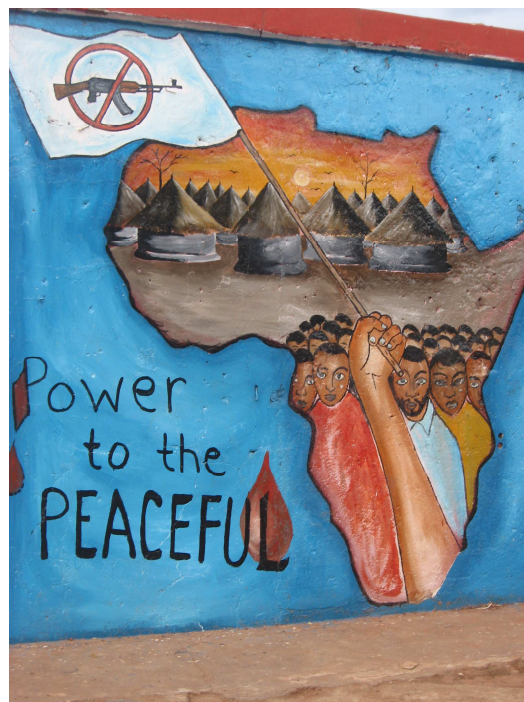


Justice and Accountability: Complex Political Perpetrators

Abducted as Children by the LRA in Northern
Uganda



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List of Abbreviations

AAR	Agreement on Accountability and Reconciliation
AA	Amnesty Act
AC	Amnesty Commission
ARLPI	Acholi Religious Leaders Peace Initiative
CAR	Central African Republic
DDR	Disarmament, Demobilization and Reintegration
DPP	Directorate of Public Prosecutions
DRC	Democratic Republic of Congo
FAP	Formerly Abducted Person
GoU	Government of Uganda
HRW	Human Rights Watch
ICC	International Criminal Court
ICG	International Crisis Group
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
JLOS	Justice and Law and Order Sector
LRA	Lord's Resistance Army
NGO	Non Governmental Organisation
NRA	National Resistance Army
SPLA	Sudanese People's Liberation Army
TJWG	Transitional Justice Working Group
UPDF	Uganda People's Defence Force
WCD	War Crimes Division

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Introduction

Research Question

This research is about abducted children who became adult perpetrators of mass atrocities in the conflict between the Lord's Resistance Army (LRA) and the Government of Uganda (GoU) - a conflict that has been raging for over twenty years. In order to fill its ranks the LRA's main tactic is to abduct children and adults and force them to serve as rebels, porters or, in the case of many girls, also as sex slaves and domestic servants. A recent study by Phuong N. Pham, Patrick Vinck and Eric Stover estimates that between 1986 and 2006 approximately 54,000 to 75,000 people, including 25,000 to 38,000 children, were abducted (2008:410).¹ Forced killing and mutilation of defenceless civilians, including members of the abductee's own family or community, is very common. Consequently, the suffering of the Acholi people is often inflicted upon them by people from their own communities. This hinders the return and reintegration of abductees after their escape. Moreover, it complicates the identity of the abductees.

On the one hand, they are victims because of their abduction, while on the other hand they turn into perpetrators when forced to commit severe atrocities. This situation shows that, rather than being two homogeneous and separate groups, the line between victims and perpetrators in Uganda is largely blurred and unclear, a complicated reality often seen in post-conflict situations. The issue of these "victim-perpetrators" becomes most relevant in the pursuit of justice - the search for accountability for past crimes - and reconciliation in a (post-) conflict society. Two (former) LRA combatants, Dominic Ongwen and Thomas Kwoyelo, represent the complexity of the Ugandan situation. These two men do not fit simplistic categories of victims and perpetrators because they both were abducted as young children by the LRA, matured in the organisation, grew through the ranks, and made it to the command levels as respectively top- and mid-level commanders. Due to their rank, they are held responsible for crimes committed by the LRA and will be prosecuted for it on national and international level. As such, their victimization is ignored completely, which brings up questions about responsibility and identity. In this research, people such as Kwoyelo and Ongwen, who hold the identity of both victim and perpetrator due to complex

¹ These numbers are based on figures from reception centers where children are registered after return. Since not all abducted children return from the bush and not all who return pass through a reception centre, these numbers are just an estimation.

circumstances, are described as *complex political perpetrators*. This concept is elaborated more in-depth below.

In the past years, scholars increasingly acknowledge that in order to build “positive” and long-term peace after violent conflict, reconciliation between the formerly warring parties needs to be achieved. Although there is no consensus on the exact meaning of the term reconciliation, justice is recognised as one of its core elements. The planning of post-conflict reconciliation and justice efforts has therefore become a fundamental part of peace negotiation processes (IDEA 2008:6). Hence, peace, justice and reconciliation are closely related concepts that cannot be seen separate from each other. For justice to contribute to the process of reconciliation and peacebuilding, it is important that all different parties in the conflict feel that justice is being done. In other words, *inclusive* justice needs to be attained, contrary to a *victor's* justice in which the victor can judge the defeated party because the former has a louder voice to resonate its opinion than the latter, in this case complex political perpetrators and the LRA. Before a justice system can be designed that contributes to an inclusive sense of justice, it must be understood which people are, or are perceived to be, the victims and the perpetrators in a conflict. However, as noted above, these groups are often difficult to distinguish. It is not possible to speak about the identity of “the Acholi population” or “the LRA combatants” since among them wide variation exists in conduct and motivation behind it during the conflict. Questions rise regarding the complex identity of abductees, levels of responsibility, and accountability and justice strategies but they are very difficult to answer. Moreover, the answers may vary widely among different actors because people’s perceptions on the situation are influenced by, among other things, their past war experiences, their knowledge about the LRA, emotions or their social environment. By collecting all these perceptions, one can analyse the different perceptions on the identity of and preferred justice strategies for complex political perpetrators. Such an analysis can provide a deeper understanding of how to design a justice system in which most actors involved in the conflict feel acknowledged and feel that justice is being done to them. This research aims to contribute to the discussion about an inclusive justice system for Uganda after the recent conflict between the GoU and the LRA by addressing the following question: *Within the larger aim for reconciliation and peace, which approach to justice in cases of complex political perpetrators such as Kwoyelo and Ongwen, is most effective when taking into account the perceptions of the local population and the GoU on justice?*

The results of the war are immense. Over 1,8 million people, about ninety Per cent of the Acholi population, were forcibly displaced from their homes by the GoU. From their homesteads, where they were largely self sufficient, they were forced to move to overcrowded camps for Internally Displaced Persons (IDPs) where living conditions were very difficult in terms of health, housing, and security. In these camps, they were largely dependent on external food assistance because they did not have access to the agricultural resources on their land. Furthermore, the rebels attacked the camps on a regular basis without protection from the government's forces (RLP 2004:3). Anyone found outside these IDP camps, called "protected villages" by the GoU, could be arrested on suspicion of being a rebel or a rebel collaborator by the government's army, the Uganda People's Defence Force (UPDF, previously called National Resistance Army (NRA)). Moreover, tens of thousands of children have been abducted and uncounted numbers of civilians massacred, mutilated, raped, and injured (Branch 2007:181; JRP Field Note 6 2008:2). Due to the relocation of the LRA to Garamba National Park in the Democratic Republic of the Congo (DRC), the violence has reduced in Northern Uganda since 2006 and many people have started returning to their regions of origin where they attempt to build up their lives again. Since the failure of the Juba peace talks in 2006, the GoU has pursued a military solution to end the almost twenty-four year long conflict between the GoU and the LRA. In December 2008, together with the governments of DRC, South Sudan and the Central African Republic (CAR), the Ugandan government launched Operation Lightning Thunder in an attempt to defeat the LRA militarily. However, the operation has proved to be unsuccessful as the LRA is still very active in the region.²

This research needs to be understood within the context of the justice and reconciliation processes that have been set in motion in 2006. Although no final peace agreement was signed in Juba, a process of positive peacebuilding in Uganda was set in motion. Both conflicting parties signed an Agreement on Accountability and Reconciliation (AAR) that lays out a whole range of transitional justice mechanisms. Among these instruments are the establishment of the War Crimes Division (WCD) - a special division of

² The recent report of Human Rights Watch (HRW) "Trail of Death: LRA atrocities in North-Eastern Congo", shows that although the LRA might be scattered and weakened in number and in terms of communication, it remains a large threat to the civilian population in DRC and CAR. Between 14 and 17 December 2009 the LRA carried out an attack in the Makombo area of Haut Uele district in North-Eastern Democratic Republic of Congo. In a well-planned operation, the LRA killed more than 321 civilians and abducted more than 250 others, including at least eighty children (HRW 2010:3).

the Ugandan High Court to try individuals for war crimes and crimes against humanity - and restorative (informal) justice mechanisms in the form of traditional justice mechanisms and a truth seeking body. Other strategies to pursue reconciliation, justice, and accountability in Northern Uganda are the implementation of disarmament, demobilization and reintegration projects (DDR), the Amnesty Act 2000 (AA) and its Amendment in 2006 to encourage combatants to return home without fear of prosecution, and the earlier 2003 government's referral of the situation in Northern Uganda to the International Criminal Court (ICC) in the Hague.

Complex Political Perpetrator as a Key Concept

As Kwoyelo and Ongwen reached high ranks in the LRA and became part of the command level, they are (inter)nationally held responsible for LRA crimes and will not be granted amnesty under de AA. Kwoyelo will be tried soon by the WCD in its first trial ever. He is accused of war crimes and crimes against humanity. Ongwen is indicted by the ICC for crimes against humanity, including massacres, and the abduction and enslavement of children, but he still remains at large.

Drawing from Erica Bouris' theory on victim agency, Erin Baines introduces the concept of the complex political perpetrator (Baines 2009:180). According to Baines, Bouris (2007) argues that the way in which victims in conflicts are portrayed in the media and by humanitarian agencies, helps people to make sense of the conflict and to make moral judgements about who is "good" and who is "evil". The international community is also informed by these images and bases its recognition of victims and perpetrators as well as its response policies on them (Bouris 2007:4 in Leatherman & Griffin 2009:6). Yet, Bouris argues that perpetrators and victims are not homogeneous groups. She rejects the clear-cut labels of victims as always innocent and helpless and perpetrators always only guilty. Her theory describes the "complex political victim", those victims of human rights abuses who act forced by their environment in a way that goes against these basic assumptions of victims and perpetrators (Bouris 2007 in Baines 2009:177; Baines 2008:432). Bouris explains the contradictory ways in which victims might act. She adds that by not recognising this special category of people in justice pursuits after conflict by excluding them, this might lead to the social construction of the "other". This can result in dehumanization, often a first step to violence and conflict (Bouris 2007 in Baines 2009:177).

Baines introduces the concept of the complex political perpetrator to describe cases such as Ongwen and Kwoyelo (Baines 2009:180). The term is used to describe “a generation of victims in settings of chronic crisis who not only adapt to violence to survive, but thrive” (Baines 2009:180). Those people grow up in societies where the state is largely absent and basic services and security are not delivered. Excluded from society, they lack access to political ways of expression and use violence to exercise control over their own lives, the lives of others and to gain material wealth and some political influence (Baines 2009:180). Northern Uganda is a good example of such a state where a whole generation has grown up in war. Young people who are abducted are a product of violence and reproduce these structures of violence thereby forcibly turning from victim to perpetrator. As it is one of the LRA’s main tactics, the levels of abduction are tremendous in Northern Uganda. It is not clear how many of them stayed until adulthood in the LRA, but from the previously mentioned number of abductions one can conclude that there is a high chance of more cases of complex political perpetrators such as Kwoyelo and Ongwen.

It needs to be recognised that the term complex political perpetrator does not fully acknowledge the complexity of the person’s story. By just naming him perpetrator, the focus is shifted away from his victimhood, while without his abduction the person would also not have become perpetrator. On the other hand, when the term complex political victim is used the same happens but the other way around. Important to note is that the choice for the former is not made to emphasise his liability but made because Baines’ term is very relevant for the case of Ongwen and Kwoyelo and describes the complexity well.

Framing Theory as an Approach

In order to identify and analyse the different opinions or perceptions that exist regarding complex political perpetrators, the theory of framing is used in this study. Gregory Bateson introduced frame analysis in the 1950s but most people attribute the concept of framing to Erving Goffman who wrote the book “Frame Analysis” in 1974. The concept of framing is now often used in the fields of sociology (Snow & Benford 1986), psychology and (political) communication and media studies (Entman 1993).

The central proposition of framing theory is that “an issue can be viewed from different perspectives and can be construed as having implications for multiple values or considerations” (Chong & Druckman 2007:104). Put simply, people perceive the same events differently and consequently attach different meaning to them. This results in the use of

different frames of the event that again leads to different actions. First, what is a frame and how should the process of framing be understood? According to framing theory, events, places, actors or actions do not automatically have meaning but they are given meaning by people. When people observe a phenomenon they, both conscious- and unconsciously, emphasise some of its aspects while they disregard others. They focus attention on what is relevant according to them, include it "in-frame", and omit other aspects that they find irrelevant and leave them "out-of-frame" (Snow et al 2007:387). Robert M. Entman provides a pertinent definition of this process of framing: "to frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation and/or treatment recommendation for the item described" (Entman 1993:52). In this process people thus organise their world into understandable categories or frames that are "built upon underlying structures of beliefs, values and experiences" (Kaufman et al 2003:1) and constituted of a collection of perceptions and thoughts. They help people to understand and interpret the complex world they live in. They determine how people understand a problem and guide their action. Thus, "frames provide meaning through selective simplification, filtering people's perceptions and providing them with a field of vision for a problem" (Kaufman et al 2003:1).

According to framing theory, people give meaning to a phenomenon and create the frames they use. Consequently, the ontological grounding of framing theory clearly inhibits a constructionist approach to reality because, in addition to making sense of the world or reality, people also shape reality in a particular way by framing it. The construction of reality and meaning making thus implies an active approach and agency of actors (Benford & Snow 2000:614; Triandafillidou & Fotiou 1998:§1.1). Politicians or rebel groups, for instance, use frames to (re)construct reality in a way it fits and legitimises their (violent) actions or policies. They present their "version" of an event or actor, (frame it in a specific way) and, in doing so, try to determine or at least influence public opinion in their advantage. According to Art Dewulf et al (2009), there are two different types of frames that both have a different ontological grounding. They distinguish between "cognitive framing" and "interactional framing". Cognitive frames are memory structures that help us to organise and interpret incoming perceptual information by fitting it into pre-existing categories or frames about reality (Minsky 1975 in Dewulf et al 2009:158-159). The latter sees frames as "communicative devices that individuals and groups use to negotiate their actions" (Dewulf et al 2009:160). The difference between the two approaches is thus that the former is static while in the latter

approach framing is a dynamic, ongoing process and frames are negotiable (Benford & Snow 2000:628; Dewulf 2009:159). The work of Goffman can also be situated in this latter tradition of framing.

In interactional framing, a conflict is seen as a phenomenon that resides in social interaction among disputants. Keeping this in mind, it can be understood why framing has become a popular theory in the field of conflict studies. As Sanda Kaufman et al (2003:2) explains, “knowing what types of frames are in use and how they are constructed allows one to draw conclusions about how they affect the development of a conflict, and can be used to influence it”. In other words, frame analysis can be utilised to analyse the conflict by explaining which different frames the conflicting parties pursue. Within the process of reconciliation or conflict negotiation, “reframing” or in other words the management of frames and the framing process, can lead to important shifts in frames and their impact on the conflict because the different actors get a better insight in their own and the others’ frames (Kaufman et al 2003: 4). The techniques used in frame analysis are, among others, interviewing the different actors in the dispute to identify their perceptions. By doing so, it is possible to understand what subject the parties view differently and whether there are possibilities to reframe. Thus, seen from the interactional approach, conflict resolution consists primarily of finding new alignments in the interaction between the actors involved (Dewulf et al 2009:61).

Structure and Agency

There are thus different types of frames that help to interpret the world around us. People, as agents, construct the frames but, as David A. Snow & Robert D. Benford note (2000), framing processes cannot be seen as independent from structures. They too are affected by the context in which they are embedded. This study examines the social and/or institutional role one has and one’s structures of beliefs, values, and experiences. The understanding of the mechanisms of structure and agency is very important in the social sciences. It aims to answer the following question: are we people agents, free to act as we want, or are our actions shaped and determined by structures? Here agency refers to the capacity of individuals to act independently and to make their own free choices. By contrast, structure refers to those factors (such as social class) that seem to limit or influence the opportunities that individuals have. Anthony Giddens’ “structuration” theory starts from the assumption that individuals can act purposively but are not able to do so alone because of the existence

of social structures that are both enabling and constraining the individual. It relates agency to power (Giddens 1984:9). As such, his theory aims to make sense of the relation between agency and structure and fill the gap between the classical agency approach and structuralists.

Finally, what insight can the analysis of frames provide in the situation regarding complex political perpetrators and justice? The analysis of different frames that are used to describe the same situation or issue shows how reality is (re)constructed by different actors and how this guides their actions, moral evaluation or policy making. Thus, in order to understand how peace and justice policies with regard to complex political perpetrators can be made inclusive and satisfying for different actors, several issues have to be clarified. First, it must be established what perceptions the local Acholi population and the GoU have, or frames they pursue, about complex political perpetrators. Second, it must be analysed whether there is a fit between these frames and if not, why this is the case. Concluding, the implications and consequences of the current policies are analysed and some recommendations are made for the justice system to become more inclusive and effective. The structure versus agency debate is used to analyse the extent to which people really are agents in forming their own perceptions or are influenced by other factors. Additionally, this debate is used to discuss the level of responsibility people attribute to the complex political perpetrator.

Purpose of this Research

First of all, this study does not aim to exonerate Kwoyelo or Ongwen. It does not deny the crimes they committed but tries to show that their situation is more complex than as the WCD and the ICC currently portray it. The atrocities these men have perpetrated are the atrocities they once were victim of themselves. Therefore, it might be too simple to point at them as being solely perpetrators and among the most responsible for the atrocities committed by the LRA. If their victimhood is completely denied, this might have large consequences in the future. Although issues of peace and justice have been subject of extensive debate in Northern Uganda, the special “category” that Kwoyelo and Ongwen are part of is largely ignored. Generally, research conducted on justice issues can be divided along two lines that are closely related. The first one examines the so-called “peace versus justice” debate that focuses on whether one of the two should hold precedent over the other. The second one researches what form justice strategies should have in Uganda. Many

traditional and religious leaders propose the implementation of traditional justice mechanisms such as *Mato oput* while opponents claim these mechanisms will fail to address impunity and propose formal justice strategies based on retributive justice. In line with this research, several studies have been published the past years on the perceptions of people at the grassroots level of peace and justice and what instruments and mechanisms they believe to be appropriate for justice, reintegration, and reconciliation.³ These surveys answer relevant questions about local perceptions on peace and justice. However, they do not address the specific cases of complex political perpetrators in justice strategies but instead view victims and perpetrators as two homogenous and separate groups.

This relates to a general trend in research in which children and youths are not regarded as a separate group that deserves attention in the drawing of transitional justice frameworks. The International Center for Transitional Justice (ICTJ) in New York acknowledges that, although they are among the most heavily affected groups in conflict, children and youth are generally being overlooked, both as victims and as perpetrators (ICTJ 2009). Moreover, the issue of child soldiering has received much attention in the media and in international policy making but this has brought a particular, narrow, understanding of child soldiers and youth in conflict; one that has served the needs of advocacy against the use of child soldiers and perceives children in conflict as helpless victims (McIntyre 2005: 228). Several academics who have studied the relations between children and youth, violence, and identity thoroughly, suggest approaching children and youth in conflict differently. Rather than being helpless victims, they view them as actors who do exercise some agency over their own situation (Honwana 2005; McIntyre 2005; Utas 2005). Additionally, many principles, guidelines, and reports are published on child soldiering proposing to act upon the phenomenon and suggesting how to reintegrate these children. Under international law, they cannot be prosecuted and guidelines on justice for children are developed to safeguard them from harm such as the *UN Guidance Notes of the Secretary General to Justice for Children*. Therefore, at least on paper, children in combat are recognised and protected. For those abducted people who return after they turn eighteen - as adults - there are no specific guidelines and no principles on how to treat them in the aftermath of conflict. They are often seen solely as perpetrators who need to be punished although they share the same past as many child soldiers; abduction, indoctrination and forced killing. The fact that Kwoyelo will

³ Examples are the study "When the War Ends: Peace, Justice, and Social Reconstruction in Northern Uganda" (2007) by the Berkeley-Tulane Initiative on Vulnerable Populations and the research study "Making peace our own" by the office of the UN High Commissioner on Human Rights (2007).

indeed be prosecuted makes the questions about identity and agency of complex political perpetrators thus even more relevant. Janie Leatherman and Nadezhda Griffin (2009) conducted a study on the culpability and accountability of child soldiers and how to treat them in the aftermath of a conflict, but this study does not address the question of child soldiers who become adult perpetrators. The study that Baines conducted on Ongwen, one of the LRA's complex political perpetrators, is the one research that exists on this specific topic. It brings up the same issues as this study and asks critical questions about justice in Ongwen's case. Yet, it does not provide the reader with many detailed answers. It rather brings up more questions and as such is an impetus for future research. The current research thus aims to build on these studies and addresses some of the lacunae that exist regarding "victim-perpetrators" and justice efforts. Moreover, this research can go a step further than Baines could in assessing justice efforts in such complex cases because Kwoyelo is actually captured and the process of his prosecution has started while Ongwen has not even been captured yet. In addition, this research assesses the applicability of the concept of the "complex political perpetrator" introduced by Baines.

One of the main tactics of the LRA is abduction of children which means that Ongwen and Kwoyelo are not unique cases; they represent more men - many still in the LRA - who hold the same ambiguous status of both victim and perpetrator and might have risen through the ranks. Besides, a quarter of abducted females were given to LRA commanders as forced wives and half of all forced wives gave birth to children from these relationships (Annan et al. report 2008:vii). This implies large numbers of children who are born and raised in the LRA. They are all "products of violence" who do not know about "normal" life. The longer the war continues, the more cases of complex political perpetrators will come to exist, and the more important it is that their return and reintegration is facilitated well. For that reason, recognition of this special category within the justice system is crucial.

In addition, some personal issues play a role. While visiting Kwoyelo in prison it became increasingly clear that his legal situation, at least as it developed at the time of visiting, is not fair according to (international) law. The Directorate of Public Prosecutions (DPP) is working on his case in order to make a strong appearance when the trial starts but Kwoyelo is not provided with the means to defend himself as no defence council has been appointed yet after one and a half year imprisonment. This is the WCD's first case. It will present itself to the world and additionally, the DPP wants to perform well and set a precedent. Still, for the case to be fair and in order to meet international standards, it is essential that the WCD changes its handling of the case. Exposure, although very little, via

this research might be a first step towards more (international) attention for Kwoyelo's case and pressure on the GoU to change its conduct. All together it is important to start a debate on how to handle these complex cases in terms of justice strategies.

Set-up of the Research

Thus, this study aims to contribute to the discussion about how to set up an inclusive justice system in which most victims and perpetrators feel that justice is being done and that can contribute to the long-term goals of reconciliation and peace. The different perceptions that exist in Acholiland on complex political perpetrators are identified and analysed and it is examined whether the current government policies on peace and justice fit these perceptions. The first chapter provides the elements of the background of the conflict. Moreover, an extensive account of the structure and functioning of the LRA is given, thereby providing more insight in the environment in which abductees and complex political perpetrators grow up. This will help to understand the complexity of their situation and that of the Acholi generally. The second chapter identifies the different existing frames regarding responsibility, justice, and accountability in cases of complex political perpetrators by analysing the local perceptions on these topics. Additionally, it analyses the justice strategies that people attach to these frames. Chapter three is an account of Kwoyelo's life starting at the moment of abduction by the LRA. It is a report of his experiences and the developments that took place in the two years after his capture in February 2009. Chapter four analyses the government's policy regarding peace and justice, with a focus on the approach to complex political perpetrators. By defining the existing frames of both the Acholi people and the GoU regarding complex political perpetrators, it provides a deeper understanding of the different justice strategies proposed by different groups in society. Important is to gain an understanding of the objectives the different actors have. The different frames are compared and it is determined whether there are overlaps or divergences in frames and justice strategies and why. In the conclusion, the analyses of the previous chapters result in a hypothesis about the consequences and implications of this policy for the attainment of inclusive justice and the process of reconciliation. Additionally some recommendations are made to the government.

Methodology

This research is carried out between the beginning of March and the end of May 2010 in the Gulu and Oyam districts, two of the four Acholi districts in Northern Uganda. The data were collected through a total of twenty five semi-structured interviews. In order to get a broad understanding of ideas on justice and reconciliation and topical issues in Northern Uganda, two informal interviews were conducted; one with the programme officer of the Gulu based non governmental organisation (NGO) Justice and Reconciliation Project and one with a journalist from Gulu who works for a national daily newspaper. Sixteen interviews were conducted in villages spread over several sub-counties in Gulu and Oyam districts in Acholiland. The respondents include six formerly abducted persons (FAP), two women and four men, ranging in age between nineteen and thirty. The time they spent in the LRA varies from two years to ten years and the ranks they reached in the LRA from foot soldier to a higher rank such as sergeant. In addition, six parents of FAPs were interviewed. Four of them have welcomed their children back home while two have not seen their children neither heard from them since the moment of abduction. Furthermore, five more victims of the past war in Northern Uganda were interviewed.

All these people were identified with the help of a translator who is, due to his background, very knowledgeable about the communities of the respondents. He is from the district of Gulu, has spent four years in the LRA as a young boy, and is currently director of an organization that works to support FAPs after their return to their home communities via, among other things, psychosocial support and vocational training. He is thus fluent in *Luo*, the local language, has easy access to the communities, and knows people in the beneficiary communities relatively well. This all together has been of great assistance in identifying, contacting and interviewing respondents.

In addition to these interviews, six interviews were conducted with a variety of people. This group includes a lawyer who will most probable be appointed to defend Kwoyelo and additionally works for the ICC by sensitising the local communities on the ICC's work; a member of the Ugandan Amnesty Commission (AC); the archbishop of Gulu who is also member of the Acholi Religious Leaders Peace Initiative (ARLPI); the Senior Principal State Attorney and head of the War Crimes Prosecution Unit of the High Court in Uganda; and Kwoyelo himself, a captured and imprisoned former LRA-commander of the Sinia Brigade. The collected data is analysed with the qualitative analysis programme MAXQDA. In the bibliography, a full list of all interviews is presented although in this text

not every interview is used or cited from. Nevertheless, it is evident that they altogether helped to form an adequate picture of the situation and that they therefore are all presented.

Limitations

By identifying respondents from different villages that were all affected severely by the war, it is attempted to select a diverse group of respondents in order to gain as much insight as possible in the existing local perceptions. Yet, some remarks must be made in relation to the limitations of this research. First, with data collected in a short period of three months research it is impossible, and also not the intention of this research, to make generalizations about local perceptions on justice in the cases of abducted children who became adult perpetrators. This is especially the case when perceptions concern such specific and complex issues as responsibility, culpability and justice. Although the war has affected everyone in Northern Uganda, all people are different and experience war differently. The war-affected communities in Northern Uganda are widespread and diverse and every village has its own story. By interviewing respondents from different communities with different experiences, it is attempted to show how perceptions are influenced by people's experiences.

The war has affected almost everyone in Northern Uganda directly and most people have had very negative experiences. This has partly influenced the process of interviewing. The topic is very complex and sensitive and two interviews were stopped before reaching the end due to overwhelming emotions of the respondents. In addition, it proved to be very difficult to interview a respondent more than once although this obviously would have increased the quality of the data collected. Reasons are unwillingness of respondents, schedules of farmers in planting season and severe sickness of both the translator and two respondents.

A last limitation of this research is that it is only conducted in Acholiland. It was not possible to conduct interviews in the other Northern regions of Lango and Teso due to time restrictions. The relations between these two clans and the Acholi have been hostile for a long time and the conflict has exacerbated this even more. Generally, the Langi and Tesi perceive the Acholi to be the people who started the war and as the main perpetrators. If one would conduct the same research in the Teso and Lango areas, the answers would probably be very different. For this reason, the perceptions of people and the results presented in this research should not be regarded as representing the whole war affected Northern population of Uganda.

Apart from these disappointments and limitations a highlight of this research has been to speak to Kwoyelo twice in the maximum security prison Luzira in Kampala. To enter this prison, let alone to speak to him proved to be a very difficult undertaking for a (white) researcher. First, Luzira is not commonly visited by white people and the appearance of the researcher made guards very suspicious and hesitant to provide entrance. Furthermore, Kwoyelo is the first one to be tried by the WCD of the High Court and this makes him a very special case in prison. Fearing exposure about cases of prisoners in (international) media, the Prison Department in Kampala has strict rules and regulations for visitors, especially for those who are not Ugandan and not family of the prisoner. These rules and regulations had thus to be bypassed in order to get access to the prison and Kwoyelo. A researcher from the Netherlands would have been denied access unquestionably so other identities needed to be thought of and unofficial ways taken to enter the prison. When finally allowed in, the next obstacles had to be overcome. In order to speak to Kwoyelo “in private”, meaning at some distance from other prisoners, and to have more visiting time than the regular twenty minutes, guards had to be satisfied in different ways. Some privacy was eventually obtained but at both meetings with Kwoyelo guards made it impossible to discuss sensitive (political) issues openly because they monitored the conversations closely. Additionally, it took some time to build a level of confidence with Kwoyelo. He was quite suspicious in the beginning and remained very careful when talking about his life and case. Moreover, he does not speak English so the role of the translator and the preparation of the questions were very important. Altogether, this explains that it was impossible to conduct “normal” interviews with Kwoyelo which in turn affected the quality and quantity of the information obtained about him. For this reason, chapter three is more journalistically rather than analytically written and includes quite some information from secondary sources. Still, all the additional sources were checked with Kwoyelo himself before using them.

1. Conflict in Northern Uganda: Root Causes and Responses by Government and LRA

The conduct of complex political perpetrators and (local) perceptions on this conduct must be understood against the background of a very complex context in which the people in Northern Uganda have lived for over twenty years. This chapter analyses this context extensively. First, it addresses the root causes of the conflict and describes the attempts by the GoU to end the conflict - both military and through negotiations. In the first part it is explained what made this conflict so difficult to solve and how the relationships between the Acholi population, the GoU and the LRA were shaped over time. The second part goes deeper into the LRA as an organization by analysing its structure, objectives and modus operandi. This part illustrates what abductees experience once they are taken by the LRA. The focus lies on the intense indoctrination of new abductees and the way their identity is affected by living in the brutal environment of the LRA. To understand the role of potential agency, the diverse ways of abductees to survive in this environment are also described.

1.1 Root Causes and Background to the Conflict

Uganda has been the stage of conflict and political turmoil since the end of British colonial rule in 1962. Since independence, the country has had nine different leaders including Obote, Idi Amin, Okello and Museveni. Under the former a development of manipulative leadership came about that gave rise to militarization, violent politics and a series of armed conflicts in Uganda (IDEA 2008:87). The current conflict in Northern Uganda is generally regarded to have started in 1986. In that year, Museveni's NRA overthrew the second government of Okello (1980-1985) and took over power in Kampala. Museveni has remained in government until today but has been challenged ever since by popular rebellion.

The precise root causes of the conflict are difficult to identify. The distinction between triggers, structural causes, and external factors that contributed to the conflict is blurred because of the duration and its dynamics (IDEA 2008:87; RLP 2004:7). Unfortunately, most analyses of the conflict have ignored political and economical dimensions and identified ethnicity, spirituality and religion as root causes. Following Huntington's "Clash of Civilizations" (1996), the war has often been explained as an ethnic conflict between tribes that are different in culture and are therefore bound to clash. When this primordialist explanation failed, another simplistic analysis was made; the civil wars in Africa were then

described as “a new kind of barbarism, where chaos has replaced almost every aspect of culture and sociality, and violent anarchy has replaced any political dimensions” (Finnström 2008:151). The LRA has also been described as a gang of criminals, rebels without a cause, terrorists or religious fanatics who aim to overthrow the Ugandan government in order to install a fundamentalist Christian government based on the Ten Commandments (Dolan 2009:72). Not only the media, but also Museveni has used these explanations to describe his opponent. By framing the LRA as a non-political, very brutal group of criminals and murderers, he could legitimise his military approach by arguing that it is impossible to negotiate with a terrorist group without political agenda because there is nothing to negotiate (Finnström 2008:156-157). The result of this way of framing the conflict is that the LRA is now widely perceived as the aggressor and the GoU as the “good” party that tried its best to solve the problem peacefully but is forced to intervene militarily to crush the LRA.

After careful analysis, some factors that played a large role in the emergence of the conflict can be identified. First, the conflict has its roots in colonial rule that divided the country along ethnic lines. In order to manage the ethnic diverse country, the British executed a policy of “divide and rule” using people from different ethnic groups for different objectives. Describing them as a “martial tribe”, they used the Acholi as army recruits to fight in British expeditions. The Southerners, on the contrary, were used for agriculture and civil services mainly. Furthermore, the British introduced industry and cash crop production in the South and used the Northerners as cheap labour, which resulted in an economic imbalance between North and South as well.⁴ As Chris Dolan (2009:42) describes aptly, this policy secured that no group had both economic and military power and contributed to the perceptions of ethnic differences that remain to exist even today.

The inter-ethnic competition over power continued after independence. Elites politicised and manipulated ethnicity during the decades by stereotyping the “other” and feeding hate and mistrust between ethnic groups. In addition, violent politics and militarization contributed to a great extent to the development of the conflict (Baines 2007:99; ICG 2004:3; IDEA 2008:87). The Northern military elite had been in power for decades since

⁴ Even now, according to the Centre for Global Development Uganda’s national poverty rate is currently around thirty Per cent while in the North it is about sixty Per cent. Consequently, many Northern Ugandans feel economically marginalised. Although Uganda has gone through a period of significant economic development and is often seen as the African success story (Allen 2005: ii), many Acholi feel that they are not included in this new found prosperity of Uganda because the GoU has done very little to diminish the suffering in Northern Uganda and left most of the work to the UN agencies, international NGOs and humanitarian organizations (Baines et al 2006: 20; Finnström 2003:170). This policy feeds feelings of resentment against the South and the GoU.

the 1960s with presidencies of respectively Obote, Idi Amin and Okello. Military oppression by Okello and manipulation of the elections led Museveni, a southerner, to launch a rebellion with his NRA against Okello. When Museveni took power in 1986, his followers perpetrated revenge killings and massacres in the North mainly against Acholi for abuses committed during Obote's regime by the army, which had then consisted mainly of Acholi. The fact that the political and military power had shifted to the South, the failure to reintegrate Acholi combatants into the national army, and the continuous use of violence against the Acholi resulted in a sense of insecurity among the Acholi and widely perceived prejudice against the South. As a reaction, two successive guerrilla wars were launched by respectively the United People's Democratic Army (UPDA) and Alice Lakwena, a young Acholi woman who claimed to be possessed by spirits and who created a populist, messianic Christian spiritual group, the Holy Spirit Movement (HSM). Both UPDA and HSM attracted broad support among the Acholi but were finally defeated by the NRA. In this counter-insurgency thousands were killed which refuelled fear and resentment in the North (ICG 2004:3-4). Kony, claiming to be a cousin of Lakwena who inherited her spirits, united the remnants of the UPDA and the HSM and started the LRA insurgency in 1987.

The relation between the LRA and the government of Sudan is important in explaining the intractability of the civil war in Northern Uganda (Baines 2007:100; ICG 2004:7). The LRA sought alliances with the government of Sudan, an enemy of the GoU. Khartoum provided the LRA with weapons, food, medicine, and safe places for Kony where he could have his bases to train combatants and regroup. In turn, the LRA fought the Sudan People's Liberation Movement (SPLA), a Southern Sudan rebel group fighting the government of Sudan. This Sudanese support has been central to the LRA's survival throughout the years.

The weakness exposed by the state during the war has also enhanced the grievances of the Acholi population towards the GoU that already existed (IDEA 2008:90). Several reasons contributed to this situation. First, the state was not able to protect its citizens from LRA attacks. Initially, the predominantly Acholi LRA claimed to fight the GoU in the name of Acholi nationalism and as a result it enjoyed large support among the Acholi population. However, as popular Acholi support seemed to reduce due to the government's brutal counterinsurgency, the LRA turned their violence upon suspected government collaborators and supporters, also among the Acholi people, while the UPDF was unable to defend the people from these attacks (Branch 2007:180). The government then forced entire communities to flee their homes and livelihoods and go to the so-called "protected villages" which in

effect were not protected at all and only increased the suffering of the Acholi. Moreover, the government's forces are not free of blame. By pursuing to defeat the LRA militarily, Museveni's army paid very little attention to the effects of its campaigns on the civil population in Northern Uganda and it committed widespread human rights abuses. This increased the resentment of the Northerners (Mallinder 2009:7).

Hence, the use of violence by the elites strengthened the identity of the Acholi community in relation to Museveni and the South and resulted in deep grievances. People in the North generally have little trust in the government and feel marginalised. They believe the GoU views the conflict as a Northern problem and not very important to the rest of the country. Obviously, the Northerners wish to see that the GoU shows political will and addresses the conflict with commitment and as a national problem (Finnström 2008:164). It is described below in the paragraph about the LRA's tactics how the Acholi identity developed in a later stadium of the conflict in relation to the LRA.

1.2 *Government Responses to End the Conflict*

There have been several attempts to end the conflict in the past decades. Yet, a solution has proved to be difficult to find. Since the referral of the situation in Northern Uganda to the ICC in 2003, peace talks and justice efforts are simultaneously pursued which has frustrated the process of making peace. Currently, only a military solution is pursued but this has not resulted in the defeat of the LRA as it remains very active in the region. In the past, the GoU has pursued several other than military actions to end the conflict. Most important are the peace talks, the AA in 2000 and the referral of the situation to the ICC (Allen 2005:iv). What follows here is a brief description of all three.

Led by then Minister for the Pacification of the North Betty Bigombe, the GoU and the LRA engaged in peace talks in 1994 but they collapsed. After these peace talks Museveni again declared to defeat the LRA militarily but he failed to do so. In 2000, under growing pressure from civil society, NGOs and Acholi religious and traditional leaders who demanded a negotiated solution, a blanket amnesty was put in place that granted amnesty to all rebel groups including their leaders. Museveni again showed his unwillingness towards a negotiated solution by repeatedly declaring that the amnesty should not apply to the leaders of the LRA (Dolan 2009:99). In addition, the LRA was excluded from formulating the AA, which diminished its effect. It was implemented to encourage combatants to return home without fear of prosecution, but in order to prevent the re-creation of a system of impunity

and deter future violations the AA was amended in 2006. This amendment provides the Minister of Internal Affairs with the authority to exclude individuals from the scope of the amnesty, which implies that the leaders of rebellion might be denied amnesty and will instead be prosecuted. The AA also states that those abducted or coerced into rebellion and those who apply for amnesty in reasonable time, in good faith, and who have demonstrated repentance, will be granted amnesty (McGregor in Mallinder 2009:24). In March 2002, following the global discourse on the “war on terrorism”, the GoU passed its national Anti-Terrorism Act. This Act labelled the LRA a terrorist organization and made membership a punishable criminal offence. As Dolan explains, “conventional rules of legal construction stipulate that where two legal instruments are in conflict, the later instrument, in this case the Anti-Terrorism Act, takes precedence” (2009:53). As such, the Anti-Terrorism Act undermined the effects of the AA and made it even more difficult for (senior) LRA combatants to come out of the bush.

When military “Operation Iron Fist” in Sudan in 2002 failed, the government’s next step was, despite calls from civil society for reconciliation, to refer the situation in Northern Uganda concerning the LRA to the ICC. In 2005, after thoroughly investigating the cases, chief prosecutor Moreno Ocampo issued five arrest warrants against the top leaders of the LRA for crimes against humanity and war crimes. Those indicted are Joseph Kony, Okot Odhiambo, Dominic Ongwen, Vincent Otti and Raska Lukwiya but the last two cases have been terminated because the two men have died. Until this moment, all indicted men remain at large and the ICC has thus not been able to start any case. In the meanwhile, new peace talks were initiated again in 2006 by the vice-president of South-Sudan, called the “Juba Peace Process”. Although in the end no final peace agreement was signed here, some progress has been made in Juba. The agenda of the talks was organised in five phases and included cessation of hostilities, a comprehensive solution to the conflict, reconciliation and accountability, a formal ceasefire, and a plan for DDR (Mallinder 2009:42). After signing phase one in August 2006 and phase two in May 2007, there was a break in the negotiations but in June 2007 phase three of the AAR was signed followed by an Annexure in February 2008. They both aim to strengthen domestic accountability mechanisms. Ultimately, a final peace agreement was not signed due to disagreement over bringing alleged criminals to justice and the ICC’s role in that process. The case of Uganda shows that operating parallel to peace processes can be very difficult for the ICC’s chief prosecutor and that it can also have large consequences for a peace process. As Roy Licklider (2008) points out, there may be tensions between the pursuit of justice after violent conflict and conflict management. On the

one hand, there are people who claim that there can be no peace without justice. Perpetrators need to be held accountable in order to build long term peace and enable non violent coexistence of different peoples. On the other hand, the price for pursuing justice in the immediate aftermath of violence might be very high for peace efforts since “no leaders are likely to agree to a civil war settlement which put them and their followers at risk”. The pursuit of justice can thus seriously hamper peace talks (Licklider 2008). This dilemma is referred to as the “peace versus justice” debate.

The unwillingness of the LRA leaders to sign a final peace agreement unless they are given protection from the ICC and the chief prosecutor’s refusal to drop the indictments, have contributed to the collapse of what has been called the best opportunity for peace that Uganda has had since the war began (Nielsen 2008:35). What the exact effects of the indictments have been on the peace process in Uganda is topic of heated debates among scholars, human rights activists and conflict management practitioners. Proponents of the indictments argue that the effects have been largely positive. They claim that the indictments pressured the Sudanese government to stop supporting the LRA, thereby forcing the LRA to move to the DRC. This has reduced violence significantly in Northern Uganda, which enabled thousands of IDPs to return home and weakened the LRA due to the loss of support thereby forcing it to come to the negotiation table. In addition, proponents claim that the ICC has focused the attention of the international community on the conflict (Mallinder 2009:36).

Opponents of the indictments, on the other hand, argue that the indictments have undermined the peace process by, among other reasons, removing the incentives for the LRA leaders to come out of the bush because they fear prosecution. Furthermore, the violence of the LRA is not stopped but only displaced to the DRC. The fact that the LRA has moved there also makes it harder for abducted Ugandans to return. Lastly, there does not have to be a direct causal link between the indictments and the LRA coming to the negotiation table since they have engaged in peace talks before (Branch 2007:183; Mallinder 2009:37). Branch adds that the “ICC’s intervention, by providing international legitimation for the military campaign in the name of enforcing international law, has cleared the way for the Government’s militarism”, a solution that has proved to be unsuccessful for twenty years (2007:184). Although the ICC’s chief prosecutor has always said his job is to prosecute and that he wishes to stay distanced from politics, in practice this obviously has not and cannot be the case. President Museveni’s referral to the ICC can be seen as a political manoeuvre for which he has used the ICC. Now that he has assured that only the LRA will be prosecuted for committing gross human rights abuses against its own people and the government’s

army not, he has managed to enhance his own international legitimacy by framing the LRA as a criminal organization (Allen 2005:37). Moreover, the fact that the chief prosecutor only investigated the crimes committed by the LRA and not those of the government's army, resulted in critique towards the chief prosecutor for being biased in favour of the state. This contributed to the loss of the ICC's already scarce legitimacy in the eyes of many Acholi because they view the GoU also as one of the main perpetrators in the conflict (Mallinder 2009:38).

The GoU, in an attempt to remove the obstacle of the ICC indictments, even pleaded with the ICC to drop the charges, claiming they blocked an emerging peace deal. A situation is admissible for the ICC when a state is unwilling or unable to investigate or prosecute human rights abuses itself. Under the complementarity principle, the ICC must suspend indictments if the GoU undertakes prosecutions of LRA leaders by a national tribunal that functions well according to international standards (Article 95 Rome Statute). As such, the WCD can serve as the basis for a request by the Ugandan government to the ICC to drop its indictments but, as will be discussed in the fourth chapter, there are some remarks to be made regarding the functioning of the WCD.

1.3 Approaches of the LRA

It is previously mentioned that the civilian population in Northern Uganda has suffered from extreme violence of the LRA side, whose operations are based on the use of rape, killing, maiming and abduction of the civil population. To understand the circumstances in which the abductees grow up, the LRA's structure, objectives, and modus operandi are described first.

1.3.1 Structure and Motivations

In describing the structure and processes of indoctrination and initiation of new abductees into the LRA, data from the interviews with FAPs in Gulu and Oyam districts are used. Moreover, Dolan has included a very detailed account of an LRA soldier who returned in 2001 under the AA in his book "Social Torture: the case of Northern Uganda 1986-2006" (2009). This person describes the situation within the LRA in detail and his testimony therefore adds up well to the interviews conducted for this research.

The total number of LRA combatants in the bush has always been a matter of estimation. They fluctuate from 3,000 to 4,000 in 1997 to an OHCHR estimation of 1,000-1,100 in 2001 and 2,000 combatants in 2002 (USDS) (Dolan 2009:74). The exact number of children abducted and fighting in the LRA is also unknown but it is estimated that between 25,000 and 38,000 children have been abducted since 1986.⁵ It is often suggested that the LRA's only aim is to abduct children and that the organisation is largely composed of uneducated children who barely know how to fight. Yet, half of all the abductees are adults and some of its core combatants have received good military training abroad (Dolan 2009:75).

The LRA is often portrayed in the media as a disorganised group of Christian criminals without a political agenda (e.g. IRIN 12 September 2002; IRIN 20 November 2002). However, it does have a religious, spiritual, and political agenda and an extensive organisational structure through which strict control can be exercised over its combatants. The religious dimension of the LRA can be recognised in Kony's constant referral to the Bible. He aims to bring rule in Uganda according to the Ten Commandments and describes the LRA as an organisation of God. The spiritual dimension plays a large role in the LRA. At the top of the organisation are the four Spirits called Juma Oris, Silindi Makay, Who are you? and Divo (Dolan 2009:301). These Spirits are believed to have very important jobs such as giving advice about health, military decisions, and ritual processes. Most often, this advice is given through Kony, who acts as a medium. An example is given by a boy who stayed in the LRA four years:

*'The LRA has been able to survive this long because Kony has a Spirit. For instance, if the UPDF comes to attack the LRA by surprise, the Spirit communicates this to Kony so that he can prepare for the battle or run away.'*⁶

Furthermore, the administrative mechanisms helped Kony to control the organisation. Below the Spirits comes Kony as chairman and again below him four brigades with different battalions. All the information about new recruits, food, weapons, and leave is communicated from the bottom to the top of the organisation. In addition, the smaller groups who find themselves in Uganda (and DRC, Sudan and CAR) communicate via the

⁵ Most of those who returned from the LRA were thirteen to eighteen years old (thirty-seven Per cent) and nineteen to thirty years old (24 Per cent). Twenty-four Per cent of the LRA returnees were female and seventy-six Per cent were male. The average length of abduction was 342 days, and the median number of days of abduction was ninety-two days. Among women aged nineteen to thirty years old, the average length of abduction was four and a half years (Pham, Vinck and Stover 2008:404).

⁶ Interview, FAP 19 March 2010, Awach.

radio with the headquarters in Sudan. This means that different groups do not function independently but are strictly controlled and monitored and that all their orders come from the top (Dolan 2009:300; Interview Kwoyelo 7 May 2010, Luzira Prison Kampala). Apart from this structure, Kony regulates life in the LRA through a list of strict rules regarding behaviour of his combatants.

Although sometimes difficult to distinguish, the LRA has a political agenda pursued by its special political wing. The LRA has repeatedly distributed manifesto's among the population in Northern Uganda in which they criticise, among other things, the policies of privatisation and unequal distribution of resources of the GoU. Moreover, in his speeches to his fighters, Kony constantly articulates his wish to overthrow the government in Kampala. Kony describes Museveni as a dictator whose corrupt regime needs to be removed and replaced by the LRA (Interview FAP 7 May 2010, Gulu). However, as Sverker Finnström argues accurately, there is a big gap between the LRA's political agenda and their extreme violent and brutal military tactics targeted at the Northern population (2008:161-162). This makes it difficult to understand their real motivations but the existence of this political agenda, which is based on grievances that many Acholi share, shows that the analyses of the conflict that only focus on spiritual and religious elements are too limited.

1.3.2 Tactics: Abduction, Indoctrination, Initiation and Escape

The abduction of children and adolescents is a carefully crafted element of the war. According to the International Crisis Group (ICG), the LRA's logic is focussed on the empowerment and survival of the organisation and its key personnel and on discrediting the rule of President Museveni (2004:5). Through large scale abductions, the Acholi population served as a reservoir of recruits for the LRA and the raiding of food and other products contributed to the sustainability of the LRA. The abductions served the second goal by creating resentment against the GoU. The abductees served as a weapon of terror against their own parents because if they were killed in UPDF attacks, their parents condemned the UPDF for killing the victims of the war. Moreover, every LRA attack undermined the credibility of the government because it was perceived as a lack of power or political will of the GoU to protect their children. Altogether, this has distanced the Acholi community even further from the GoU.

All FAPs interviewed described the same process they had to go through after their abduction (Interviews FAPs March – May 2010). Their stories make clear that escape from

the LRA is very difficult due to a variety of reasons and of which the establishment of fear is one. The process of creating fear will be explained more in-depth below. Taken from their homes or the IDP camp they lived in, abductees are chained together with a long rope so they cannot escape and are forced to carry very heavy loads. New abductees are forced to walk for miles and miles and are often taken to Sudan for training. If one cannot keep up with the pace or collapses under his loads, he or she will be beaten until he or she continued. Those who cannot follow, because they are too weak, too small, have soar feet, or are hungry or thirsty, are instantly killed. Moreover, the LRA kills those who break the rules, for example, who start crying. Sometimes the LRA releases people, mostly the adults, after having carried their loads but most of the abductees are taken along to become fighters. In the camp they are trained how to dismantle and reassemble their gun, how to shoot, to parade and to lay ambushes for the enemy (Interview FAP 27 April 2010, Gulu).

Although to a lesser extent, the LRA also abducts girls. They also fight in combat but are usually taken to become sexual slaves or “wives” of commanders or to work for them as domestic servants. Rape is very common and as a result many of the girls have children in the LRA. The girls, on average, spend longer in the LRA than the boys because they mainly stay in the camps to take care of their children and their household. The relationship between men and women is subject of strict regulations made by Kony (Dolan 2009:296; Interviews FAPs March- May 2010).

Once the new abductees are in the LRA camp, the process of initiation and indoctrination begins. In order to make them identify with the LRA, convince them of the objectives of the LRA, and exercise control over the new recruits, they are indoctrinated heavily. This process of indoctrination and initiation has multiple dimensions. Again, the description draws on accounts of respondents. When the abductees reach the camp, Kony gives a speech to the group. Moses, a FAP abducted at the age of ten who stayed until his eighteenth, explains how the indoctrination starts immediately after arrival:

‘Kony makes many promises such as, ‘In 2004 we will overthrow the government of Museveni! You, who were taken from school, we did not abduct you! We went and chose you, you are our brothers and sisters. Those stupid Acholi who do not want to fight with us, we do not need them. We want you so we can fight and overthrow the dictatorship of Museveni. You are the new Acholi now, you are the Israelites, and this is now the Promised Land. You crossed the Nile, so this movement is following the Bible. Next year we will overthrow the government and it will be you, the educated people, who will

*become ministers and drive big cars'. Quite some people tend to believe him because he can be so convincing, you have to see it to understand.'*⁷

These messages are repeated constantly and for many hours. Kony also explains the rules and regulations of the LRA in this speech. These concern for instance the prohibitions in the camp, the initiation rite, and relations between men and women (Dolan 2009:273). Moreover, the recruits are being told to respect 'their commander and their gun because they are now your mother and father'.⁸

Part of the initiation is to forcefully commit or witness severe atrocities, often directed towards family, community members, or against other abductees who broke the rules and regulations. Moses continues:

*'It takes time, about six months, to brainwash the new abductees totally. What they do first is, when you are still new, beat you about 500 times. But if you are lucky it is only 200. Then they force you to watch terrible things. We were abducted as a group of students. One of us was brought in front of us and killed there so that we could see. Those are the things they do. They force us to do it. Then, second, anyone among you who tries to escape will be killed the same way. So, as this might be the first time you see a person getting killed, this will traumatise you and make you very afraid.'*⁹

The LRA is also known for mutilating people, mostly civilians. Through the creation of fear, by for instance mutilation, the LRA brings its message across not to collaborate with the enemy. The new abductees are confronted with much violence. The practice of using the children to kill or forcing them to watch someone being killed, fosters guilt and fear among them and sends a powerful message to the children of their potential fate if they attempt to escape (HRW 2008:11).

Lastly, spirituality plays a large role in the indoctrination process. On the one hand it is believed that the Spirit helps the LRA combatants. Part of the initiation ritual is to smear chestnut butter on chest, feet and hands. The fighter is told that he or she now possess special powers that will protect him or her on the battlefield. In addition, they sometimes give children a "holy stone" or "holy water" which will protect them from bullets. Most children believe in the Spirit's powers and think, if someone dies although he was protected by the Spirit, that he must have broken one of Kony's rules or laws and it therefore was his

⁷ Interview FAP, 27 April 2010, Gulu.

⁸ Interview FAP 2 April 2010, Rwot Obilo.

⁹ Interview FAP, 27 April 2010, Gulu.

own fault. On the other hand, it is believed that the Spirit can read the minds of the abductees or uses birds and other animals to spy on them. If one is even thinking about escaping, the Spirit will know and tell Kony. The role of spirits must be understood in a cultural context in which spirituality plays a large role in daily life. The public killings of abductees who tried to escape and the power of the Spirit spreads a lot of fear among abductees and prevents many from escaping (Interview FAP 27 April 2010, Gulu).

Besides profound fear, practical obstacles prevent many abductees from escaping. The newly abducted people are strictly guarded which makes it even more difficult to run away. At night, they are tied down so they cannot move and during the day guarded every single moment. The highly ranked combatants are not guarded so strict anymore and have more freedom to move around. However, they are always accompanied by their own group of fighters and among them can be spies from Kony who might tell him about plans to escape (Interviews FAPs March – May 2010).¹⁰ It was emphasised in the interviews that for senior commanders it is most important to plan the escape very well and ensure no one knows about it. Despite the strict surveillance some abductees obviously have managed to escape while others, it is unknown how many, have died while trying. Escaping happens mostly during the chaos of the battle when no one is watching or when people are sent to fetch water or collect fire wood.

A last reason that complicates escaping from the LRA is the fear for what is waiting at home after return. Kony tells the combatants that the UPDF will kill them if they escape because it views them as rebels. This is clarified by a FAP who stayed fourteen years in the LRA as a sergeant. He explained that for a long time he believed Kony when he told him that the radio programme on MEGA FM¹¹ was just a government propaganda tool to make him come out of the bush and kill him. It was only after he heard his escaped wife on the radio programme that he believed it was not just a trick from the GoU but that instead amnesty was really given to rebels who returned. Moreover, many children do not know whether their parents are killed or still alive, and their own brutality - often perpetrated against their

¹⁰ Because people highly ranked in the LRA are very knowledgeable about the LRA, its strategies and whereabouts, they are guarded and “protected” very carefully to limit chances of escape or capture by the UPDF. Kony knows that if these people fall in the hands of the UPDF, forcibly or willingly, they might reveal important information to the UPDF so he “gives” his senior or mid-level commanders, like Kwoyelo, a team of soldiers loyal to himself with whom the commander moves around. They are under direct command of the commander but in the end are even more answerable to Kony and also spy for him.

¹¹ The radio show of Lachambel on MEGA FM is very famous in Northern Uganda. It invited returnees to speak on air about their experiences after they returned. As such it tried to convince people still in the bush to come out, and to explain that Kony’s stories about the UPDF killing or arresting rebels who returned were not true.

home community, though forced - makes many children fear the reaction of their community. A FAP explains:

*'When you know that you've done something bad to the community, when you were forced to kill someone of your community, it is hard to escape. This particular factor contributes a lot. (...) Now, if I escape back home, I might fear they [the community] will retaliate or revenge against me, so I better stay in the bush and die here.'*¹²

Another FAP relays:

*'Suppose I was abducted from my own village eight years ago and I now want to plan to escape, they [the LRA] have my details, where I am from, everything! The names of the district, village, parish, even how the house looks like, and my mothers name! If I plan to escape, they will come to my village and kill many people to revenge. So what will my community think of me? 'You escaped from the LRA and see what happened to us!' You know what negative consequences there can be for you or for your village once you escape.'*¹³

1.3.3 Coping Mechanisms

There is not much known about the effect of extreme violence on the moral development of a child who grows up in a brutal environment such as the LRA. It is therefore very hard to make substantial claims about what happens in the minds of children or adolescents when they live and mature in the LRA and to determine to what extent they are responsible for their actions. For that reason, the objective here is to understand which coping mechanisms people develop in order to survive in the LRA and to understand their actions. After abduction, people are forced to adjust as fast as possible to their new environment because if they do not get along quickly, they will be punished or even killed. The way people do this differs obviously from person to person.

There is a discussion among scholars about the extent to which children have control over their own situation and can act as free agents. On the one hand, there are scholars who argue that children do everything because they are forced to do so; they are passive victims and therefore carry no responsibility at all. They are loyal and follow their leaders without

¹² Interview FAP 21 April 2010, Awach.

¹³ Interview FAP 2 April 2010, Rwot Obilo.

challenging them and without thinking too much about their actions. It is also put forward that young people lack the ability to attach moral meanings to violence and that children who engage in violence over long periods of time are likely to lose the ability to empathise with others and begin to internalise violent behaviour as normal practice (Boyden 2003:347). Most psychological analyses of child soldiers argue that the longer children stay in an armed group, the larger the chance on trauma is, which can and does lead to “developmental dysfunction” (Baines 2009:178). Although they do not deny that extreme violence has a great impact on children’s psychology, other scholars argue that children are not only good, innocent and passive victims. Children can exercise some agency although they are certainly limited by the circumstances and might choose to suppress their sense of “good” and “bad” in order to survive. This shows they are not completely helpless and deprived of any agency (Boyden 2003; Brett & Specht 2004; Wessells 2006). Alcinda Honwana, who researched child soldiering in Mozambique extensively, acknowledges the fact that abducted soldiers are victims who have turned into perpetrators and, although they cannot be considered fully responsible for their actions, they do exercise some sort of agency (2004:69). Referring to Giddens’ structuration theory, she explains that they have some power over their actions but are constrained by the structure (2004:71). She argues that child soldiers ‘display “tactical agency” devised to cope with and maximise the concrete, immediate circumstances of the military environment they have to operate in’ (2004:51). They are not in a position of power to reject orders given to them but do make short-term choices for short-term gains and may not be fully aware of the goals and consequences of their actions. There are different ways of showing “tactical agency”. One survival strategy can be to show willingness to participate very actively in combat. Someone who demonstrates he or she is fearless and can carry out dangerous and difficult tasks - such as laying ambushes or abducting a specific number of people - can be promoted in rank. This often means better access to food, clothes, and health care, which can make life in the LRA easier and provide more security. On the other hand, people can decide to use their agency to try to avoid having to commit atrocities by “playing stupid” or even attempt to escape (Interview FAP 21 April 2010, Awach).

For abductees who stay long and get involved in LRA actions, it is important to justify actions and explain to themselves why they are in the LRA. Dolan (2009:91) describes that “alongside the brutality there was an eclectic mixture of Christianity, spiritualism, and politics to choose from to explain why they were there. Abductees therefore probably reached a compromise with the reality they found themselves in and “bought into” at least one of the elements of the LRA’s discourse, (...) pretending to believe in the others as and

when necessary for their survival". Jeffrey Rubin, Dean G. Pruitt and Sung Hee Kim (1994) argue that social order breaks down in situations such as in the LRA and that "runaway norms" are developed. These runaway norms, instead of banning unacceptable practices, justify the escalation of such practices and the conflict, legitimise cruel behaviour, and come to be seen as the right thinking. Anyone who challenges these norms is punished for this by the group and therefore most people follow the "norms" (Rubin et al 1994:93 in Leatherman and Griffin 2009:16-17).

1.4 Conclusion

In this chapter it has first been explicated how the relationship between the GoU and the LRA has evolved over the past decades and what position the Acholi have herein. A description was given of the evolution and the underlying causes of the conflict. Although it has been repeatedly framed as such by mainly the GoU, this study shows that the LRA is not just a criminal gang whose aim is to loot and kill in the name of God, but instead it does have political agenda. The failure to address the root causes of the conflict, Sudanese support and the ICC referral (although clearly opinions vary on its impact) have contributed to its intractability. Second, it has been illustrated that the Acholi population is caught between two warring parties. It is victimised profoundly through the mass scale abduction of children and adults by the LRA, but also by the UPDF, who has also committed atrocities and has not protected them well enough from abduction and crimes. In the second part about the workings of the LRA, it was demonstrated that the specific methods used by the LRA - the use of and exposure to extreme violence to foster fear, the role of the Spirits, and the strict surveillance of abductees - create a situation from which (heavily indoctrinated) abductees cannot easily escape. By describing the coping mechanisms of abductees it has been illustrated how the identity of innocent abducted children or youths can change into complex political perpetrators who display "tactical agency". Both the circumstances they live in as well as the choices they make influence this development. The examination of the situation in which the Acholi people have lived for over two decades will help to understand how people's perceptions about complex political perpetrators are formed and on what experiences they are based.

2. Local Perceptions on Complex Political Perpetrators

Along with other factors, the long conflict in the North and the handling of it by the GoU has contributed to a large gap between Northern Uganda and the rest of the country, most importantly the South. As mentioned previously, people in the North do not feel included but feel rather distanced from the GoU in Kampala and its policies. In order to be able to understand whether policies regarding peace and justice, specifically those policies regarding justice in cases of complex political perpetrators, are in line with the opinion of the people in the North who are directly affected by them, their perceptions concerning complex political perpetrators have to be analysed first.

This chapter examines the local perceptions on the role of LRA propaganda, moral development of young abductees in the LRA and the possibilities to escape. Moreover, it identifies the frames pursued by Acholi people regarding complex political perpetrators, with special focus on Kwoyelo. If a person's actions are indeed guided by the frame pursued, the factors that determine the diversity in frames of the same event, actor or issue must also be understood (Snow et al 2007:408). According to Kaufman et al (2003:3) and Gardner (2003:1), those factors include one's the social and/or institutional role, and a person's structures of beliefs, values and experiences. To understand how they influence the framing processes of Acholi, this chapter examines these factors. Lastly, it identifies the justice strategies for complex political perpetrators proposed by the Acholi.

2.1 *Local Perceptions on LRA Propaganda, Violence, Escaping and Responsibility*

To understand what identity the local population ascribes to complex political perpetrators, their perceptions on several aspects of life in the LRA were explored. People clearly distinguished between reasons that count for everyone and reasons that might have played a role only for commanders not to escape. This especially counts for reasons regarding the influence of propaganda and violence. First, Kony's ability to convince combatants by propagating his message is well known among the respondents. People have often heard about Kony's ability to convince people in his speeches, thereby "mentally deceiving" the abductees. Almost all respondents think that most abductees, especially in the beginning, believe Kony when he speaks about overthrowing the government. They therefore believe that the abductees really want to stay and are motivated to fight hard. Although one man argued that a person has to be 'stupid to believe Kony' in this, the rest was more subtle

saying that children, especially those who were taken as young children, of ten or twelve years old, are easy to influence. Yet, as one FAP (two years in the LRA, no rank) said, 'in the beginning we all believed Kony but after some years I think most of us understood that Kony was just leading us on and was making false promises'.¹⁴ Moses, a FAP who stayed in the bush for eight years and was promoted to the rank of sergeant, stated that in his experience especially the level of education and age affect the extent to which indoctrination influences one's mind. The younger a child is taken, the easier it is and the more education an abductee previously received, the more difficult he or she can be led to believe things.

Secondly, ten out of seventeen respondents linked propaganda and indoctrination to the refusal of abductees to escape. Most respondents know what happens to those who try to escape and are caught again and that the practice of public killings spreads profound fear among all LRA combatants. In addition, people know it is very difficult to escape, especially for new abductees, due to strict guarding. Two respondents also mention that commanders are guarded strictly because they possess knowledge about strategies and Kony wants to assure they do not run to the other side. On the contrary, ten respondents believe that commanders are not really guarded anymore and have many opportunities to escape if they really want to. Half of those people believe that commanders just do not want to escape because they find life in the bush easy and comfortable. They mention free, more and better food, free clothes, better security and easy money as reasons for this "easy bush life". Three of the people who believe commanders are not guarded strictly, together with five other respondents, say that for commanders it is easy to escape in practical terms but that there might be other reasons that prevent them from doing so. One woman believed that the Spirit tells Kony when someone will try to escape, which makes commanders fear Kony. However, the most cited reason is fear of being killed by the government after return. Three FAPs and three parents said that Kony spreads fear among the combatants with rank by saying that everyone who goes home will be prosecuted by the ICC or the GoU, or immediately killed by the UPDF. Three people said they believe many children think they have nothing to return to since their family is killed. Moreover, six respondents said that the combatants might fear the reaction of the community if they would return.

Apart from the two FAPs who reached high ranks themselves, only two respondents knew about the probable large LRA-retaliation when a commander manages to escape.¹⁵ One woman (abducted twice herself, mother of FAP) explained:

¹⁴ Interview FAP, 21 April 2010, Awach.

¹⁵ The retaliation of the LRA when a commander escapes is often worse than when an abductee

*'I heard about some mass killings after a senior commander escaped. I think this definitely influences the decision of other commanders to escape because you do not want be the reason for mass killings in your village. The LRA will come and revenge on your community and they [the commanders] know that.'*¹⁶

Regarding the moral development of those abducted at a young age, who grew up in the LRA, the answers were quite homogenous. Generally, people think that the development of a child is disturbed by living with the LRA for so long. According to most respondents, children start to find killings, looting and other criminal activities normal and they will get used to it because they both witness and are forced to commit many crimes themselves for a long time. They are also not being raised by parents who can teach a child normal values and "community life". Nevertheless, almost all respondents believe that the combatants still know the difference between "good" and "bad". They commit crimes because they are trained and forced to do so, not because they really believe it is good to kill or mutilate someone. The respondents reckon that most combatants will stop behaving as such when they are no longer ordered or forced to. One FAP (two years in LRA, no rank) thinks very young abductees might believe in the cause they are fighting for and in that way justify their behaviour. They will always know deep down inside though, that it is not good what they are doing (Interview FAP, 21 April 2010, Awach). However, some respondents note that the younger a child is abducted, the less it has learned about values and the older at the time of abduction, the better a child knows how to be critical and think for itself. According to them, the age of abduction thus influences the extent to which their moral development is affected, which is similar to what Moses experienced. One man, who was abducted at eight of eight, stayed for fourteen years in the LRA and became a sergeant, argues:

*'Everyone changes a little bit. You are forced to commit so many crimes, and if you do not do it, you will be killed yourself. It will get stuck in your mind. At one point there was so much anger in me, it needed to get out and you just stop thinking about what you do and whether it is good or bad.'*¹⁷

without rank escapes. The LRA not just kills one person but everyone of the clan or community. There are examples of where whole communities were swept away because an LRA commander who was originally from there had managed to escape.

¹⁶ Interview parent, 26 April 2010, Awach.

¹⁷ Interview FAP, 2 April 2010, Rwot Obilo.

2.2 Framing the Complex Political Perpetrator

The previous discussion about perceptions on propaganda, escaping, and the moral development of abductees is clearly related to how people view or frame the level of responsibility and the identity of complex political perpetrators. A distinction is made between two frames depicting the complex political perpetrator differently in terms of identity and responsibility: the “complex political perpetrator frame” and the “complex political victim frame”. It must be noted though, that between these frames there is overlap and that they are flexible. Thus, the frames should rather be seen as malleable than as completely static and separate.

Out of seventeen respondents, thirteen people pursue the “complex political perpetrator frame”. When asked whom they consider victims of the conflict, many people answer that they believe the abducted children and youths are most victimised. Reasons pointed out are that the abductees are deprived of education and that they committed many crimes and are therefore haunted by spirits for the rest of their lives. Besides, all respondents believe that the abductees are forced to commit the crimes. They have no other choice but to follow the orders they are given, or they will be punished themselves. The abductees therefore do not carry responsibility for their actions. Nonetheless, these people at the same time argue that some specific changes in the behaviour of an abductee can affect their identity, changing him from victim to perpetrator. Respondents distinguish between those who cannot get used to the violence, who will always be afraid and keep seeking for ways to escape, and those who get used to it and find reasons to participate very actively. The first group tries to avoid the use of violence and participation in committing crimes as much as possible. A woman whose husband was killed and her two sons abducted describes how this is possible:

‘If you are being sent to loot and do such things and you find that you have to punish some civilians, you can do two things. Either you just kill them without showing mercy or you pretend to kill by beating them so hard that it looks that they were killed due to all the blood.’¹⁸

According to these respondents, the second group participates very actively and shows eagerness to its superiors. Several reasons are mentioned for this eagerness. First, many people believe that abductees feel great anger because of their own abduction. They are

¹⁸ Interview parent, 23 April, Awach.

mistreated and abused in the bush and do not know how to release the resulting anger. As a consequence, they revenge on civilians by abducting as many children as possible or being extra cruel. Second, people argue that the combatants without rank often aim for promotion because the higher one is ranked, the “easier” the life in the bush becomes in terms of security and food. The only way to get promotion is to show eagerness, for instance by going beyond the orders that were initially given.

Only some of the thirteen respondents who pursue this frame mention fear when they try to explain one’s eagerness to fight. Generally, respondents believe combatants fight hard because they hope to gain from it. When it was asked whether it is *taught* to people to be merciless and eager, respondents answered that the difference is mainly that some people just have a “good” and others a “bad” character. As one parent argues:

‘Those with a bad character are already aggressive before their abduction. Being in the LRA gives them the opportunity to utilise this aggression. That is why they are different and want to stay in the LRA.’¹⁹

The moment that such people reach high ranks, they can give orders. According to the respondents, this is the moment that one’s identity changes from victim into perpetrator. They argue that when you order others to fight, abduct, kill or loot, you are responsible for those actions. Additionally, since most people believe that commanders can escape if they really want to, the fact that they do not escape shows they choose to stay and enjoy bush life. In sum, according to these respondents, the senior commanders are perpetrators and are responsible regardless of a possible history of abduction. Eight people argue this despite their earlier statements that commanders might have other than practical reasons not to escape.

Contrary to the abovementioned respondents, the four respondents who pursued the “complex political victim frame” view abductees with a high rank still as victims without responsibility, because they are trained and forced to commit crimes. Two of these respondents are the former abductees who reached high ranks after a long stay in the LRA. The others were a FAP who stayed in the LRA for one and a half year without rank and a father of two abducted sons of whom one did not return. According to the father:

¹⁹ Interview parent, 23 April 2010, Rwot Obilo.

*'Kwoyelo was abducted at a very young age. He was trained to do many bad things such as killing and looting and was not in a position to refuse. Everything he did must have been an order from a higher level. I now want him to come home so we can apply traditional justice mechanisms and he can apologise to me.'*²⁰

One FAP explains that he considers only Kony responsible for atrocities committed by the LRA. According to him, it is Kony who gives out orders and everybody has to follow these orders. Moreover, in explaining why commanders might stay, all four respondents refer to fear for the ICC and fear for the reaction of their own family and community. Also, they argue that those abducted at a very young age probably do not realise it is wrong to kill; they just view it as "part of life".²¹ Lastly, Moses (eight years in LRA, sergeant) says he knows Kwoyelo personally from his time in the LRA and describes him as extremely heavily indoctrinated. Although most orders come from the top of the LRA, Kwoyelo would also go out and organise missions himself without orders. However, he did this only because he really believed he did well by doing so. Moses also explains:

*'Besides being brainwashed completely, I think he was also afraid to return because he mainly operated in the area where he is originally from. This obviously makes it very hard to return because people will know what he did and reject him if he would come back. Now, when you cannot return to your family, why would you risk your life by escaping? You rather stay in the LRA and die on the battlefield.'*²²

Concluding, although many respondents ascribe a reasonably high level of agency to the complex political perpetrator, the respondents have quite opposing views on the level of responsibility and identity. Important to note is that most of the respondents give very contradictory answers regarding escape and the responsibility of commanders. Thus, the answers are not as unambiguous as they might seem from the prior analysis. As is mentioned previously, many respondents think that a commander's decision about escape is to a large extent influenced by Kony's lies and propaganda and to a much lesser extent by practical obstacles. However, this is forgotten or ignored once they speak about senior commanders in relation to responsibility, even when they are reminded of their previous statements. Their later, opposing, statement that commanders can escape if they really want to, shows people's confusion when discussing the responsibility and identity of

²⁰ Interview parent, 26 April 2010, Awach.

²¹ Interview parent, 26 April 2010, Awach.

²² Interview FAP, 27 April 2010, Gulu.

commanders. One way to explain this is that people tend to become more emotional and less rational when talking about whom is responsible for their suffering. People feel that those in the LRA with a rank, those who give out the orders, live a relatively good life while they themselves suffered a lot. This fuels their anger. In addition, it became clear that only very few people know that for escaped senior commanders the retaliation by the LRA is much heavier than for an escaped abductee without rank. This implies that people might not completely understand that there are additional reasons not to escape than an “easy bush life”. The next question pertains to the reasons for the variation in opinions among the Acholi. In order to do so the factors that account for this diversity in frames must be analysed.

2.3 *Factors that Account for the Formation of Frames*

Previously, it is stated that the institutional or social role, structures of beliefs, values and experiences may play a role here. The social or institutional role one has refers to one’s role in society as for instance a parent, a victim, a relative, a politician, an employee or a student. Especially those first two are important here as we can clearly distinguish some differences in perceptions among people with different social roles. While people are ruthlessly victimised and searching to see someone punished and justice to be done, they are rather unclear on the way this should be done and their opinion is often influenced by their social role. For instance, the parents of abducted children had many difficulties expressing their thoughts about responsibility and victimhood or liability of the abductees. The reasons are quite obvious; the subjects of this research are their own children and as such they are asked to judge their own children. Their children are the ones who loot, kill and abduct other children, whether forced or not. Especially the lower ranks, which mostly consist of abductees, are the ones who commit many crimes, while the higher ranks usually only give orders and stay away from the actual execution. Therefore, the interviewed parents were repeatedly a bit softer in their judgement about responsibility and liability. This difference is even clearer in the proposed justice strategies that are described below. Secondly, it became clear that many of the interviewed FAPs struggled with questions about responsibility for the same reasons as their parents. They were the ones who killed the neighbour, who burned the nearby houses or who looted all the food from the fields. For many of them it is not possible to speak about issues of complex political perpetrators without making it very personal. The man who stayed in the LRA for fourteen years and became sergeant was

overwhelmed by emotions when talking about responsibility. He knows that he has committed many crimes and more importantly, ordered them, which makes him feel very guilty. However, he also knows that he was forced by the circumstances. But does that exonerate him from responsibility?

Secondly, the structural factors of war experiences play a large role in the formation of one's opinion. In Northern Uganda, it is almost impossible to find people who have not suffered from the war, whether it was through abductions or killings. This obviously has a large impact on their perceptions. Although the LRA consists mainly of Acholi - their own people - the respondents do not excuse them. Especially those people who suffered a lot, for example the man who has lost three sons and his wife and had to flee to an IDP camp where he stayed for over six years, are very bitter and vengeful. As the man explained, 'I cannot begin to tell you how much we suffered here. We have lost so much, how am I supposed to forgive those who did this to me?'²³ This shows that perceptions are influenced by reality and they do not just develop in one's head. Again, the interaction between structure and agency can be identified here. Apart from people forming their own perceptions as active agents, their perceptions are also influenced by the structures of reality they live in.

2.4 Locally Proposed Justice Strategies with regards to Complex Political Perpetrators

Observably, most of the respondents think that complex political perpetrators are responsible for their own actions which makes them in their view perpetrators. Nonetheless, their opinions about how to hold them accountable differ. Not all of them wish to see complex political perpetrators tried in Court. Several significant observations can be made. First, people are generally not very much interested in justice. Many respondents said that they are busy living their lives as they are occupied with the cultivation of their land and with earning enough money to feed their children and to pay for their school fees. Some of them also articulated fear for the LRA to come back. As long as the LRA is not defeated, they do not want 'to hear anything about justice'.²⁴ Besides, many people feel they cannot benefit from trials or other justice mechanisms as long as they do not receive any compensation for damage done or suffering caused by both the LRA and the UPDF. Only a few people said that they would benefit psychologically if the commanders of the LRA would be brought to trial and imprisoned. In addition, they often expressed doubts about the government's real

²³ Interview parent, 23 April 2010, Gulu.

²⁴ Interview FAP, 25 March 2010, Otwal.

intentions and ability to try. For instance, one man said he fears that Kwoyelo will bribe the WCD because he believes it is corrupt and he thinks that Kwoyelo is rich enough to do so because he brought much money back from the bush. This man would like to see Kwoyelo taken to the ICC since he trusts this institution more than the WCD. More people expressed doubts about the Court's ability to try but also say they have little knowledge about the Court and therefore have no other option than to trust it. Their confidence seemed very little though. Furthermore, three people wonder why the GoU suddenly expresses interest in Northern Uganda while, in their opinion, it has ignored the situation for years. Another reason for not being very enthusiastic about the WCD (nor the ICC) is that at least four respondents feel that justice will only be attained when also the government's army stands trial. Now that this actor is practically exonerated from any blame, they do not consider the trials against LRA combatants of much value.

By taking a closer look, more differences in opinion among people can be distinguished. Of the seventeen respondents, thirteen people pursued the complex political perpetrator frame. Yet, only seven of them would like to see Kwoyelo taken to Court. Five people wish to see senior commanders imprisoned for life while the other two would only be satisfied if the accused receives capital punishment. When they were asked whether there is a difference between people who joined the LRA voluntarily and those who were abducted, three people answered that a history of abduction should be taken into account during trial. They propose shorter imprisonment for commanders who were abducted as children. Seven respondents favour traditional justice mechanisms such as *Mato Oput*, *Kayo Ocut* or similar mechanisms. They would like to see the complex political perpetrators apologise and ask for forgiveness and would then be able to forgive them. Moses, the former abductee who stayed in the bush for eight years and made it to the rank of sergeant, knows Kwoyelo personally and said he favours traditional mechanisms for all except for the leadership. Yet, he does not consider Kwoyelo a leader as he was just a Colonel. Only Kony and three or four top commanders should be tried according to Moses, the rest should go through *Mato Oput*. All seven people agreed that in the case of Kwoyelo, who will be taken to Court inevitably, it should be taken into account that he was abducted by punishing him leniently. What this means exactly is largely unclear but answers about punishment range from one year to five years. The two remaining respondents make a distinction between those who escaped out of the bush and those who were captured by the UPDF. They argue that someone who escapes himself shows that he is really willing to give up life in the bush and should therefore be forgiven via traditional justice mechanisms. LRA combatants who are captured should be

tried because for them it is easy to say they want to denounce rebellion now that they are in prison but have never really showed it. In relation to what was stated previously about the social roles of people and the frames they generally pursue, it is interesting to see that mostly the parents of abducted children and the former abductees themselves plea for forgiveness rather than punishment. Still, two parents favour punishment. These were both parents whose children already have returned and have been granted amnesty though, while the other parents often do not know anything about the fate of their children. Their children could have become senior commanders and punishment would then not be favourable for them.

Again, it must be noted that these answers are not as straightforward as they are presented here. When amnesty was subject of discussion it became apparent that people were often very confused and could not always answer the questions that were asked about accountability and justice. Regarding low-ranked combatants, people supported amnesty very much because they do not consider them to carry responsibility, just as they want them all to go through *Mato Oput*. However, concerning amnesty for senior commanders, the respondents often appeared undecided. They did not reject amnesty for a commander, nor did they show to be very excited about it. Especially when it was asked whether it is fair to grant one commander amnesty while another ex-commander (Kwoyelo) will now be tried,²⁵ many respondents answered that amnesty was a matter for the government and that they did not really have an opinion about it. This could be explained as an indirect way to articulate that they do not agree with this policy. More importantly, some of the same people who previously argued in favour of prosecution for all commanders coming out of the bush now argued the opposite; if someone escapes, thus comes out voluntarily, he should be granted amnesty rather than being punished. Probing about these contradictory answers confused most people even more. For instance, one woman answered that she would rather see Kwoyelo imprisoned for two years and then be granted amnesty so he could come to her and show to the community that he changed into a good person. The answers about accountability, amnesty, and justice strategies show the complexity of the issue and the way people struggle with these questions. Also worth mentioning is that the respondents from Otwal do not know anything about the trial against Kwoyelo. This is interesting because Kwoyelo stands trial for killing and abducting civilians in an alleged attack on this village.

²⁵ While Kwoyelo is prosecuted by the WCD, other senior commanders such as Bania Kenneth and Sam Kolo who came out of the bush at about the same time have been granted amnesty. In the next chapter this different management of such cases will be elaborated on.

The effect of a trial against him can be questioned if the direct victims do not even know about the WCD or the trial. Lastly, it was asked how justice could be best attained for all the people who have been abducted by the LRA throughout the years. The respondents unanimously replied that they consider Kony responsible for all abductions and that, as a result, he should be the one punished. Additionally, half of the people pointed at the UPDF because it should have protected the people instead of running away when abductions took place. Most people again say that only compensation can help them. Especially the FAPs say that they now suffer from lost opportunities for education that only compensation, by giving some money to pay for example for school fees or to pay for agricultural equipment, will help.

2.5 Conclusion

This chapter provided an analysis of the local perceptions on Acholi people on the identity and responsibility of and accountability mechanisms for complex political perpetrators. Generally, two views can be identified that correspond with the “complex political perpetrator frame” and the “complex political victim frame”. The people who view them as perpetrators point out several reasons for commanders not to escape but in the end still think that complex political perpetrators make a rational choice to stay which makes them responsible for their actions. According to these respondents, the abductees use their “tactical agency” to be promoted in rank that provides them with more security and profits from the bush. The aforementioned rational corresponds with the description Baines gives of the complex political perpetrator: abductees might understand that staying in the bush is the only way to exercise some control over their lives and to gain some level of material wealth and therefore indeed *choose* to stay in the LRA.

On the other hand, the people who pursue the “complex political victim frame” believe that complex political perpetrators do not have so much control over their situation. They view them as trained and brainwashed which implies that they do not know exactly what they are doing, or that they are very afraid due to indoctrination and the systematic spread of fear. Thus, according to that opinion, complex political perpetrators do not consciously make decisions about escaping or staying. These respondents do not consider them responsible for their actions since the complex political perpetrator is ordered to commit crimes and forced by the circumstances to follow these orders.

In terms of accountability, there are some important remarks to be made. Quite a number of people express doubts about the Court's ability to take up such complex cases, they show low interest in justice because they do not see how they can benefit from trials without compensation, and feel that not only the LRA but also the conduct of the government's army should be investigated. Moreover, large variation in opinion exists regarding the accountability mechanisms that should be implemented. While a large majority (thirteen out of seventeen) Acholi pursues the "complex political perpetrator frame", only seven Acholi favour trials for the complex political perpetrator and another two respondents favour prosecution in case the person is captured rather than escaped himself. The rest favours forgiveness and traditional mechanisms. Furthermore, many people think that the GoU should take into account whether one was abducted or joined voluntarily. This shows that the attribution of a high level of responsibility is not necessarily linked with justice via prosecution. The analysis of the social and institutional roles of the actors provides some insight in the reasons for framing the complex political perpetrators in a certain way. It shows the complexity of the situation with respect to complex political perpetrators and the intense emotions that are involved, especially for parents and FAPs. It became clear that answers about these issues are often contradictory, that there is much confusion about government mechanisms such as the AA, and that there is a large distance between the GoU and the people in the North. The relation between these perceptions and the policy that the GoU formulates are discussed below in chapter four.

3. Case Study of a Complex Political Perpetrator: Thomas Kwoyelo

The life of Thomas Kwoyelo, similar to that of Dominic Ongwen, illustrates the complexity with which is dealt in this research and is therefore presented here. Born in Acut-Omer village in Amuru district in Northern Uganda, Kwoyelo was abducted in 1987 when he was fifteen. He spent most of his life in the LRA and was captured by the UPDF in February 2009 during the Operation Lightning Thunder. At that time, he had the rank of Colonel. The DPP will try him for war crimes and crimes against humanity. Consequently, Kwoyelo is imprisoned in Luzira Upper Prison in Kampala in anticipation of his trial. This chapter first provides a description of his history of abduction, his life in the LRA as a mid-level commander, and his capture by the UPDF. This is mostly based on information that he himself gave during the interviews in Luzira Upper Prison. Next, it presents a factual overview of Kwoyelo's current situation concerning his amnesty application, the DPP's investigation on Kwoyelo, and the subsequent developments in his court case.

3.1 *Kwoyelo's Involvement in the LRA*

3.1.1 *His Abduction and Job within the LRA*

*'I was abducted, together with some other children from my group, when I was going home from school at about four pm. We came from school and bumped into a group of LRA rebels who took us. We were taken to many different places in Northern Uganda, from North to South, we just kept on moving for weeks. I think we even went outside of Uganda. After sometime, I did not know where I was anymore and, even if I would have had the chance to escape, had no idea how to get back home. Also, I was very much afraid to die.'*²⁶

Over the years, he was trained to handle a weapon in battle but eventually ended up working mostly in sick bay, a "safe place" where people who need medical treatment go to stay until they get better. These sick bays move around constantly in order to keep them hidden from the enemy. Kwoyelo's main job was working in sick bay and because he did well he was in charge over a large group. About this time he says the following:

²⁶ Interview Kwoyelo 7 April 2010, Luzira Prison Kampala.

*'I was responsible for all the people in my sick bay, there were really many at times. This means you are the one who has to take care of food, medicines, and clothes and so on for the sick. The only way to do my job was to force the population to help me. As a rebel you do not get things from them, you have to fight for it.'*²⁷

From time to time he had to loot products and food and even abduct people to help him with his work. Kwoyelo thus acknowledges that he occasionally would get into a fight and commit crimes, although 'it was always for the purpose of taking care of the sick.'²⁸ Eventually, he climbed up to the rank of Colonel.

3.1.2 *Life in the LRA with a Rank and Escape*

Kwoyelo explains that when all people in his sick bay were healed and he had finished his job there, he would be assigned other duties from other commanders more senior than he was. According to Kwoyelo himself, he had a rank but there were quite some others who were higher in rank and he was therefore was not very close to Kony. Yet, Kony did know him because he had this special job in sick bay and was good in it. About his relationship with Kony he says the following: 'My situation in the bush was like that of a dog and his master. When you tell a dog to do something, it will act as instructed' (de Temmerman 2009:8-9). He also says:

*'My master was Kony and everything I did came from Kony; the attacks, the ambushes, the abductions. When he tells you, 'ambush a car there and come back with twenty five new recruits', you do it because otherwise he will kill you.'*²⁹

Kwoyelo says there were several reasons for him not to escape. First, as a young boy he was very scared to die. He explains that soon after he arrived in the main LRA basis he was present at the killing of an escapee. This terrified him and made him understand that escaping was a difficult and dangerous thing to do. He describes his situation accurately: 'I was caught up between two deaths. Either I would be killed in the bush or I would be killed

²⁷ Interview Kwoyelo, 7 April 2010, Luzira Prison Kampala.

²⁸ Interview Kwoyelo, 7 April 2010, Luzira Prison Kampala.

²⁹ Interview Kwoyelo, 7 May 2010, Luzira Prison Kampala.

trying to escape.³⁰ Not only was he afraid to die himself, he also feared for the life of his family once he would attempt to escape.

*'Just as I was, many abductees are very afraid for the revenge they [the LRA] take on your family when you escape. They keep records of all the abductees and their clans and go back to your community to kill for example your father as a punishment.'*³¹

Second, because he was moved a lot in the beginning he was ignorant of both his own location and the location of his family and had no contact with them.³² This made it very difficult to return home. Kwoyelo says he only got into contact with his family again after his capture. Thirdly, Kwoyelo says that it is very difficult to escape from the LRA. As a new abductee he was guarded very strictly which gave him little chance to escape and even later on, despite his rank, it did not get easier for reasons that were pointed out earlier in chapter one.

Lastly, Kony used to tell every LRA commander that his name was on the ICC list. He did away with the rumours that only five names were on this list by calling it government propaganda. The commanders believed him. Moreover, there were rumours spread within the LRA that the UPDF killed every LRA combatant they managed to get in their hands. 'And nobody escapes to end up being killed by the UPDF', Kwoyelo says, 'the intention is to go home and be with your family. You have seen enough death (...) and you do not want to go through that again.'³³

3.1.3 Imprisonment in the LRA by Kony

In an interview that Els de Temmerman of the weekly Sunday Vision conducted in Gulu Prison just after his arrest, Kwoyelo tells about his imprisonment by Kony.

'I was arrested just before Otti's arrest. (...) All of us were accused of being in favour of the peace talks and wanting to surrender to the Government of Uganda. Kony believed the talks were a way to get

³⁰ Interview Kwoyelo 7 May 2010, Luzira Prison Kampala.

³¹ Interview Kwoyelo 7 May 2010, Luzira Prison Kampala.

³² Kwoyelo argues that the UPDF took special interest in his family after they found out he was in the LRA and had a rank. His family members were under constant surveillance of the UPDF, were regularly attacked and put in different IDP camps moving them every few months to ensure no contact with or support for Kwoyelo was possible in any way.

³³ Interview Kwoyelo, 7 May 2010, Luzira Prison Kampala.

him out and have him arrested. He considered all those who were in favour of the peace talks as enemies.' (de Temmerman 2009:8-9)

After being disarmed, blindfolded and tied for one week he spent about one year in detention in the First Brigade in Garamba National Park and was then moved to Kony's central Brigade. He was kept under arrest until he was captured by the UPDF. His escorts were put in different camps and units (de Temmerman 2009:8-9).

In December 2008, Operation Lightning Thunder was launched in an attempt to crush the LRA with a surprise offensive. Although the LRA was weakened by the attacks, it was not defeated and neither Kony nor one of his top commanders was captured or killed. When the operation started, Kwoyelo was taken along with the LRA, on the run for the attacks of the joint forces. One day his group ran into these forces. He was shot and because he was too heavy to carry, they removed his gun and left him behind promising to pick him up later that day. However, the UPDF found him before the LRA did and took him along. From that moment on he has been in custody. First in Gulu Prison, later he was moved to Luzira Upper Prison, the country's maximum security prison in Kampala.

3.2 *Present and Future: Amnesty Application and the DPP's Approach*

As has been explained in the previous chapter, the GoU has referred the situation in Northern Uganda to the ICC but because all the indicted men remain at large, the ICC has not been able to start any court case yet against them. On the contrary, the WCD, established by the GoU as was agreed upon in the AAR, can start its first case because Kwoyelo is in their hands.

After his capture, Kwoyelo was eventually imprisoned with his case being investigated by the DPP. However, two other actors - the UPDF and the AC - were also involved in his case. The army's interest is to stop the war and defeat the LRA and an LRA captive such as Kwoyelo can assist the army in achieving this objective by spying for them in the LRA. The AC, on the other hand, wants to grant him amnesty under the laws of 2000 and 2006 because it views amnesty as an instrument that can increase chances for peace. Consequently, despite the DPP investigating Kwoyelo's case, the AC visited him in prison where he applied for amnesty. However, after application the process must go through the DPP that will prosecute a person if it has reasons to do so. They can then prevent the AC from granting

amnesty. Ms. Kagezi, the DPP's senior principal state attorney and head of the Prosecution Unit of the WCD, explained that the DPP had difficult negotiations over Kwoyelo with the UPDF. The army wanted to hand him over to the AC so he could be granted amnesty but suddenly changed its strategy and left Kwoyelo for the DPP with the consequence that he had to appear in Court unexpectedly, before the DPP could even finalise its investigations. In addition, the WCD was not operational yet. The ordinary court then took up his case and Kwoyelo appeared before the magistrate in Gulu. Initially, he was charged for the offence of kidnap with intent to murder but now that the DPP has finished the investigations and the WCD is operational, the DPP is planning to amend the indictment into crimes against humanity and war crimes in order to include everything it has found against him in the charges. Thus, charging him for lesser crimes than war crimes and crimes against humanity was just a way of 'buying time' to complete the investigations and wait for the WCD to be established. The charges against Kwoyelo relate to the disappearance of villagers from Atiak and Pabbo, sub-counties of Amuru and Gulu districts. He is also suspected of the raiding and killing of over 100 civilians in the districts of Otwal in Oyam (Interview DPP 7 May 2010, Kampala).

At first Kwoyelo was imprisoned in Gulu but this institution expressed its lack of facilities to secure Kwoyelo's imprisonment, especially after stories about a possible break out. Therefore, he was moved to the maximum security Luzira Upper Prison in Kampala.³⁴ In Luzira he is currently waiting for his trial to begin. It was planned for May to begin, it is now August and the trial has not started yet because the DPP has not finalised its work. Besides, until this moment Kwoyelo has no defence council yet and says he is not being informed about the progress of his case.

3.3 Conclusion

This chapter illustrated the life of Kwoyelo from abduction until his imprisonment in Kampala as he described it himself. First, it was demonstrated how Kwoyelo has experienced his life in the LRA. From a tender abductee he climbed up to the rank of Colonel whose main job was to manage a large sick bay but in addition had to execute orders he

³⁴ When a case is under investigation, the accused has to appear in court and be informed about his position constantly. Moving him from Kampala to Gulu for this purpose would be very risky though so he was committed for the High Court in Kampala. This implies that he received committal papers containing the indictment and a summary of the case. Kwoyelo (in theory) could from that moment start preparing his trial and wait in prison for his trial to start without having to be transferred to Gulu Court (Interview DPP, 7 May 2010, Kampala).

received from other more senior commanders. Second, Kwoyelo gave several explanations with which he, at least for himself, justifies why he never attempted to escape. Fear for death, the practical obstacles to escape, not knowing the location of his family, and fear for retaliation on his family (especially once higher in rank) played a large role. Later on, the belief that he was on the ICC list added up to this. The second part of the chapter described Kwoyelo's life after his capture by the UPDF. It is demonstrated how his case has developed over time and which actors are involved in it. It has been shown that different actors - the AC, the UPDF and the DPP - have different objectives, which are often conflicting. While the first aims for peace via amnesty, the second seeks it via the military approach and the last wants to fight the LRA in court. The next chapter compares the different views of the DPP (GoU), the AC and Kwoyelo himself on Kwoyelo's victimhood and liability and discusses them in detail.

4. Government Policies on Peace and Justice: the AAR, AA and Kwoyelo

Following chapter two, which analysed the local perceptions on complex political perpetrators, this chapter addresses the government's policies towards peace and justice. More specifically, it discusses the government's approach towards complex political perpetrators and the case of Kwoyelo. It is examined how the GoU perceives his liability and victimhood and how it handles his Kwoyelo's court case. Concluding, it critically evaluates the government's policies on peace and justice - the Agreement on Accountability and Reconciliation and the Amnesty Act - and on complex political perpetrators. A few general critiques are followed by an examination of the government's policies in comparison with local preferences regarding justice and complex political perpetrators. This part serves as an important basis for the last chapter that discusses the possible consequences and implications of the government's policies.

4.1 The Agreement on Accountability and Reconciliation (AAR)

The aim of the AAR is to strengthen domestic accountability mechanisms via a combination of strategies adopted to build positive long-term peace and to start a process of reconciliation. As such, the AAR states that "the Parties shall promote national legal arrangements, consisting of formal and non formal institutions and measures for ensuring justice and reconciliation with respect to the conflict" (Agreement cl. 2.1; Mallinder 2009:43). The Agreement and Annexure lay out a wide range of transitional justice measures. These include punitive justice mechanisms such as the WCD of the High Court that will "try individuals who are alleged to have committed serious crimes during the conflict" (Annexure cl. 7). It will carry out criminal investigations and prosecutions of individuals who are "alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict" (Agreement cl. 6.1). Furthermore, clausal 4.3 states that "the choice of forum for the adjudication of any particular case shall depend, amongst other considerations, on the nature and gravity of the offending conduct and the role of the alleged perpetrator in that conduct". In practice, this will come down to the prosecution of the LRA leaders while other lower ranked LRA combatants will probably be excluded. In addition, restorative (informal) justice mechanisms such as the traditional justice mechanisms, a truth-seeking body, and reparations are implemented (Onyango & Lamony 2007:8 in Mallinder 2009:42). The AAR thus distinguishes

different conceptions of justice; retributive justice based on prosecution and restorative justice based on mediation.

Both have other definitions of what constitutes “justice”. Retributive justice can be defined as justice that involves punishment and prosecution of the wrongdoer. It is generally associated with legal trials in the western legal justice system (Lambourne 2009:30) and does not seek reconciliation between victim and perpetrator (Van Ness 1996 in Estrada-Hollenbeck 2001:68). Restorative justice mechanisms handle wrongdoers differently and may be defined as justice that restores relationships between conflicting parties and aims at repairing the injuries caused thereby including victims, perpetrators and the rest of the community (IDEA 2003:111; Van Ness 1996 in Estrada-Hollenbeck 2001:74). Generally, restorative justice is regarded as an alternative form of justice outside the formal judicial court system, at least according to Western legal practice (Lambourne 2009:30). Examples of restorative justice mechanisms are traditional African justice systems such as the truth and reconciliation commissions as implemented in South Africa, *gachacha* courts in Rwanda or the traditional justice mechanisms that exist since long in Acholiland.

4.2 Acholi Justice and the AAR

The Acholi’s original system of conflict resolution and justice mechanisms has some central principles that diverge from the more “Western” forms. Among these principles are the voluntary nature of the process, mediation of truth, acknowledgement of wrongdoing, reconciliation through symbolic acts, and spiritual appeasement (Baines 2007:103). They aim for the restoration of trust between the two conflicting parties through the acceptance of responsibility, the showing of remorse, and compensation rather than punishment. The Acholi people prefer to forgive and except the perpetrator back.³⁵ It is a community rather than an individual affair meaning that if someone commits a crime, this action concerns the person’s whole clan. In addition, the suffering of the victim affects the whole victim’s clan. One of the justice rites is called *Mato oput*, the drinking of the bitter root, which is used in cases of accidental or deliberate killing.³⁶

³⁵ The exact rituals may differ across clans but the central elements and principles of Acholi justice are generally the same.

³⁶ The Acholi believe that the killing of a person angers the ancestral spirits of the victim who can then invite evil spirits to the houses of the people and harm them. Moreover, a “supernatural barrier” is created by the killing between the clan’s of the killer and the victim (IDEA 2008:103). From that moment on, the two clans stop any social interaction that previously existed. This barrier remains in force until after the performing of the ritual. The ritual includes the same principles of truth,

Under pressure of Acholi religious and traditional leaders, the AAR - alongside the WCD - also gives a prominent position to informal traditional justice mechanisms that “shall promote reconciliation and shall include traditional justice processes, alternative sentences, reparations, and any other formal institutions or mechanisms” (Agreement cl. 5.3). The traditional rituals performed by different affected groups in Uganda such as *Ailuc*, *Culo Kwor*, *Kayo Cuk* and *Mato oput* are mentioned as appropriate mechanisms to address issues of accountability and reconciliation, though with the necessary modifications. The large majority of the LRA’s ex-combatants who returned from the bush will be subjected to these traditional mechanisms aiming for reconciliation and their reintegration into society. There are some remarks to be made though regarding the use of traditional justice processes in achieving justice and reconciliation in Northern Uganda. Tim Allen argues that in viewing the traditional courts as a good alternative for the ICC, the merits are often “oversold”, the dangers “under-appreciated”, and the claims about the effectiveness of these mechanisms might be illegitimate (2008:47-48).³⁷ Thus, the question is whether these local mechanisms are applicable to this specific situation and can do justice to the victims and meet international standards of justice. What is definitely required, is adaptation to remove inconsistencies with (inter)national law. Moreover, the AAR needs to be more specific about these issues.

The informal or traditional justice mechanisms as described in the AAR and the AA thus exclude most ex-combatants from prosecution by the WCD. Hence, there is a tendency

accountability, compensation, and restoration of relationships and is a process led by a Council of Elders. First, the conflicting clans are brought together to establish the truth and determine the compensation that will have to be paid. Then the *Mato oput* ritual is performed to promote reconciliation between the clans of the victim and perpetrator clan after which they are expected to resume their previous relationship. This involves the drinking of the bitter root (IDEA 2008:103-105).

³⁷ Among the remarks that can be made about it are the following (Allen 2008; Baines 2007; IDEA 2008). First of all, the Acholi traditional justice system was always used for killings but never for the kind of atrocities that have been committed during this conflict. Moreover, it remains unclear what will be done about for instance rape, a rather “new” crime. The applicability of this system for the reconciliation of LRA war crimes and crimes against humanity is thus questionable. Second, one could question the applicability of *Mato oput* and other Acholi mechanisms for perpetrators who are not Acholi such as UPDF soldiers or even not Ugandan who committed crimes. Thirdly, what will be done when the perpetrator is unknown or when the perpetrator is unable to compensate for all the crimes he committed? Moreover, due to the length of the conflict and the fact that many people have lived in camps for years, the teaching of “social education” about ceremonies, celebrations and other activities of the community has not taken place as it did before. The value of these ceremonies and the legitimacy of local leaders in the eyes of the younger population are thus uncertain and it is unclear whether a revival of those values is possible on such short term. Lastly, Allen argues (2008:52) that the capability of the Acholi to forgive might be exaggerated. For historical and political reasons the Acholi have often been depicted as primitive and therefore they are sometimes seen as less concerned about the atrocities committed against them than others would be. Nevertheless, as Allen asserts, like people anywhere in the world, they too deserve a state that protects them and this includes legal protection from those who oppress them.

in Uganda to focus on the restoration of relations, the promotion of reintegration of ex-combatants, and forgiveness (via amnesty) rather than punishment via retributive justice mechanisms. The case of Kwoyelo, which is explored in-depth below, shows that there are exceptions.

4.3 *Policies and Perceptions on Liability and Victimhood of Kwoyelo: the DPP and AC*

In analysing the government's perceptions and policies regarding Kwoyelo, there is one very important issue to keep in mind; the DPP, the judicial arm of the GoU, does not consider Kwoyelo to be abducted. How it views Kwoyelo and consequently handles his case must be understood against that background.

There are several categories of people the DPP distinguishes in deciding who will indeed be sent to the AC and whose case will be investigated. The first group is that of children who were abducted and returned from the bush under the age of eighteen. These children are directly sent for rehabilitation without investigation and are subjected to transitional justice mechanisms such as *Mato oput*. Most abducted people who came out of the bush as adults are also handled as such. The DPP's focus lies with the commanders, those who climbed up to higher ranks, committed many atrocities and have been rewarded for it with a rank. This group is considered to carry most responsibility for atrocities and is, if caught, therefore subjected to investigation by the DPP. When asked in an interview what would be done in the case of a commander who was abducted as a child, Kagezi, head of the prosecution unit of the WCD, replied that then many issues have to be considered on a case by case basis but that no fixed format exists (Interview 7 May 2010, Kampala). Each case will thus be dealt with depending on its merits and different circumstances. The DPP will consider issues such as the extent to which a person willingly continued in the LRA, instigated most of the atrocities, and developed mentally from a child onwards in the LRA. Information obtained through investigations should provide clarification about these issues. Kagezi admits that these are subjective issues but is not willing to acquit such men and send them to the AC. She agrees that a past of abduction can be put forward as a mitigating factor by the defence council of the person accused, but argues that no commander should be exonerated in advance.

The case of Dominic Ongwen offers more insight into the approach that the DPP would take in the case of a complex political perpetrator. The DPP considers someone responsible for his actions once a person reaches his majority. It does not recognise the idea

of forcibly committing atrocities but instead argues he is culpable for whatever he did as an adult. However, mitigating factors can be put forward. Kagezi mentioned for instance the fact that a complex political perpetrator does not know sanity and has left the “civilized world” at a very young age, and therefore might believe that violence is the way to go about. She also agrees that it is not easy to escape from the LRA. For many people it is very hard to do so and she understands that people, after a long period in the LRA, might just give in and decide to stay and make the best out of it. However, she emphasises that all these factors can only play a role in court and that the judges should decide on these matters (Interview 7 May 2010, Kampala). The GoU thus pursues the “complex political perpetrator frame”. Again, the institutional role of the actor, the DPP, helps to explain why it pursues this frame. As the judicial division of the GoU, the DPP has an important role to fulfil. The needs and interests of the GoU are different from the needs of the local population in Acholiland. Apart from the attainment of justice, the GoU wants to show to the international community, and in particular to the ICC, that it is able to try LRA combatants itself. In that sense, the Kwoyelo-case is a very important first case because the eyes of the international community, especially those of the ICC, will be focussed on Uganda. If the DPP wins, a precedent can be set that can enable the DPP to start many more cases against captured senior LRA commanders. The DPP therefore has no interest in granting him amnesty now that it finally has someone it can try. In that sense, it is very logical that the DPP tries to depict Kwoyelo as someone who joined the LRA voluntarily instead of someone who was abducted. In the words of Snow et al (2007:387), the DPP emphasised those aspects of his case they find relevant, Kwoyelo’s crimes, and omit those facts they find irrelevant, that he might be abducted, leaving them out of their frame to strengthen their case.

Regarding the attainment of justice for all abducted people including complex political perpetrators, Kagezi is not able to explain clearly what should happen. Responsibility for this issue lies, according to her, not with the DPP but at the national level with the Transitional Justice Working Group (TJWG). It is working on a Bill on Truth and Reconciliation that could possibly address the question of justice for former abductees. She considers the consequences that the prosecution of Kwoyelo might have for those who currently remain in the bush irrelevant. Simply put she states, ‘we are not going to wait for them to come out of the bush. If they really had the intention, they would have come out much earlier. (...) I believe that after failing to conclude the peace agreements, chances of them coming out have even more diminished’ (Interview DPP 7 May 2010, Kampala).

The approach that the AC takes regarding complex political perpetrators is very clear and does not differ from other cases. Draku, pr officer of the AC, explains in the interview that the AC's main task is to grant amnesty. The underlying thought is that the AC strongly believes that amnesty for ex-LRA combatants increases chances for peace, the commission's main objective, because it can persuade rebels to surrender. According to the AA, "any Ugandan who has at any time since the 26th of January 1986 engaged in or is engaging in armed rebellion against the Government of the Republic of Uganda" will be granted amnesty but following the amendment in 2006, it was established that leaders of the rebellion against the GoU would be denied amnesty (AA 2000 & Amendment 2006). Nevertheless, as Draku states, the AC will always provide a person amnesty - with the exception of those indicted by the ICC - as long as he or she denounces rebellion. Thus, as far as the AC concerns, 'the law is blanket amnesty. (...) Whether you were abducted, coerced, or you went out of free will, disregarding the crimes you committed, everyone is treated the same' (Interview AC 20 April 2010, Gulu). This means that the AC does not judge ex-LRA combatants on their level of responsibility or liability. The AC prefers to give amnesty to them rather than to pursue prosecution. Hence, for this institution, the complex political perpetrator exists but it does its work indiscriminately of a person's past. Nonetheless, the final decision to investigate or prosecute lies with the DPP.

4.4 *The DPP's Execution of the Case of Kwoyelo*

The case against Kwoyelo is the WCD's first one so the system and its procedural rules have to be established from scratch. This has resulted in some unusual developments - or what some would call - flaws in the process. Besides, the politics that surround the debate about justice and prosecution of ex-LRA commanders play a significant role. As is mentioned above, the DPP does not consider Kwoyelo abducted but instead claims he voluntarily joined the LRA and this obviously changes their approach towards him.

Investigations in Kwoyelo's region of birth, the district of Amuru around Pabbo IDP camp, provided information to the DPP about his date of birth, his alleged abduction, and opportunities to escape. The DPP concluded that Kwoyelo is not abducted but joined voluntarily and was nineteen instead of fifteen when he did so which has great legal implications for his case.³⁸ Yet, Kagezi does admit that age is a relative notion and that, since

³⁸ The DPP claims to have spoken to witnesses who declare that unlike being abducted, Kwoyelo joined the LRA voluntarily. Allegedly, he was newly wed when the rebels came and abducted his

there are no birth certificates of Kwoyelo, it remains difficult to make statements about his age. Moreover, the DPP claims that Kwoyelo, unlike other rebels, had many opportunities to escape because he used to come and visit his family and wife from time to time during his life in the bush (Interview DPP 7 May 2010, Kampala).³⁹

As is previously explained, the interviewed people in the districts of Oyam and Otwal do not know Kwoyelo and are not aware of the existence of the WCD or its first case. The DPP refutes this and states it has spoken to many people, such as Kwoyelo's wives, people from his team, and other people in the area who knew about him and were willing to help the DPP. The DPP argues that many of them wish to see him appear in court but admits that there were also some elderly who emphasised the young age he had at the time of abduction, thereby resonating their wish to set him free. During this part of the interview Kagezi made a slip of tongue twice saying 'he was *taken* when he was young' (Interview DPP 7 May 2010, Kampala). When probing about this she recovered and again argued he joined voluntarily. Nevertheless, her contradicting answers cause confusion and doubts about her story.

The DPP is very clear about its reasons to deny Kwoyelo amnesty. Kagezi explains that the DPP considers Kwoyelo a very senior commander of the LRA because, according to the DPP, he was the only commander based in Uganda with the others operating in Sudan. This shows he had great influence. Thus, following the amendment of the AA in 2006, the DPP will ensure he is denied amnesty by the Minister of Internal Affairs based on the ground he was a "leader" of the rebellion. Other similar cases in the past have been handled completely different. There are for instance two well-known cases of LRA commanders, Sam Kolo and Bania Kenneth, who have been granted amnesty while they were more senior than Kwoyelo. They are even supported in their livelihoods by the GoU.⁴⁰ The fact that Kwoyelo

wife. Kwoyelo then offered to go in his wife's place. According to the DPP, it is also proven that he was not fifteen years at that time but that he was older. His participation in a wedding ceremony, paying dowry for his brother and the fact his new wife was pregnant (this child allegedly is now nineteen) are signs of maturity in the DPP's view. In addition, his former peers from school declared he went to school much earlier than he himself said. This implies he was older than fifteen.

³⁹ The DPP has found a line of children from Kwoyelo who have never lived in the bush but have been born and raised by Kwoyelo's wife in a village. According to the DPP, the wives said that he came and visited them regularly. Sometimes he even stayed for two weeks.

⁴⁰ Bania Kenneth was trained abroad and was a senior in Okello's UNLA that was later overthrown by Museveni. He was among those who started the war with Alice Lakwena and the HSM and ran, after she was killed, to Kony's side. In the LRA, he was the vice chairman of the LRA and one of its master brains in terms of planning operations. After he left the LRA, he received amnesty and now lives his life in Gulu quietly with his family. He receives a monthly allowance from the GoU of about 600,000 shilling which is more than an average month salary in Gulu. Sam Kolo was also among the top of the LRA functioning as the political commissar of the political wing. He now studies at Gulu University

was captured after the establishment of the WCD was in a sense “bad timing” for him; it enables the DPP to actually prosecute him while Sam Kolo and Bania Kenneth came out at the moment that Amnesty was relatively new and considered to be the best solution to get rebels out of the bush. There are examples though of other senior commanders, such as a man named Makasi, who were recently granted amnesty while the WCD was already established. Kagezi explains that the difference is that Makasi remained in the hands of the army and more importantly, he came out very quietly which resulted in less media exposure and pressure on his case, contrary to Kwoyelo’s capture (Interview DPP, 7 May 2010, Kampala). Kwoyelo was the first one handled by the DPP and is considered a test case for the DPP and the WCD. If they succeed in this case, a precedent for all future arrested LRA commanders is established.

It was already mentioned that Kwoyelo’s indictment will be amended soon from kidnap with intent to murder to war crimes and crimes against humanity. One main obstacle remains in place though; a defence council is not yet appointed. The DPP argues that the Justice Law and Order Sector (JLOS) is responsible for this and that it can do nothing but wait. It has declared not to proceed further until his defence council is appointed. This has resulted in long delays in the development of the case.

4.5 *Kwoyelo’s Perception of his Own Situation*

Obviously, Kwoyelo himself draws a completely different image about his level of responsibility, escape, and victimhood. Due to very strict guarding in prison and his own suspicion, it was not possible to ask Kwoyelo just anything about these matters. However, after some time in which he got used to the situation and a setting of relative privacy and less attention from guards was ensured, he provided some important information. One of the first things he said explains how he feels about his situation:

‘I do not understand why I am here in prison. I am wondering, why am I the first of all LRA combatants, including those who are responsible for crimes, to be locked up in prison and prosecuted? For example, how can the other LRA commanders still be free, such as Commander Okwonga Alera or Sam Kolo or even Bania Kenneth. Those men were even more senior than I was!’⁴¹

Business Administration which is paid for by the GoU and receives an allowance as well (anonymous source, interview 2 May 2010).

⁴¹ Interview Kwoyelo 7 April 2010, Luzira Prison Kampala.

In short, this clarifies the dilemma that Kwoyelo finds himself confronted with. He considers himself a victim and therefore his imprisonment confuses him. In his view he was abducted as an innocent child walking from school to home, trained to use a gun and fight as a soldier. As described in the third chapter, Kwoyelo felt he was not in a position to escape and claims he never felt home in the LRA. According to him, it remained a struggle everyday. A person cannot get used to it but can only adjust as much as possible and try not to draw attention and make life as safe as possible. The fact that he was imprisoned by Kony for over a year and accused of being in favour of the peace talks shows, according to Kwoyelo, that he was not just following the leaders of the LRA without critique and was no longer “on Kony’s side”.

What confuses him especially is the fact that the other commanders such as brigadier Bania and Kolo were granted amnesty and currently live their lives freely in Gulu.

‘These men were much more senior than I was, had much responsibility and there was not even a single charge for them, not even by the ICC. Thus, those who actually abducted me are free now and I, the one who was abducted, am in prison.’⁴²

Regarding the pursuit of justice, he thinks his own victimization is neglected. Moreover, he argues that he is denied his rights as a prisoner because he is not informed properly about the charges against him. Kwoyelo still does not have a defence council and is left without legal support and most details about his court case or his offence were unknown to him at the time of the interviews. He was also ignorant about the progression of his amnesty application. He applied for amnesty in February in Luzira Prison and was told then that, although the AC could not promise him anything, he would get a response by the end of March. In May he had not heard from it but was still confident that he would be granted amnesty although the official paper had not been sent to him yet.

This account of Kwoyelo’s own perceptions on his situation explains his feeling of being victimised again; he thinks he is left in the dark and forgotten by the outside world. He feels neglected and argues his rights are not respected because he lacks a defence council, is not informed properly about the development of his case, and he claims to be unequally treated in relation to other (more senior) ex-LRA combatants who are free. His abduction as an innocent child is what he considers most important here and he does not understand why that is not taken into account.

⁴² Interview Kwoyelo 7 April 2010, Luzira Prison Kampala.

4.6 Discussion: Government Policies and Local Perceptions

This chapter illustrates the comprehensive justice strategies that the GoU implements with a focus on the specific cases of complex political perpetrators. It becomes apparent that there are several government institutions and instruments simultaneously working on peace and justice, which sometimes hinders their functioning and affects their efficiency and results. Some critical notes can therefore be placed at both the outline and the implementation of the government policies. A distinction is made between general critique on the AAR, AA and WCD on the one hand, and on the other the particular functioning of the WCD and DPP in the case of Kwoyelo.

Firstly, as Louise Mallinder points out, the establishment of the WCD as is provided for in the AAR can be a step in the right direction because there are advantages of national courts over ICC prosecutions. While the ICC cannot prosecute crimes that occurred before 1 July 2002, the WCD can do so. This is positive since many atrocities have been committed before 2002. Additionally, the trials would take place in the state in which crimes occurred. This can be positive for the victims who might feel more connected to such trials than when they take place in The Hague (2009:45). Nevertheless, the AAR remains vague on a number of very important issues. The AAR does not provide much guidance on how it will be investigated which perpetrators should appear before formal and which perpetrators before informal justice mechanisms. It thus remains unclear which category of offenders will be prosecuted by the WCD and which category will participate in traditional restorative processes. There are articles in the AAR that address the focus of the WCD investigations but they remain quite vague. In a response to a request for information of the ICC about this issue, the GoU stated that the categorization and identification of offences will follow the anticipated conclusion of the final peace agreement (Mallinder 2009:48). However, this agreement was never signed. Furthermore, it remains unclear how the AA and the AAR will function simultaneously. In the AAR there is no explicit reference made to the AA while trials would clearly go against granting amnesty so one could argue another amendment of the AA is required (Mallinder 2009:45-49).⁴³ The pr officer of the AC also explained that there are no clear criteria for who is eligible for amnesty and whose case will be investigated. Even

⁴³ Agreement clausal 3.10 states: "Where a person has already been subjected to proceedings or exempted from liability for any crime or civil acts or omissions, or has been subjected to accountability or reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct." This could mean that those who have received amnesty already will not be liable for prosecution.

the DPP expressed its concerns because it thinks the situation, as it exists currently, is rather impractical (Interview AC 20 April 2010, Gulu; Interview DPP 7 May 2010, Kampala). In the interview, Kagezi complained about the procedures that have to be followed before the DPP can start prosecution and she argues that the AC and the WCD cannot exist alongside each other in the way they do now.

This touches upon another problem. There are several institutions working towards the attainment of justice and peace but the way they should function alongside each other is unclear. As was stated previously, the AC and the DPP have different interests that sometimes clash. As there are no clear criteria for whom to prosecute and who to grant amnesty, it seems to depend on contingencies whether one will be prosecuted or not. For instance, how a case is handled depends on which actor – the UPDF, AC or DPP – can get his hands first on the captured commander. In the future, this can result in unequal treatment as we have already seen in the case of Kwoyelo; he is prosecuted while another commander captured at around the same time has been granted amnesty. This can have negative effects on the credibility of both the WCD and the AC, which can harm the general process of attaining justice. From the interview with the AC, it also became apparent that the AC is not informed regularly by the DPP about the developments in Kwoyelo's case. Draku admitted that even he himself was ignorant about the progression of the case and said the AC was never officially informed about the prosecution of Kwoyelo. One could argue that instead of working independently and separated, these institutions should cooperate to achieve the best result. Procedural rules of the WCD thus have to be established as soon as possible in order to avoid such affairs in the future.

Concerns have also been articulated about the ability of the Ugandan criminal justice system to take up the task of such trials. Ugandan senior academics have criticised the Ugandan court system arguing that it is corrupt and lacks the jurisdiction over war crimes and crimes against humanity (Oketch 2009). On 10 March 2010, the Ugandan parliament passed the International Criminal Court Bill and after months of delay, President Museveni also signed this Bill just before the first ICC Review Conference in Kampala started. The ICC's Rome Statute has now been incorporated officially in Ugandan law and it thereby gives the WCD jurisdiction over the men indicted by the ICC. One important obstacle is thus removed but corruption in Ugandan courts remains a problem. The local legitimacy of Ugandan judicial structures is limited in many (rural) areas. The fact that quite a number of respondents expressed their concerns about the court system supports this claim. Some said

that trials in Uganda would not be sufficient for them because they lack trust in the government's capability.

The lack of a defence council for Kwoyelo is also subject of great concern because this hinders a fair trial. The AAR lays down some instructions for how the WCD should function. Clausal 3.7 of the AAR states that "any person appearing before a formal proceeding shall be entitled to appear in person or to be represented at that person's expense by a lawyer of his or her choice". However, until this moment the WCD does not follow the AAR here. The fact that the WCD blames another state institution (JLOS) for this problem again shows that different institutions do not cooperate well enough. Kwoyelo's case was supposed to start in April this year, however, in August still some major issues have to be resolved.

Another question is whether these government policies converge with the perceptions of the Acholi respondents. It is evident that within the GoU several approaches are taken. The AC does not take a stand about responsibility, victimhood or liability but it prefers to grant Kwoyelo amnesty. Its job is to grant amnesty if one meets the requirements as specified in the AA 2000 and its Amendment in 2006. On the contrary, the GoU pursues the "complex political perpetrator frame"; it argues that complex political perpetrators carry complete responsibility for their actions and should be held accountable via punishment. Yet, the GoU does not have a specific policy regarding complex political perpetrators. Nowhere in the AAR or the AA the issue of this complexity is mentioned or recognised and levels of responsibility are not distinguished. Instead, the focus lies with the crimes that a person has committed and the responsibility that he had for his actions. These two matters are the subject of the DPP's investigations and only in court issues regarding victimhood might be touched upon. Still, it is up to the defence council of the indicted person to bring this up. Although there are investigations on a case to case basis, a senior commander will always be taken to Court if there are allegations that he committed grave crimes.

As is mentioned previously, most Acholi pursue the "complex political perpetrator frame". However, the justice strategy that is taken by the GoU - solely retributive without taking into account whether one is abducted, joined voluntarily, escaped or was captured - corresponds with the opinion of not even half of the respondents. In that sense, one could argue that the government's policy with regards to complex political perpetrators diverges considerably from local preferences. In addition, the respondents made some general remarks regarding justice. In their opinion, the DPP only focusses on the LRA in his criminal investigations while many people expressed the need for investigations of the conduct of the

UPDF and NRA. Quite some respondents also articulated the need for compensation because the imprisonment of a commander far away in Kampala does not satisfy many people.

The question that should be asked is why the policies regarding the complex political perpetrator do not meet the needs of half of the population in Acholiland. Obviously, it is not possible to meet everyone's needs since these vary widely, also among Acholi. The analysis of the social and institutional roles of the actors that are involved provides some insight in the reasons for framing the complex political perpetrators in a certain way. The people in the North seek justice but their social roles as parent or FAP make this rather complex. The government's attitude towards Kwoyelo, on the other hand, is influenced by other issues. It becomes clear that this case is not only about Kwoyelo but that instead politics determines the government's actions to a large extent. The goals and underlying dilemmas thus determine one's perception of Kwoyelo. The next chapter provides a hypothesis of the possible consequences and implications of the current justice strategy in the case of complex political perpetrators. It also attempts to contribute to an inclusive justice system by making some recommendations to improve the government's functioning.

5. Conclusion: Implications, Consequences and Recommendations

The nature of the conflict that raged in Northern Uganda for over two decades has resulted in a very complex situation in which people from the same community or tribe ended up diametrically opposed. Through the tactic of abduction, the LRA has managed to create a division between both the Acholi and the GoU, and the Acholi themselves. Dividing lines between victims and perpetrators are blurred, a fact that complicates the pursuit of justice and accountability. Abductees become or perceive to become dependent on the LRA and often begin to think they cannot return home. Believing Kony when he says their family has been killed, fear for the reaction of that very same family after return, fear for being caught and brutally killed, fear for the retaliation of the LRA once they manage to escape; there is a wide variety of reasons that prevents many from trying to escape. Brutality, indoctrination, and the use of spirituality force many (young) children in a situation in which they can exercise very little control over their lives, a situation in which they have to kill or will be killed. Once they reach higher command levels, they gain more control but this might actually prompt some to stay. They know that going home often means going back to insecurity, poverty, a lack of chances to develop and marginalization, while staying in the LRA provides them with some control over their lives and possibilities to profit from the bush. The complex political perpetrator is born; a person who, forced by the circumstances, chooses for his own benefits even when this means turning into a perpetrator of horrific crimes.

Complex Political Perpetrator: the Feasibility of the Key Concept

In the introduction I have explained why I chose the concept of the complex political perpetrator as the key concept of this research. Here I will assess whether this concept is indeed feasible in research on cases such as Kwoyelo and Ongwen. From this study it becomes apparent that the concept that Baines has described corresponds with how many people - both FAPs who experienced being in that situation and people who stayed behind - view someone such as Kwoyelo. In their perception he made a conscious choice when he did not attempt to escape; he chose to take care of himself and felt that by staying in the LRA he could gain most. In that sense, it is a workable concept. However, this study shows that heavy indoctrination plays a role too in Kwoyelo's decision-making, something that Baines does not address specifically in her description of the complex political perpetrator. If a

person such as Kwoyelo is depicted as a person who very consciously made the decision to stay in the LRA, the concept is too limited. Kony makes extensive and deliberate use of indoctrination and fear to influence the minds of children and adults and this should not be disregarded. In her study on Ongwen though, Baines extensively illustrates the situation in which Ongwen grew up, the brutality of the LRA. With this background knowledge about the indoctrination the concept is very useful, especially because it can be employed in a broader discussion on young people involved in war. I thus find the concept workable in research but I do think that the influence of the severe indoctrination on the conduct of and the decision a person such as Kwoyelo makes, should be emphasised more.

Different Approaches to Justice: Retributive versus Restorative Justice?

This research is about showing diversity and commonality in opinions. This is only an exploratory research among a little less than twenty people in the districts of Gulu and Oyam in Northern Uganda. It is little material to generalise from, but based on the limited evidence obtained some comments can be made. In interviews, people often answer first that they do not want to think or talk about justice when they are asked how they feel about it, but say they would rather just carry on with their lives. However, when the conversation continues, it becomes clear that, although it is painful and complex, people do have an opinion about justice, also in cases of complex political perpetrators. It seems that pushing these feelings away is just a way of coping with their anger or pain and that issues such as securing their livelihoods are more urgent currently. People view low-ranking abductees always as victims who were forced to commit atrocities because they can do nothing but follow the orders they are given. People's perceptions about highly ranked combatants and life in the LRA are clearly influenced by war experiences, which are often brutal and uncountable, and social and institutional roles such as parenthood. Many people wish to see someone punished for their suffering, and this is mostly directed at Kony and his senior commanders because they are the ones who give the orders. The great dilemma becomes visible when the same commanders they point out as perpetrators and responsible appear to be abducted, thus coming from their own midst. It is at that moment that doubts about victimhood and liability rise and answers become contradictory. For instance, parents reflect about their own children and FAPs about their own past. How to judge your own child or someone who is guilty of perpetrating the same crimes you yourself committed? From this, it can be understood that

complex political perpetrators, although also high in rank, are not perceived as “normal” commanders but viewed as a different group.

This research shows that most people in Acholiland view people such as Kwoyelo responsible for their actions rather than being indoctrinated and unable to take decisions on their own. Only a few people believe that complex political perpetrators are defenceless, without choice, that they are indoctrinated victims. But how do people want to see such cases handled in court? Even though most people ascribe a high level of responsibility to Kwoyelo, only half of the total group of respondents wants to see him or similar cases punished. Most people prefer different ways to hold him accountable than the GoU has chosen. If the respondents are taken as a representative sample of the Acholi, one could argue that many Acholi feel distanced from the trials of the WCD. According to them, the WCD trials and amnesty are government affairs and they themselves do not have any influence over them, nor can they benefit much from them. This corresponds with the previous description of the relationship between the GoU and the Northern population. There is little trust and especially rural people feel distanced from the government because it has never done anything tangible for them. Every attack from the LRA, or in other words lack of protection from the UPDF, confirms their sense of marginalization and exclusion from the rest of the country. Most people would rather see the complex political perpetrators handled differently than solely via retributive justice mechanisms. They hope to benefit from the outcome of the justice process, both in a material and a psychological way. The opinions on how to do so vary considerably from traditional justice to (short) imprisonment, but compensation is usually mentioned as essential. Most people think that abduction, escape and capture by the UPDF do play a role and that these factors therefore should be taken into account. This is rather contradictory to how the GoU wants to handle the case of a complex political perpetrator, arguing that “a commander is a commander”. The interviews show that there are some people who demand retributive justice via prosecutions but they also show that not one respondent knew about the trial nor the WCD. Without the victims knowing about it, the effect of a trial is severely diminished. This raises questions about the value of the WCD in the pursuit of justice, at least in the way it works now.

In the process of reconciliation, of which justice is considered a core element, both restorative and retributive justice approaches offer opportunities (IDEA 2003:24). Although the aim of retributive justice is not to reconcile, it can contribute to this process because it can prevent the re-creation of a system of impunity, deter future violations, create sustainable peace, establish a rule of law, and prevent the victims from taking revenge (IDEA 2003:98).

Reconciliation is a desirable outcome of restorative justice (Estrada-Hollenbeck 2001:76). Traditional forms of restorative justice adapted to dealing with atrocities can positively influence the process of reconciliation because they are highly participatory, include victims and perpetrators, involve the whole community, and place greater emphasis on getting offenders to accept responsibility for their behaviour (IDEA 2003:112-113). However, in my view it should not be overlooked that reconciliation solely based on forgiveness and amnesty – a form that skips punishment completely – might be problematic on the long run as is also pointed out by Allen (2008). I believe that the men who are most responsible for the atrocities should be held accountable to signify some degree of accountability and justice. The findings of this research also support this thought as many of the respondents do demand some form of punishment for the men who bear greatest responsibility, in their opinion the senior commanders. Finally, in examining which justice approach receives broadest public support two conclusions can be drawn from these findings. First, people struggle with the dilemma between punishment on the one hand and reconciliation and forgiveness on the other hand. Yet, they view them as complementary rather than opposing so instead of excluding one, a combination of the two approaches should be made. Secondly, people distinguish between different “categories” of perpetrators so in the establishment of such a combined justice system these categorizations have to be taken into account; complex political perpetrators should be handled differently than other commanders.

Achieving the Long-term Goals of Reconciliation and Peace

Thus, if the aim of the justice efforts is to positively affect the long-term goals of reconciliation and peace in Uganda, what is required? Unquestionably, Kwoyelo, Ongwen and other complex political perpetrators have committed many crimes and have exercised (some) tactical agency in this. To exonerate them completely is thus not an option. But in my opinion, a purely retributive justice approach such as the GoU has chosen in handling the case of Kwoyelo and future complex political perpetrators can have negative consequences. First of all, by prosecuting Kwoyelo or complex political perpetrators generally, without any regard for their “special status”, their victimization is completely disregarded. A legal justice approach can only produce “guilty” or “not guilty” outcomes and provides no possibility to acknowledge the extraordinary circumstances of Kwoyelo. If found guilty, Kwoyelo is assigned individual responsibility while the mass violence committed in Northern Uganda can to a large extent be deemed a case of collective responsibility. In that sense, the

responsibility that for instance the GoU carries for not protecting Kwoyelo and the other thousands of abductees from LRA attacks is ignored. This contradicts the respondents' wishes for justice and accountability to be directed at both sides, the LRA and the GoU. Additionally, the international community is very eager to try war criminals via the ICC and among them is Dominic Ongwen. But where was this same international community when Ongwen was abducted? The situation in Northern Uganda has never received much attention and only after Jan Egeland, former UN Under Secretary- General for Humanitarian Affairs and Emergency Relief Coordinator, called it the world's most neglected humanitarian catastrophe, international support began to flow to Northern Uganda. It should be considered unjust of this same community to emphasise only one side of the story and neglect the other side.

In the introduction, it is argued that if this special category of people, the complex political perpetrator, is not recognised in the attainment of justice this might lead to feelings of exclusion and feelings of revenge for what has happened to them, which again might lead to new violence (Bouris 2007). For instance, if the two interviewed FAPs who achieved high ranks in the LRA do not see possibilities or chances for inclusion in the new society that is emerging in Northern Uganda because they are perceived as perpetrators solely, they might decide to follow their anger and join the LRA again in the bush filled with feelings of revenge. I would argue that although they have committed and ordered many atrocities, they deserve some sense of justice as their lives have been affected to a very large extent by their abduction. Their chances for education, jobs but also love and friendship have been severely diminished.

Furthermore, as Baines argues in her study on Ongwen (2008), the message that the prosecution of Kwoyelo sends to the people in Northern Uganda should not be disregarded. Prosecution emphasises only the guilt and responsibility of a person who is abducted at a young age and turned into an adult perpetrator, while his victimization is ignored completely. This can affect the identity of all those former abductees who have returned to their homes already and now struggle to reintegrate into their communities. It might send the message that they are responsible for their own suffering and for the crimes they committed, which in turn might affect fragile processes of reconciliation between former abductees and communities that are currently taking place.

Besides these comments on the government's retributive justice approach, a few observations have also been made with regards to the functioning of the WCD generally and more specific in Kwoyelo's case, and its cooperation with other government institutions such

as the AC. Obviously the trial will be an important one because Kwoyelo is the first LRA commander who can be actually tried. His capture provides a chance to show that Uganda has an effective and knowledgeable WCD. From the viewpoint of the GoU it therefore seems logical that he is not granted amnesty. However, the decisions about how to deal with former LRA commanders seem to be politically motivated rather than based on clear criteria and procedures. The handling of the Kwoyelo case is unclear to people who are not closely related to the DPP or WCD, those who know and understand the politics involved. This results in unequal treatment of people who have the same background of high-level command in the LRA. It is also questionable whether Kwoyelo was part of the top of the LRA. He made it to the rank of colonel, which is a mid-level rank, but, as he himself explained, he did not belong to the inner circle of Kony, which exists of the very top command. From the wordings in the AAR on formal justice, it appears that only the very top of the LRA will be prosecuted but Kwoyelo's case shows that also mid-level commanders now have to fear for prosecution. This can have consequences for those mid-level commanders still in the bush who want to escape, because they now realistically do run the risk of prosecution. Moreover, the WCD can prosecute only few of the possibly hundreds of complex political perpetrators who made it to mid-level or higher ranks. The question is how the GoU will handle the rest of these men when they return, if they return. The AAR provides for a truth-telling commission but it is very possible that these complex political perpetrators do not want to participate in truth-telling sessions. This argument was supported by the reaction of the interviewed FAP who made it to sergeant after fourteen years in the bush. He was terrified and very wary to discuss issues related to the LRA, his own situation, responsibility or justice even for this small research. Altogether this shows that the lack of clarity about who is going to participate in which justice instrument can have great consequences.

Recommendations

I have shown that there are still problems to be solved regarding the government's instruments and institutions working on justice and peace both generally and in cases of complex political perpetrators. I will therefore make some recommendations for future research and for changes in the government's approach to justice in cases of complex political perpetrators in order for the justice strategies to have positive effects on peace and reconciliation. The justice system must be an inclusive one in which most people, including

both the victimised civil population and the complex political perpetrators, feel acknowledged.

- The government institutions need to cooperate and communicate closely in the pursuit of peace, justice, and reconciliation and their policies have to be made coherent. Clear criteria on who will participate in which instrument, procedures about the co-existence of different government institutions and instruments such as the trials, the informal justice mechanisms and the AA, and the handling of different levels of responsibility of possible perpetrators must be specified in the AAR.

- The WCD should appoint a defence council. If the WCD really wants to show the international community that it is willing and able to try LRA criminals, Kwoyelo should have a defence council that can support him in this process and help guarantee a fair trial. The developments in the case of Kwoyelo show that the WCD is not ready yet to take on such a big case. This can harm the image of the WCD on the long run and influence the perceptions people have of the WCD. If this trial does not go well, it can diminish its effect in the pursuit of inclusive justice as people do not value the outcome of the trial.

- The GoU has to reflect on its real objectives and victor's justice, in which the GoU solely decides whom to prosecute in a political trial, should be avoided. Does it want to achieve justice for the sake of the victims or are there more important political issues at stake that dominate its policies? Only if the objectives of the GoU and the people in Northern Uganda are clarified and differences are accommodated, a sense of justice can be shared by the real victims. The GoU must therefore invest in future research on the identification of the specific needs of the people regarding justice, also in cases of complex political perpetrators. When do people feel justice is served or more specific, what form should justice strategies have in order to attain justice for the victims of this conflict?

- To enhance the impact of the trials more and better outreach programmes, although they are very expensive, are crucial. People must be informed about the trials, especially the direct victims of the attacks that Kwoyelo now stands trial for. Open discussion is required here in which people, including the complex political perpetrators themselves, are involved and are given opportunities to express their concerns and needs.

- If it is indeed established that complex political perpetrators make a conscious choice to stay in the bush, it is worthwhile to investigate why they do so and how they can be prevented from staying in the LRA by examining the alternatives that can convince them to try to come home and build a new life.

I want to emphasise again that people such as Kwoyelo are also among the victims and quote him one last time to explain that the current situation is far from achieving the goal of inclusive justice: *'How can those men who abducted me be free, study at university, have a family life, while I am indicted for abduction, the abducted child himself?'*⁴⁴

⁴⁴ Interview Kwoyelo 7 April 2010, Luzira Prison Kampala.

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