; Ogora, 2009; Quaranto, 2007). While the LRA clearly expressed from the start that they wanted to discuss and address the deeper underlying economic, political and social root causes of the conflict, the GoU in comparison entered the negotiations by perceiving it as a possible political solution to a military problem where they hoped to negotiate a solution with a 'soft landing' allowing the LRA leaders to avoid punishment. These completely different perceptions of what should be included on the agenda, illustrated that there still was a great deal of common mistrust between the two warring factions that was understandably extremely difficult to overcome. Because of this, there was constantly a 'blame game' between them, which threatened to undermine the Juba peace talks throughout the negotiations. This had to stop for a permanent solution to be reached, meaning that both parties would have to realise that it was now time to bring about an end to the fighting as no good would come out of constantly blaming each other for what had happened in the past (Batanda, 2009; ICG, 2008; Latigo, 2008:98; Mwaniki *et al*, 2009; Ogora, 2009; Quaranto, 2007).

Slowly, as the talks progressed, the delegations were able to bridge this divide by agreeing on a five point agenda which outlined what had to be discussed and agreed upon before a peace agreement could be reached at all. These five points, which included both military and more structural issues covered; (1) cessation of hostilities; (2) a comprehensive frame of solution to economic and social development; (3) accountability and reconciliation; (4) disarmament, demobilisation and resettlement (DDR), and; (5) a final comprehensive peace agreement (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:98-99; Mwaniki and Wepundi, 2007:5; Mwaniki *et al*, 2009; Ogora, 2009; Quaranto, 2007).

After several delays, the first point on the agenda, a cessation of hostilities, was finally reached through a ceasefire agreement on August 26th, 2006, that was renewed for the first

time in December 2006, and later again in April 2007 (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:99-100; Mwaniki and Wepundi, 2007:2-4; Mwaniki *et al*, 2009:4; Ogora, 2009; Quaranto, 2007). Even if the situation on the ground remained tense, it was nevertheless peaceful, as there were only being reported some sporadic clashes between them after the talks began, and no outbreak of violence after this first agreement had been signed, which contributed to improving the humanitarian situation in Northern Uganda (ICG, 2007, 2008; Mwaniki and Wepundi, 2007:2-4; VG, 2009). After this, the parties were seemingly much closer to a final settlement than ever before, and the Juba talks were therefore being described as the best chance ever for reaching a negotiated settlement between the GoU and the LRA in the conflict, which at this stage had lasted for more than two decades, and throughout this period no kind of negotiations, whether being mediated by a third party or not had resulted in a successful outcome (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:98-99; Mwaniki and Wepundi, 2007:2; Mwaniki *et al*, 2009:4,9-11; Ogora, 2009; Quaranto, 2007).

But this cessation of hostilities through a ceasefire was only the first item out of five points on the agenda, and many other difficult aspects had yet to be solved at numerous meetings before a final peace agreement could be reached. In January 2007, the first round of Juba peace talks did however collapse, since the LRA delegation argued that their safety was at stake. This was understandable given the increased pressure they were faced with from different angles at this stage (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:99; Mwaniki and Wepundi, 2007:8; Mwaniki *et al*, 2009; Ogora, 2009; Quaranto, 2007).

After a two month delay the peace talks resumed in April 2007. When the Juba process had entered its second year, Machar was still in charge of the negotiations, but the team of negotiators was beefed up considerably, as he was now assisted by Joaquim Chissano, the former president of Mozambique and now a UN special envoy, in addition to monitors from the DRC, Kenya, Mozambique, South Africa and Tanzania (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:99; Mwaniki *et al*, 2009:8-9; Ogora, 2009; Quaranto, 2007).

Since only the first one of the five items on the agenda had been dealt with, the parties therefore decided to renew the ceasefire for another two months to be able to move on to the second item concerning a comprehensive solution to the conflict. This had to do with issues such as social and economic development for Northern Uganda, land titles and more detailed security arrangements for the rebels once they returned from the bush. As most of these issues had been discussed on previous occasions, they were able to move on to the third item on the

agenda dealing with the issue of accountability and reconciliation related to the questions about transitional justice (Batanda, 2009; ICG, 2007:5 and 2008; Latigo, 2008:99-100; Mwaniki and Wepundi, 2007:6-8; Mwaniki *et al*, 2009; Ogora, 2009; Quaranto, 2007).

This 'peace vs. justice' dilemma was another issue that had complicated the Juba peace talks from the very beginning. Although the ICC indictments against Kony and four of his henchmen were just one of the several important issues that had to be resolved, the ICC clearly represented the biggest major obstacle threatening to undermine the whole process, and it provoked a great debate about this dichotomy between peace and justice concerning which one of them should come first (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:100; Mwaniki and Wepundi, 2007:9-10; Mwaniki *et al*, 2009:11; Nielsen, 2008; Oomen and Marchand, 2007; Ogora, 2009; Quaranto, 2007).

The LRA leaders demanded the withdrawal of the ICC indictments against them to make sure of that the peace talks would continue smoothly, as well as stronger guarantees about their fighters' security. As such, a successful outcome with a comprehensive peace agreement depended on the Court to let the LRA leaders off their judicial hook by removing the indictments, which represented a massive obstacle for continued peace talks (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:99-100; Mwaniki and Wepundi, 2007:9-10; Mwaniki *et al*, 2009:10-11; Ogora, 2009; Quaranto, 2007). For its part, the GoU insisted that the ICC would not stand in the way as an obstacle when the prospects for achieving the greater good through a peace agreement was in sight, and promised to approach the Court to have the indictments against the LRA leaders lifted, but only after they had agreed to sign an agreement (Latigo, 2008:99; Mwaniki and Wepundi, 2007:9-10). The problem with this was that even if Museveni clearly expressed his willingness to have them withdrawn and prepare the ground for a 'soft landing' for the rebel leaders, this is extremely difficult to achieve and not up to him to decide by himself. For its part, the ICC did not show any sign of removing the indictments, but to the contrary indicated that they interpreted this 'soft landing' through amnesty as a continuance of the practice of impunity that it sought to root out (Mail and Guardian, 2009c; Ogora, 2009). The arrest warrants would therefore remain in place as long as the Court had more than enough evidence to charge Kony and his four commanders for war crimes and crimes against humanity, and the GoU made no attempts to prosecute the rebel leaders by themselves. But as long as the arrest warrants remained in place, the LRA would

refuse to sit down and talk peace at all (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:99; Mwaniki *et al*, 2009; Ogora, 2009; Quaranto, 2007).

Most likely in an attempt to convince the Court of the need for greater flexibility and sensitivity to the local needs on the ground in Northern Uganda, and to create a ‘win-win’ situation, the Acholis’ neo-traditional justice system was introduced as a third and more viable solution to this impasse between the two polar opposites between the ICC and impunity through blanket amnesties. It was hoped that the ICC would be convinced of that there were other possible venues for justice where Kony and his four commanders would be held accountable and sufficiently dealt with through the use of national prosecutions coupled with the neo-traditional Acholi justice system (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:99-100; Mwaniki *et al*, 2009; Ogora, 2009; Quaranto, 2007).

On the 29th of June 2007, the GoU and the LRA finally signed an agreement on item three concerning accountability and reconciliation, which deals with the relationship between the ICC arrest warrants, amnesty procedures and the Acholis neo-traditional justice system (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:108; Mwaniki *et al*, 2009; Ogora, 2009; Oomen and Marchand, 2007:168; Quaranto, 2007). This agreement on agenda item number three concerning accountability and reconciliation was based on an acknowledgement of the atrocities committed by both parties throughout 22 years of conflict and ‘commits the parties to prevent impunity and to promote redress in accordance with the constitution as well as international obligations’, but it has also recognised the need for adopting appropriate justice mechanisms, including customary processes of accountability (Beyond Juba Project quoted in Batanda, 2009:5). This agenda item stresses the need for implementing neo-traditional justice mechanisms like Mato Oput in an attempt to achieve a sustainable and lasting peace in Northern Uganda (Batanda, 2009:5). As such, the signing of item number three concerning accountability and reconciliation on the agenda for the Juba peace agreement explicitly deals with the relationship between formal and non-formal transitional justice mechanisms. Whereas the former is expressed through the establishment of a Special Division of the High Court (SDHC) and the latter through the neo-traditional justice mechanisms associated with the tribes living in Northern Uganda, as for instance the Acholis Mato Oput rituals (Batanda, 2009; ICG, 2007, 2008; Latigo, 2008:108; Mwaniki *et al*, 2009; Ogora, 2009; Oomen and Marchand, 2007:166; Quaranto, 2007).

At the core of the more formal transitional justice mechanisms being referred to in this agreement, the SDHC is intended to prosecute the individuals who allegedly had been responsible for committing the most serious crimes of concern for the international community throughout the entire conflict (ICG, 2008:8-9; Ogora, 2009). The Chief Justice of the Ugandan High Court did, however, clarify that the creation of the SDHC just like other conventional forms of justice elsewhere, especially with regards the ICC, would only be able to prosecute a handful of the most senior commanders in the LRA. This would either be the very same five LRA top commanders indicted by the ICC or a few more individuals (ICG, 2008:8-9; Ogora, 2009:3-4). Ogora (2009:3-4) argues that by assuming how ten individual LRA leaders would face formal prosecution by the SDHC, with the LRA's current strength estimated at about 4000 fighters, this meant that it was not likely that any more than one percent would be dealt with in this way. The prospect of prosecuting such a low number seemed highly unlikely to have any major impact concerning the reconciliation at the grassroots level, as the large majority of mid-level rebels together with the rank and file combatants would not be prosecuted through the SDHC. They would instead have to be sent back to their respective communities and dealt with through the non-formal system of restorative mechanisms associated with the neo-traditional justice by undergoing reconciliation processes before being fully reintegrated back into society (Ogora, 2009:4-5).

This is a reflection of the situation in Rwanda six years after the genocide, where more than 120,000 individuals were still in prison awaiting trial, and at that current stage it was believed that it would take the formal court system more than 180 years to deal adequately with all of these individuals. Despite this, more resources were directed towards the ICTR than to the development of the Gacaca courts (Quinn quoted in Ogora, 2009:3; van Zyl, 2005).

It also explains why neo-traditional justice mechanisms practiced by the Acholi and other neighbouring ethnic communities being affected by the conflict also should be promoted with necessary modifications as a central part of the framework for the principles of accountability and reconciliation being mentioned in item three of the Juba agreement. These non-formal mechanisms refer to the traditional and customary mechanisms being practiced for decades among the local tribes living in Northern Uganda for conflict resolution and maintaining a stable social order within their societies. Except from the Mato Oput being practiced among the Acholis, among several others it is worth mentioning Culo Kwor and Kayo Cuk by the

Acholis and Lango, Ailuc by the Iteso and Tonu ci Koka by the Madi⁹ (Ogora, 2009; Latigo, 2008:108; Oomen and Marchand, 2007:173). This is also a reflection of how, across the African continent, other similar neo-traditional justice mechanisms have been revived over the last few decades, like the Inkundla in South Africa, the Gacaca courts in Rwanda, Magamba in Mozambique, and Bashingantahe in Burundi¹⁰. Although they differ in their aim to achieve and way of being practiced, these traditional justice mechanisms are all being associated with the concept of Ubuntu, since most of them deal with restoring broken relations (Huyse 2008; Ogora, 2009).

This illustrates how retributive and restorative forms of transitional justice have different, yet equally important roles to play, whereas the former focus on bringing an end to the practice of impunity, the latter focus on restoring broken community relationships (Ogora, 2009:4). Many local NGOs and other actors in the local civil society in Northern Uganda supported the introduction and use of these unconventional neo-traditional justice mechanisms to be used as part of the transitional justice strategies to deal with the war crimes and crimes against humanity being committed after the conflict had ended. This was, however, not welcomed by human rights organisations like the AI and the HRW, who expressed their preference for the use of more direct punitive models associated with retributive justice. The result of this was arguably that the local ‘peace vs. justice’ debate from that stage went from being perceived as a dilemma between the ICC and impunity to become a confrontation between amnesties, the neo-traditional and the international forms of justice (Latigo, 2008:99-100; Ogora, 2005:1-3).

After this major obstacle had been dealt with, the peace talks advanced further to the issue of DDR. For its part, the GoU demanded that the LRA laid down their weapons and subsequently moved all of its fighters to the assembly points. This meant that the LRA would have to respect the conditions in the cessation of hostilities, by moving all of their fighters to the assembly points. In their response to these demands, the LRA asked for protection by the

⁹ ‘Ailuc’ refers to the traditional rituals performed by the Iteso to reconcile parties who formerly have been in conflict after full accountability; ‘Culo Kwor’, referring to the compensation to make up for homicides, and to any other form of reparations, again after full accountability, which is practiced by the Acholi and Lango, one of the neighbouring ethnic communities to the Acholi; ‘Kayo Cuk’ or the biting of charcoal, is a traditional ritual performed by the Lango, to reconcile parties formerly in conflict, after full accountability; ‘Tonu ci Koka’, the traditional rituals performed by the Madi to reconcile parties formerly in conflict, also after full accountability (Latigo, 2008:108; Oomen and Marchand, 2007:173).

¹⁰ For an excellent cross comparison between these traditional practices and their strengths and weaknesses, please see International IDEA’s (2008) report *‘Traditional Justice and Reconciliation after Violent Conflict: Learning from African experiences’*.

UPDF once a final peace agreement had been reached, but also that their monthly allowances were raised. All of these demands were accepted by both sides. The GoU would also through this negotiated solution to the conflict have to start a serious and thorough analysis of how to address the issues associated with the North vs. South divide, as a central part of the Acholi grievances and the LRA's insurgency, to avoid a repetition with a similar tragic conflicts unfolding in this part and elsewhere in Uganda in the future (ICG, 2008; Mwaniki *et al*, 2009; Ogora, 2009).

Without disregarding the other points on the agenda for the Juba peace talks, but for this thesis item number three concerning accountability and reconciliation is by far the most important point in this regard, as it deals with the issue of transitional justice in the 'peace vs. justice' debate concerning Northern Uganda.

To sum up and refer to the introductory theoretical discussion in chapter two, based on the work of Galtung (1969, 1996), Lederach (1997), Mani (2002, 2005), Nielsen (2008), Oomen and Marchand (2007) and van Zyl (2005), the conflict in Northern Uganda at this stage seemed to be situated somewhere between the stages of peacemaking and peace building. Since the agreement on cessation of hostilities was reached between the parties in August 2006, the demand for peacekeeping had clearly been met, as the high level of destructive behaviour through direct and indirect forms of violence had been significantly reduced afterwards (Galtung, 1969, 1996; Lederach, 1997; Mani, 2002, 2005). The next stage in this process, namely peacemaking, which refers to the mediation and negotiations that were taking place at Juba during this period, as well as changing the hostile attitude that existed between the warring factions, is something that will not be fully achieved in the foreseeable future, given the long period of animosity. The final and most important stage, namely peace building, is intended to adequately address the more structural issues by transforming the situation from a violent conflict into sustainable and lasting peace, in order to provide for that the relationship between the conflicting parties also will function properly in the foreseeable future (Galtung, 1969, 1996; Lederach, 1997). This creation of such a conducive environment associated with sustainable and lasting peace in Northern Uganda was at this stage being explored and clearly on its way, evidenced by how the parties had agreed to the different items on the agenda. The deeper and underlying root causes of the conflict would however have to be properly analysed and genuinely addressed in order for this to work.

This could have given reason to hope for that at this stage the preconditions for a sustainable and lasting peace had slowly emerged, but as the Economist (2009b) reported in its article ‘A country adrift, a president amiss: The government fails yet again to defeat the Lord’s Resistance Army’ dated 12th of February 2009, illustrates the negative development since the negotiations ended in April 2008, that will be further addressed in the last main subsection of this chapter:

The north of the country, terrorised by the (...) LRA, has been a blood-spattered mess for two decades- and still awaits a real peace. (...) A million-plus people, most of them resentful Acholis, still live in squalid camps in the north. The monstrous ragtag militias that drove them out of their villages are still at large; a recent military campaign against the LRA in neighbouring Congo has been indecisive. Troops from Uganda, Congo and South Sudan backed by Ugandan air raids and American intelligence, hammered the LRA’s camps towards the end of last year. But, like mercury, the LRA fighters slipped away through the jungle in several directions, burning villages, butchering hundreds of civilians and kidnapping children to slave for it. The UN’s head of humanitarian affairs, Sir John Holmes, says the campaign’s result was ‘catastrophic’. The war goes bloodily on.

3.12 The developments since the end of the Juba peace talks in 2008

As discussed over the last subsections, although some of the previous attempts being made at peace talks and negotiations had shown positive signs of bringing the parties together, they were however not producing any significant results before the Juba peace talks began in July 2006, which made significant progress in this regard concerning the fact that all of the five points on the agenda were signed. Although negotiations were concluded in April 2008, the final peace agreement had yet to be signed, and this round of peace negotiations unfortunately ended in April 2008 as Kony argued that he needed some more time to analyse the signed items before he could commit himself by signing a final peace agreement (Batanda, 2009:3-4; ICG, 2008; Mwaniki *et al*, 2009:1). Part of the reason for why he withdrew from this round of negotiations was arguably the ICC indictments and arrest warrants were still hanging over him and his four top commanders (Batanda, 2009:3-4; ICG, 2008; Mwaniki *et al*, 2009:10). Kony was at that stage situated in the Garamba region in the eastern DRC, where several reports have claimed that the LRA has attacked in both the DRC and Southern Sudan. With the breakdown of the peace process, this understandably led to widespread fear of renewed use of military force in the ongoing conflict. This fear turned into reality when the UN and the

DRC made it clear that they would join forces in a combined military campaign against the LRA, but in November 2008 the President of the DRC, Joseph Kabila, promised to put the military campaign on halt so that Kony could sign the final peace agreement. The GoU had eventually become tired of waiting for over 6 months by the LRA to sign the final agreement and on several occasions demanded that the LRA should be forced to sign the papers or face the consequences. When such a deadline finally was made and the LRA broke it, forces from the DRC, Southern Sudan and Uganda in Operation Lightning Force together attacked the LRA hideouts in Garamba on the 14th of December 2008. The LRA responded by indiscriminately retaliating against Congolese civilians who were killed or abducted in their tens or hundreds as it retreated towards the CAR. After several of the LRA top commanders had been wounded and numerous of its fighters had been killed or surrendered to the UPDF, the offensive ended on the 15th of March 2009 when the UPDF withdrew its forces based on an agreement with the DRC about the duration of the offensive. Kony, together with a small number of rebels, that was believed to be the remnants of the LRA, was still on the run and heading towards the CAR (Batanda, 2009:3-4; Mwaniki *et al*, 2009:1-2).

In one of the latest reports about the LRA, the United Nations High Commissioner for Refugees (UNHCR) 12th of September (quoted in Verdens Gang, 2009), argued that although Northern Uganda had been at peace since the signing of the ceasefire agreement in 2006, it was a widespread fear of that the LRA had used these three years that had past to regroup its forces and stockpile weapons in the DRC and Southern Sudan.

The UNHCR also reported that the whole region is still being affected by the LRA's atrocities, as it continued to spread fear and terror among the civilian population in both Southern Sudan and the eastern parts of the DRC by retaliating against them for Operation Lightning Bolt between December 2008 and March 2009. Since the end of July 2009, in the eastern part of the DRC more than 1,270 civilians had been reported killed, over 650 children abducted and 125,000 people had fled from their villages, making the number of internally displaced in this country alone reaching more than half a million in less than one year. In the same period from the end of July 2009, more than 200 people had been killed and 230,000 had fled from the LRA in Southern Sudan (VG, 2009). This seems like a repetition of how the conflict has developed in the past, as described throughout this chapter, with failed peace negotiations and unsuccessful military counterinsurgencies, which begs the question of how

the transitional justice mechanisms mentioned here can assist in solving this conflict once and for all that will be analysed in the next chapter.

3.13 Conclusion

The first subsection of this chapter has looked at the violent history of Uganda, mainly from independence in 1962 and onwards. It illustrates how the root causes to the current conflict originates from an ethnically dominated cleavage introduced by the British colonialists between the Northern Nilotic and the Southern Bantu tribes of the country, which resulted in extreme disparities concerning economic, military and political power. This served as a useful tool for consecutive Ugandan rulers like Amin, Obote and Okello who all came from the north to maintain their power, but which ended in 1986, when Museveni, as a southerner, and his NRA came to power. Through his statements after becoming president, Museveni created great concern among northerners, especially with regards to the Acholis, who feared for their very existence as an ethnic group, which resulted in their support for three insurgencies against him by the UPDA, HSM and LRA respectively.

Based on this context, the second subsection describes how Kony emerged as a rebel leader in 1987, and how he by 1990, after the defeat of the UPDA and the HSM, was in charge of the only remaining insurgency in Northern Uganda, namely the LRA. He and his rebel movement initially enjoyed sympathy from their fellow Acholis, by promising to fight for their political cause against Museveni's government in the south. Based on a vision Kony had allegedly received from God to create a 'new' Acholi society cleansed through violence the LRA did, however, soon radically change the objectives by instead targeting their very own next of kin.

The third subsection illustrates how the Acholis turned against Kony and the LRA, by supporting the NRA through militias during Operation North in 1991. This apparently pushed Kony over the edge as he accused his fellow Acholis of betraying their common cause. From then on the conflict was to be characterised by forced recruitment of child soldiers through abductions. Another unique aspect compared to other insurgencies is how the LRA has retaliated against their fellow Acholis, with extreme levels of violence through indiscriminate mutilations and killings. The establishment of the militias are therefore partly to blame for the increased attacks by the LRA against the Acholi civilian population. If this was not bad enough in itself, the GoU in 1996 launched a new counterinsurgency strategy aimed at undermining the LRA forced Acholis in their thousands away from their villages and into IDP

camps. As this was done without proper planning, these camps lacked even the most basic infrastructure, like running water and sanitation, resulting in that their inhabitants are experiencing appalling living conditions resulting from overcrowded and unhygienic standards. The UPDF has also proved its complete inability to protect these camps, enabling the LRA to frequently attack them and use them as their new resource bases after the villages were emptied. As such, the Acholis are placed in a difficult situation, as they have to fear continued attacks by the LRA rebels, but also have to face the harsh treatment from the UPDF in these camps.

As described in the fourth subsection of this chapter, the failed 1994 peace talks, and to a certain extent the 1996 incident, served as a catalyst for three interrelated events, stretching from the LRA receiving military support and facilities from the central authorities of Sudan in Khartoum, the civil society in Northern Uganda pushing for an amnesty law to create an incentive for the LRA to give up its insurgency and the revival of neo-traditional Acholi justice aimed at reconciliation and conflict resolution. These three different transitional justice mechanisms analysed in this thesis were introduced at different times, with the Acholis' neo-traditional justice already in 1997, the Amnesty Act in 2000 and the ICC between 2004 and 2005.

The Sudanese support to the LRA after 1994 complicated and prolonged the conflict, as the LRA not only received ammunition and weapons from Khartoum, but could also use Southern Sudan as a safe haven by retreating into bases there after attacks in Northern Uganda. Although this was supposed to have ended with an agreement between Sudan and Uganda in 1999, the LRA still received support from parts of Khartoum at least until 2002. The signing of the CPA between Khartoum and the SPLA in 2005 gradually ended this support, and with the newly established GoSS three layered ultimatum towards the LRA in the same year, the rebels were forced out of Southern Sudan into the Garamba region of the DRC.

The peace talks and further negotiations led by Bigombe in 1994 and 2004 respectively, as well as the ones in 1996, 2001 and 2003, being described in various subsections, have all failed because of mutual mistrust between the GoU and the LRA and a lack of confidence in that talks would result in a lasting peace. Clearly, both the 1994 and 2004 talks could have resulted in peace, as the LRA rebel leaders expressed their interest in surrendering in return for receiving amnesty. Both of them were, however, thwarted by Museveni, as he in 1994

expressed his preference for a military solution to the war and acted accordingly. In 2004 this military engagement was combined with his referral of the conflict to the ICC, which served to further complicate the conflict. The LRA are also partly to blame for this, as they seemingly have only expressed their interest in peace talks when being in a difficult position, by using these breathing spaces to regroup and stockpile weapons for new rounds of conflict, as was done following the 1994 peace talks with the Sudanese support and in the three years after the 2006 ceasefire. Likewise, the military counterinsurgencies during Operation North, Iron Fist and Lightning Force described throughout this chapter have all proved their complete failure to deal a final and decisive blow against the LRA.

The penultimate subsection looks at how the LRA, between 2005 and 2006, were literally caught between a rock and a hard place by facing challenges at different levels. These stretched from the collapse of the second round of Bigombe led negotiations between 2004 and 2005, a threat from the GoU to pursue it over the border into the DRC just like it had in Southern Sudan three years before, the GoSS three layered ultimatum to force it out of its territory, and the nearby pressure of a UN peacekeeping force in the DRC, as well as the ICC indictments. It was in this context that the Vice-President of Southern Sudan, Riek Machar offered to mediate between the GoU and the LRA. Talks began in July 2006 and resulted in a ceasefire one month later. The parties then agreed on a five point agenda stretching from the cessation of hostilities; comprehensive solutions to the conflict; reconciliation and accountability; a formal ceasefire; and DDR. Because of this, the Juba negotiations were described as the best chance for peace so far in the two decades long conflict. The most problematic item on the agenda was number three concerning reconciliation and accountability, as it dealt with the issue of transitional justice. The LRA demanded the removal of the indictments before continuing the talks, whereas the GoU argued that it would approach the Court to have them removed once the LRA had signed a final peace agreement. This proved to be problematic, with the ICC's refusal to give in and remove the arrest warrants as long as Kony and his henchmen would receive amnesty and thereby enjoy impunity for their crimes. Most likely to convince the Court of removing the arrest warrants, the parties signed a deal on agenda item number three in June 2007 to strike a balance between different perspectives concerning the demands of justice.

Whereas conventional forms of justice would be guaranteed through the establishment of the SDHC to deal with Kony and his commanders, more unconventional forms of justice, like the

Mato Oput, would be used to reconcile the victims with their perpetrators and reintegrate the large majority of rebels. The negotiations over all five agenda items were concluded in April 2008, and this agreement, based on the Juba talks, could have been the decisive step towards success by ending this long war in Northern Uganda, but which unfortunately stranded partly due to the ICC arrest warrants against the LRA leadership. More importantly in this regard is the explicit reference that was made to the role of neo-traditional justice mechanisms in the wider context of peace building and justice, which is a confirmative signal to the important role that such mechanisms should play in the transition from war to peace. Acknowledging the importance of these other items, the main focus here will be on how the June 2007 Juba agreement made between the GoU and the LRA was intended to strike a balance between amnesties, neo-traditional and more conventional forms of justice to create sustainable peace in Northern Uganda.

The last subsection has briefly described the development since the negotiations ended in April 2008, which unfortunately collapsed toward the end of 2008, with Operation Lightning Bolt resulting in the LRA retaliating against the civilian population in the DRC and Southern Sudan. This is done to stress the need to find a permanent solution to this conflict, based on these three transitional justice mechanisms, which will be analysed in the next chapter.

4 A critical assessment of the ICC, the Amnesty Act and the Acholis' neo-traditional justice contribution towards creating sustainable peace in Northern Uganda

4.1 Introduction

After more than two decades of civil war, negotiations over a peace agreement with a five point agenda stretching from the cessation of hostilities; comprehensive solutions to the conflict; reconciliation and accountability; a formal ceasefire, and; DDR between the GoU and the LRA was concluded in April, 2008 at Juba in Southern Sudan (Batanda, 2009; ICG; 2008; Mwaniki *et al*, 2009; Ogora, 2009). This agreement was the first real and promising sign of peace since 1994 and could have been the major decisive step towards a success in bringing about a peaceful end to this long war in Northern Uganda, but was severely affected by the ICC arrest warrants against the LRA leadership. But more importantly in this regard for this thesis is point three on the agenda, which deals with the issues of reconciliation and accountability, in terms of the relationship between the ICC indictments, amnesty and the Acholis' neo-traditional justice system aimed at reconciliation and conflict resolution (Batanda, 2009; ICG; 2008; Latigo, 2008; Mwaniki *et al*, 2009; Ogora, 2009; Oomen and Marchand, 2007:166).

This explicit reference being made to the role of neo-traditional justice instruments in the wider context of peace building and justice, is clearly a confirmation about the important role that such mechanisms can contribute with in times of transition from war to peace, and which began nearly ten years earlier with the Gacaca courts dealing with the genocide in Rwanda (Huyse, 2008; Latigo, 2008; Ogora, 2009). With a basis in the Juba peace agreement, the only mechanisms that will be taken into consideration here are those that are directly associated with the local 'peace vs. justice' debate in Northern Uganda, namely; international legal proceedings through the ICC, amnesty laws, or the Acholis' neo-traditional justice system. This is not concerning which one of them is best suited to bring an end to the violence in the wake of more than twenty years of conflict by striking the appropriate balance between peace and justice, but rather how they can be combined to achieve this.

This chapter will elaborate on the fifth step in the theoretical framework of this thesis, namely how to optimise these different transitional justice mechanisms in order to create and support the conditions conducive for a sustainable peace in Northern Uganda. In the following, each of these mechanisms' main characteristics, in terms of their historical background, development and current impact will be assessed in order to gain insight into their strengths and weaknesses, and thereby be able to analyse how they best can be optimised to work together on a parallel track in a combined transitional justice approach to create sustainable peace in Northern Uganda.

4.2 The International Criminal Court

As the process leading up to the establishment of the ICC in 2002 has already been thoroughly dealt with in the second chapter describing the historical development of transitional justice, this section will only give a brief summary of it. The main emphasis will therefore instead be concerned with giving an introduction where the functions and structures, as well as the mandate and jurisdiction of the ICC is explained, by describing how a case is being processed by the Court. This is done to provide a thorough background understanding of the challenges that the Court is faced with in the current 'peace vs. justice' debate in Northern Uganda and elsewhere in order to be able to analyse this issue to look for ways to overcome it and be able to use the Court in a combined approach.

4.2.1 The establishment of the ICC

In international criminal law, the notion of how some crimes are international, in the sense that they are of concern to humanity as a whole has existed for almost a century. The idea of a permanent international institution in the shape of a court capable of enforcing these laws is also an old one, as it has developed steadfast alongside it throughout major historical events ranging from World War One, the Nuremberg and Tokyo tribunals after World War Two, and the Rwanda and Yugoslav tribunals in the early 1990s. It would however take almost a century between this idea taking shape before it eventually culminated with the adoption of the Rome Statute in 1998, and the coming into existence of such an international criminal court (du Plessis, 2005:174-177; van Zyl, 2005). The main reason for why this process was delayed for so long is mostly due to the hostile reception that this idea received on both sides in the Cold War (du Plessis, 2005:174-175; van Zyl, 2005).

It was therefore not until the end of the Cold War that any serious progress in the direction of establishing an international criminal court could take place. This idea was however catapulted forward with the UN Security Council's (SC) decision to establish the first war crime tribunals since Nuremberg and Tokyo after the Second World War, with ICTR and ICTY respectively, which gave it widespread attention and as a consequence much stronger support than anticipated (du Plessis, 2005:176). These events served as a basis for the Rome Diplomatic Conference, between June and July 1998 (du Plessis, 2005:176-177). After 120 out of 148 participating states attending the negotiations had voted in favour of it, the Rome Statute of the International Criminal Court was adopted on July 17th, 1998. This first ever global criminal court with jurisdiction to prosecute individuals responsible for committing certain international crimes became operational on July 1, 2002 60 days after the 60th state had ratified the Statute (du Plessis, 2005:177).

In sum, the ICC can be described as the most recent manifestation of an increasingly acknowledged perception of how certain human rights override the principle of state sovereignty, as it was established as a permanent international tribunal especially designed to prosecute individual perpetrators accused of committing genocide, crimes against humanity and war crimes (du Plessis, 2005:178). According to some legal scholars, the ICC could therefore 'easily be considered to be the crown jewel among the transitional justice institutions, a shining example of how the 'age of implementation' of international human rights had finally come about' (Ignatieff quoted in Oomen and Marchand, 2007:167). The establishment of the ICC is perceived as a success story of international cooperation, as 108 states have ratified the Rome Statute by now, thereby acknowledging and effectively giving it the authority under certain circumstances, to intervene in internal matters of state affairs when it is assumed that the alleged perpetrators of these crimes are going unpunished (Mail and Guardian, 2009c; Nielsen, 2008).

4.2.2 Functioning and structure of the ICC based on the main provisions of the Rome Statute

The Rome Statute (1998) consists of 13 parts with 128 articles in total. Based on the Statute, the ICC is created as a permanent international organisation independent of the UN, although the SC can report a situation and intervene in the legal process. Following article 34, the Court is organised in four main Organs: (1) the Presidency; (2) the judiciary branch known as

the Chambers, consisting of a Pre-Trial Division, Trial Division and an Appeals Division; (3) the Office of the Prosecutor, and; (4) the Registry (du Plessis, 2005:178-179; Rome Statute, 1998:19). According to article 112 the highest decision making organ of the Court is the Assembly of States Parties, where the states that are Parties to the Statute has one representative each (Rome Statute, 1998:59). In order to become a State Party a state must ratify the Statute, whereby it unconditionally accepts the jurisdiction of the Court, as article 120 makes it clear that once it is ratified 'No reservations may be made to this Statute' (Rome Statute, 1998:61). There are 18 judges serving in the Court elected by the Assembly of the States Parties for nine years in office without any possibility of re-election (art. 36). All judges, including the Presidency, were elected in 2003, in the same year as the Chief Prosecutor Luis Moreno-Ocampo was sworn in (du Plessis, 2005:178; Rome Statute, 1998:19-21).

The Preamble read in accordance with article 1 of the Rome Statute makes it clear that the States Parties to the Court all have an obligation to 'put an end to impunity for the most serious of international crimes and thus to contribute to the prevention of such crimes'. The ICC will thereby be capable of prosecuting individuals for 'the most serious crimes of international concern' after July 1, 2002 when the Treaty became effective (Rome Statute, 1998:3).

4.2.3 Mandate and jurisdiction of the ICC

The mandate and jurisdiction of the ICC is best illustrated by the process of bringing a case to the Court and the following handling and proceeding of it, which can be described in these nine following steps.

4.2.3.1 Necessary acceptance of jurisdiction

Article 5 to 8 makes it clear that the ICC based on its jurisdiction, is concerned with the most serious crimes of concern to humanity as a whole, namely genocide, crimes against humanity and war crimes (du Plessis, 2007:179-192; Rome Statute, 1998:4-9). These crimes included in the ICC's jurisdiction are, however, far from all crimes regulated by international law, but only those perceived as the most serious ones of concern to everyone. This is a deliberate consideration of striking a balance between the principle of state sovereignty and the goal to end impunity for crimes that are regulated by international law. Unlike the ICTR and ICTY,

which both take precedence over national jurisdiction, the international crimes covered by the Statute will therefore primarily be prosecuted in the national courts of States Parties, with the ICC complementing them (du Plessis, 2005:192-193).

Whereas the Court's jurisdiction over these crimes are regulated in Part 2, articles 5 to 11, of the Rome Statute (1998:4-10), the preconditions for when it can exercise its jurisdiction over them are further defined in articles 12, 13, 14 and 20, where article 12 is the most important one in this regard. The preconditions for the ICC to exercise its jurisdiction is either if the territorial state where the crimes were committed (art. 12(2)(a)), or if the state of nationality of the accused (art. 12(2)(b)), has accepted the Court's jurisdiction by being a State Party or ad hoc on a case to case basis (art. 12(3)) (Rome Statute, 1998:10). This means that if these preconditions are met, where either a state that is a Party to the Court by ratifying the Rome Statute thereby has given its consent for all cases, or a state that is not a Party can give its consent ad hoc for a specific case, the Court can exercise its jurisdiction over the crimes specified in article 5, where 'a situation (...) is referred to the Prosecutor by a State Party' (art. 13 (a)) (Rome Statute, 1998:10). A third possibility which does not require consent is if the SC acting according to its responsibilities under Chapter 7 of the UN Charter refers a case to the Court (art. 13(b)) (du Plessis, 2005:192-193; Rome Statute, 1998:19).

4.2.3.2 Admissibility or inadmissibility after a referral of a 'situation' to the ICC

For the very same reason of striking this balance between ICC's jurisdiction and state sovereignty, in addition to the preconditions there are also further limitations to safeguard against the potential abuse of the ICC's jurisdiction, where articles 17, 18 and 19 describes the 'admissibility' of cases to the Court. The most important one in this regard is the principle of complementarity in article 17 read in accordance with the Preamble and article 1. Following this principle, domestic courts take precedence over the ICC, except for certain cases admissible to the Court where it can exercise its jurisdiction (du Plessis, 2005:193-196; Rome Statute, 1998:12-14;).

Although the Court's jurisdiction only becomes effective after a referral by a State Party or the SC, at a subsequent stage, the complementarity principle also requires that a case must be perceived as inadmissible in the following situations: (1) the case has already been properly investigated by the state in question with jurisdiction over it, unless it is either unwilling or

unable to carry out the investigation or prosecution (art. 17 (1)(a)), or; (2) if the case where the crimes defined in article 6, 7 and 8 has already been tried by a domestic court, the ICC is under article 20(3) not permitted to conduct a trial unless it was inadequate or conducted in such a way as to protect the accused, or last, but not least; (3) in accordance with the Preamble and article 1 which makes it clear that the Court can only deal with genocide, crimes against humanity and war crimes as ‘the worst crimes of concern to the international community’, the case is inadmissible if it is not of sufficient gravity to justify further action by the ICC (du Plessis, 2005:193-196; Rome Statute, 1998:12-14).

It is, however, up to the judges of the Court to determine if these conditions apply with a state deemed as unwilling or unable genuinely to investigate or prosecute either if the case is undertaken with the purpose of shielding the accused person, if there are unjustified delays or if the proceedings were not conducted independently and impartially (art. 17(2)(a), (b) and (c)) (Rome Statute, 1998:12).

As such, all of these provisions concerning jurisdiction and admissibility expressed through the complementarity principle clarifies that the ICC is complementary to national courts, and will only be able to exercise its jurisdiction if or when such a court proves to be unwilling or unable to judge over a case where ‘the most serious crimes of concern to the international community’ are taking place (du Plessis, 2005:193-196; Rome Statute, 1998:3).

4.2.3.3 Initiating investigations and prosecutions

After a State Party or the SC has referred a case to the Court, it is up to the prosecutor based on the information received to decide on whether or not to continue with an investigation into the case. It is based on an analysis of whether a crime actually has taken place, whether it is admissible and if such an investigation will serve the interest of justice. If the prosecutor decides to proceed, the prosecutor will start collecting evidence and testimonies. This decision must be approved by the Pre-Trial Chamber who determines whether it has ‘reasonable basis to proceed’ and to which extent the case falls under the crimes covered by the Courts jurisdiction (article 15). If the case is referred by the SC, the Court is able to exercise its jurisdiction without any preconditions, and the next step in the process will be step 4.2.3.5 (du Plessis, 2005:192-193; Rome Statute, 1998:11).

4.2.3.4 Possible deferral after decision of the UN Security Council

At this stage, the SC is, according to article 16 of the Statute, given the authority to put an investigation on halt for 12 months which can be renewed when it expires. If the SC makes a resolution under Chapter 7 of the UN Charter, whereby the ICC is requested not to begin proceedings, this means that in situations with national amnesties, the Court must respect this, even if it goes against its mandate of preventing impunity. Three requirements must however be met before the SC can adopt such an resolution, as this decision requires that the conditions of actions against a threat to the peace, breaches of the peace and acts of aggression described in Chapter 7 of the UN Charter have been determined and the resolution and request must be consistent with the UN's purposes and principles (du Plessis, 2005:193; Rome Statute, 1998:11).

Most importantly in this regard is that if no such resolution exists, the Chief Prosecutor can close down investigations or prosecutions by requesting the Pre-Trial Chamber to respect such amnesties for peace if he, after the legal considerations, concludes that there are 'substantial reasons to believe an investigation would not serve the interest of justice' (Article 53 (1) (c)). This decision of whether or not the ICC will exercise its jurisdiction under such circumstances will be made by the Court itself (du Plessis, 2005:195; Nielsen, 2008; Oomen and Marchand, 2007:172; Rome Statute, 1998:27-28).

4.2.3.5 Issuance of orders and warrants

Following article 57 and 58, the prosecutor must at this stage request the Pre-Trial Chamber to issue summons to appear, arrest warrants, and necessary measures to preserve evidence (Rome Statute, 1998:30-32).

4.2.3.6 Confirmation of charges

Before the trial can take place, the Pre-Trial Chamber must arrange a hearing where both the defence and the prosecutor participate. The prosecutor must here provide a sufficient level of evidence to support the claims behind each charge, so there are 'substantial grounds' to believe that the accused is responsible for the crimes he or she is accused of committing.

According to article 61, based on this Pre-Trial Chamber will either dismiss or confirm each of the charges put forward (Rome Statute, 1998:33-34).

4.2.3.7 Trial

The trial takes place in the Trial Chamber, where the prosecutor must prove that the guilt of the accused is beyond reasonable doubt. The trial cannot take place without the presence of the accused, who also has the right to a defence lawyer. The decision of guilt is made by a majority of three judges and the highest possible penalty is life imprisonment of a maximum of 30 years. Fines and confiscation of profits can be added on top of this (du Plessis, 2005: 205-207; Rome Statute, 1998:43).

4.2.3.8 Appeal

After the verdict is reached with the decision of guilt and sentence has been made, the case can be appealed either by the prosecutor or the defence, and the case will then be taken to the appeals chamber. Appeals can be based on new evidence, procedural error, error of facts, error of law or fairness and reliability of the proceedings or decision (Rome Statute, 1998:44-46).

4.2.3.9 Serving of sentence

The convicted will serve the sentence in a state appointed by the ICC from a list of states willing to accept him or her. After 2/3 of the sentence has been served, the Court is obliged to re-examine the sentence to consider whether there are reasons to reduce it (du Plessis, 2005:205-207; Rome Statute, 1998:42-43).

4.2.4 The ICC's contribution towards creating sustainable peace in Northern Uganda

In line with the arguments made by the 'justice' approach described in chapter two, in situations with countries torn apart by civil war and where there is a clear need to arrest and prosecute the perpetrators responsible, an international criminal trial by the ICC might ease the heavy burden for a domestic judicial system in the following situations: it does not have

the capacity to prosecute itself, or; a national trial would not be impartial due to a perception of being biased, or; the courts are crippled by corruption, or; the controversial impact of a judgment in the case might threaten the stability of a country. Based on this it was hoped that States Parties would perceive the Court as a useful instrument to assist them in such times of national crisis, but it was seemingly able to exceed beyond even the most positive expectations (du Plessis, 2005:176-179; Nielsen, 2008:34-35; Oomen and Marchand, 2007:166-170).

A short time after the ICC started operating effectively, Museveni, after several unsuccessful attempts to negotiate peace in the 1990s, and an effort to get the rebel leaders to surrender by offering them amnesty, decided to refer the ongoing conflict in Northern Uganda to the ICC's Chief Prosecutor Moreno-Ocampo in December, 2003. By asking the ICC to start investigating the alleged atrocities committed by the LRA and thereby invoking its jurisdiction, Museveni made Uganda the first State Party ever to voluntarily refer a case to the Court since the entry into force of the Rome Statute in July, 2002 (Allen, 2006; Oomen and Marchand, 2007:167; RLP, 2004). On January 29, 2004, a historic press conference took place in London, where Moreno-Ocampo and Museveni made this referral public (Allen, 2006; Oomen and Marchand, 2007; RLP, 2004). On July 7, 2004, after longer legal considerations Moreno-Ocampo officially indicated his decision to start investigating the supposedly grave international crimes taking place in Northern Uganda. In deciding to open investigations he argued that Uganda's civil war had not only caused immense suffering, but also led to war crimes and crimes against humanity that clearly fell within the Court's jurisdiction (Oomen and Marchand, 2007:167-168; RLP, 2004).

Little more than a year later the Court's Pre-Trial Chamber had issued arrest warrants for the LRA rebel leader Joseph Kony and four of his commanders, as they, by being in charge of the LRA, were perceived as being most responsible for having engaged in a cycle of violence and established a pattern of brutalization of civilians by acts including abduction murder, mutilation and sexual enslavement (Allen, 2006; Latigo, 2008:98; Nielsen, 2008:35; Oomen and Marchand, 2007:168-169).

Other cases followed suit, first when the government of the DRC in March 2004 as another African State Party formally referred the situation in the eastern parts of the country to the ICC. Based on this, Moreno-Ocampo decided to investigate the serious international crimes

taking place in the DRC since July 1, 2002. In January 2005, a third state in the region, the CAR referred the situation taking place in the country to the ICC. On March 31, 2005, the SC referred the situation unfolding in the Darfur region of Western Sudan to the ICC (du Plessis, 2005:178; New African, 2009; Nielsen, 2008:35).

Based on the premise of active state cooperation, the ICC had seemingly been given an ideal start, as these affected States Parties referred these situations by themselves almost immediately after the Rome Statute became effective in July, 2002, and as such clearly indicated their preference for letting the ICC investigate and prosecute the atrocities being committed. The Court's existence was thereby apparently justified, and it was able to reach its objective of making a global impact with regards to the fight against impunity for the most serious crimes of concern to everyone (Oomen and Marchand, 2007:166-170).

A widely held perception in the justice camp is therefore that one of the main challenges for the LRA is now constituted by the continued and ever increasing threat from the ICC. This has led some observers to argue that this form of international pressure also has had a large influence on the LRA's decision to pursue a more peaceful outcome of the conflict through negotiations, as the warrants provided the LRA with an incentive to entering negotiations at Juba in order to have the indictments against their top leaders lifted or to influence Museveni to grant them amnesty and protection against the ICC prosecutions. Although this external pressure forced the LRA to participate in the Juba peace talks, this pressure was not only constituted by the ICC, but also came from other sources, like the unsuccessful 2004 peace talks and the three layered ultimatum from the GoSS, as described in the previous chapter. Whether or not the ICC indictments finally forced the LRA to take a seat at the negotiation table at Juba, this issue soon became one of the most disputed and remained one of the central stakes that contributed to undermine the Juba peace talks (Latigo, 2008; Nielsen, 2008; Ogora, 2009; Oomen and Marchand, 2007).

Generally, more than seven years after its establishment, the potential impact that the ICC could have had on conflicts is, however, at best contested and at worst largely unsuccessful. More specifically, nearly six years after its initial involvement in the process and exactly four years after the announcement of its five indictments against the top five LRA commanders, the ICC has at this stage proved to be a futile attempt by failing to bring about an end to the

conflict, just like the military operations and former negotiation attempts described in the previous chapter.

As will be illustrated in the following, unlike their opponents in the ‘justice’ camp’s perception being discussed above, observers and commentators of this debate in the ‘peace’ camp remain unconvinced about what positive effect the ICC warrants could have, as the Court instead contributed to make the LRA rebels much more prone to violence and reluctant to lay down their arms, as they fear being arrested and sent off to The Hague to stand trial (Dunn, 2007; Mwaniki *et al*, 2009; New African, 2009:20; RLP, 2004).

In the following months after the January announcement, the killings by the LRA continued, including a massacre in February 2004 at Barlonya IDP camp, where two hundred unarmed civilians were hacked to death (Oomen and Marchand, 2007:168). Although it is impossible to draw the conclusion that a specific announcement made by the ICC resulted in the LRA retaliating with certain massacres, as the one in Barlonya IDP camp in February 2004, ‘the announcement of the ICC investigation has the potential to raise the stakes in the conflict and make the LRA become even more elusive and aggressive (...) it may increase the incentive, especially of the LRA leadership to fight and avoid capture at all costs’ (RLP, 2004:6). Although the civil society and aid agencies working on the ground in Northern Uganda expressed their grave concerns about what the consequences of this would be, the ICC made a public announcement on July 28th 2004 that it ‘would commence on a formal investigation into alleged crimes against humanity committed by the LRA’ (RLP, 2004:1).

After the ICC issuance of the five arrest warrants against the LRA leadership was known by the public in October 2005, this renewed the fear of that the rebels would unleash a new campaign of violence in retaliation against these indictments (Ruaudel and Timpson, 2005). Soon after, the LRA responded by further intensifying its attacks in Northern Uganda and Southern Sudan, with the result that many aid agencies had to put their activities on halt, as a number of their workers had been ambushed and killed by the rebels (Allen, 2006:189-190). This is supported by Dunn (2007:136), who points to how ‘after that the military campaign further intensified, with attacks by the LRA increasing in number and severity’. According to Allen (2006:187-190) another aspect is how the ICC indictments enabled the LRA to consolidate and strengthen its position, by preventing its fighters from defecting to pursue the amnesty option analysed in the next subsection out of fear of being prosecuted instead. As

such, the ICC had seemingly provided the LRA with an incentive to continue their insurgency by ruling out a number of other options, as reflected on in the second chapter concerning New African's (2009) analysis of the Taylor and al-Bashir cases respectively.

In March 2005 a group of Acholi traditional leaders visited Moreno-Ocampo in The Hague. At this meeting, they argued that if the ICC continued with its proceedings it would interfere with the fragile peace process, and they asked him to respect the local amnesty procedures and neo-traditional justice mechanisms already put in place (Allen, 2006). The prosecutor did, however, continue with the investigation and convinced the Pre-Trial Chamber to issue the arrest warrants (Oomen and Marchand, 2007:167). Shortly thereafter, the first signs of what would prove to be stiff resistance came out of Uganda, as the traditional leaders were joined in their demands by other local religious leaders as well as the most powerful actors in the Ugandan society, including the government responsible for referring the situation to the ICC in the first place (Nielsen, 2008; Apuuli, quoted in Oomen and Marchand, 2007:168-169).

The main reason for this opposition was that the peace talks that had broken down on several previous occasions was now revitalised, with a new round of serious negotiations taking place at Juba. These were believed to be the most promising until then, as they then seemed to be creating results (Nielsen, 2008:37; Oomen and Marchand, 2007:169). The LRA rebel leaders did, however, make it very clear from the beginning of the negotiations that a peace agreement would not be signed unless it had provisions giving them immunity against prosecutions by the ICC (Nielsen, 2008:37). This fear of being arrested and sent to The Hague was clearly evident at the negotiations taking place at Juba as none of the LRA commanders were physically present, but instead negotiated through a mediator over a satellite phone (Grono and O' Brien, 2008; Nielsen, 2008:37). This can be seen in line with the New African's (2009:20) argument about 'why rebel leaders would come to roundtable talks if they think that such talks might just be a trap to arrest them and send them to The Hague'.

This change of mind, especially by the GoU in the middle of 2006, was that they saw a possible end to the conflict by taking a more accommodating approach favouring alternative accountability mechanisms rather than the retributive justice associated with the ICC prosecutions. Most of the Acholis supported this approach as they were in favour of the Mato Oput and other neo-traditional rituals emphasising reconciliation, forgiveness and integration as an alternative to the ICC (Cobban, quoted in Nielsen, 2008:37). The result of this was an

ever increasing pressure on Moreno-Ocampo from NGOs, scholars and aid workers to drop the indictments in order for the peace process to continue smoothly. He instead argued that the indictments issued by the Court would ‘remain in effect and have to be executed’ (Nielsen, 2008:37).

This led the spokesperson for Uganda’s Amnesty Commission to argue that: ‘This is going to make it difficult for the LRA to stop doing what they are doing’ (Apuuli, quoted in Oomen and Marchand, 2007:168). Bigombe, the chief negotiator behind the previous rounds of peace talks, has expressed similar worries, as ‘the ICC arrest warrants meant that there is now no hope of getting the LRA commanders to surrender’ (Apuuli, quoted in Oomen and Marchand, 2007:168). An international scholar involved in Northern Uganda for a long time summarised these worries about the ICC among the Acholis in the following way: ‘it is biased; it will exacerbate the violence; it will endanger vulnerable groups, notably witnesses and children; it is spoiling the peace process by undermining the amnesty and the ceasefire; and it ignores and disempowers local justice procedures’ (Oomen and Marchand, 2007:168).

Many activists and lawyers from Uganda and elsewhere have agreed with these critical considerations by focusing on the principle of complementarity in article 17 read in accordance with article 1 and the Preamble as one of the cornerstones of the Rome Statute (1998:12) regulating the ICC’s jurisdiction. According to this principle, a case is only admissible to the Court if the State Party itself ‘is unwilling or unable genuinely to carry out the investigation or prosecution’ (art. 17 (1) (a)) (Rome Statute, 1998:12). In addition to this aspect, the Chief Prosecutor can, after having taken into consideration the gravity of the crime and interests of the victims, decide that an investigation would not serve the interests of justice. Based on this they argue among other things that the local amnesty and neo-traditional justice procedures should be considered domestic remedies excluding involvement by the ICC (Apuuli, quoted in Oomen and Marchand, 2007:169).

Some of these activists and lawyers in favour of conditional amnesty through local rituals for the LRA leaders have also referred to article 53 (1)(c) and (2b) of the Rome Statute (1998:27-28) regulating the ICC’s jurisdiction (du Plessis, 2005:194-195). According to them, this article creates an opportunity to accept local practices as an alternative, as it provides the Chief Prosecutor with the authority to withhold or even withdraw investigations and prosecutions if it is believed to be in the ‘interests of justice’ after having taken into

consideration the gravity of the crimes in question and the interests of the victims. The problem with the notion ‘interests of justice’ is that this is an extremely technical and diffuse concept, and both Huysse (2008:192) and Nielsen (2008:41-42) illustrate the emptiness in this argument as this is based on a matter of interpretation.

Despite this widespread criticism being raised by the opponents of the Court, Moreno-Ocampo has, on the contrary, on several occasions repeated the necessity of his decision to have the LRA rebel leaders brought to book for the crimes they have committed against humanity. For instance, on July 6th, 2006 Moreno-Ocampo repeated the argument about the crimes committed by the LRA, but also indicated that ‘while the current situation is delicate, we believe that peace and justice can work together’ (Oomen and Marchand, 2007:169). Similarly, in an internal policy paper concerning the ‘interest of justice’ the Office of the Prosecutor recognised the importance of peace processes, although it made it clear that ‘the broader matter of peace and security is not the responsibility of the Prosecutor’ (Nielsen, 2008:42). Based on this, on July 13, 2007 Moreno-Ocampo repeated that: ‘I cannot be a political actor in the talks, I am only a judicial actor at the ICC, I have to do my judicial work’ (Oomen and Marchand, 2007:169). When being asked about the protests against the arrest warrants issued for Sudan’s Al-Bashir and what the implications for the country’s already fragile peace process would be, the ICC President Sang-Hyun Song’s reply (Mail and Guardian, 2009c) was more or less a repetition of the statements made above:

Darfur was referred to the Court by resolution 1593 of the UN Security Council whose preamble stated ‘that the situation in Sudan continues to constitute a threat to international peace and security’. The Security Council re-affirmed not only that justice and peace are compatible, but also that justice is an important factor in restoring peace and security. One must make a distinction between a political process and a judicial one. The ICC does not have a humanitarian mandate and has no jurisdiction with respect to peace negotiations. Its role in helping to bring peace to Darfur lies in holding fair judicial proceedings.

While it is important not to glorify neo-traditional mechanisms, one must also be aware of that the Western retributive model is not a perfect solution on its own. The comments made by Moreno-Ocampo and Song can also be perceived in another way, like the researchers Hovil and Quinn from the RLP do in their article ‘*Peace First, Justice Later: Traditional Justice In Northern Uganda*’ (2005:37):

The implementers of retributive institutions see their task as mainly technical in nature, and often fail to consider contextual factors. This has been called “global legalism from above” and is seen as one of the biggest difficulties of outside experts participating in the building of appropriate institutions in post-conflict societies. These programmes are often “one-size-fits-all” and therefore less effective than tailor-made solutions, since they target institutions and structures rather than getting to the heart of the problem. In other words, while many of the ideals are good in theory, when applied to a complex conflict such as the one in northern Uganda, they look inadequate if applied in isolation. It is a mistake to assume that simply prosecuting and, hopefully, convicting Kony and a few of his senior commanders will satisfy the needs of justice in this context.

Item number three in the Juba peace agreement concerning accountability and reconciliation, that was signed in June 2007 between the GoU and the LRA, eventually confirmed this increasing gap between the GoU and the ICC. This agreement had provisions regulating the relationship between retributive and restorative justice, acknowledging the ‘need for adopting appropriate justice mechanisms, including customary processes of accountability that would resolve the conflict while promoting reconciliation’ (Latigo, 2008:99-103; Oomen and Marchand, 2007:169-170). While recognising neo-traditional justice procedures, both parties at the same time also agreed to apply formal criminal justice mechanisms to deal with the perpetrators of human rights violations during the conflict. Museveni made it quite clear that the intention behind the agreement was to protect the LRA’s top leadership from prosecutions by the ICC: ‘If they go through the peace process, then we can use alternative justice, traditional justice, which is a bit of a soft landing for them. But if they persist and stay in exile then they will end up in The Hague for their crimes’ (Oomen and Marchand, 2007:170). Even if the more specific details in the agreement were left open, it was clear that national trials would be combined with the amnesty law and neo-traditional justice mechanisms already put in place. This also led the GoU to argue that the ICC would have to withdraw from the case, since domestic remedies had not yet been exhausted (Latigo, 2008:99-103; Oomen and Marchand, 2007:169-170).

The ICC frowned upon this agreement and in October, 2008, the Pre-Trial Chamber initiated a review of the admissibility of the case based on the establishment of the SDHC in Uganda’s High Court to try serious crimes in the conflict in Northern Uganda. In March 2009, after considering submissions from the GoU, the Chamber found that the case remains admissible

(Mail and Guardian, 2009c). Either way, arguably partly due to the ICC indictments, the Juba process collapsed in 2008, leaving the prospects for peace currently in a limbo (Batanda, 2009; Mwaniki *et al*, 2009; Nielsen, 2008:37; Ogora, 2009).

4.2.5 The strength and weaknesses of the ICC

The discussion above illustrates how the perspectives in the ‘peace vs. justice’ debate in Northern Uganda continue to operate within a narrow framework of common misperceptions, where justice is perceived as ICC prosecutions only and negotiations with amnesties and the Acholis neo-traditional justice through Mato Oput reconciliation procedures as the incarnation of peace. The two concepts are thereby treated as totally incompatible to such an extent that the use of one of them goes totally against the other (Nielsen, 2008; Simpson, 2008).

One of the main challenges for the ICC relates to the aspect of perceived impartiality and overall legitimacy in the way in which it has made its public announcements, and how the public opinion in Northern Uganda was subsequently outraged by this injustice, as the Court only decided to try one of the sides in the conflict, namely the LRA rebels, despite of the fact that the UPDF has also committed serious crimes covered by the Court’s jurisdiction. The main reason for this is that in the three years prior to the indictments and throughout the same period as the Court’s jurisdiction became effective, most of the grave crimes were allegedly committed by the LRA. But as a consequence of the Court’s ill-perceived activities in Northern Uganda, this has also affected the incentives for States Parties for further cooperation with it, not only with regards to Uganda, but in other cases as well, evidenced by the AU’s recent decision to end its cooperation because of the indictments made against Sudan’s President al-Bashir (New African, 2009; Nielsen, 2008; Ruaudel and Timpson, 2005).

This decision to only charge the LRA for being responsible for committing the worst part of the crimes since its entry into force also relates to another problematic challenge for the Court, namely its temporal jurisdiction. The temporal jurisdiction limiting the ICC’s jurisdiction means that it is prevented from investigating or prosecuting any crimes covered by the Rome Statute that were committed before its entry into force on July 1st, 2002 (du Plessis, 2005:192). This formal hindrance on the Court’s jurisdiction means that the root causes are far beyond the reach of the ICC, as the Court is only given access to addressing

only a very small fraction of the total sum of atrocities that have been committed in the conflict in Northern Uganda.

As such, one of the main reasons for why the implementation of international criminal justice during conflict, and in some instances parallel to ongoing peace processes, has proved to be so difficult for Moreno-Ocampo is due to the fact that the ICC can only prosecute crimes that have been committed after the Rome Statute came into force on July 1, 2002. Because of this, the ICC has been involved in the CAR, the DRC, Sudan, and especially with regards to Uganda, who all are affected by and involved in protracted internal conflicts that are still raging or have just recently been concluded and found itself unable to fully address their root causes as they date back to the colonial era, way beyond its jurisdiction from 2002 (Nielsen, 2008:35). These aspects clearly show that the belief in the 'justice' camp about the ICC being the only transitional justice mechanism being able to bring about a lasting peace has clearly proved its futility and will continue to do so, unless this perception is changed in the direction of perceiving the Court from another angle, where it is seen as one of several mechanisms that must work together in order to achieve this outcome.

As a new and quite controversial international institution that has been met with scepticism by some states and outright hostility by others, the ICC is therefore clearly in need of political legitimacy, which requires it to show strength through exercising its powers which necessitates prosecutions (Nielsen, 2008:42). But in its aspiration to be seen as an impartial and apolitical actor, the Court clearly disregards the fact that by exercising its jurisdiction over nationals of states with conflicting legal and moral values, it does little if anything to resolve this diversity in perceptions of justice (Nielsen, 2008:42). It thereby fails to take into consideration for whom justice actually is made for, the victims or an international legal regime put in place to punish the perpetrators in these affected post conflict societies, as the obsession with criminal prosecutions to uphold it by punishing alleged perpetrators has resulted in that the pursuit of making justice through prosecutions has become an end to achieve in itself instead of being a means to achieve an end (Nielsen, 2008:39-40).

However, quite ironically, it is a certain possibility that *realpolitik* will be the central motivator for the prosecutor to pursue indictments in the face of a political reality to which he claims to be impartial (Nielsen, 2008:42). This is supported by malicious rumours that point to how the criticism against it influenced the ICC's decision to first open proceedings in the

situation in the DRC, by trying the case against Thomas Lubango Dyilo. In addition to this, the ICC's public relations office increased its activities in the affected communities in Northern Uganda to promote a better understanding of how the Court functions (Oomen and Marchand, 2007:169).

But as prevention of conflict is the ultimate goal of the ICC, the Court is forever bound to operate in such societies torn apart by conflict. This means that the Chief Prosecutor will increasingly be faced with such situations where the pursuit of international criminal justice is fundamentally at odds with peace building efforts and intricate processes of national reconciliation, to such an extent that it increases the risk of failure with these societies trying to prevent it from doing its job (Nielsen, 2008).

A major step away from avoiding such a destiny would be to distance itself from the current narrow understanding with the pursuit of justice only in the form of prosecutions as an end in itself, by taking into consideration that justice is actually made for the victims. By doing so, the Court would acknowledge that the retributive form of justice that it represents is only one among of several accountability mechanisms that must work in a well orchestrated effort in order to build a sustainable peace. This in turn means when it becomes engaged in post war peace building, the Court's impact depends on cooperation in a well orchestrated effort with a number of other actors and institutions at the local, national and international levels collectively pursuing the purpose of furthering the overall process of building a sustainable peace in post-conflict societies, where justice is merely one of the important dimensions to take into consideration in this complex endeavour.

As illustrated in the second chapter, by moving the focus away from a negative to a positive understanding of peace, and from justice solely based on being retributive to a balance between this and the restorative form of justice, where the interests of the victims are the point of focus, it is possible to come up with a more satisfying combined approach to deal with this issue of transitional justice turning the whole 'peace vs. justice' dilemma obsolete. In this approach, where the two concepts are perceived as mutually dependent on each other, the only way forward when dealing with the difficult issue of conflicts in transition it is thus not to decide on whether peace or justice is most important, but to the contrary to apply a process where the appropriate measures are negotiated over and compromises are being made.

In this combined approach, the prosecution of alleged perpetrators being most responsible for committing gross human rights violations is a central element in any transitional justice process being undertaken to properly deal with a legacy of abuse. Prosecutions thereby serve several important purposes as an important source to provide a sense of comfort to the victims, deterring future crimes and reflecting a new set of social norms (van Zyl, 2005:210). It is, however, important to realise that criminal justice systems are not designed for societies where violation of the law was the main rule and not the exception. As criminal justice processes are expected to meet a scrupulous commitment to fairness and due process, this requires a significant amount of time and resources. In situations where such violations have been widespread and/or systematic by involving tens to hundreds of thousands of crimes, ordinary criminal justice systems will simply be overwhelmed and cannot cope with all of them (van Zyl, 2005:210). Acknowledging the fact that criminal justice systems have such a structural inability to deal with mass atrocity is not about dismissing the important role of prosecution or punishment when dealing with past crimes. This means that even if the Nuremberg and Tokyo trials or the prosecution of Slobodan Milosevic for that matter only represented a very small percentage of the total amount of criminally responsible individual perpetrators, they cannot be dismissed once and for all (van Zyl, 2005:210). Even in Uganda, the establishment of the SDHC in the Juba peace agreement would only be able to deal with an extremely small fraction of those most responsible for the crimes committed (Ogora, 2009). Thus, trials should not only be seen as the expression of a societal desire for retribution by the affected society itself or the international community for that matter, but also that they play a vital role in confirming that when essential norms and values are violated this will give rise to sanctions. Trials by domestic or international courts can thereby help re-establishing the trust between citizens and the state by demonstrating a commitment to those whose rights have been violated and that state institutions will protect instead of violating their rights, and might thereby help or restore the dignity of victims and reduce their sense of anger, marginalisation and grievance (van Zyl, 2005:210). That said, according to van Zyl (2005:210):

It is nevertheless important to recognise and accept the fact that prosecution can only ever be a partial response to dealing with systematic human rights abuse. The overwhelming majority of victims and perpetrators of mass crimes will never encounter justice in a court of law, and it is therefore necessary to supplement prosecutions with other complementary strategies.

The two following subsections will take a closer look at these complementary strategies in the form of amnesty and neo-traditional justice through procedures aimed at reconciliation and conflict resolution.

4.3 Amnesty

As outlined in chapter two, a transitional society can choose between two different forms of issuing amnesties, namely unconditional with blanket amnesties or through witnessing in front of a TC/TRC with strict conditions attached to it. Uganda is clearly a transitional society with regards to the situation in the northern parts of the country, and could thereby choose between these two forms of amnesties. It decided on the former, as an Amnesty Act passed through its Parliament in 2000 (Allen, 2006:74). In order to be able to understand why Uganda opted for the first alternative it is necessary to go briefly into the history behind the decision to apply it, as well as a short summary of the theoretical discussion concerning amnesties in the second and third chapter, before looking at its strong and weak sides, and how it as a transitional justice mechanism can be optimised for use in a combined approach.

4.3.1 Introductory background to the Amnesty Act

According to Kaufman (2005:63), in general, amnesty refers to a formal or informal agreement between the ruling authority and those who for some reason are rebelling against this authority, by exempting the latter from facing any kind of prosecution and punishment from the former. Although the practical implementation of it differs between different contexts, the granting of amnesties to war criminals is however not a new phenomenon. While amnesty in the past was based on religious foundations with a focus on mercy and forgiveness, more modern forms of amnesty are in comparison based on a political strategy rather than religious commitments (du Plessis, 2005:193-195; Oomen and Marchand, 2007:170; van Zyl, 2005).

As described in the previous chapter, after the failed 1994 peace talks and the 1996 incident, the Acholis in Northern Uganda began mobilising at the grassroots level in search of a peaceful resolution to the conflict through a comprehensive amnesty. What began as a local initiative pushing for amnesty following the renewed attacks in Northern Uganda after the failed 1994 peace talks, resulted in the establishment of the ARLPI in 1998 (Allen, 2006:78). Although this initiative by the ARLPI did not result in any direct negotiations, it was decisive in the process of lobbying for the Amnesty Act, which is described more thoroughly below in

the following section (Allen, 2006:78). Finally, after years of persistent activism by Acholi religious and traditional leaders in the ARLPI, as well as other NGOs, and despite Museveni's declared preference for a military solution to the 'LRA problem', the Amnesty Act was passed by the Ugandan Parliament in December 1999, and was enacted by the government in 2000 (Allen, 2006:74; Hovil and Lomo, 2005; Oomen and Marchand, 2007:170-171).

Even if President Museveni after referring the situation in Northern Uganda to the ICC, initially promised Moreno-Ocampo that the Amnesty Act of 2000 would be amended to exclude the LRA's top leadership, this never happened (Allen, 2006:82; Oomen and Marchand, 2007:172). The 2007 agreement between the warring factions could instead have lead to amnesties on a large scale, as it allowed for amendments to be made on the Amnesty Act in the other direction (Oomen and Marchand, 2007:172).

But although this question concerning amnesties was brought back again during the latest rounds of peace negotiations from 2006 onwards, and formalised as one of the main provisions to deal with the issue of justice in the 2007 agreement, the LRA commanders had made it clear since 1994 that they would settle for amnesty if they could trust President Museveni in securing their personal safety. Amnesty procedures were therefore almost from the very beginning of the conflict one of the local remedies offered to the LRA, long before the ICC became involved in the process (Oomen and Marchand, 2007:170).

4.3.1.1 The Amnesty Act

In the Act amnesty is defined as 'a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State'. The Amnesty Act provides an offer of amnesty for any Ugandan citizens, including the members of the LRA, who have engaged in armed rebellion and committed crimes against the State since January 26th 1986, which is the day that the current administration under President Museveni took office (Allen, 2006:74; Hovil and Lomo, 2005:6-7; Oomen and Marchand, 2007:170).

The Amnesty Act gives former combatants an amnesty package which consists of money, basic utilities and advice on housing and employment possibilities. In addition to this, the amnesty regulation seeks to offer the high-ranking LRA combatants the opportunity of living an ordinary life that is no worse than the one they lived in the bush. But except from promising not to return to the bush and start fighting again, the rebels do not have to give

truthful confessions of the crimes they have committed in return (Hovil and Lomo, 2005:7-8; Pham *et al* quoted in Oomen and Marchand, 2007:171-172).

All persons seeking amnesty must report to designated individuals to hand in their weapons, but also renounce and abandon all involvement in the war or armed rebellion (Oomen and Marchand, 2007:170). In return for doing so, these persons are granted an Amnesty certificate protecting them from prosecution and punishment, as well as providing them with DDR assistance. In practical terms, with regards to the situation in Northern Uganda, by claiming amnesty from the Ugandan state this means that the Amnesty Act allows former LRA combatants not only to avoid national state prosecution, but also ICC prosecution (Allen, 2006; Hovil and Lomo, 2005:7-8; Oomen and Marchand, 2007:171).

The Amnesty Act illustrates how, after many years of unsuccessfully trying to use the military option as a stick to hit the LRA and defeat it, the GoU moved away from it by instead using amnesties as a carrot to offer the rebels a more peaceful return from the bush (Hovil and Lomo, 2005; Oomen and Marchand, 2007:172). The Acholis themselves initially expressed enthusiastic support for the prospects of peace that came along with the introduction of the Amnesty Act, as it promised amnesty to all rebels in Uganda who surrendered. This initial and cautious optimism was, however, soon torn apart by Museveni's lack of enthusiasm, which is illustrated by the military offensive 'Iron Fist' in 2002, described in the previous chapter, and later with the involvement of the ICC being analysed in the following subsection (Allen, 2006:74; Dunn, 2007:136; Hovil and Lomo, 2005; Oomen and Marchand, 2007).

4.3.1.2 The ICC undermining the Amnesty Act

As previously mentioned, at the press conference in London on January 29th 2004, the ICC's Chief Prosecutor Moreno-Ocampo and President Museveni went public with the Court's decision to start investigating the situation in Northern Uganda after the latter's referral of the conflict in December 2003. This was followed up with the Court's announcement that it would proceed with formal investigations in July 2004, and finally the arrest warrants against the LRA leadership in October 2005 (Allen, 2006; Oomen and Marchand, 2007; RLP, 2004).

The ICC arrest warrants are thereby aimed at bringing justice to the Acholis for the atrocities being committed against them by the LRA through targeting its leadership as most responsible in this regard. However, a combination of an extremely bad timing for when it

issued the indictments and a rather inappropriate one-way communication in this case was perceived as hampering the efforts being made by the local civil society organisations working on the ground in Northern Uganda to support the peaceful return and reintegration of former rebel combatants under the auspices of the Amnesty Act (Hovil and Lomo, 2005; Ruaudel and Timpson, 2005:12). The main reason for this hostility was that the Amnesty Act up until that stage had been the only transitional justice mechanism providing the rebels with an incentive to leave the LRA, and the intervention by the ICC was clearly perceived by some, if not most of these NGOs as undermining their only viable exit strategy in this situation. The Amnesty Act has often been described as being in line with Acholis tradition about forgiveness and reconciliation and the amnesty process has received wide support, especially in Northern Uganda (Allen, 2006:82; Hovil and Lomo, 2005; Ruaudel and Timpson, 2005:12).

Being the first and thereby also the landmark case of the ICC, it is important for the Court to establish itself as a international legal force to be reckoned with by overcoming the expectations of total failure by its sceptics, and it apparently decided to brush aside these local worries from the very beginning (Nielsen, 2008). These were seemingly confirmed as the LRA in late 2005 increased its attacks in the North and started targeting relief organisations, resulting in that some of them were forced to put their operations on halt (Allen, 2006:189-191; Dunn, 2007). Questions have therefore been raised about whether Moreno-Ocampo has taken the political context into consideration at all when deciding to undertake investigations. Concern about a lack of such a consideration has also been raised about the timing by starting investigations while the conflict is still raging, and how the ICC communicates with the public through its announcements could result in the LRA targeting the civilian population (Hovil and Lomo, 2005; Ruadel and Timpson, 2005).

In relation to this political context and also being at the core of the 'peace vs. justice' debate, the ICC investigations in Northern Uganda highlights two very different perceptions of justice. Whereas the ICC by deriving its jurisdiction from the Rome Statute of 1998, it is the institutional cornerstone and embodiment of the international criminal justice fight against impunity primarily through punishment and accountability (du Plessis, 2005; Hovil and Lomo, 2005; Oomen and Marchand, 2007:166-170; van Zyl, 2005). In Northern Uganda many people are, on the contrary, operating with a totally different mindset concerning what restorative and retributive justice implies, as evidenced by the findings in many of the studies

and surveys undertaken by local NGOs (Oomen and Marchand, 2007:175-177). This is illustrated by the RLP's (2004:8) statement concerning the ICC's involvement:

According to the majority of the people who support the Amnesty Law, criminal justice—in this sense, punishing the LRA leaders for the crimes they have committed- must lead to an end of the conflict. Seen from their perspective, criminal justice is a process of confessions, forgiveness, cleansing, reconciliation, responsibility, restoration, rehabilitation, stability, and continuity. Unlike the adversarial nature of existing national and international concepts of criminal justice, the sense of justice described here is consensual and restorative with the primary aim of re-establishing social cohesion and ending communal violence.

But beyond contradicting the local history, traditions and perspectives, there seems to be a genuine fear, if not outright hostility, as to whether the investigations by the ICC is a genuine conflict resolution method at all, evidenced by the fact that five years down the line it has clearly failed in bringing about an end to the conflict. On the contrary, by merely aiming at arresting and prosecuting the five worst and most wanted perpetrators the ICC only deals with the direct symptoms of the conflict rather than the needs of the wider society by addressing its deeper root causes (Hovil and Quinn, 2005; Ruaudel and Timpson, 2005). If one is to believe the subsequent reactions expressed by the local NGOs on behalf of the population in Northern Uganda, the ICC has demonstrated a complete incompatibility as a transitional justice mechanism that is able to bring about a sustainable peace.

Among those who underline the local Amnesty Act instead of ICC prosecutions are the two RLP researchers Hovil and Lomo (2005). Through their research they found that although the impact the Act could have had is being undermined both by the GoU's lack of support by emphasising the military option through Operation Iron Fist, and the challenge by the ICC intervention, it seems to be a widespread support for amnesty among the victims of this violent conflict (Hovil and Lomo, 2005). Based on these findings they draw the following conclusion (Hovil and Lomo, 2005:24):

It is extraordinary that, after 19 years of civil war, many of those who have suffered most are willing to allow Kony to be granted amnesty if he voluntarily leaves the bush. This is not an indication of their support for him, or of empathy for what he is doing, but reveals the fact that they are willing to allow him to be granted amnesty if it means an end to the war. In other

words, the desire for long-term stability outweighs the demands of modern justice as articulated in international law. This clearly raises huge questions with regard to issues of impunity.

4.3.2 Strength and weaknesses of the Amnesty Act

Between four and five years after it was launched, the Amnesty Act had seemingly been a success, as a substantial amount of rebels from Northern Uganda had been granted amnesty and received amnesty certificates (Lomo and Hovil, 2005). According to Allen (2006:75), since 2003 large numbers of LRA fighters had surrendered and accepted the amnesty on offer, and by mid-2004 this amount had increased to more than 5,000 former LRA rebels (Allen, 2006:75). Allen mentions several reasons for why this happened: The UPDF's military operation in Southern Sudan had increased the pressure on the LRA and resulted in that some of its fighters were either captured, rescued or surrendered altogether, such as former 'Brigadier' Kenneth Banya, at that time LRA's fourth highest commander, and some of Kony's so-called 'wives'. Others again were separated from their commanders and could escape, or were unable to access food supplies and thereby starved into surrendering. Another reason was that Mega Radio, a local radio station, broadcasted radio interviews with former LRA rebels, who after receiving amnesty urged their fellow rank and file combatants to surrender or defect as well (Allen, 2006:75).

Despite this initial success in undermining the LRA from within, by late 2004 the numbers of LRA rebels returning from the bush and accepting amnesty was, however, reduced to a trickle for a number of reasons (Allen, 2006:75). The Amnesty Act had been based on a vague hope that Kony and his senior commanders would accept the amnesty as well. But to the contrary of these expectations, former LRA rebels reported that Kony condemned the amnesty and threatened abductees and followers alike with reprisals if they tried to accept it by defecting or escaping, as the growing numbers who did 'were understandably perceived as a threat' (Allen, 2006:74-75).

In May 2004, words were followed by action from the LRA after a number of key commanders surrendered together with their units. A week after an interview with one of these commanders had been broadcasted on Mega Radio, LRA attacked the Pagak IDP camp where he now lived, and clubbed or hacked about 30 of its inhabitants to death. Some days later, a similar retaliation against another IDP camp, Lukodi, left 28 people dead (Allen, 2006:75-76). Whereas it is very difficult to directly link statements made by the ICC to

retaliations from the LRA, these two massacres clearly illustrate that the senior commanders in the LRA knew about the amnesty process, but were unwilling to accept it. This indicates that it could not be a final solution to the conflict in itself as, instead of accepting it, they responded with a killing spree (Allen, 2006:75-77).

After the ICC arrest warrants became known in October 2005, this has also seemingly had an effect in galvanising the LRA against defections. According to Allen (2006:187-190), several observers point to how the arrest warrants helped consolidate and strengthen the LRA's position, by preventing its fighters from defecting to pursue the amnesty option in fear of that it would not be genuine. Dunn (2007:136), as one of these observers, argue that after becoming familiar with the ICC's arrest warrants the LRA intensified its military campaign by increasing the number and severity of its attacks.

This aspect of a more international character also represents a challenge to the Amnesty Act (Hovil and Lomo, 2005; Oomen and Marchand, 2007:172). The Rome Statute (1998) article 17(2)(a)), makes it clear that a national decision of implementing amnesties with the intention of shielding the person concerned from criminal responsibility implies a national unwillingness to prosecute and thereby enables the ICC to prosecute instead (du Plessis, 2005:193-195). Based on this, in their more recent reports AI and HRW have both argued that the perpetrators behind the worst crimes against humanity in Northern Uganda deserve their rightful punishment instead of forgiveness (AI and HRW, quoted in Oomen and Marchand, 2007:172). Shortly after the ICC published the arrest warrants AI (quoted in Allen, 2006:188-189; Oomen and Marchand, 2007:172) went so far as to declare that with regards to the Amnesty Act '(...) Uganda must (...) revoke its unlawful national amnesty seeking to protect perpetrators of the worst possible crimes from justice (...)'

As can be derived from the description of it in the previous subsection, the rationale behind the Ugandan Amnesty is thus to make the decision for the LRA combatants to stop the fighting, looting and rape by renouncing their arms easier (Allen, 2006; Hovil and Lomo, 2005; Oomen and Marchand, 2007). But even if former child soldiers complain about their horrible experiences and traumas haunting them after being forced to participate in committing horrendous atrocities, senior LRA commanders have a different viewpoint on the life in the bush. As one former LRA combatant described it in an interview quoted by Oomen and Marchand (2007:171): 'Once rebel commanders return to the community, they lack the

authority they were accustomed to in the bush, and also the free access to (stolen) foods, medicines, technological advices, and ‘wives’. This reflects yet another disincentive for current LRA commanders to make the decision to leave the bush and returning to an ordinary life as they fear a reduction in their personal economic wealth (Annan *et al* quoted in Oomen and Marchand, 2007:171-172).

In an extension of this argument, problematic aspects are also arising over the amnesty or demobilisation packages on offer to the rebels. Van Zyl (2005:216) argues that, in general, the relationship between the resources provided to demobilising combatants and reparations offered to the victims of human rights abuses requires careful consideration. In many cases, former combatants are receiving far more generous demobilisation packages than their victims are given through reparations, which create a great sense of injustice among their victims, thereby making them more hostile towards the reintegration of former combatants back into society (van Zyl, 2005:216). Ruaudel and Timpson (2005:12) already noted in 2005 that more emphasis had been placed on receiving and returning former fighters to their communities in the north than on genuine accountability and reconciliation. Based on this, they argued that it would be better ‘to make use of the full ambit of the amnesty law, as the Amnesty Act provides for the application of appropriate reconciliation and justice mechanisms, which could provide for accountability by perpetrators’ (Ruaudel and Timpson, 2005:12). This multifaceted transitional justice process would be one of that embraces trials, limited amnesties, truth telling, reparations, reintegration and community rebuilding (Ruaudel and Timpson, 2005:12).

Northern Uganda is thereby no exception in this regard, where a painful aspect among the people living in the IDP camps is the fact that the Amnesty Act has a narrow focus on the perpetrators. In their view, the Act is an agreement between the government and the rebels, reducing the space for the local community’s involvement in the process through neo-traditional procedures, meaning that the victims are not given a chance to reconcile with their offenders, thereby creating a mental gap between the former rebel and the community that person is supposed to be reintegrated into. Also, while the individual perpetrators responsible for committing the most serious of crimes against humanity are entitled to apply for amnesty with a DDR package, their victims in the IDP camps are not receiving anything from the government; no excuse, respect, confirmation of human dignity, or even a financial compensation. This one-sided focus of the Act on the perpetrators not only hurts their feelings

and reduces their willingness to accept the return of former rebels, but is also more than likely to reduce its effectiveness (Hovil and Lomo, 2005; Oomen and Marchand, 2007:171).

In a similar manner, many Acholis are adamant that it is no longer possible for them to reconcile with the LRA rebel leaders, as they are responsible for the massive atrocities being committed that are not supported by the majority of the population, as well as the randomness of the attacks by targeting the government forces one day and fellow Acholis the next day. The combination of this inhumane treatment of civilians with the randomness of the attacks has therefore caused many Acholis to close the door to reconciliation (Oomen and Marchand, 2007:171).

When added up, even if the intentions behind the Amnesty Act were good, the results have been far from promising. Not only has it failed to end the ongoing conflict in Northern Uganda after 9 years, but in some cases it has also been the cause of increased violence as the LRA has deliberately targeted the families of former rebels after their surrender. In addition to this, even if the GoU partly accepted the Act as another mean to end the conflict, it has nevertheless still pursued the military option to deal with the rebels. Furthermore, the ICC arrest warrants has also undermined the effectiveness of the Act. But most importantly, and maybe the final nail in the coffin of the Act was that all of these aspects together served to spread disappointment not only about the Act itself in Northern Uganda, but also a feeling of disenfranchisement and alienation from the GoU (Allen, 2006; Hovil and Lomo, 2005; Oomen and Marchand, 2007; Ruaudel and Timpson, 2005).

4.3.3 The Amnesty Act's contribution towards creating sustainable peace

The situation described above reflects van Zyl's (2005:216) argument about how in those instances where courts and blanket amnesties are framed respectively as the only transitional justice mechanism being able to create peace, they might thereby produce unintended and counterproductive results.

In situations where a court with universal jurisdiction declares that it will prosecute all of the perpetrators being responsible for committing atrocities, including those who already have been granted amnesty, thereby disregarding their position in the rebel movement and the gravity of the crimes they have committed, this will most probably result in preventing those who consider surrendering or defecting from doing so. As mentioned under the previous section discussing the ICC as a transitional justice mechanism, no court will ever be able to

prosecute all of the individual perpetrators responsible for committing human rights violations (van Zyl, 2005:210). It is therefore rather unwise to dissuade rebels from defecting or surrendering, based on a false threat of facing prosecutions, which cannot be realistically fulfilled and rather prevents an end to the conflict (van Zyl, 2005:216).

This would have been the consequence if AI's (quoted in Allen, 2006:188-189; Oomen and Marchand, 2007:172) dismissal of the Amnesty Act had been taken seriously by the GoU. Likewise, the ICC has rather avoided this debate by arguing that it is up to the GoU to deal with the issue of amnesty and done nothing to further the understanding of itself as a Court of last resort whose intention is not to prosecute the large majority of rank and file rebels, but only the most senior commanders perceived as the worst perpetrators in the conflict (Allen, 2006:195).

But even if impunity for war crimes through blanket amnesties will increase the number of rebels surrendering or defecting, this is, according to van Zyl (2005:216) yet another undesirable solution. Not only does it go against the prohibition of and fight against impunity under international criminal law, but it will also create a climate of impunity, which could result in a return to conflict at later stage.

There are, however, better ways to balance the relationship between the role of amnesties and courts as transitional justice mechanisms in this process. Van Zyl (2005:216) uses the Commission for Reception, Truth and Reconciliation (CRTR) in East Timor as his example. It utilised a new technique to promote the reintegration of low-level perpetrators by allowing them to come forward, provide a full disclosure of the crimes they had committed as a precondition to avoid being punished for their crimes, and agree to undertake an act of reconciliation, usually community service. The CRTR thereby reduced the probability of a return to conflict by promoting reintegration into society, but it also saved the authorities of the expense and effort of dealing with thousands of low-level perpetrators through prosecution and imprisonment. This conditional amnesty was however explicitly limited to the rank and file perpetrators, whereas persons responsible for committing serious crimes such as rape and murder were still liable for prosecution. By doing so in the following way, a balance is made between encouraging the reintegration of individuals' responsible for certain offences, and achieving accountability for those carrying the greatest responsibility (van Zyl, 2005:216).

Although the Ugandan authorities launched a TRC in 1986, which remained in place until 1994, it differs significantly in this regard compared to East Timor, as the local ‘peace vs. justice’ debate is not concerned with TRCs as a transitional justice mechanism, but initially the ICC and the Amnesty Act and later on the Acholis’ neo-traditional justice mechanisms like the Mato Oput. According to Hovil and Quinn (2005:19-21), there are several reasons for this, as the Commission of Inquiry into Violations of Human Rights (CIVHR) as it became known as, rather serves as an illustration of how it not should be done. CIVHR was launched almost immediately after Museveni took office in 1986 to look into the abuses of previous regimes, but time proved to be a challenge, as many people had died after nearly twenty years of permanent instability. The CIVHR lacked sufficient funding and qualified staff, but also broke its time schedule by more than six years, and finished its work after more than eight years instead of the initial two. Most importantly is maybe that it tapped into the interests of the new rulers who responded with death threats and the disappearance of vital evidence. When it finally presented its findings in 1994, it had not been able to make any final decisive conclusions, due to a combination of these challenges. Its legacy is thereby extremely limited, evidenced by the fact that most Ugandans are totally unaware of its existence and those who are remain highly critical to it (Hovil and Quinn, 2005:19-21).

So instead of a TRC giving out conditional amnesties in return for truthful confessions, the Amnesty Act was launched and used as an alternative to provide former combatants with blanket amnesties. Clearly, the amnesty process initially worked as it was intended to, with more than 5,000 former LRA combatants leaving the conflict because of the guaranteed amnesty that awaited them. But this ended after the referral of the situation by Museveni in December 2003 to the ICC, and its investigations into the case made it clear that Ugandan authorities was violating its obligations under international criminal law to combat impunity, as well as that the two processes of the ICC and the blanket amnesties were fundamentally at odds with each other (Hovil and Quinn, 2005:31).

Hovil and Quinn (2005:32) argue that as a result, in addition to the creation and implementation of the Amnesty Act, to guarantee perpetrators that they will not face prosecutions at a later stage by the GoU, coupled with the customary mechanisms of the Acholi neo-traditional justice rituals serving as an alternative to a TRC seems to offer a middle ground between impunity and prosecution. According to Oomen and Marchand (2007:175), their argument translates people’s preferences into a combination of conditional

amnesty and neo-traditional reconciliation mechanisms as Hovil and Quinn (2005:32) argues that:

If, indeed, such traditional mechanisms are able to meet the needs of the community through already-understood mechanisms that can adjudicate, arbitrate, mediate, reconcile, and compensate, then perhaps they can be called upon to provide these services in the context of a complicated legal minefield. With some revisions, these mechanisms might even be able to incorporate the retributive aspect that many seem to desire. The gacaca process in Rwanda followed this model, and appears to be meeting these same kinds of goals.

It is this aspect that the following and last subsection will explore in more detail.

That said, in relation to this is how the current focus has been on a regional form of reconciliation, which fails to take into consideration Uganda's history of conflict (Batanda, 2009:7). Already in 2005, before the Juba peace agreement, Ruaudel and Timpson (2005:13) expressed their concern about that:

While the ICC focus is mainly on the LRA leadership, more attention and efforts ought to be put on the restoration of the rule of law in northern Uganda and on monitoring, redressing human right violations that are perpetrated on a daily basis (...) The government needs to lead emerging efforts towards a peaceful solution including reconciliation within the Acholi community, between communities in the north and in the entire country, and discourage any action that has the potential to fuel renewed ethnic tension.

This is a major problem, given the weaknesses associated with only pursuing reconciliation at the regional level. The rest of this section will therefore briefly describe what is being done about this, and why it currently is not a viable option. Item number three in the Juba peace agreement has been used by NGOs as a entry point to argue for the need of discussing a national reconciliation process, given Uganda's violent history of armed conflict since independence, whose causes needs to be properly addressed in order to avoid renewed outbreak of conflict in other parts of the country (Batanda, 2009). In this regard the Beyond Juba Project (BJP) is among the most important civil society organisations that have perceived this as a possibility to prepare the ground for a national reconciliation through a truth-telling forum as a way to properly address the past wrongs of previous regimes

(Batanda, 2009). The BJP is a transitional justice project by the RLP, intended to create support for this national reconciliation process in Uganda, by illustrating how conflicts and their legacies are not regional, but rather national problems and assist in the development of transitional justice mechanisms, most notably a draft National Reconciliation Bill (Batanda, 2009: 6-7).

This Bill would result in the creation of a Truth Forum, the equivalent of a national truth process, but avoids being associated with a TC or TRC, as Uganda's history concerning commissions has been far from unproblematic and the term 'Forum' was therefore selected to move away from the perception of commissions as the solution to all of Africa's current problems. The problem in Uganda is that there have been so many commissions of inquiry that the public has lost their faith in them and are widely perceived as wasting taxpayers' money with no result to show for it (Batanda, 2009:6-7).

The draft National Reconciliation Bill was first presented to a group of members of the Ugandan Parliament by the BJP in July 2008, and later to members of the GoU's committee on the Justice, Law and Order Sector (JLOS) in January 2009, in an attempt to convince them of the need for such a Bill. The implementation proved to be problematic, since the NRM as the ruling party refused to support the Bill in Parliament. This is a consequence of how the Bill would result in investigations from the present and back to independence in 1962. The implications for the NRM as the ruling party are that it will be held responsible for the gross human rights violations it committed when fighting as a rebel group before coming to power in 1986. As long as the NRM disagrees with it and also dominates in the Parliament, this Bill will not be implemented into Ugandan law, and its proponents will therefore have to proceed carefully in order to convince the NRM of the need for this process (Batanda, 2009:6-7).

Despite the positive impact that a national approach to reconciliation could have had, it seems highly unlikely that it will happen in the near future. It should not be dismissed once and for all as a completely unrealistic alternative, but further coverage is beyond the scope and space of this thesis.

4.4 Neo-traditional reconciliation and conflict resolution procedures in Northern Uganda

4.4.1 Introduction

This subsection will in the following first analyse the strong and weak sides of the Acholis neo-traditional justice mechanisms associated with reconciliation and conflict resolution and then discuss how it can be placed within a combined approach to contribute to the creation of sustainable peace.

4.4.2 The strengths of the Acholis neo-traditional justice

Allen (2005, 2006 and 2008), identifies the NGO International Alert as being the main actor responsible for establishing the notion of what he perceives as a previously non-existing notion of neo-traditional restorative justice in Acholiland. Based on the current situation described above, it published the report *'The Bending of Spears: Producing Consensus for Peace and Development in Northern Uganda'* written by Dennis Pain, an English sociologist, who, in the 1990s, conducted several detailed observations of the conflict in Northern Uganda. Pain found that despite the violence and suffering they had experienced throughout the conflict, the Acholis were able to endure the situation, as they had a unique form of forgiveness performed through a long and thorough reconciliation process. This involved an investigation of the circumstances, an acceptance of responsibility and an indication of repentance, with the elders laying down terms of compensation and the reconciliation is sealed by a traditional ritual known as Mato Oput, where the parties share a bitter root drink from a common calabash (Pain, 1997:82). Pain (1997:82) further explains the reconciliation ceremony as:

Between groups the process required a delegation of elders to investigate the fault and identify the cause and for those concerned to accept their responsibility. The acceptance of responsibility is a group acceptance, not so & so, son of X, but we have done this. Then the compensation is determined, traditionally cattle or girls, and lastly reconciliation occurs with the 'bending of the spears' and 'mato oput'. There should be individual mato oput for children at the sub-country level and a final mato oput between groups- Acholi, Government and LRA- at a public event.

One of the several studies that have been conducted afterwards, thereby representing the 'legacy' of Pain's initial study by quoting his work, is the RLP researchers Hovil and Quinn's (2005) working paper with the title *'Peace First, Justice Later: Traditional Justice in Northern Uganda'*. In the Ugandan context, they found that not just the Acholi society, but most of Uganda's many different ethnic communities, such as the Karamojong, the Buganda and the Lugbara, had traditionally used such mechanisms in order to deal with conflicts. But whereas these forms of local traditions in some instances had disappeared under the pressure from the 'Western' form of retributive justice under colonialism, which was later upheld by post-colonial rulers, it was still an active part of the community's everyday life in other places, such as in the Acholi society (Hovil and Quinn, 2005:22-25).

In later reports with titles such as *'Beyond Truth Commissions: Indigenous Reconciliation in Uganda'* proponents of the Acholi restorative justice system have gone even further by pointing to its superiority over retributive justice, as it deals with crimes against humanity and war crimes through reconciliation rather than punishment (Quinn, quoted in Oomen and Marchand, 2007:174). Based on this Oomen and Marchand (2007:174) found that many NGOs, as well as local traditional and religious leaders have claimed that over time, this systems key principles and the rituals associated with them have been passed on orally to the next generations. This means that even if the majority of the current Acholi generation have been prevented from putting these reconciliatory rituals into practice because of the war, the memory of how to practice them has not been forgotten (Oomen and Marchand, 2007:174).

For their research, Oomen and Marchand (2007:173) gathered a group of Acholi elders in an IDP camp, who explained to them how these traditional ceremonies work in detail. The main idea behind the Acholi justice system to deal with the war crimes taking place is based on a notion of forgiveness by the victimised family and community. A criminal case is thus a communal event, as it is not only involving the perpetrator and their family, but particularly the victim(s). The general procedure in this system focuses on the offending clan or family confessing the crimes committed in public, expressing public remorse by going through different communal rituals and giving material compensation to the victimised family, whereby the latter promise to forgive the former for their misdeeds (Oomen and Marchand, 2007:173).

But despite this emphasis on forgiveness for such serious crimes aimed at reintegrating former rebels into society requires the victims to show a strong will to reconcile with them, the public expression of guilt and remorse is in a way a form of psychological punishment. Also, the assumption that the Acholi society has a strong capacity to forgive includes a detailed memory of their communal history concerning events involving grave crimes and violent episodes affecting their communities. As such, the victims and perpetrators do not reconcile in terms of promising each other to forget what has happened, but in terms of coming along on a daily basis in order to avoid possible revenge, but they are far from overlooking the past in their historical accounts (Oomen and Marchand, 2007:175)

This should be seen in relation to the RLP's (2004:8) explanation of how the rationale behind the neo-traditional justice mechanisms is to deal with crimes being committed through reconciliation and conflict resolution:

In some traditional communities, such as the Acholi and the Kakwa, there is no death penalty or prison sentence for the 'convicted' murderer. However, this is not to say that those who commit crimes are not made accountable. There is punishment and accountability. For example, a person who commits murder not only might be required to make material restitution to the family of the bereaved, but also might be assigned the responsibility of taking care of the family for the rest of his/her life. Particularly for communities such as those living in northern Uganda, which live in extreme poverty and marginal conditions, this 'replacement' of the role and service of the deceased usually seems more 'just' than punishing both communities by imprisoning or killing the offender.

Although in the past the Acholi people performed a number of different ceremonies, in the present situation the focus is primarily on two rituals, namely Nyono Tong Gweno and Mato Oput. Both of these rituals symbolises the different stages of the process of restorative justice (Hovil and Quinn, 2005:25; Oomen and Marchand, 2007:174). Nyono Tong Gweno and Mato Oput were traditionally used respectively to welcome back a traveller and in those instances where a member of one clan has killed a member of another clan, but in the current situation with the conflict taking place both rituals are often used interchangeably. Nyono Tong Gweno is a welcome ceremony where an egg is being stepped on and is used by the Acholi society to welcome back anyone who has been away from their home for a longer period of time (Hovil and Quinn, 2005:25). This ceremony is, however, not in itself a ceremony for dispute

settlement, as it traditionally was used to cleanse someone from whatever ills that had attached themselves to the person during the travel. But for someone who returns as a wrongdoer, this cleansing ceremony is only a necessary precondition before the much more thorough reconciliation ceremony of Mato Oput can take place (Hovil and Quinn, 2005:25).

In cases involving violent conflict or even murder between families and clans, the final overarching reconciliation ritual that must be passed is the Mato Oput. This refers to the drinking of a bitter root extracted from the Oput tree, which is a ritual that all parties involved must perform together in order to be reconciled. The most important aspect of the Mato Oput ritual is the perpetrators willingness to show remorse and compensate the victim(s) for the loss they have suffered (Oomen and Marchand, 2007:174).

The overall intention behind this is to enable the Acholi society to send out the signal that these persons have been accepted back into the community and that the community is glad to have them back. Whereas abductees will only need the simple cleansing ceremony, former combatants also need Mato Oput, and will thereby have to undergo both upon their return to be welcomed back home (Hovil and Quinn, 2005:25; Oomen and Marchand, 2007:174). Almost all of the LRA returnees, of which the total numbers were estimated to be over 12000 in 2007, have undergone this ceremony, either conducted by their respective families, or collectively with the support from the United States Agency for International Development (USAID) through its funding of NUPI. In comparison, the USAID through funding NUPI supported 54 Mato Oput ceremonies between 2004 and 2006 (Latigo, 2008:107).

4.4.3 The weaknesses associated with the Acholis neo-traditional justice

Oomen and Marchand (2007:173) argues that compared to the Rome Statue regulating the jurisdiction of the ICC and to a lesser extent, Uganda's Amnesty Act of 2000, the Acholis neo-traditional justice system's ability to handle criminal offences have hardly been documented. As an expert on Northern Uganda, the social anthropologist Tim Allen has, because of this, made an effort out of deconstructing the whole notion of a unique local Acholi neo-traditional justice system by writing extensively about the subject in several publications, most notably in his book *'Trial Justice: The International Criminal Court and the Lord's Resistance Army'* from 2006. Starting off by illustrating how confusing some of the critical notions in the local language may be for external observers Allen (2006:76-77) argues that:

(...) In the Lwo language, 'amnesty' and 'forgiveness' are not distinct- the same word (timo-kica) is used for both. The Christian organizations and the 'traditional' leaders were especially prone to confuse the two ideas, even arguing that there is an Acholi system of justice based on forgiveness which is superior to more conventional law-making and enforcement. Rather naively, many NGOs have taken this at face value.

Allen illustrates how the influential report *'The Bending of the Spear'* from 1997 started this trend, where Pain argued that the conflict was eroding 'Acholi culture' and what was needed to solve it was a community based approach drawing on their traditional values. Pain highlighted how the Mato Oput ceremony mediated by elders requires the wrongdoer to admit responsibility, asking for forgiveness and agreeing to pay compensation. Thereafter both parties drink the blood of the sacrificed sheep mixed with Mato Oput and the ceremony ends with Gomo Tong, or bending of the spears, to symbolise reconciliation (Allen, 2006:132-133).

According to Allen, Pain's report has created a great deal of confusion by obfuscating two distinct ceremonies. Mato Oput is a ceremony intended to deal with the consequences in the aftermath of a killing by reconciling social divisions, where those who participate are the wrongdoer and one member representing the family of the killed, together with clan elders. Gomo Tong is a totally different ceremony of peacemaking undertaken to bring a peaceful resolution to conflicts between clans or other ethnic groups. The last time it was performed was, however, in the early 1980s to reconcile social unrest between the Acholis and the people of the West Nile after Amin's downfall (Allen, 2006:132-133). In this regard Doom and Vlassenroot (1999:11) and ICG (2005a:7) seem to represent these authors and NGOs confusing these rituals, as they mention Gomo Tong alongside Mato Oput as illustrating these local reconciliation ceremonies.

Another negative aspect concerning these Acholi rituals is the way in which they are presented as local and genuine initiatives which have their foundations in ancient traditions (Oomen and Marchand, 2007:174). Allen argues that statements made in favour of this culture of restorative justice, based on the perception of a supposedly unified Acholi identity established a long time ago must be treated with utmost caution, and rather be understood as a deliberate mythmaking (Allen, 2006; Oomen and Marchand, 2007:174). He illustrates this point by arguing that 'to the extent that there was ever an integrated Acholi justice system, it

was introduced and regulated under the indirect rule of the British protectorate' (Allen, 2006:162). With regards to the unified Acholi society, the current borders of the area which is now known as Acholiland, were formed by the British colonisers (Allen, 2006:162). Last, but not least, evidence suggests that, to the contrary of this perception of the Acholis ability to forgive and that murder was not in their nature in pre-colonial times, killings were widespread in this region, especially in the period between 1860 and 1910 (Allen, 2006:162).

Nevertheless, shortly after Pain's report the Belgian government provided funding to ACORD, another local NGO in Northern Uganda, to conduct a study to verify Pain's findings (Allen, 2006:133). Allen notes that despite of what are for him obvious facts, because of the international aid agencies' willingness to support it and the increased press coverage by local and global media, local traditional and religious leaders, NGOs and ordinary people living in the IDP camps have all been strengthened in their perception of the uniqueness of the Acholi justice system by regarding it as an institutionalised 'traditional' system (Allen, 2005).

Oomen and Marchand (2007:174) argue that this is a consequence of how the international aid community became increasingly frustrated with the seemingly unsolvable 'peace vs. justice' debate and therefore started looking for alternative remedies to deal with this impasse, which they seemingly found in the local approach to conflict resolution in Acholiland by expressing its interest in contributing with finances to stimulate these apparently authentic traditions. Another reason for why the donors have supported these NGOs emphasised reconciliation relates to how many of the organisations most closely involved have a religious background and agenda (Oomen and Marchand, 2007:174). Both the ARLPI and the various Acholi traditional leaders' associations have received most of their funding from international donor agencies (Allen, 2005). Thus, in addition to the local actors, they play a very strong role in supporting these neo-traditional forms of conflict resolution.

4.4.4 The neo-traditional justice mechanism's contribution to sustainable peace in Northern Uganda

The ongoing conflict in Northern Uganda has clarified the existence, although imperfect, of a neo-traditional justice system reflecting both retributive and restorative elements of conflict resolution focusing on how to reintegrate the perpetrators back into their communities by

reconciling them with their victims through a process which includes establishing the truth, confession, reparation, repentance and forgiveness (Latigo, 2008:108).

There has been some degree of success in the implementation and use of neo-traditional justice mechanisms, such as the Mato Oput, to mediate in the Northern Ugandan conflict thanks to the ground breaking agenda item number three of the Juba peace talks calling for the use of neo-traditional justice mechanisms alongside formal justice procedures (Ogora, 2009).

This illustrates how neo-traditional justice practices are increasingly perceived as being a potential mechanism to deal with the issues of conflict resolution and transitional justice, and Northern Uganda is currently one of the most important cases in this regard, as neo-traditional justice mechanisms like the Mato Oput are about to be used to deal with resolving war crimes and crimes against humanity committed throughout more than two decades of conflict (Ogora, 2009:1).

In this regard, Uganda is already at an advanced stage, as it has gone further than any other country in this regard after the failed Juba peace talks by incorporating and codifying certain principles of neo-traditional restorative justice in the amnesty law in conformity with 'Western' standards (Latigo, 2008:111).

In relation to this, Sverker Finnström, a Swedish social anthropologist, who did extensive field work in Northern Uganda between 1997 and 2002 for his PhD published in 2003 with the title '*Living with Bad Surroundings: War and Existential Uncertainty in Acholiland, Northern Uganda*' (quoted in Hovil and Quinn, 2005:25), argues that:

It is important to note that drinking the bitter root (mato oput) is not simply a tradition of some glorious past. In the midst of war this reconciliation ritual is conducted in Acholiland and clan feuds are settled there. Even though a murderer is sent to prison, a reconciliation ritual ought to be conducted (...) These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon and performed to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance.

In defence of the proponents of these neo-traditional justice procedures it should therefore be noted that their confusion might have been the result of changes in these procedures over time

and because of the conflict itself. In their report on the neo-traditional Acholi rituals, the local staffs of Caritas in Northern Uganda (quoted in Oomen and Marchand, 2007:173) have noted that in the past, it was normal procedure for the perpetrators to give their young daughters to the victimised clan, whereas they by giving birth to a child would replace the lost clan member(s). In modern times, this procedure has changed to compensating through money or cattle. Furthermore, the Mato Oput ritual requires a large amount of material resources and organisation, such as 'a sheep from each clan, a bull, several goats, new knives, spears, calabashes, bowls and baskets, communally brewed beer and local bread, and large financial court fines to the local chiefs'. This might be extremely difficult, if not impossible, to obtain given the current situation with war and restricted movement resulting from being placed in an IDP camp, and the Mato Oput procedure has therefore not been performed frequently since the LRA began its insurgency (Caritas quoted in Oomen and Marchand, 2007:173). The Acholi society has therefore understandably been forced to welcome LRA returnees back into society with other rituals, such as Nyono Tong Gweno (Caritas quoted in Oomen and Marchand, 2007:174).

However, neither Latigo (2008), Hovil and Quinn (2005), or Oomen and Marchand (2007), denies the fact that despite of continued existence in the Acholi society compared to other ethnic communities in Uganda, even here the role of the neo-traditional mechanisms of justice has changed, both relates to how colonialism and in modern times government in Kampala has altered the way in which justice is administered. All of them had noted the complaints about how the youth do not adhere to them anymore, as well as how the introduction of other religions, especially Christianity, had led some to reject the mechanisms altogether, even if some saw no contradiction between their personal belief and the Acholi justice system.

Also, none of these authors mentioned here refers to Gomo Tong, the bending of the spears, in the same way as Pain (1997), but instead put an emphasis on describing Nyono Tong Gweno and Mato Oput. Rather they refer to it in the same way as Allen does, by being an intertribal reconciliation ceremony between two or more conflicting parties to end their hostilities (Latigo, 2008:107-108; Quinn and Hovil, 2005:25).

A major problem in this regard is, however, that even if times have changed drastically with new conflicts where mass atrocities on an unprecedented scale have taken place and new generations who are unaccustomed to these neo-traditional practices have been brought up,

neo-traditional rituals are still presented in their 'ancient' and 'archaic' forms like they were practiced in the past. The result of this has been that neo-traditional justice mechanisms are perceived by many as at best a supplementary mechanism to more direct Western forms of retributive justice (Ogora, 2009:1).

The Mato Oput procedures in Northern Uganda are, for instance, still being presented and discussed in such a way that it makes outsiders like Tim Allen (2005, 2006 and 2008) draw the conclusion that it will remain 'as it was in the beginning, is now and forever, amen', and resulted in that many analysts and scholars have dismissed neo-traditional justice mechanisms as unable to deal with 'modern' war crimes and crimes against humanity (Ogora, 2009). This is despite of the fact that the lessons from Rwanda's Gacaca courts clearly indicates that neo-traditional justice mechanisms can indeed be remodelled to deal with the challenges associated with contemporary conflicts (Huysse, 2008; Ogora, 2009). This is also the main reason behind why traditional justice mechanisms have not been taken more seriously into consideration until now, as most of them are still being presented and discussed in their 'archaic' and 'ancient' form without taking into consideration the challenges they are being faced with in contemporary conflicts and the environments in which they would be operating in.

The reality on the ground in Uganda is therefore that these neo-traditional mechanisms are still primarily understood as supplementary rather than the equivalent to formal mechanisms. For instance, the GoU has for a long time seen the use of such traditional mechanisms as a 'soft landing' for the LRA leaders to avoid punishment. This is illustrated by how it, in July 2008, through the JLOS started developing a transitional justice framework towards the signing of the final peace agreement. It was, however, never considered necessary to give priority to include consultation by the traditional and religious leaders or the researchers who have a lot of knowledge about the neo-traditional justice system to contribute with their input (Ogora, 2009:2-3). Because of this, there have been many preparations for the establishment of the SDHC, while in comparison there has been very little progress on the work to prepare the traditional justice for the same thing (Ogora, 2009:2-3).

Ogora (2009:2-3) points to how neo-traditional justice mechanisms can and will need to adapt to the changing circumstances in order to properly address contemporary challenges of transitional justice. In this regard, he tries to address the problematic way that neo-traditional

justice mechanisms are still presented in contemporary settings as holding on to the past. Overall he suggests that there is a clear need to remodel neo-traditional justice mechanisms in order to adapt them to contemporary settings, as well as the need to consider them as alternative justice mechanisms that are equivalent, rather than supplementary to Western models of justice (Ogora; 2009:3-4). As the case of Northern Uganda illustrates, more effort and attention is being aimed at making sure that judicial mechanisms are functioning while restorative mechanisms like neo-traditional justice are often left in the cold to 'sort themselves out'. While the GoU has made arrangements for establishing the SDHC, very little has in comparison been done to prepare for the use of neo-traditional justice (Ogora, 2009:3-4).

Ogora (2009:4) therefore argues that there 'is an urgent need to begin considering traditional justice mechanisms at least as equally significant to formal judicial justice mechanisms'. The relevance of traditional justice mechanisms should not only be recognised but significant amounts of resources and time need to be allocated towards developing them (Ogora, 2009:6). In order to be able to move forward, it is necessary to take into consideration contemporary realities on the ground by analysing whether and to what degree neo-traditional justice mechanisms can evolve and be adapted to deal with these aspects so that they can complement the limitations in more conventional transitional justice mechanisms (Ogora, 2009:1).

Unfortunately, this practice of conditional amnesties through the Amnesty Act coupled with forgiveness and reconciliation through Mato Oput and Nyono Tong Gweno will clearly be perceived from the perspective of the 'justice approach' focus on retributive justice as defying the ends of justice and result in impunity. It does, however, fail to take into consideration that in the Acholis restorative justice there are no contradictions between accountability and reconciliation, as they are aligned, which makes the practice of impunity difficult, as it is never accepted. This is due to the fact that the Acholi traditional justice and reconciliation system reflects many, if not most of the elements in the concept of transitional justice through investigations into the crimes of the past in order to forge out the future. This investigative process is brought to the fore through the Mato Oput reconciliation ceremonies (Latigo, 2008:109).

Furthermore, the role of the ICC, or the SDHC for that matter, and the applicability of their retributive form of justice in resolving more than two decades of conflict in the region will

only result in the conviction of the LRA leaders for being the worst and most responsible perpetrators for the atrocities being committed. This is despite the fact that after more than two decades of conflict, it will be an extremely difficult task to establish the truth about the atrocities taking place, where neither restorative or retributive mechanisms of transitional justice by themselves will ever be able to cope with the sheer magnitude of cases and create a sense of justice (Latigo, 2008).

However, as most conflicts today are intrastate, this means that more often than not, both perpetrators and victims will have to live together. This conflict is no exception in this regard, meaning that the large majority of the perpetrators responsible for committing these atrocities mostly against their own people will stay around their victims even long after that the hostilities have ended (Latigo, 2008:117). This will result in that victims and perpetrators as well as their families or clans will have to live alongside each other and share a common social future for generations to come. It is therefore imperative that the Acholis neo-traditional justice system for all its flaws and weaknesses must be used to deal with this as best as possible.

What can be derived from all of this is that the neo-traditional approach to justice should not be perceived as the only way to deal with the conflict. But neither should it be dismissed outright as mythmaking, as these traditions hold the key to the successful reintegration of former combatants by providing them with an alternative to the life in the bush, but also reconciling them with their victims (Latigo, 2008:109-111, 118-119).

Although the differences between retributive and restorative justice are seemingly vast, it should by now be understood that peace and justice can only be achieved in Northern Uganda through a comprehensive and all inclusive approach, where the two different mindsets should be reconciled in the process. In this alternative and combined approach to transitional justice in Northern Uganda, the different mechanisms associated with both forms of transitional justice should be utilised in a positive way, so that they are not seen as working against each other by contradicting or competing, but as complementary (Latigo, 2008:118-119; Ogora, 2009). Thus, by being critically aware of the influence of religions and religious aid organisations, most notably Christianity, by continuing to trace the processes which led to the development of certain traditional processes, the decay of others and the emergence of new ones, the Acholi way of promoting reconciliation and conflict resolution for the whole society

should be drawn upon alongside the contributions associated with the Western mechanisms associated with retributive justice (Latigo, 2008; Ogora, 2009).

The complications of this combined approach lie in how to make the two systems operate simultaneously in order to guarantee that no form of impunity is accepted. While acknowledging that the retributive forms of justice associated with the ICC and the SDHC should be targeting the LRA leadership for being most responsible for two decades of mayhem that deserve punishment rather than amnesty, whereas its rank and file combatants are offered conditional amnesty by the government to avoid punishment and prosecution at a later stage, but are at the same time obliged to undergo a process of reconciliation through the local restorative system associated with neo-traditional justice.

4.5 Conclusion

Based on the balance in item number three on the agenda for the Juba peace agreement, this chapter has elaborated on the fifth step of the theoretical framework used throughout this thesis, namely how to optimise these three transitional justice mechanisms in order to facilitate and support the conditions conducive for a sustainable and lasting peace in Northern Uganda. This is done by assessing each of these mechanisms' main characteristics respectively, in terms of their historical background, development and current impact in order to gain insight into their strength and weaknesses, and to be able to analyse how they best can work together on a parallel track in a combined transitional justice approach to create sustainable peace in Northern Uganda.

The ICC as a transitional justice mechanism is described by first looking at the process behind how it evolved until the Rome Treaty in 1998. With its basis in this Treaty regulating the Court's jurisdiction, the next section explains the processing of a case through this judicial system in nine steps. Then the Court's strength is described, in terms of how several African States Parties approached the ICC a short time after it became fully operational in July, 2002, by requesting it to assist them in dealing with various atrocities taking place on their territories. The ICC had thereby seemingly been given a more or less ideal start. However, shortly after it had become involved in Northern Uganda, first by expressing that it would investigate the atrocities committed by the LRA in 2004, and later on in 2005 by indicting five of its leaders, it experienced heavy resistance from the Acholis themselves, their traditional and religious leaders, as well as the GoU. The reasons for this were that, until then,

blanket amnesties were the only transitional justice mechanism on offer to the rebels providing them with a return to their communities, which the Court demanded an end to, as well as how the ICC had a one-way communication with the public. Although its opponents expressed grave concern about what the consequences of this would be in terms of the rebels becoming much more violent and refusing to give up their insurgency at all, the Court seemingly brushed them aside, since it as a relatively new international Court seemed eager to establish itself as a legal force to be reckoned with and thereby make its presence felt in conflicts worldwide. It thereby disregards the fact that it has jurisdiction over individuals in countries with conflicting forms of justice and for who it should be for, an international legal human rights regime or the victims.

In a combined approach, the retributive forms of justice associated with the ICC is one among several available forms of justice that together address the root causes of a conflict, rather than merely treating the symptoms. That said, prosecutions serve several important functions, such as clarifying where the guilt lies, and that crimes against humanity and war crimes are not tolerated and will result in punishment, re-establishing the trust between state institutions and the citizens they are supposed to serve. But prosecutions cannot be the only response when dealing with perpetrators, especially in conflict situations like Northern Uganda, where tens to hundreds of thousands of crimes have been committed. Here the only viable solution is to prosecute the rebel leaders, who are to blame for being most responsible behind the atrocities, but the mid-level leaders and rank and file combatants will have to be dealt with through other remedies. In this regard, that refers to Uganda's Amnesty Act of 2000 and the Acholis neo-traditional justice, like the Mato Oput ceremonies.

The Amnesty Act, which passed through the Ugandan parliament in 2000, was the result of increased pressure from the ordinary Acholis and the NGOs in the civil society in Northern Uganda, such as the ARLPI, following the failed 1994 peace talks and the 1996 incident. Although it initially had some success in making LRA combatants defecting or surrendering in return for unconditional amnesty until 2004 and 2005, this mechanism has failed for a number of reasons. First and foremost is the LRA's response by retaliating against former rebel fighters, their families and surroundings in IDP camps that had defected or surrendered in return for amnesties. Then is the aspect that rebel commanders have become accustomed to a life in relative material and physical wealth based on looting and forcibly abducted 'wives'. In relation to this are the DDR packages former rebels receive upon their return without them

having to accept the guilt of their crimes, whereas their victims in return are left without apologies enabling them to come to terms with their past experiences or compensation for their losses. Many have therefore closed the door to reintegration and reconciliation with former rebels. Another aspect of a more international character is the ICC's dismissal of the Amnesty Act, by serving as a symbol of the unacceptable practice of impunity that it is meant to bring an end to. This has in turn meant that rebels have refused to surrender as they fear being prosecuted instead of receiving amnesty upon their return. When added up, these aspects together illustrate how the amnesty as a transitional justice mechanism in its present form has failed and will need to be amended in order to become relevant again.

Although the ICC's retributive justice and the practice of impunity is seemingly at odds, they share a major weakness. By declaring that it will prosecute all perpetrators irrespective of their status, a court will reduce the probability of rebels surrendering or defecting and thereby serve to continue an already ongoing conflict, although it will never be able to adequately deal with all of them. Even if blanket amnesties increases the probability of rebels defecting or surrendering, it will create a climate of impunity, which increases the risk of a return to conflict at a later stage. In this regard, it has been pointed to how a TC or TRC can serve as a middle way by giving conditional amnesties in return for truthful confessions, and how the weakness in the current approach to reconciliation is regional and not national. Although work is being done in this regard with the proposed National Reconciliation Bill, given Uganda's negative experience with such institutions in the past, and Museveni's reluctance to accept it as it will tap into his interests, it seems highly unlikely for now. It is suggested in this regard that the Amnesty Act be amended, so that the rebels receive a state based amnesty protecting them from prosecution from the GoU at a later stage. Such an amnesty should, however, be conditional and dependent upon the rebels agreeing to participate in neo-traditional reconciliation ceremonies with their fellow Acholis upon their return and before being fully reintegrated into society.

The Acholis neo-traditional justice was just brought to the fore in 1997, but was one decade later fully integrated as a transitional justice mechanism alongside the ICC and amnesty in the Juba peace agreement. Reconciliation ceremonies like the Mato Oput and the Nyono Tong Gweno are intended to reconcile the victims with their perpetrators in order to overcome a difficult past and build a peaceful future together. This form of justice is however challenged by several aspects. The most problematic aspect concerning neo-traditional justice is the way in which it is still being presented in its 'ancient' and 'archaic' form, which makes it

irrelevant when dealing with the ‘modern’ crimes against humanity and war crimes. It is therefore neither taken seriously by the GoU who perceives it as a ‘soft landing’, the ICC who understand it as a continuance of the unacceptable practice of impunity, or researchers like Allen, who describes it as mythmaking. Another aspect is related to how NGOs, especially religious ones, have influenced the process of re-establishing this form of justice, reflecting how neo-traditional justice is possibly the product of deliberate mythmaking of the Acholis supposedly peaceful past before the introduction of Western justice under colonialism that was later upheld by the post-colonial rulers. In order for the Acholis neo-traditional justice to have a purpose in a combined transitional justice approach, a thorough historical account with regards to their origins, influence by religions and financing by NGOs, especially religious ones, to undertake such procedures, the impact of colonialism and post-colonialism, the effect of the conflict and how they are being practiced in the current context is required. Only then can these procedures be fully integrated into a combined transitional justice approach. That said, it clearly has a purpose to serve in avoiding the practice of impunity, by dealing with the large majority of rebels upon their return, as the more conventional forms of justice being expressed through either the ICC or the SDHC will only be able to handle an extremely small fraction of the most responsible perpetrators in the shape of Kony and his top commanders.

This chapter has thereby illustrated how these transitional justice mechanisms when being presented as the only solution respectively to deal with the conflict has failed and will continue to do so, unless a more comprehensive approach where they are combined is applied instead. Such an approach will, however, require a careful consideration and negotiation between various stakeholders in the process without dismissing each others’ perceptions, but not uncritically accepting the conventional ‘wisdom’ about each mechanism either. Only then can the hopes for sustainable peace be renewed and a more viable solution to the conflict in Northern Uganda be presented.

5 Conclusion

This last and concluding chapter will in the following draw conclusions and make propositions for future research, based on the central assertion originating from the two main theoretical and empirical research questions, as well as the research sub-questions of a more peripheral, but still important character, that all have guided this study.

(1) To what degree is it possible to reconcile the two opposing perspectives in the ‘peace vs. justice debate’ through a combined approach?

Based on the work of leading theorists within peace and conflict studies, such as Galtung (1969, 1996), Lederach (1997) and Mani (2002, 2005), this study has developed a theoretical framework to analyse the more theoretical side of the ‘peace vs. justice’ debate. It finds that despite their seemingly vast differences, both perspectives are based on the same misperceptions associated with negative peace, reflecting the mere absence of more direct and physical forms of violence through prosecution and punishment and peace negotiations respectively. Both perspectives would thereby at best end a conflict by dealing with its symptoms but, however, without addressing the reasons behind its outbreak in the first place.

By first deconstructing the perceived differences between these two opposing perspectives concerning their understanding of what the concepts of peace and justice consist of, to later reconstruct them, it is possible to come up with a more inclusive and combined approach. Here the essence of both perspectives is encapsulated into one, where both are clearly needed in order to build a future based on a sustainable and lasting peace. ‘Peace’ is here extended to the notion of ‘positive peace’ which in addition to physical violence also addresses its deeper and underlying background through the societal structures and institutions inherent in all societies, like economic and political inequalities, or a colonial legacy resulting in grievances. In comparison, ‘justice’ is not only being concerned about the past through retribution and punishment, but also focuses on restoration through reconciliation and more socioeconomic forms of justice.

There are clearly weaknesses associated with applying such an all-inclusive approach, but as long as the existing perspectives still remain locked, it is important to look for venues where these perspectives are not opposing each other, but rather mutually reinforces their common

goal for transitional justice mechanisms of contributing to the creation of the conditions that allows a process of lasting and sustainable peace to take place in conflict zones. Concerning the main theoretical question guiding this study, it has thereby been able to illustrate that despite of the perceived incompatibility at the current level, it is not impossible, but at the same time a very difficult challenge to come up with a better approach through a combined perspective emphasising the inclusion of central elements from both perspectives in the 'peace vs. justice' debate.

As this theoretical perspective reflects a debate with far reaching empirical implications, a case study was deemed necessary to determine the practical relevance of this combined approach. For this purpose the case of Northern Uganda was chosen, as it is where the practical implications of the 'peace vs. justice' debate has lasted for the longest period of time since the establishment of the ICC in 2002, and its involvement in the conflict from 2004 onwards. Thus, the more empirical research question this thesis has answered is:

(2) How can such an approach help create sustainable peace in the case of the ongoing conflict in Northern Uganda?

This conflict, which has lasted for more than twenty years between the GoU and the LRA rebels represents a humanitarian disaster on an unprecedented scale, which involves atrocities against the Acholi civilians through killings, mutilations and forced abduction of children to serve as child soldiers in the rebel movement, but also eviction from their homesteads and villages into IDP camps with appalling living conditions and harsh treatment from the UPDF. Previous attempts at ending this conflict through military counterinsurgencies from the GoU, peace negotiations in 1994 and 2004, and blanket amnesties have all shown initial promising signs of ending the conflict, but then failed utterly with the rebels retaliating through violent attacks against the civilian population, with a further deterioration of an already bad situation.

It was in this context that the ICC, on Museveni's request, became involved between 2004 and 2005, by first launching formal investigations and later indicting Kony and four of his commanders for war crimes and crimes against humanity. This move was not welcomed by the local NGOs and aid workers who feared that the rebels would become more violent and refuse to end their insurgency. It can also be prescribed to the way in which the Court utilised a one-way communication strategy and without taking such local worries into consideration,

by rather brushing them aside in the pursuit of enforcing a global human rights regime. The result of this was the local Ugandan ‘peace vs. justice’ debate between proponents of justice favouring the ICC’s retributive justice and advocates for peace emphasising amnesty and neo-traditional justice aimed at reconciliation and conflict resolution.

In all of this, the Juba peace talks between July 2006 and April 2008 with the GoSS mediating between the two warring factions made significant contributions to end the hostilities with a five point agenda addressing both the direct symptoms and the deeper root causes behind this conflict. Unfortunately, this attempt at ending the conflict peacefully broke down in April 2008 with the parties resuming the hostilities. More importantly in this regard for this thesis is the way in which agenda item number three concerning accountability and reconciliation, if it had been successful, would have resulted in striking such a balance between the retributive and restorative forms of transitional justice mechanisms in Northern Uganda, namely the ICC, the Amnesty Act of 2000, and the Acholis neo-traditional forms of justice.

With a basis in this item, the second part of this thesis finds that only a combined approach can help bring about a sustainable peace in the case of the ongoing conflict in Northern Uganda, by striking such a balance between these three transitional justice mechanisms, where Kony and his top commanders are prosecuted in a court, whether this is in Uganda by the SDHC or in The Hague by the ICC, but at the same time also dealing with the rank and file rebel fighters and the mid-level officers, by offering them conditional amnesty against state prosecution in the Amnesty Act, in return for them agreeing to participate in neo-traditional reconciliation and conflict resolution ceremonies with their victims to overcome the difficult past and be able to move on into a peaceful future.

Although Northern Uganda might be at relative peace and calm at the moment, with the Acholis returning to and reconstructing their villages, this is only in the negative sense of the word with an absence of the more direct and physical forms of violence. So far, the deeper underlying root causes of a more structural character associated with ‘positive’ peace have not been addressed, meaning that the Acholis grievances against Museveni’s rule are unsolved and will continue to complicate the situation unless something is done.

Furthermore, Kony and most of his rebels are still at large in the bush spreading death and destruction as they pass by villages in the CAR, the DRC and Southern Sudan. Although it is

too soon to tell, but given the UPDF's complete inability to defeat the LRA over the past two decades, it is most likely not a question of if, but rather when the rebels are back to launch a new round of ferocious attacks against the civilian population in Acholiland and other parts of Northern Uganda.

In the conclusion of his article Dunn's (2007:148) argument illustrates the main empirical findings of this thesis:

Perhaps the LRA would collapse if Kony were to be arrested or die, as did União Nacional para a Independência Total de Angola (UNITA) after Jonas Savimbi's death. But there is no reason to anticipate such a turn of events. Despite heightened expectations, the massive self-repatriation of thousands of displaced persons in the north, and evidence that the LRA leadership seems to have reached a level of exhaustion with their struggle, nothing indicates that the conflict will reach a conclusive resolution soon. Given the history of the struggle, it is likely that the underlying roots of the conflict will continue to keep both sides emboldened and embittered.

How this conflict will end, whether it is in a violent way or with a more peaceful outcome remains yet to be seen, but what is for certain is that it will continue to haunt not only the local Acholi communities in the north of the country, but also the much wider Ugandan society for decades to come unless something is done about it. All good measures will therefore have to be utilised and work together in a well orchestrated peace building effort to solve the underlying grievances fuelling this conflict for so long in a best possible way through neo-traditional justice procedures, conditional amnesty and the ICC. More research analysing how this can be achieved are therefore clearly needed.

Thus, with basis in the main theoretical and empirical research questions guiding this study, this thesis has proved its central assertion about how the existing perspectives are wholly inefficient in addressing transitional justice in conflict zones, as their attempts have clearly failed due to a number of deficiencies, and will continue to fail, unless a combined holistic approach is applied instead.

Based on the central assertion, this study has illustrated how the existing 'peace vs. justice' perspectives are wholly inefficient in addressing transitional justice issues in conflict zones, as their attempts have clearly failed due to a number of deficiencies and will continue to do so,

unless a more holistic and combined approach is applied instead. The main reason for why these existing perspectives are unable to achieve this is because of their common perception of total incompatibility, where it must be a trade-off between them. This results in that one comes at the expense of the other, where 'justice' is only associated with retributive justice mainly aimed at punishment and prosecution, while 'peace' is merely being obsessed with negotiations to end the hostilities. They are thereby only able to deal with the symptoms and not the deeper underlying root causes and grievances that caused the conflict in the first place.

In line with the central assertion, this study has, based on the works of leading theorists within peace and conflict studies, like Galtung (1969, 1996) and Lederach (1997) developed a more holistic and combined approach, where instead of simply relying on one single perspective, such as political science, a variety of perspectives within different disciplines have all been included to avoid missing important insights. These stretch from those writing within the discipline of peace and conflict studies itself, like Mani (2002, 2005), Nielsen (2008) and Simpson (2008), political science such as Bøås (2004), Dunn (2007) and Prunier (2004), social anthropology like Allen (2005, 2006 and 2008), human rights lawyers like du Plessis (2005) and van Zyl (2005), or a combination of both such as Oomen and Marchand (2007).

Based on their work, a more thorough and balanced analysis illustrates how the only solution to properly address the issue of transitional justice in the Northern Ugandan context is to balance these three mechanisms, with prosecutions against those perpetrators perceived as most responsible for committing the worst kind of atrocities, coupled with conditional amnesties and the Acholis neo-traditional justice mechanisms aimed at reconciliation and conflict resolution through ceremonies, such as the Mato Oput, for the rank and file rebel fighters as well as the mid-level officers.

This also relates to the first research sub-question being asked in this study, namely: Does transitional justice work in societies deeply divided over social issues or ethnicity?

As the conflict in Northern Uganda illustrates, its root causes can be found in an ethnic north vs. south divide between Bantu and Nilotic speaking tribes that was introduced during colonialism and later served as a practical tool for successive post-colonial rulers from the north, like Obote, Amin and Okello, to exploit in order to remain in power. This practice ended when Museveni came to power in 1986 and concentrated the economic, military and

political power in the south. This is also the main reason behind the Acholi grievances, which in turn resulted in the three successive insurgencies respectively by the UPDA, HSM and LRA that all were aimed at overthrowing Museveni and replacing him with a northerner once again. Museveni has, however, done little if anything to address the Acholis or other northern groups' grievances, but rather focused on his own southern interests. As such, Uganda is described by most analysts used throughout this study as a society deeply divided over both social issues and ethnicity.

In relation to this, although the transitional justice mechanisms aimed at ending this conflict have had a certain degree of success, like the Amnesty Act until 2004/2005, and the Acholis neo-traditional justice mechanisms performed through ceremonies like the Mato Oput, a major challenge is that these are only a partial and regional answer to the problems in Northern Uganda and not the country as a whole. There is clearly a need for a more thorough and genuine national reconciliation process for coming to terms with the past and creating the foundations for a permanent future oriented solution within Uganda. In this regard, the efforts being made by the Beyond Juba Project at the RLP, based on agenda item number three on accountability and reconciliation, aimed at a National Reconciliation Bill should be noted as a positive attempt to deal with this issue. But despite the work being done by them, this seems highly unlikely to make any impact at the current stage, as it would tap into and expose the interests of Museveni's regime, who therefore has little interest in undertaking such a procedure. As for now, the existing regional approach towards transitional justice is more likely to succeed, although things could change in the future, and more research is needed to analyse this aspect.

Uganda is, however, not unique in this regard, and similar patterns can be found in other places where the ICC is currently involved, like the DRC and Sudan. Many other African countries also have a similar colonial legacy resulting in the contemporary problems associated with extreme levels of social inequality and/or ethnicity, meaning that irrespective of what kind of transitional justice mechanisms are deployed, they are faced with a tremendous challenge when dealing with the issue of peace and justice in these instances. This needs to be analysed before they are deployed in other conflict zones, which is a task for future research.

This reflects another challenge being framed in research sub-question number two, namely: Based on all the experiences that can be drawn from previous empirical and theoretical research conducted in transitional justice, is it possible to make generalisations that can be applied on different cases, or should they all be interpreted individually because of their unique complexities?

In the field of transitional justice, there are clearly two trends concerning the general application of transitional justice mechanisms in different conflicts. One relates to the perception of universal human rights and core crimes, which cannot be violated, and if it happens, will give rise to prosecution and punishment, as reflected in the Rome Statute and being expressed and upheld by the ICC. The other refers to how the South African TRC has served as a model for similar commissions elsewhere, like in East Timor and Sierra Leone.

Even if some researchers and analysts based on this are in favour of making generalisations to apply in each and every post-conflict society going from war to peace, the majority seem to caution against this, as it creates ‘one-size-fits-all’ solutions. This is especially relevant when discussing the impact of the ICC as a transitional justice mechanism. Until now, this Court has unfortunately demonstrated a complete lack of understanding for the necessity of taking such a context specific approach, but rather treated the different cases it is currently involved more or less in the same way. As this case study of the conflict in Northern Uganda illustrates, a drastic change in its perception of justice is therefore necessary in order for it to be a relevant transitional justice mechanism in conflict zones.

Although the South African TRC has been used with a certain degree of success in countries like East Timor and Sierra Leone, each context is unique in its own right. Another aspect illustrated in this study is how the application of such commissions in Uganda is not relevant, as they have been abused and therefore have had a rather limited impact. For now, the only viable solution is therefore an amendment of the Amnesty Act away from issuing blanket amnesties to conditional ones.

But even within the category of neo-traditional justice mechanisms there are big differences, as evidenced by the way in which the Gacaca courts in Rwanda were reformed from their traditional form to prosecute and punish the large majority of perpetrators. In comparison, the Mato Oput ceremony has little if any elements of punishment associated with it, but rather

aims at reconciliation and conflict resolution. As such, certain elements from transitional justice can possibly be implemented in different settings, but this will require a careful analysis of what the situation is like on the ground in specific conflict zones, but also based on thorough negotiations of how to do this in each and every instance.

As reflected on in the research design section in chapter one, with regards to the case study undertaken in this thesis, this is relevant in the local setting and cannot automatically be used to draw wider generalisations beyond this case. As the most recent developments in the conflict between the GoU and the LRA illustrates, although the situation on the ground in Northern Uganda is calm with a negative peace, it is still fluctuating, and the empirical relevance of this study will therefore most likely not have a long lasting impact. It is, however, hoped that the theoretical propositions made in the framework used throughout this thesis will make an impact that remain more constant, by serving as a source of inspiration to researchers elsewhere to conduct more of a similar kind of research in the future on both the theoretical and empirical implications of transitional justice in conflict zones, with basis on peace and conflict theories by using the works of Galtung (1969, 1996) and Lederach (1997), as well as other leading theorists within this field.

This leads to the last group of research sub-questions, related to: What are the strong and weak sides of the various transitional justice mechanisms that are available to bring an end to, and create sustainable peace in conflict zones? Furthermore, how can the positive aspects of a specific mechanism, like amnesties, be optimised, and the negative excluded in a joint approach? How can the positive aspects of different transitional justice mechanisms available be highlighted and applied in a common framework with the goal of creating sustainable peace in Northern Uganda?

The strengths associated with the ICC include how it can assist transitional societies struggling with coming to terms with their past and move on by providing them with a neutral venue for trials that might be destabilising if they were conducted nationally, and by stepping in where local legal remedies are either non-existent or has collapsed altogether. Trials thereby serve several important purposes, by sending out a clear signal to perpetrators that the atrocities they commit will give rise to punishment through prosecutions. Furthermore, by dealing with the worst of the worst, like the chief architects of war crimes and crimes against

humanity, it shows a dedication to human rights and that the unacceptable practice of complete impunity through blanket amnesties is now coming to an end.

However, the ICC has until now perceived its retributive justice as the only relevant form of justice to deal with such individuals. This perception of how only prosecution of those perceived as most responsible will create sustainable peace clearly disregards the fact that these persons are the tip of the iceberg, and that they are only dealing with the symptoms and not the root causes. Another aspect in relation to this is the way in which it has used a one-way communication with the public and other stakeholders, thereby overlooking local perceptions on the ground, as well as other mechanisms already put in place. This relates to how the Court, as a relatively new international organisation must make its presence felt as a legal force to be reckoned with and gain legitimacy by overcoming the scepticism among its critics.

For a start in a combined approach, the ICC must learn its lessons from past experiences concerning that it is far from being the one and only relevant transitional justice mechanism in conflict zones, but to the contrary one among many available forms of justice to assist post-conflict societies to overcome and be reconciled with their past and move on to develop a prosperous future with lasting and sustainable peace.

For their part, amnesties also serve several important purposes, but it is important to make a distinction between conditional and unconditional forms of amnesties. Although unconditional amnesties might increase the probability of rebel fighters surrendering in return for receiving it, this sends out the signal that there are no costs attached to committing atrocities and might result in a return to conflict at a later stage. This form of amnesty should not be dismissed once and for all, but it should only be applied under extraordinary circumstances where there are absolutely no other options available.

Conditional amnesties given in return for the perpetrator agreeing to undergo a process of remorse, forgiveness and reconciliation should therefore be emphasised instead. This option is especially relevant under circumstances where tens to hundreds of thousands of atrocities have been committed, and where any court would simply be overwhelmed and totally unable to deal with the magnitude of crimes. Conditional amnesties given by TC/TRCs have however

been abused in the past to gloss over a difficult past, and in those instances where this is the reality, their decisions must unfortunately be dismissed as unlawful.

The neo-traditional forms of justice also has a role to play in this process, as it is often the closest and most relevant form to settle disputes in many local African communities. As the case of Rwanda with its Gacaca courts illustrates, they can also be used to deal with situations where atrocities on a large scale have been committed, and the formal justice mechanisms are unable to deal with the scale of atrocities. In the Ugandan context it is however understandable that analysts like Allen (2005, 2006 and 2008) remain sceptical towards the Acholis neo-traditional justice mechanisms like the Mato Oput, as long as it is being presented in its 'ancient' and 'archaic' form like it was performed in the past, without being adapted to the contemporary setting with crimes being committed on a large scale.

These mechanisms associated with the Acholis neo-traditional justice should, however, not be dismissed once and for all, as they clearly have a purpose to serve. But in order to become relevant, a thorough and vigorous account must be made of their historical origins, the influence of colonialism and 'Western' forms of justice, the introduction of new religions, especially Christianity, the sponsoring by religious donors to perform them, and how they can be adapted to meet the international demands of human rights and avoidance of impunity. Only by undertaking such a procedure can they be properly implemented and applied in the Northern Ugandan context.

Thus, in a combined approach, the strong sides of these mechanisms would be applied in the following way: ICC should assist either by prosecuting Kony and his henchmen, as the worst perpetrators behind the violence, or by assisting the SDHC to undertake a judicial proceeding in this regard. As for now, a TC or TRC is not a relevant mechanism, as Uganda has had negative experiences with them in the past and the National Reconciliation Bill would tap into the interest of Museveni. Instead, a combination of utilising conditional amnesty in the Amnesty Act coupled with the Acholis neo-traditional justice aimed at reconciliation and conflict resolution will have to be used.

But the Amnesty Act will have to be amended at the same time, so that it instead of giving out blanket amnesties to the rank and file rebels and their mid-level commanders, it rather provides them with conditional amnesties that is dependent on them accepting participation in

Nyuo Tong Gweno and Mato Oput ceremonies before being reintegrated into their communities in Acholiland.

As it is presented now, these ceremonies are however, not relevant enough to deal with the 'modern' crimes against humanity and war crimes taking place on a large scale. The Acholis neo-traditional justice must therefore be reformed away from its current 'archaic' and 'ancient' form. This reform will have to be based on a thorough analysis of its historical background in terms of how they have evolved through the colonial era, post-colonial times and more recently with the ongoing conflict, as well as the influence of religions and religious NGOs by supporting such procedures financially. Only then can they be integrated as a transitional justice mechanism in a combined approach.

Based on this, it is suggested that future research try to address how they can work together in such a combined approach in conflicts elsewhere, as it is clearly a need for it in places like the DRC and Sudan.

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Appendix A

Map of LRA's operational areas



Source of map: The Economist (2009b)

Appendix B

Map of Uganda



Source of map: ICG (2008)

Appendix C

Ethno-linguistic map of Uganda



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