2014

Transitional justice in Northern Uganda: the case of the Trust Fund for Victims

Nawar, Alexander Shereef

https://hdl.handle.net/2144/15228

Boston University
TRANSITIONAL JUSTICE IN NORTHERN UGANDA:
THE CASE OF THE TRUST FUND FOR VICTIMS

by

ALEXANDER NAWAR

B.A., Boston University, 2014

Submitted in partial fulfillment of the
requirements for the degree
Master of Arts
2014
TRANSITIONAL JUSTICE IN NORTHERN UGANDA:
THE CASE OF THE TRUST FUND FOR VICTIMS

ALEXANDER NAWAR

Boston University Graduate School of Arts and Sciences, 2014

Major Professor: Timothy Longman, Associate Professor of Political Science

ABSTRACT

Recent debates on transitional justice have concerned whether the field responds to the needs of victims who have suffered serious crimes. At the global level, the International Criminal Court (ICC) serves as the most visible institution of transitional justice and is most famous for its prosecutions of war criminals. Critics of the Court question its relevance to victims and allege that it embodies a Western form of justice, prioritizing retribution over restoration of victims’ lives and societies. Often overlooked, however, is the Court’s sister organization, the Trust Fund For Victims (TFV). Also established by the Rome Statute, the TFV is mandated to deliver court-ordered reparations to victims as well as to provide assistance to those affected by crimes under ICC jurisdiction. This assistance mandate creates a novel opportunity to reach a wide scope of affected individuals and to bring international justice directly to those who need it most. This thesis reviews research on transitional justice and employs the Trust Fund as a case study of localizing transitional justice through reparative assistance. This study
concludes that the reparative assistance, when designed to respond to victims’ needs, has material and symbolic significance to victims that meet the goals of transitional justice.
Table of Contents

1. Introduction .............................................................................................................................................. 1
   Is Transitional Justice Biased? .................................................................................................................. 4
   Trials after Mass Atrocities ...................................................................................................................... 8
   Peace and Deterrence ............................................................................................................................. 11
   Relevance of Trials ................................................................................................................................. 12
   Reparations and Holistic Justice ............................................................................................................. 14
   Research Question and Thesis Outline .................................................................................................. 19

2. Transitional Justice from Nuremberg to the International Criminal Court ........................................... 22
   Roots of Transitional Justice .................................................................................................................... 23
   Constructing “Transitional Justice” ......................................................................................................... 27
   Transitional Justice and The Rome Statute ............................................................................................. 30
   Conclusion .................................................................................................................................................. 36

3. The ICC’s First Case: Uganda .................................................................................................................. 38
   Post-colonial history ................................................................................................................................. 38
   The Northern Conflict ............................................................................................................................ 40
   International Crimes, ICC Referral, and Victims’ Needs ......................................................................... 45
   The ICC in Uganda .................................................................................................................................... 49
   Peace ......................................................................................................................................................... 49
   Deterrence and Isolation ............................................................................................................................ 52
# List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARLPI</td>
<td>Acholi Religious Leaders’ Peace Initiative</td>
</tr>
<tr>
<td>ASP</td>
<td>Assembly of States Parties to the Rome Statute</td>
</tr>
<tr>
<td>AVSI</td>
<td>Association of Volunteers in International Service</td>
</tr>
<tr>
<td>AYINET</td>
<td>African Youth Initiative Network</td>
</tr>
<tr>
<td>CAR</td>
<td>Central African Republic</td>
</tr>
<tr>
<td>CTV</td>
<td>Centre for Torture Victims</td>
</tr>
<tr>
<td>COOPI</td>
<td>Cooperazione Internazionale</td>
</tr>
<tr>
<td>DNU</td>
<td>Diocese of Northern Uganda</td>
</tr>
<tr>
<td>DRC</td>
<td>The Democratic Republic of the Congo</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICC Statute</td>
<td>Rome Statute of the International Criminal Court</td>
</tr>
<tr>
<td>ICD</td>
<td>International Crimes Division of the Ugandan High Court</td>
</tr>
<tr>
<td>GoU</td>
<td>Government of Uganda</td>
</tr>
<tr>
<td>GROW</td>
<td>Gulu Regional Orthopedic Workshop</td>
</tr>
<tr>
<td>LRA</td>
<td>Lord’s Resistance Army</td>
</tr>
<tr>
<td>NRA/M</td>
<td>National Resistance Army/Movement</td>
</tr>
<tr>
<td>Rules</td>
<td>Rules of Procedure and Evidence of the International Criminal Court</td>
</tr>
<tr>
<td>SPLA</td>
<td>Sudan People’s Liberation Army</td>
</tr>
<tr>
<td>TFV</td>
<td>Trust Fund For Victims</td>
</tr>
<tr>
<td>TFV Regulations</td>
<td>Regulations of the Trust Fund for Victims of the International Criminal Court</td>
</tr>
<tr>
<td>-----------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Victims Declaration</td>
<td>Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNLA</td>
<td>Uganda National Liberation Army</td>
</tr>
<tr>
<td>UPDF</td>
<td>Uganda People’s Defence Forces</td>
</tr>
<tr>
<td>VSLA</td>
<td>Village Savings and Loan Association</td>
</tr>
</tbody>
</table>
1. Introduction

“Retributive justice is largely Western. The African understanding is far more restorative—not so much to punish as to redress or restore a balance that has been knocked askew. The justice we hope for is restorative of the dignity of the people.”

– Archbishop Desmond Tutu

Established by the Rome Statute of the International Criminal Court in 1998, the International Criminal Court (ICC) was designed to prevent impunity for atrocities through its jurisdiction over four crimes: crimes against humanity, war crimes, genocide, and the crime of aggression. The ICC’s establishment fulfilled a vision first presented in the 1948 Genocide Conventions by creating a permanent international institution that could hold individuals accountable for massive crimes. No longer could war criminals commit atrocities with impunity, hiding behind the shield of national sovereignty. In addition, the Rome Statute goes beyond determining criminal responsibility by mandating the Court system to contribute to efforts to restore and maintain peace and security and “to guarantee lasting respect and enforcement for international justice.”

The Rome Statute’s most innovative provisions established a Trust Fund for Victims (TFV) as a mechanism to deliver Court-ordered reparations, including restitution, rehabilitation, and compensation, against convicted persons to victims, as stipulated in Article 75. Furthermore, Article 79 allows the Trust Fund to use funds “for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of


2 Art. 5-8, ICC Statute.

3 “Preamble,” ICC Statute.
such victims.” Rule 98 of the ICC Rules of Procedure and Evidence elaborates on the Trust Fund’s reparations role, particularly “where the number of victims and the scope, forms and modalities of reparations makes a collective award more appropriate.”

Rule 98 also makes clear that the Trust Fund can use voluntary contributions to provide assistance to victims independent of Court orders on reparation. These provisions respond to the reality that victims need more than a criminal prosecution to recover from grave crimes.

Based on Article 79 in the Rome Statue, the mandates and operations of the Trust Fund have been elaborated in resolutions by the ICC Assembly of States Parties (ASP). The Trust Fund operates under the dual mandate to (a) implement reparation orders of the Court and (b) provide physical or psychological rehabilitation or material assistance for the benefit of victims and their families. This dual mandate gives the Trust Fund the power to act on behalf of a larger scope of victims and at an earlier date than would be afforded by the Court-ordered reparations mandate alone. The Trust Fund may begin rehabilitation or support as soon as the Chief Prosecutor initiates an investigation.

---

4 Resolution ICC-ASP/I/Res.6, Establishment of a Fund for the Benefit of Victims of Crimes within the Jurisdiction of the Court, and of the Families of Such Victims, adopted at the 3rd plenary meeting by consensus, 9 September 2002.


7 Katharina Peschke, “The Role and Mandates of the ICC Trust Fund For Victims,” 323.
responding to victims whose suffering may require attention before criminal convictions in the Court.⁸

While the ICC shares the goal of ending impunity for mass atrocities with its predecessors, these provisions for the TFV institutionalize concern for the victim. The statute also provides for victim participation in criminal proceedings, but this participation will necessarily be limited in cases of mass atrocity by the large scope of victims. By moving beyond victim participation in proceedings and Court-ordered reparations, the Trust Fund has the possibility of bringing assistance directly to those who have suffered international crimes, endowing the Rome Statute system with an unprecedented mechanism to bring international justice to local populations.⁹

This concern for victims emerged from an international consensus on victims’ right to reparation under international law, most clearly articulated in the United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power. Adopted by the General Assembly in 1985, this declaration guarantees victims the right to reparation for “the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services, and the restoration of rights.”¹⁰ The right to reparation also appears in earlier

---


¹⁰ Art. 8, Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power.
documents, including Universal Declaration of Human Right, the International Covenant on Civil and Political Rights, and the Convention Against Torture. These documents considered reparations to be guaranteed by the state, but ICC is the first permanent organization to formalize a reparations regime that extends responsibility to provide reparations from the individual perpetrators and the state to the international community.

Established by the United Nations, the Court and the TFV can be considered an international endeavor into transitional justice, a field which, broadly speaking, concerns responses to mass atrocity and repression. By permanently establishing a Court for international crimes and a fund to assist victims and their families, the Rome Statute institutionalizes principles of restorative and retributive justice encompassed by contemporary conceptions of transitional justice. This form of international intervention engages a number of debates regarding transitional justice in theory and practice, the role of criminal prosecutions following atrocities, and, most importantly, the effects on victims of international crimes.

Is Transitional Justice Biased?

Critics of transitional justice allege that the field embodies a Western bias. These critics suggest that transitional justice is a form of neo-colonialism that enables powerful

---


12 Ibid., 199-200.

13 This study adopts “transitional justice” to refer to the array of judicial and non-judicial mechanisms that aim to confront large-scale human rights abuses.
Western states to intervene in weaker states, particularly in Africa.\textsuperscript{14} Many transitional justice programs have incorporated extensive participation by the international legal community, which has sometimes applied a “one size fits all” model to societies recovering from violence or authoritarianism.\textsuperscript{15} This bias is further illustrated by transitional justice’s focus on punishing perpetrators of crimes rather than on the immediate needs of those who suffered the crimes. As the only permanent international institution of justice, the ICC is subject to much of this criticism.\textsuperscript{16} In addition, all existing ICC investigations are in Africa. As explained by Nicholas Waddell and Phil Clark, “the Court’s focus on Africa has stirred African sensitivities about sovereignty and self-determination—not least because of the continent’s history of colonisation and a pattern of decisions made for Africa by outsiders.”\textsuperscript{17} A response to this claim is that the ICC can only consider violations since 2002, and many, though certainly not all, of these cases have occurred in Africa.\textsuperscript{18} More generally, transitional justice scholars have sought


\textsuperscript{17} Nicholas Waddell and Phil Clark introduction to \textit{Courting Conflict?: Justice, Peace and the ICC in Africa}, edited by Nicholas Waddell and Phil Clark, (London: Royal Africa Society, 2008), 8-9.

\textsuperscript{18} Drexler, “Whither Justice?,” 98
to combat accusations of bias by focusing on incorporating local conceptions of justice, surveying and studying victims’ perceptions and needs, and trying to understand when and how transitional justice fails victims.

Harvey Weinstein argues that transitional justice should work to incorporate local perceptions of justice and to consider “the impact of non-Western cultures and different beliefs” on practices of justice. Similarly, Alexander Hinton suggests that conceptions of justice as transcendent and universal prevent transitional justice actors from considering the ways justice is perceived, experienced, conceptualized, and produced at the local level. These calls for consideration of local justice have led to the extensive study of the gacaca hearings in Rwanda, as well as some studies on “traditional” justice practices in Uganda, Guatemala, and Timor Leste. While some laud efforts to localize transitional justice, several of these studies illustrate the illegitimacy and failures of “traditional” mechanisms. For example, gacaca in some cases had the effect of exacerbating tensions in Rwanda, while mato oput rituals in Uganda represented the

---


interests of a few “traditional” leaders and international organizations, rather than the local population more generally.\textsuperscript{22}

Alongside calls for the study of local practices of justice, scholars have begun to focus on the perceptions and judgments of victims. Recent research suggests that for transitional justice to achieve its goals, its mechanisms most involve a participatory approach that incorporates locals at every stage of the process, from conception to design to administration.\textsuperscript{23} These researchers note that the emphasis on direct injustices against individuals, in the form of international crimes, often ignores the injustices that led to the crimes.\textsuperscript{24} Empirical research in the form of population-based surveys corroborates these arguments, suggesting that local participation in the decision-making process is the most important feature of successful transitional justice mechanisms.\textsuperscript{25} This research also addresses claims about the relative importance to victims of various forms of justice. In general, these studies find that victims in transitional societies prioritize measures of justice that help facilitate the return to a normal life, for example through reparations that


\textsuperscript{24} Lundy and McGovern, “Whose Justice?,” 273.

restore livelihoods. In addition to these priorities, these victims still demand accountability for the injustices committed.

Other scholars have been more critical of transitional justice, highlighting the ways it has failed its victims. Tshepo Madlingozi argues transitional justice experts “produce” victimhood in their attempts to speak about and for victims. Transitional justice, he argues, should focus on redistribution of resources and power, rather than just seeking to tell the story of marginalized victims. Similarly, Marie Smyth suggests that truth recovery processes can inadvertently perpetuate a “victim culture,” reopen old wounds, and raise unrealistic expectations about their therapeutic effects. Ralph Henham argues that the participation of victims in international criminal proceedings needs to extend beyond the symbolic in order to fully address victims’ notions of truth and justice.

Trials after Mass Atrocities

Many allegations of transitional justice’s bias focus on the role of trials, a central focus in the field of study. Early transitional justice scholars argue that criminal

---


prosecutions can contribute to peace and reconciliation by achieving justice, constructing truth, and individualizing guilt. Since then, discussions of trials have centered around (1) their political and practical shortcomings; (2) their relationship with peace and deterrence; and (3) whether they represent a uniquely Western form of justice.

**Shortcomings of Trials**

Martha Minow identifies three crucial complications confronted by the first international criminal tribunals: retroactivity, selectivity, and politicization. Retroactivity describes a situation in which defendants face charges under norms that had not been established in law at the time of their criminal action. The Nuremberg Trials and Tokyo War Crime Trials following World War II famously prosecuted defendants based on norms that were not codified under international law until the postwar period. The International Criminal Tribunal for Rwanda (ICTR) also raised questions of retroactivity by applying for the first time international human rights law to conduct that occurred within a nation’s borders; this application arguably implicates defendants who were unaware that these international norms applied to their individual conduct within a single nation. The Rome Statute overcomes retroactivity in ICC prosecutions by defining its jurisdiction over war crimes, crimes against humanity, genocide, and crimes of


31 Minow, Between Vengeance and Forgiveness, 33.
aggression. The scope of this jurisdiction applies only to crimes committed since July 1, 2002, when the Rome Statute came into force.\footnote{ICC Statute.}

A second concern of trials, politicization, is when courts fail to serve as independent institutions isolated from political pressures.\footnote{Minow, \textit{Between Vengeance and Forgiveness}, 31.} When a court is dependent on a government for its operations, as in Yugoslavia, its impartiality is undermined. In addition, Western states’ domination of the Security Council, where the international tribunals originated, could mean that the tribunals are sensitive to the political alignments of powerful nations, whose support is necessary for the tribunals to exist and function. The Rome Statute has not successfully deterred accusations of politicization. As will be discussed in Chapter 3 in more detail, many have questioned the ICC’s collaboration with the Ugandan government during its investigations as well as a possible bias against Africa.

Third, prosecutions following mass atrocities necessarily grapple with selectivity, the reality that only a small portion of individuals involved in an atrocity can practically be prosecuted.\footnote{Ibid., 40.} To prevent collective guilt from plaguing a post-conflict society, guilt must be ascribed to selected individuals based on significant evidence. Focusing on individuals from a specific group, however, may create feelings of bitterness and have
detrimental effects on societal reconciliation.\textsuperscript{35} Some may perceive the prosecution of only leaders as violating the principle of individual responsibility, and individual accountability is an important component of social reconstruction.\textsuperscript{36} This limitation raises the risk of creating martyrs out of the few who are prosecuted, as well as producing perceptions of unfairness.\textsuperscript{37} The Court has demonstrated a commitment to prosecuting only individuals at the top of a chain of command that led to an international crime.

**Peace and Deterrence**

A more specific criticism challenges the role of trials in cases of ongoing conflicts. Advocates of prosecutions suggest that they can lead to peace and justice, while critics fear that prosecutions will deter the peace process.\textsuperscript{38} ICC Chief Prosecutor Moreno Ocampo, an outspoken advocate of prosecutions, argues that the ICC forces armed groups to the negotiating table, raises issues of accountability, deters additional crimes, weakens external support for armed groups, and promotes reconciliation.\textsuperscript{39} Max du Plessis and Jolyon Ford argue that prosecutions demonstrate commitment to the rule of law and responsiveness to international crimes, resulting in a strengthening of national


\textsuperscript{36} Des Forges and Longman, “Legal responses to genocide in Rwanda,” 49-68.

\textsuperscript{37} Minow, *Between Vengeance and Forgiveness*, 45.


justice capacities. Similarly, Frank Van Acker argues that any attempts at conflict resolution that offer amnesty to perpetrators of international crimes will incentivize further crime and fail to achieve peace and justice.

Critics of prosecutions in ongoing conflicts argue that they might deter peace negotiations and conflict resolution efforts. In particular, critics suggest that parties may reject a compromise if they fear prosecution after the conflict. In some cases, amnesties might play a role in ending hostilities and paving the way for reconciliation. Some authors even claim that criminal prosecutions can result in increased hostilities. A consensus has yet to arise concerning this question, partially due to the lack of empirical data from conflict contexts.

Relevance of Trials

An additional debate regarding prosecutions in post-conflict societies concerns the relevance of prosecutions altogether. In some situations, victims may be less

---


concerned with the prosecution of a few key leaders than with the immediate redress of their suffering.\textsuperscript{45} Advocates of restorative justice in post-conflict settings argue that retribution fails to deter crimes or provide justice for victims.\textsuperscript{46} Rather than punishing perpetrators, efforts at justice should seek social integration through alternative mechanisms, such as truth commissions or reparations.

Several transitional justice scholars continue to maintain that trials can promote reconciliation by beginning to address the needs of victims and by individualizing guilt to prevent perceptions of collective guilt.\textsuperscript{47} Proponents of prosecutions note that trials have effects beyond the punishment and condemnation of perpetrators. Mark Osiel argues that trials can help a nation construct memories and engage in reparative rituals of commemoration.\textsuperscript{48} Trials can also help articulate norms that will characterize the post-transition society and can yield some measure of accountability.\textsuperscript{49}

---

\textsuperscript{45} Eric Stover and Harvey M. Weinstein, “Conclusion: a common objective, a universe of alternatives,” in \textit{My Neighbor, My Enemy}, 323-342.


\textsuperscript{49} Minow, \textit{Between Vengeance and Forgiveness}, 50.
argues that victims across cultures “thirst for justice in the form of prosecutions,” and that trials must be a part of any transitional justice experience.\footnote{Orentlicher, “‘Settling Accounts’ Revisited,” 22.}

**Reparations and Holistic Justice**

By the twenty-first century, transitional justice had come to encompass an array of mechanisms beyond trials, such as truth commissions, lustration, reparations, memorialization, amnesties, institutional reforms, and reconciliation. Many scholars and practitioners advocate for a “holistic approach” to transitional justice, arguing that the variety of mechanisms can serve as a sort of “menu” which can be tailored to the unique context and needs of each situation.\footnote{Olsen et al., *Transitional Justice in Balance*, 24.} The International Center for Transitional Justice adopts this approach, claiming, “No single measure is as effective on its own as when combined with other mechanisms.”\footnote{Quoted in Olsen et al., *Transitional Justice in Balance*, 24.} This approach helps combat accusations that transitional justice serves Western interests or prioritizes trials, which may have limited relevance to victims of grave crimes. Reparations and reparative practices in particular may have the potential to help victims meet their immediate needs.

Reparations are practices that aim to rectify, correct, or ameliorate the condition of parties who have suffered certain injuries.\footnote{Naomi Roht-Arriaza, “Reparations in the aftermath of repression and mass violence,” in *My Neighbor, My Enemy*, 121.} When designed to recompense victims rather than to punish perpetrators, reparations can be considered a form of restorative
justice, which emerged as a rejection of the punitive nature of retributive justice. Critics of retributive justice argue that its focus on punishing victims alienates offenders and makes it more difficult for societal reintegration. Restorative justice renounces the crime committed, rather than the person who committed the crime, and encourages repentance and forgiveness, as well as the empowerment of all involved. Following this model, reparations aim to help repair the harm suffered by victims who have experienced physical violations, property destruction, or loss of livelihoods. Ideally, the wrongdoer bears the costs of reparations; where impossible, the state assumes the responsibility to provide reparations. Reparations can be material or symbolic and awarded on an individual or collective basis.

Material reparations include financial compensation and restitution and generally address specific harms resulting from a crime. Restitution describes the return to the


55 Minow, Between Vengeance and Forgiveness, 91.


victim of specific, misappropriated object, such as rights, jobs, benefits, and property.\textsuperscript{60} Restitution represents an ideal form of reparation but is often unattainable because the “object” of a crime may be lost or immaterial. Compensation, a second form of material reparation, includes measures that aim to reduce suffering through monetary quantification of the harm.\textsuperscript{61} A third form of material reparation, rehabilitation, comprises measures that provide social, medical, psychological, or legal services designed to improve the conditions of a victim.\textsuperscript{62}

Material reparations can help diminish victims’ desire for revenge, thus reducing the chances of recurring conflict.\textsuperscript{63} In addition, material reparations can have practical benefits, such as persuading victims to testify. The Rome Statute provides victims with standing to request and receive reparation from a person convicted in the Court, and the Trust Fund may provide material reparation before a defendant is convicted.\textsuperscript{64} Though material, these three forms of reparation all carry symbolic significance. While they may help victims materially to different extents, they necessarily acknowledge an admission of guilt and the vindication of the victim.\textsuperscript{65}

---

\textsuperscript{60} Minow, \textit{Between Vengeance and Forgiveness}, 107.

\textsuperscript{61} Hoyle, “Can International Justice Be Restorative Justice?,” 198.

\textsuperscript{62} Ibid.

\textsuperscript{63} Ibid., 199.

\textsuperscript{64} Art. 75, Art. 79, ICC Statute.

\textsuperscript{65} Hoyle, “Can International Justice Be Restorative Justice?,” 200.
Symbolic reparations, including apologies, monuments, and memorials, acknowledge the harmfulness of the crimes on individuals and societies without directly trying to redress a specific harm. Apology, the verbal acknowledgement of responsibility for injustice, is one common type of symbolic reparation. Apologies acknowledge the truth of injustices, accept some responsibility, express sincere regret, and promise non-repetition. This communication between victim and perpetrator may help facilitate reconciliation. Other “moral reparations” include the disclosure of facts, public naming, and removing perpetrators or bystanders from power, measures which can be instituted through reparations programs, truth commissions, or administrative policies. Truth commissions, though sometimes considered a form of restorative justice distinct from reparations, reveal narrative, dialogic, and evidential truths.

In post-conflict situations, reparations may carry a few risks. If apologies come from a new government or another party that is not directly responsible for the wrongdoing, they will have less meaning to the victims than if from the perpetrator. Similarly, material reparations may trivialize victims’ suffering by suggesting that the amends offer full remedy and not addressing underlying causes of the harm. In cases of

---


67 Ibid., 112.

68 Roht-Arriaza, “Reparations in the aftermath of repression and mass violence,” 121.


70 Minow, *Between Vengeance and Forgiveness*, 112.

71 Ibid., 117.
civil war, dividing survivors of armed conflict into “victims” entitled to reparations and “perpetrators” subject to prosecutions or truth-telling procedures can perpetuate divisions and fail to address the moral ambiguity of civil wars. Reparations designed to help large collectives, such as rehabilitation programs, may obfuscate of the government’s distinct obligations to make reparations and to provide essential services. It can also be difficult to target reparations appropriately, which raises concerns of favoritism and resentment. Theo Van Boven argues that reparations under international law must not be confused with development. For reparations to be meaningful to victims, they must explicitly be linked to the injustice suffered by victims.

To minimize these risks, Naomi Roht-Arriaza suggests that any reparations program acknowledge that it can never “return victims to the state they would have been in had the violations not occurred.” Like other transitional justice measures, the process of deciding the form of reparations must include victims fully. Otherwise, victims will not feel empowered and reparations may have a divisive effect. Minow points out that the type of reparations implemented may matter less than victim participation in the

---


73 Roht-Arriaza, “Reparations in the aftermath of repression and mass violence,” 121


75 Roht-Arriaza, “Reparations in the aftermath of repression and mass violence,” 122.

76 Ibid.
development of the program. This claim parallels other research on transitional justice mechanisms, which suggests that victim involvement and participation in the policies at every stage are crucial to the programs’ success. Like trials, reparations are shown to achieve the goals of transitional justice most successfully when combined with other measures, such as amnesties or truth commissions.

Research Question and Thesis Outline

While the debate on trials in ongoing conflicts remains contested, a growing consensus among post-conflict criminologists and justice theorists transcends the dichotomy of retributive and restorative justice, acknowledging that principles of both practices can coexist and effectively respond to post-conflict realities. This position acknowledges that, in addition to achieving punitive retribution, prosecutions can have reparative effects by mobilizing reparations to victims, documenting truth about the crimes, and formally condemning injustices. Trials should be combined with other measures such as reparations or amnesties, but are necessary for transitional justice to achieve its goals. This complementarity of restorative and retributive principles is reflected in the Rome Statue, which integrates a reparations regime into the Court system.

---

77 Minow, *Between Vengeance and Forgiveness*, 100.


79 Roht-Arriaza, “Reparations in the aftermath of repression and mass violence,” 121.


81 Ibid., 209.

This study understands the Rome Statute’s reparations regime as an attempt to incorporate restorative principles of justice into international criminal law. The Trust Fund’s second mandate, to provide assistance to victims outside of Court-ordered reparations, particularly appeals to restorative ideals. By focusing on victims and their families, the TFV can counter accusations that the Rome Statute system focuses on retribution—the punishment of perpetrators—rather than restoration. More broadly, reparative assistance provided in an international transitional justice context challenges accusations that transitional justice is inherently biased in favor of the West. Through a case study of the Trust Fund For Victims’ operations in northern Uganda, this study seeks to answer the question, Can a focus on reparative assistance achieve justice for victims of international crimes?

Chapter 2 begins by seeking to situate the Rome Statute system within the history of international criminal law and transitional justice. This chapter first traces the concomitant development of transitional justice and international criminal law and then examines the construction of transitional justice as a field of study. This background helps elucidate the context surrounding the Rome Statute’s creation and adoption at the turn of the century. Finally, this chapter concludes by suggesting that the creation of the International Criminal Court and the Trust Fund For Victims represents an international institutionalization of transitional justice.

Chapter 3 begins the case study of northern Uganda. First, it reviews Uganda’s history of violent governance and civil war that set the scene for the conflict that ultimately led to an ICC investigation. The chapter proceeds by exploring the Court’s
history in Uganda, as well as the controversies surrounding the Court’s intervention. These highly contested debates about the ICC’s involvement in Uganda are essential to understand the challenges faced by the TFV, which is so closely linked to the Court.

Chapter 4 continues the case study by examining in depth the Trust Fund’s operations in northern Uganda. In particular, this chapter studies the Trust Fund’s three types of programming, drawing extensively on internal and external reports. This programming is evaluated in terms of the extent to which it achieves the goals of transitional justice described in Chapter 2. In addition, original interviews conducted in May 2013 help illuminate some challenges faced by the Trust Fund. The case study concludes that despite some shortcomings, the TFV is playing a valuable role in post-conflict Uganda by contributing physically and symbolically to societal recovery.

Chapter 5 concludes the study by returning to the key debates in transitional justice. As the first attempt to provide reparative assistance in the context of international criminal justice, the Trust Fund’s operations in northern Uganda present a response to many of the criticisms of transitional justice. If future transitional justice endeavors follow a similar model and improve on shortcomings, the TFV, through its focus on reparative assistance, may play an instrumental role in shaping international transitional justice.
2. Transitional Justice from Nuremberg to the International Criminal Court

Transitional justice concerns the various responses to widespread violations of human rights in the aftermath of authoritarian rule or violent conflict. Though the term “transitional justice” emerged in the 1990s to describe responses to the falls of authoritarian regimes in the 1980s, it encompasses mechanisms of justice that stem at least as far back as the Nuremberg Trials in 1945 and 1946. Ruti Teitel, “Transitional Justice Genealogy,” Harvard Human Rights Journal 16 (2003): 69. Since then, the field has developed to encompass a variety of goals and mechanisms that aim to redress abuses of human rights. Goals of transitional justice include the restoration of the rule of law; judicial retribution; recompense and the affirmation of dignity of victims; reform of institutions; social and political reconciliation; nation-building; and reconstitution of the past. Lundy and McGovern, “Whose Justice?,” 266.

This chapter suggests that the creation of the International Criminal Court and the Trust Fund for Victims represents an international institutionalization of transitional justice. Toward this end, the chapter reviews the history of transitional justice, beginning with its roots in international criminal law and continuing to its establishment as a field at the turn of the century. This review elucidates the two underlying goals of transitional justice: redress for past abuses and progress toward a more just future. Finally, this chapter ends with a discussion of how the Rome Statue incorporates these transitional justice ideals and finds that provisions for assistance to victims through the Trust Fund allow the international community to respond directly to victims’ needs.


84 Lundy and McGovern, “Whose Justice?,” 266.
Roots of Transitional Justice

While transitional justice as a self-conscious field emerged in the 1990s, its roots parallel the development of international criminal law beginning after World War II and continuing throughout the twentieth century. Ruti Teitel outline three phases of transitional justice: the period following World War II; the democratic transitions of the 1970s and 1980s; and the civil wars and genocides of the 1990s and early 2000s. These roughly defined phases provide a useful framework to trace the development of transitional justice in practice in the twentieth century and to identify its intersections with international criminal law.

The Nuremberg Trials and the Tokyo War Crimes Trials following World War II marked the beginning of individual accountability under international law for massive human rights violations. For the first time, international criminal law applied to individuals in addition to states. While these trials represented a monumental development for international criminal law, the trials have been heavily criticized as a form of victors’ justice. Post-war proceedings fell short in the three ways discussed in the first chapter: bias, retroactivity, and selectivity. The trials failed to prosecute crimes committed by Allied forces, particularly systematic rape employed by Soviet forces; applied norms retroactively, before the codification of crimes against humanity; and only charged a small portion of those who could be charged with violations.

---

85 Teitel, “Transitional Justice Genealogy.”


87 Martha Minow, Between Vengeance and Forgiveness, 38-40.
Despite these shortcomings, the postwar era established an important legacy that served as the basis for modern human rights law and transitional justice.\textsuperscript{88} For example, Article 6 of the Nuremberg Charter defines crimes against humanity as large-scale persecution, enslavement, deportation, or other inhumane acts, and Article 7 rejects immunity for commanders of such crimes.\textsuperscript{89} The postwar era also saw the emergence of international treaties and declarations that began to create the norms of transitional justice: the 1948 Universal Declaration of Human Rights; the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; and the 1949 Geneva Conventions. In addition, a clause in the 1948 Genocide Convention indicated that an international court would be established to prosecute perpetrators of genocide, but Cold War politics postponed its realization.\textsuperscript{90} Treaties in the following decades continued the expansion of the international human rights regime. These documents enshrined an emerging international consensus on the rights of individuals and the obligations of states to protect those rights.

Teitel’s second phase surrounds the democratic transitions of Latin America and Eastern Europe.\textsuperscript{91} These transitions began to develop transitional justice mechanisms informed by principles of restorative justice in an effort to end patterns of abuse and to nation-build following years of authoritarianism and repression. Restorative justice aims

\textsuperscript{88} Teitel, “Transitional Justice Genealogy,” 71.

\textsuperscript{89} Allen, \textit{Trial Justice}, 6.; Nuremberg Charter.

\textsuperscript{90} Allen, \textit{Trial Justice}, 16.

\textsuperscript{91} Teitel, “Transitional Justice Genealogy,” 71.
to address material and emotional loss through dialogic processes and to empower all stakeholders in a crime, including victims, perpetrators, and the society. In several cases, new governments had offered amnesties to perpetrators of crimes in order to achieve peace. These conditions meant mechanisms other than trials were needed to respond to “disappearances” and other crimes. Truth commissions emerged as a formalized way to investigate and document these crimes, allowing victims to voice their experiences. Particularly notable are the Truth and Reconciliation Commissions, first in Chile and Argentina and later in South Africa, which prioritized truth-telling through public testimonies by victims. These commissions operated on the assumption that successful reconciliation requires public exposure of truth, and set peace as the goal rather than justice in a punitive sense. Though confined within specific nations, these transitions built on international human rights language that emerged following World War II, allowing for the application of transitional justice mechanisms in other contexts. Moving beyond retributive justice, these programs sought to heal entire societies.

The third phase of transitional justice emerged when international criminal trials began to complement local forms of transitional justice like truth commissions. These trials include the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for Yugoslavia (ICTY), as well as hybrid courts for

---

94 Minow, Between Vengeance and Forgiveness, 80.
Sierra Leone and Cambodia.\textsuperscript{95} These prosecutions manifested the principle of individual responsibility for mass atrocities in international criminal law. Though these tribunals existed alongside restorative mechanisms like truth commissions, their modest and impractical inclusion of a reparations regime did not represent a significant departure from the fundamentally retributive nature of international justice.\textsuperscript{96} The proliferation of human rights law and the increased use of humanitarian justifications for international intervention in this period led to what Teitel called the “normalization of transitional justice.”\textsuperscript{97} States now began to tolerate procedures that challenged state sovereignty, the politicization of justice, and departures from prevailing international criminal law.

Allen also identifies the end of the Cold War as a turning point for transitional justice.\textsuperscript{98} With the fall of the Soviet Union, the United States and its allies had reduced incentives to support regimes committing or complicit in atrocities. In addition, new techniques in television news coverage and campaigns by human rights groups raised awareness of abuses committed around the world. The ICTY and ICTR, despite many criticisms, reinforced the international jurisdiction to punish war crimes and crimes against humanity that applies to all states. By holding individuals accountable, they sought to individualize guilt in an effort to deter group blame that could perpetuate

\begin{flushright}
\textsuperscript{95} Bonacker and Safferling, “Introduction,” 5.
\textsuperscript{96} Hoyle, “Can International Justice Be Restorative Justice?,” 200.
\textsuperscript{97} Teitel, “Transitional Justice Genealogy,” 92.
\textsuperscript{98} Allen, Trial Justice, 9.
\end{flushright}
conflict. These tribunals also established the concept of “universal jurisdiction,” which obliges national judicial systems to investigate war crimes and crimes against humanity because they affect all people. This principle is incorporated into Article 7 of the Rome Statute, which allows for universal jurisdiction over cases referred to the Court by the Security Council.

Constructing “Transitional Justice”

By the end of the twentieth century, a handful of scholars began using the term “transitional justice” to describe periods of transition from authoritarianism to democracy, particularly in countries in Latin America and Eastern Europe. Ruti Teitel’s Transitional Justice (2000) and Neil Kritz’s three-volume compendium Transitional Justice: How Emerging Democracies Reckon with Former Regimes (1995) were particularly instrumental in the crystallization of the field and the proliferation of the term. Both Kritz and Teitel conceived of transitional justice as necessarily linked with the emergence of democracy, describing legal, constitutional, and administrative phenomena characteristic of post-authoritarian states.


The experiences of Latin American countries, where military forces continued to exercise power even after democratic transitions, were particularly influential in the early development of the field. In many of these cases, new governments employed mechanisms in addition to criminal prosecutions to seek justice for past abuses while promoting the establishment of liberal democracy. Kritz’s *Transitional Justice* adopted a comparative, legalistic approach to describe these processes, examining commissions of inquiry, lustration, and restitution or reparations programs, as well as criminal prosecutions. Kritz suggested that these transitional justice mechanisms both hold perpetrators accountable and promote societal healing. Priscilla Hayner’s 1994 comparative study, “Fifteen Truth Commissions,” marked another foundational examination of transitional justice, arguing that truth commissions can help a state come to terms with a history of widespread human rights violations. Hayner’s study revealed a “cathartic” response to successful commissions, while less successful commissions failed to report a “truth” that resonated widely enough to facilitate transition.

Teitel aimed to develop a theory of transitional justice by examining the legal practices employed by transitional societies in response to legacies of repression. She

---

103 Orentlicher, “‘Settling Accounts’ Revisited,” 10.


argued that law has an independent capacity to effect transformative policies by balancing principles of ideal justice with political pragmatism.¹⁰⁷ Through legislation, adjudication, and administrative measures, governments can condemn the past and embark on a pathway toward a more just future. These measures can include the issuing of amnesties, reparations, and apologies, which aim to achieve justice at the individual level by giving victims’ their due and at the collective level through the establishment of liberalizing policies.¹⁰⁸ What results is a “provisional, hyper politicized” transitional jurisprudence that symbolizes legitimacy in the transformation to a liberal state.¹⁰⁹

These early works on transitional justice identified two normative goals that continue to underlie the field: (a) achieving justice for victims and (b) establishing a more just, democratic order.¹¹⁰ The second goal distinguishes transitional justice from the broader field of human rights. While human rights aims to establish and defend norms, transitional justice also aims to identify causal relationships between power and injustice in order to facilitate transition. These goals animated the field in the 1990s and early 2000s, when transitional justice theories and practices expanded in response to the experiences of Eastern European and sub-Saharan African countries.¹¹¹ Transitional justice then began to apply to contexts in which a society may not be in a distinct period


¹⁰⁹ Ibid.


¹¹¹ Ibid.
of transition from authoritarianism to democracy but still aims to remedy past abuses and establish a more just society. In addition, transitions from neo-patrimonial governments in some sub-Saharan African countries required transitional justice mechanisms to be enacted by non-state actors, as the state, previously considered responsible for the measures, may be weak or absent.112

While a single theory of transitional justice has yet to emerge, the literature on transitional justice identifies a common set of concepts, goals, and claims for legitimacy experienced by societies emerging from conflict or authoritarianism. In addition, it describes a number of mechanisms that may help achieve justice for victims and facilitate transition to a more just society. Some regard transitional justice as offering a range of mechanisms that can be tailored to fit the specific needs and context of a transitional society.113 This study defines “transitional justice” as any programmatic effort to pursue transitional justice’s two normative goals, achieving justice for victims of grave crimes and pursuing a more peaceful and just future.

Transitional Justice and The Rome Statute

The adoption of the Rome Statute of the International Criminal Court by the UN General Assembly in 1998 marked the international institutionalization of the principles and practices of transitional justice that had developed throughout the twentieth century. The Court can hold individuals accountable for international crimes in cases that meet its

112 Ibid., 361.
requirement of complementarity, which states that the Court shares jurisdiction with member states, and that states must prosecute offenders domestically when possible.\footnote{Jeremy Sarkin, “Enhancing the Legitimacy, Status, and Role of the International Criminal Court Globally by Using Transitional Justice and Restorative Strategies,” Interdisciplinary Journal of Human Rights Law 6 (2011-2), 85.}
The ICC may only pursue cases when the member-state is unwilling or unable to prosecute domestically. The Court can also only consider crimes that occurred on the territory of a State Party or by a national of a State Party. In addition, only crimes occurring after the date of enforcement, July 1, 2002, fall under Court jurisdiction. Investigations can begin at the will of the Chief Prosecutor, by a UN Security Council referral, or by a State Party Referral. This “universal jurisdiction” permanently establishes international criminal prosecutions.\footnote{M. Cherif Bassiouni, “Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice,” Virginia Journal of International Law, 42 (2001).}

As explained above, transitional justice lacks a single clear definition. Regardless, any conception of transitional justice necessarily requires mechanisms that incorporate both retributive and restorative principles of justice with the goals of redressing past injustices and preventing future injustices. With this understanding, Articles 75 and 79 of the Rome Statute, which delimit reparations to victims in the ICC and the role Trust Fund, respectively, appeal directly to mechanisms of transitional justice.\footnote{Art. 75, Art. 79 ICC Statute.} These articles provide for victim participation in criminal proceedings, protection of victims and witness during proceedings, the right to reparations or
compensation, and a trust fund to make reparations and assist victims.\textsuperscript{117} These rights granted to victims represent both the interests of individual victims and greater interests of peace and justice by helping victims regain lost dignity.\textsuperscript{118}

The Rome Statute’s unprecedented focus on victims and the inclusion of a reparations regime distinguishes the ICC and TFV as innovative and potentially powerful tools of transitional justice. Mahmoud Bassiouni summarizes the ways in which provisions for victims distinguish the Court from earlier international tribunals:

This instrument recognises several significant principles concerning victims: (1) victim participation in the proceedings; (2) protection of victims and witnesses during Court proceedings; (3) the right to reparations or compensation; and (4) a trust fund out of which reparations to victims may be made.\textsuperscript{119}

Several scholars have acknowledged the unprecedented inclusion of victims in international criminal justice through the Rome Statute.\textsuperscript{120} The commitment to victims is evidenced by the early acknowledgement of victims in the Statute’s preamble, which states that “during this century, millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.”\textsuperscript{121} This focus on victims arrives even before the reference to “peace, security, and well-being of the

\begin{itemize}
\item \textsuperscript{117} Art. 57, 68(3) and 75, Art. 43 and 68, Art. 75 and 85, Art. 75 and 79, ICC Statute.
\item \textsuperscript{118} Dwertmann, \textit{The Reparation System of the International Criminal Court}, 36.
\item \textsuperscript{121} Preamble to ICC Statute.
\end{itemize}
world.” Dwertmann suggests that this wording implies that individual and collective interests are inclusive, and the Rome Statute system is not meant to prioritize one over the other.122

Bassiouni notes that the extent that these provisions will be practiced and funded will determine their success at achieving restorative goals.123 Heidy Rombouts and Stephan Parmentier advocate a “process-orientated approach to reparation” that prioritizes inclusion of victims.124 Extensive inclusion of victims in the development of reparations schemes can help the TFV and ICC respond to the local justice needs of a specific context.125 Some have raised practical and theoretical concerns with victim participating in criminal proceedings.126 For example, victim participation in criminal proceedings will necessarily be limited due to the amount of victims involved in mass atrocities. Nonetheless, the Court’s reparations regime has the potential to have widespread effects.


125 Ibid. 164.

Although the Court does not specify the purpose of its reparations regime, its mandate implies two goals. First, Court-ordered reparations align with contemporary concepts of justice, which call for the punishment of convicted criminals—a retributive goal—as well as their obligation to repair harm caused to victims to the fullest extent possible—a restorative goal. Second, reparations help hold individuals accountable for the gravest crimes by addressing how those crimes affected victims. Dwertmann acknowledges the importance of this latter goal:

Most victims will hardly be satisfied by a criminal conviction unless their harm is repaired in addition to the penalties applied. As the criminal proceedings and the conviction focus on the perpetrator, the reparation order made against the person convicted by the ICC shall primarily serve the needs and interests of victims. In the context of international criminal justice, these are determined by the harm suffered as a result of the crimes under international criminal law.

Since the scope of the crimes considered by the Court will prevent full reparation to victims, reparations should focus on the broader restoration of social order and reconciliation.

While the Trust Fund can administer Court-ordered reparations, its own reparation awards can be funded with its “other resources.” When the guilty party is unable to make reparations, the international community can supplement reparations

---


128 Ibid. 43.

129 Ibid.
through donations to the Trust Fund. The impact of Court-ordered reparations is limited, however, for two key reasons. First, Court-ordered reparations arrive only after criminal convictions. Convictions can take years and, in some cases, may never occur if the perpetrator is never caught or dies before prosecutions. Second, a direct link between the convicted individual and the harm suffered by the victim must also be established. In many cases, this link will be difficult to identify with the necessary certainty. In addition, many victims of mass atrocities may suffer from crimes not directly related to the few individuals prosecuted. These limitations can leave victims waiting for years with harms unaddressed.

The Trust Fund’s assistance mandate proffers a response to these limitations on Court-ordered reparations. Assistance programs can begin as soon as ICC investigations open in a situation country, removing the dependence on prosecutions. In addition, the assistance mandate also gives the TFV a broader scope of beneficiaries than Court-ordered reparations by allowing it to finance measures that benefit the current needs of victims and their families. This assistance cannot technically be considered reparations because they are not linked to the perpetrator of the crime that caused the suffering. Nevertheless, Trust Fund assistance appeals to restorative principles, as described on behalf of the TFV Board of Directors by Archbishop Desmond Tutu:

132 Ibid., 287.
[W]hen a country, a nation, the international community says, symbolically ‘we cannot compensate you but we want to show that we care, we want to show you that we hope that this small thing that we do for you will somehow pour balm on your wounds and help those wounds to heal […]’ \(^{133}\)

These reparative effects align with the restorative goals of reparations and have been incorporated into transitional justice theory.

Conclusion

More than half a century after World War II, transitional justice has evolved to incorporate more varied conceptions of justice. Transitional justice’s earliest incarnations, the post-WWII trials, left a heavy mark on the field, as evidenced by the emphasis on criminal prosecutions following the conflicts in Yugoslavia, Rwanda, and Sierra Leone, as well as in the Rome Statute. Despite the popularity of truth commissions in practice in the 1980s and 1990s and among transitional justice scholars, the Rome Statute neglects to incorporate any sort of truth-telling mechanism outside of criminal prosecutions. Somewhat surprisingly, the Rome Statute embraces victim participation, reparations, and reparative assistance, in contrast to the precedent established by preceding international tribunals.

In this way, the Rome Statute represents a major endeavor into transitional justice at the international level. Through prosecutions, reparations, and reparative assistance, the ICC and TFV pursue both restitutive and restorative ideals of justice in an effort to redress and prevent mass atrocities. While prosecutions can yield reparations, these

\(^{133}\) Archbishop Desmond Tutu: Statement by His Eminence Archbishop Desmond Tutu on behalf of the Board of Directors of the Trust Fund for Victims, quoted in Dwertmann, *The Reparation System of the International Criminal Court*, 286.
reparations must directly link the harm suffered by the victim to the crime committed by a convicted person, which limits the timeliness and scope of assistance to victims. By providing assistance before convictions to victims in situations under investigation by the Court, the Trust Fund may help remedy this shortcoming. The required connection between the Court investigation and Trust Fund assistance distinguishes TFV activities from other forms of international aid and endows it with a symbolic significance.¹³⁴ Unlike other forms of international aid, Trust Fund assistance is a direct response to harms suffered by victims and condemned by the international community. It is thus through the TFV assistance that individual victims’ rights and needs are most directly recognized by the international community within the context of international criminal justice.

3. The ICC’s First Case: Uganda

Uganda is a landlocked country in East Africa with a population of about 35 million. Since its establishment as a British protectorate in 1894, the country has suffered from decades of violent governance and conflict. In the past two decades, international attention has focused on Uganda due to a violent conflict that terrorized its northern region. These narratives have focused on the Lord’s Resistance Army (LRA), and in particular its leader Joseph Kony, as an inexplicable source of brutal violence and destabilizing chaos. Though no one would dispute the LRA’s brutality, the northern conflict, like all conflicts, is the product of intricately intertwined political, economic, and social realities. While a comprehensive attempt to understand the conflict and its roots is beyond this study’s scope, brief reviews of Uganda’s post-colonial history, the emergence of conflict in the north, and the International Criminal Court’s investigation in Uganda set the foundation for an examination of the Trust Fund’s operations in the region.

Post-colonial history

Since its independence from Britain in 1962, Uganda has faced violence from rebels and national armies as different leaders struggled for power and legitimacy. This history laid the roots for the LRA conflict that would come to terrorize northern Uganda. Political violence in post-colonial Uganda began in 1966, when Prime

---


Minister Milton Obote violated the 1962 constitution to declare himself president.\textsuperscript{137} Obote followed this declaration with an attack on the residence of the Kabaka of Buganda, which forced the constitutional president into exile. In 1971, Idi Amin, the commander of the national army, overthrew Obote and began the executions of prominent Acholi intellectuals and politicians.\textsuperscript{138} In 1973, Amin massacred Acholi and Lango who served in the military, and thousands fled the country, some forming the Ugandan National Liberation Army (UNLA) and other anti-government groups. In 1979, after organizing in Tanzania, these groups succeeded in overthrowing Amin, and Obote returned to power after rigged elections, beginning the Obote II regime.\textsuperscript{139}

Both Amin and Obote operated violent regimes, rife with human rights abuses. Violence often occurred along roughly ethnic and religious cleavages, which the regimes exacerbated to their advantage, leaving a country divided between north and south.\textsuperscript{140} Obote, of the northern Lango ethnic group, favored Acholi and Lango northerners, who had also dominated the military since its construction under British administration.\textsuperscript{141} While many northerners considered Obote’s policies to be the ‘decolonization of the north,’ people from other regions felt marginalized during his reign. Following his


\textsuperscript{138} Allen, \textit{Trial Justice}, 28.

\textsuperscript{139} Allen, \textit{Trial Justice}, 29.


\textsuperscript{141} Ibid., 67.
capture of the government, Amin, from the West Nile region, massacred Acholi and Lango in the military and killed unarmed civilians in revenge.\textsuperscript{142}

In 1981, Yoweri Museveni founded the National Resistance Army/Movement (NRA/M) and began an antigovernment insurgency.\textsuperscript{143} The NRA fought the UNLA in the northwest of Uganda and in the Luwero Triangle region north of Kampala. UNLA officers overthrew the Obote II government in July 1985, and UNLA General Tito Okello, an Acholi, became president. Soon after, a peace and power-sharing agreement between the NRA and UNLA was brokered in Nairobi, but the NRA ignored the agreement and captured Kampala in 1986, leading Museveni to assume the presidency. Museveni’s presidency ended the succession of rulers from the north that began at independence.\textsuperscript{144} UNLA soldiers retreated north into Acholi regions and into Sudan, and a number of rebellions emerged throughout Uganda.\textsuperscript{145}

The Northern Conflict

Museveni’s assumption of the presidency sparked years of conflict in northern Uganda, leading to the 2003 referral of the situation to the ICC.\textsuperscript{146} Soldiers from the

\textsuperscript{142} Allen, \textit{Trial Justice}, 28.

\textsuperscript{143} Ibid., 29.

\textsuperscript{144} Finnstrom, \textit{Living With Bad Surroundings} 68.


national army, the Ugandan National Liberation Army (UNLA), fled to the north, fighting against Museveni’s National Resistance Army/Movement (NRA/M) in response to anger that Museveni had broken a power-sharing agreement brokered with Okello in December 1985.\(^{147}\) Supporters of Okello and another former president, Milton Obote, joined forces in South Sudan after the UNLA’s defeat by NRA in 1986, forming the Uganda People’s Democratic Army (UPDA).\(^{148}\) The UPDF also included Acholi politicians and former troops of former dictator Idi Amin. The 1988 Gulu Peace Accord, offering amnesty to UPDA combatants, brought most rebels out of the bush and many joined the national army.\(^{149}\) The Accord also called for attempts to address political and economic issues in the north.

After the UPDA’s defeat, some surviving rebels joined with other anti-government forces to form the Holy Spirit Movement (HSM), headed by the spirit medium Alice Auma “Lakwena.”\(^ {150}\) Lakwena’s movement offered “hope for worldly as well as spiritual redemption” for the Acholi people, who had lost political power and were threatened by the new order.\(^ {151}\) The HSM garnered massive popular support among northern Ugandans, who feared Museveni’s government, which they perceived as

\(^{147}\) Lomo and Hovil, “Behind the Violence,” 11.
\(^{148}\) Ward, “‘The Armies of the Lord,’” 188.
\(^{150}\) Ibid.
\(^{151}\) Doom and Vlassenroot, “Kony’s Message,” 16-7.
dominated by western Ugandans who would marginalize them.\textsuperscript{152} They also resented cattle raids and atrocities they suspected the NRM sponsored.\textsuperscript{153} The HSM won several of its initial battles, startling opponents with unusual antics, such as marching partly naked, glistening in oils from cleansing rituals, and holding out bibles in the face of gunfire.\textsuperscript{154} In 1987, the NRM defeated the HSM in Jinja, about 50 miles from the capital and Lakwena fled the country.\textsuperscript{155}

Both the UPDA and HSM mobilized popular grievances against the new government to recruit soldiers. A working paper by the Refugee Law Project identifies several of the reasons that the rebellions resonated with many Acholi:

[T]hey feared reprisals for what many perceived to be Acholi-led massacres in the Luwero Triangle during the early 1980s; they were upset at their loss of political and economic power as a result of Museveni’s violation of a 1985 power-sharing agreement, and destructive cattle raids that they believed were sponsored by the NRM; they were afraid the new government – believed to be controlled exclusively by western Ugandans – would marginalise them after their dominance in the national army; they were defending themselves against atrocities committed by certain NRA units in 1986-7; and they saw violence as the only means to address these grievances after witnessing Uganda’s successive violent power struggles since independence.\textsuperscript{156}

When Joseph Kony’s Lord Resistance Army emerged after the HSM’s demise, it failed to mobilize these unaddressed grievances, instead commanding control using fear and

\textsuperscript{152} Lomo and Hovil, “Behind the Violence,” 10.

\textsuperscript{153} Ibid.

\textsuperscript{154} Allen, \textit{Trial Justice}, 35.

\textsuperscript{155} Lomo and Hovil, “Behind the Violence,” 11.

\textsuperscript{156} Ibid., 12.
violence inspired by “apocalyptic spiritualism.” Kony, a former UPDA commander, attracted UPDA soldiers who refused to give up arms following the 1988 Gulu Peace Accord and kidnapped others. Initially targeting government fights, Kony soon turned against civilians.

The emergence of the LRA initiated a decade of brutal conflict between the rebels and the Government of Uganda (GoU) that devastated northern Uganda, as well as parts of South Sudan, the Democratic Republic of Congo (DRC), and the Central African Republic (CAR). Beginning in 1991 with Operation North, the GoU launched several military offensives in failed attempts to wipe out the LRA. These assaults, including Operation Iron Fist in 2002, Operation Iron Fist II in 2004, and Operation Lightning Thunder in 2008, punctuated attempts to negotiate a peaceful resolution to the conflict in 1994, 2004-2005, and 2006-2008. In 2000, the GoU gave into pressure from the north and passed an Amnesty Act offering immunity to all rebels since 1986 who gave up their arms.

Some reports suggest the GoU did not pursue the peace negotiations of 1994 and 2004 seriously and argue that Museveni had political and personal reasons for perpetuating the conflict in the north. Tim Allen suggests that the conflict in the north helped Musveni garner support in the rest of the country, which associated the north with

---

157 Ibid., 10.
159 Ibid.
unpopular former presidents.\footnote{Allen, \textit{Trial Justice}, 48.} In addition, Allen suggests that Museveni had a personal grudge against Kony and that ongoing conflict had economic benefits for Museveni’s soldiers. The 2008 talks, however, were received optimistically due to the involvement of Southern Sudan as a mediator, the increased international attention to the conflict, and personal statements by the LRA leadership suggesting a commitment to the talks.\footnote{Wegner, “Ambiguous Impacts,” 7.} LRA and GoU representatives signed a Cessation of Hostilities Agreement in August 2006 and reached agreements on accountability and reconciliation in the summer of 2007. The 2008 discussions aimed to conclude these achievements with a permanent ceasefire, but the talks eventually collapsed when the LRA failed to appear at the final signing ceremonies.\footnote{Ibid., 8}

After the 2008 peace talks failed, the GoU launched Operation Lightning Thunder as a joint offensive with the governments of the DRC and South Sudan.\footnote{Ibid.} With the support of the United States military, this offensive targeted the LRA base in Garamba Park in the DRC, but the LRA fled before the offensive arrived. This offensive did manage to scatter the LRA, which began to operate in small groups in the DRC, South Sudan, and the CAR. Some reports claim LRA sightings as far north as Darfur.\footnote{“Statement: Lord’s Resistance Army Finds Safe Haven in Darfur,” Enough Project, last accessed March 2, 2014, http://www.enoughproject.org/news/lord%E2%80%99s-resistance-army-finds-safe-haven-darfur.}
Massacres continued in the DRC, and the International Crisis Group reported that the LRA has killed more than 2,400 and abducted more than 3,400 civilians since Operation Lightning Thunder.\textsuperscript{166} The LRA continued to survive by smuggling gold and ivory and forging alliances with local militias.\textsuperscript{167} Despite the assistance of 100 armed military advisers deployed by the United States, Kony has yet to be captured. The most recent reports suggest that the LRA is involved in the ongoing conflict in CAR.\textsuperscript{168}

International Crimes, ICC Referral, and Victims’ Needs

The last major attacks by the LRA against civilians occurred in northern Uganda in late 2005.\textsuperscript{169} A December 2008 attack by the Ugandan People’s Defence Forces (UPDF) on the LRA headquarters in the DRC marked the end to the government’s efforts to find a peaceful resolution to the conflict.\textsuperscript{170} Despite this relative peace, many northern Ugandans continue to suffer due to war crimes and crimes against humanity committed by both the LRA and the UPDF. Allegations of UPDF crimes include regular looting and

\begin{itemize}
  \item \textsuperscript{170} Wegner, “Ambiguous Impacts,” 7.
\end{itemize}
rape in camps for internally displaced persons.\textsuperscript{171} In addition, reports have accused UPDF soldiers of tortures, assault, and unlawful killings. Most of these crimes went unpunished.\textsuperscript{172} The UPDF also forced the displacement of nearly two million people, about 95 percent of the population of Acholiland. In response to the real and imminent threat of the LRA, the UPDF sometimes only gave individuals 24 hours to leave their homes, but many reported that the UPDF either looted or allowed looting in their homes.\textsuperscript{173} Disease and violence in the camps led to the death of tens of thousands of people.\textsuperscript{174}

LRA crimes included killing, torture, abduction, slavery, forced marriage, forced recruitment, mutilation, sexual violence, serious psychological harm, and pillaging and destruction of property.\textsuperscript{175} These violations were indiscriminate, systematic, and widespread, often targeting the elderly, women, and children. Some of the most brutal activity includes beating or crushing civilians to death, dismembering them, and burning them alive.\textsuperscript{176} The LRA also forced civilians, including children, to kill family members


\textsuperscript{172} Ibid.


\textsuperscript{175} “The Dust Hast Not Yet Settled,” xii.

\textsuperscript{176} Ibid.
and friends. Between 24,000 and 28,000 children and 28,000 and 37,000 adults are estimated to have been abducted between the early 1990s and April 2006, and abductees faced a wide range of abuses.\footnote{Phuong Pham, Patrick Vinck, and Eric Stover, “Abducted: The Lord’s Resistance Army and Forced Conscription in Northern Uganda,” Berkeley-Tulane Initiative on Vulnerable Populations (2007), 3.}


When the Trust Fund for Victims began its field operations in Uganda in 2008, northern Uganda continued to reel from unaddressed suffering. A population-based survey in northern Uganda in 2005 found strong support for a variety of transitional justice mechanisms, including public acknowledgement, truth-recovery, and
The survey identified sustained peace and the availability of food as the top priority of victims. Accountability for crimes committed by all sides was also a priority, with 66 favoring the punishment of perpetrators and 22 percent preferring forgiveness, reconciliation, and reintegration.

A follow-up survey in 2010 found that security improved dramatically since 2007, with 80 to 90 percent of respondents saying they felt “safe” or “very safe” in their communities. Despite this improvement, civilians in the region continue to face challenges regarding sustaining a livelihood, with socio-economic indicators showing little or no improvement since 2007. A large majority, 84 percent, still wanted accountability for crimes, but justice priorities shifted from peace and security to the fulfillment of basic needs, such as food, agriculture, education, and health care. Many of the challenges civilians faced in meeting the fulfillment of basic needs stemmed from injustices that occurred during the conflict. Reparative mechanisms could help victims by providing assistance for victims to regain access to their homes or land, funds to help cultivate land, access to education and vocational training, physical and mental health services for victims of burns, mutilations, rape, and other violence.

---


183 “The Dust Has Not Yet Settled,” xxi.
The ICC in Uganda

In January 2004, the ICC Chief Prosecutor Ocampo stood by Ugandan President Museveni to announce the referral of the LRA conflict to the Court.184 This announcement of an ICC investigation in northern Uganda ignited a cacophony of debate and discussion. As the first ICC investigation, the case focused international attention on the Court, Uganda, and transitional justice. The debates concerning transitional justice discussed in Chapter 1 had a new face, and a body of research emerged to examine the effects and implications of ICC investigations in ongoing conflicts, and particularly in Uganda. In Uganda, these debates have primarily concerned whether the Court promotes peace, deters conflict, or is biased in its investigations.185

Peace

As discussed in Chapter 1, advocates of transitional justice frequently argue that criminal prosecutions can contribute to peace and reconciliation by achieving justice, constructing truth, and individualizing guilt.186 However, both scholars and local leaders in northern Uganda have raised questions about whether the Court’s investigations and indictments have helped secure peace. Proponents argue that the investigations focused international attention on the LRA, pressuring them to negotiate and isolating them from

184 Allen, Trial Justice, 9.

185 Ibid., 96.

influential supporters, including the Government of Sudan.\textsuperscript{187} These advocates suggest that the ICC investigation helped initiate the Juba Peace Talks of 2006-2008.

Critics of the Court’s effect on peace question the ICC’s relevance in initiating the Juba talks, pointing out that processes that led to the talks began several years before.\textsuperscript{188} They counter that even if the ICC helped lead to the talks’ initiation, the Court’s irreconcilability with the Amnesty Act prevented their successful completion.\textsuperscript{189} Reports show that the LRA announced at the talks’ onset that it would not sign any agreement as long as warrants for the leadership remained outstanding.\textsuperscript{190} After the 2004 announcement, local leaders and researchers in northern Uganda argued that the Amnesty Act was a necessary precondition for successful resolution of the conflict.\textsuperscript{191} As the talks progressed, Museveni agreed to offer amnesty to LRA leadership, despite the conflict with the Court, and made a statement in 2008 that he would not hand over Kony to the Court.\textsuperscript{192} Meanwhile, the Office of the Prosecutor of the ICC continued to demand accountability for the crimes of the LRA. This argument is mirrored by the Court’s


\textsuperscript{190} Wegner, “Ambiguous Impacts,” 11.

\textsuperscript{191} See, for example, Apuuli, “Peace over Justice”; Hovil and Quinn, “Peace First, Justice Later: Traditional Justice in Northern Uganda.”

\textsuperscript{192} Wegner, “Ambiguous Impacts,” 18.
advocates, who suggest that amnesty for LRA leadership “would compromise the effectiveness of the ICC and bring questions about whether the ICC can really carry out its mandate.”

Whether the ICC alone led to LRA leadership’s failure to sign the agreements is difficult to determine, but its insistence on accountability did not likely help. Other factors contributing to the talks’ failure could include distrust between the LRA leadership and delegation and personal rivalries between some of the mediators, facilitators, and donors involved in the talks. Some claim that the LRA never intended to complete the talks, instead using them to buy time to stockpile weapons and refill its ranks through abductions in the DRC. Regardless, former LRA commanders and members of the LRA and GoU delegations have claimed that Kony’s primary concern with the talks was his lack of trust in the GoU’s promises, which conflicted with its legal obligation under the Rome Statute to arrest him.

Local perceptions regarding the Court and the peace process express mixed opinions. According to one population-based survey in northern Uganda, 65 percent of respondents supported the amnesty process, while 76 percent of respondents believed that

---


individuals who committed abuses should be held accountable. Allen suggests that these conflicting responses might be due to confusion about the term “amnesty,” which from Luo can be translated as forgiveness or reconciliation. While many critics of the Court attempt to pit justice against peace, this survey suggests that northern Ugandans do not view the two as irreconcilable.

Deterrence and Isolation

Another question debated in the Ugandan context is whether ICC intervention deters violations of human rights or exacerbates violence. In theory, the ICC can deter crimes by ending impunity. In addition, the ICC could reduce violence by isolating indicted war criminals from various sources of support. While the level of violence has reduced in Uganda since 2005, it is difficult to determine how ICC intervention affected this trend.

Deterrence

Scholars who claim the ICC promotes deterrence suggest that LRA commanders who have not yet been indicted have refrained from committing atrocities out of fear of

---

197 Allen, *Trial Justice*, 76.
Court prosecution.\textsuperscript{200} In addition, the deterrence effect has led the Ugandan army to improve its human rights conduct due to ICC presence in the country.\textsuperscript{201} Recent reports suggest that institutional reforms, such as the establishment of a Human Rights Desk within the army, have indeed improved the UPDF’s human rights record.\textsuperscript{202} These reports also suggest that UPDF soldiers who commit crimes are increasingly held to account. While the process of improving the UPDF’s human rights record began before the ICC intervention, most changes took place after the ICC became active in the country.\textsuperscript{203}

Another way the ICC might have helped deter human rights violations is by helping to strengthen rule of law and accountability. Some scholars credit the ICC for helping to establish the International Crimes Division (ICD) of the Ugandan High Court in 2008. The ICD was strengthened by Rome Statute national implementing legislation passed in 2010 and has the capacity to prosecute ICC crimes at the national level.\textsuperscript{204} These reports also credit the ICC with raising accountability issues during the Juba talks that led to the Agreement on Accountability and Reconciliation, which paved the way for post-conflict accountability.

\begin{itemize}
\item \textsuperscript{200} Allen and Vlassenroot, \textit{The Lord's Resistance Army}, 16.
\item \textsuperscript{201} Ibid.
\item \textsuperscript{202} Wegner, “Ambiguous Impacts,” 14.
\item \textsuperscript{203} Ibid., 15.
\end{itemize}
Critics of the deterrence claim point to reports of LRA attacks on humanitarian organizations in northern Uganda, which followed the announcement of investigations in 2005. However, similar attacks occurred as early as 2001. Critics also suggest that rather than deter violence, ICC indictments contributed to the marginalization of rebels and led to retaliation attacks. Advocacy groups also expressed concerns that the indictments would lead the LRA to increase violence against its own ranks in an effort to maintain its soldiers. In addition, reports of decreasing violence tend to focus only on Uganda, while the LRA has continued its campaigns in DRC, CAR, and South Sudan. Reports that the indicted commanders continue to commit crimes also undermine deterrence claims.

Isolation

The Court’s advocates claim that by focusing attention on the LRA, the Court isolated rebels from international support, forcing them to the negotiation table. Following the ICC indictments, international scrutiny came in the form of a UN Security Council condemnation of the LRA and the arrival of the UN Office of the High Commissioner for Human Rights in Uganda, both in 2006. Reports also suggest that the

207 Allen, Trial Justice, 103.
209 Ibid.
210 Ibid., 15.
LRA delegation in the Juba talks obsessed about the ICC, indicating the Court’s pressure on the rebels.\textsuperscript{211} In addition, some claim the Court’s intervention cut off the LRA from external sources of support, particularly the Government of Sudan. The United State’s inclusion of the LRA on its list of terrorist organizations in 2002 may have contributed to pressure on Sudan to terminate support for the LRA and to allow the UPDF to pursue the LRA on Sudanese territory in 2004.

Skeptics of the isolation claim point out that a variety of other processes helped lead to the negotiations that began in 2006. The UPDF’s increased military pressure on the LRA combined with the 2000 Amnesty Act had significantly weakened the LRA, as many rebels defected, including some mid-level and senior commanders in 2004 and 2005. Civil society organizations in northern Uganda contributed to the defections by advocating for the return of rebels through radio broadcast.\textsuperscript{212} Some suggest the ICC received credit for the success of local processes that had been ongoing for years.\textsuperscript{213} Pressure for Sudan to terminate support for the LRA also extended to processes preceding the ICC intervention, such as the 1999 Nairobi Agreement between the governments of Uganda and Sudan and the 2005 peace agreement between the government of Sudan and the Sudan Peoples’ Liberation Army. Even if these preceding

\textsuperscript{211} Ibid., 16.

\textsuperscript{212} Ibid.

\textsuperscript{213} Ibid.
processes contributed to the isolation of the ICC, it is difficult to deny that the ICC made it more difficult for the government of Sudan to support the LRA.\textsuperscript{214}

**Bias**

Accusations of bias have confronted the Court since the announcement of its investigations in 2004. The joint press conference of Chief Prosecutor Ocampo and Museveni created the impression of ICC bias in light of widespread awareness that both sides of the conflict committed human rights abuses.\textsuperscript{215} Its location in London also fueled memories of British colonialism.\textsuperscript{216} Some scholars and many individuals in northern Uganda suspect the president of using the ICC as a tool to confront the LRA and obscure his army’s own abuses.\textsuperscript{217} Onan Acana, the paramount chief elect, challenged the impartiality of the Court in an interview with Allen: “How can the ICC be impartial if it is only working one side of the conflict? … We have soldiers raping men. We have people thrown in pits. … Where government soldiers have committed crimes, should we just ignore it?”\textsuperscript{218} Allen argues that despite awareness of the UPDF’s crimes, their prosecution would be more difficult because defendants would be able to claim their actions were in response to LRA massacres.\textsuperscript{219}

\textsuperscript{214} Ibid.


\textsuperscript{217} Ibid.; Drumbl, “Punishment, Postgenocide,” 1323.

\textsuperscript{218} Allen, *Trial Justice*, 99.

\textsuperscript{219} Ibid. 101.
In response to the criticism, Ocampo made clear that the ICC would investigate both sides of the conflict.\textsuperscript{220} In addition, he invited religious and local leaders to the Hague in an expression of serious attention to their concerns.\textsuperscript{221} Nonetheless, many remained skeptical.\textsuperscript{222} The reluctance of the Court to explain its operations in Uganda make it difficult to determine whether bias played a role in the Court’s initial investigations preceding the indictments.\textsuperscript{223} Although Ocampo did announce investigations of the UPDF, no indictments were issued against any member of the Ugandan government or military. One defense of the ICC appeals to “gravity criteria,” defined in Articles 17 and 52 of the Rome Statute. This argument suggests that the LRA crimes are significantly graver than those committed by the UPDF, which means the Court should focus on the LRA. The Court claims it has not focused on violations that occurred within camps because it is focused on “instrumental killing” and not the indirect effects of conflict.\textsuperscript{224} Michael Drexler argues that this represents trading “principle for practicality,” as ICC jurisprudence is not limited to instrumental killings.\textsuperscript{225} Northern


\textsuperscript{221} Glasius, “What is Global Justice and Who Decides?,” 507.


\textsuperscript{223} Allen, Trial Justice, 100.

\textsuperscript{224} Drexler, “Whither Justice?,” 100.

\textsuperscript{225} Ibid.
Ugandans have understood the Court’s arguments as trivializing the forced displacement of hundreds of thousands of people at the hands of the government.²²⁶

Conclusion

This chapter sought to depict the background leading up to ICC investigations in Uganda and eventually the Trust Fund’s arrival. The LRA conflict, a result of years of political instability and violent governance, precipitated the Court investigation, which Ugandans and the international community widely scrutinized. Initial research suggests that the Court’s relationship with peace and deterrence is multifaceted. The ICC investigation may have prevented the conclusion of peace talks, but it also likely contributed to a strengthening of the human rights culture in the national military, increased accountability and rule of law, and the end of external support for the LRA. Many of these debates will remain unresolved until the Court’s prosecutions end and scholars can study the subject retrospectively.

More timely, however, are the post-conflict needs of the northern Ugandan population. Survey data suggests that for years following peace in the region, victims reported needs that appeal to both restitutive and restorative values. The population has consistently demanded accountability and rejected amnesty for perpetrators of war crimes. At the same time, the population has increasingly prioritized socio-economic needs, which have remained unmet since the conflict devastated the population’s livelihoods. These mixed wants and needs lend support to the holistic approach to transitional justice, which calls for the incorporation of various approaches to justice

²²⁶ Glasius, “What is Global Justice and Who Decides?,” 502
depending on the unique situations of the harmed individuals and society.\textsuperscript{227} It is in this context that the Trust Fund’s broad focus on reparative assistance can complement the Court’s criminal prosecutions.

\textsuperscript{227} Olsen et al., \textit{Transitional Justice in Balance}, 24.
4. The Trust Fund For Victims in Uganda

Implicit in the criticisms of the Court described in the previous chapter is the concern that the Rome Statute system has, through the ICC, established a conspicuous display of Western ideals, dangerous when transplanted into the Ugandan context. As the Court’s overlooked sister organization, the Trust Fund may placate these concerns through its explicit and broad focus on assisting victims. By directly addressing the needs of victims, the Trust Fund can localize international justice through reparative programs. By linking their assistance to an international condemnation of injustices, the Trust Fund can endow its assistance with a symbolic significance that has psychological benefits for victims.

This chapter explores these two claims through an examination of the TFV’s operations in northern Uganda. The chapter begins by reviewing the TFV’s institutional and regulatory context, which shed light on the normative motives behind and structural restraints on TFV programming. It then considers the TFV’s three types of programming—material support, physical rehabilitation, and psychological rehabilitation—and attempts to link its projects with principles of justice. Finally, this chapter considers findings from original interviews conducted with key stakeholders in northern Uganda in May 2013. The chapter concludes that the Trust Fund largely achieves the transitional justice goals implicit in the Rome Statute; crucial shortcomings, however, concern the TFV’s efforts to link its assistance with the ICC and to transition responsibilities to the government.
Context of TFV Programming

Amidst ICC controversy, the Trust Fund began its operations in Uganda in 2007, when it implemented an assessment to identify the necessary types of assistance interventions.\(^{228}\) Its assistance programs in northern Ugandan and the DRC began in 2008, following approval by the ICC Pre-Trial Chamber.\(^{229}\) That year, the Chamber approved 34 projects for the two situations. The Trust Fund’s operations in Uganda have been relatively consistent in scope since 2008. In 2013, the TFV oversaw 28 active projects, providing support to more than 110,000 victims.

The Trust Fund’s funds can stem from a variety of sources. Resources collected through fines, forfeiture, and for the purpose of reparation awards must be used in accordance with ICC rules of procedure.\(^{230}\) The Assembly of State Parties can also decide to allocate funds to the Trust Fund and determine their use.\(^{231}\) Voluntary contributions from governments, international organizations, individuals, corporations, or others comprise a substantial portion of the Trust Fund’s budget.\(^{232}\) With the exception of states, contributors can earmark up to one-third of their contribution for a specific


\(^{229}\) Ibid., 15.

\(^{230}\) Rule 98, Rules of Procedure and Evidence.

\(^{231}\) Reg. 35-36, Trust Fund Regulations.

\(^{232}\) The Trust Fund For Victims, “Programme Progress Report Summer 2011,” (2011)
purpose, as long as it does not result in discrimination.\textsuperscript{233} The most recent program report indicates that in the preceding year, States contributed about €3 million to the fund, while institutions and individuals contributed about €4,500.\textsuperscript{234}

Voluntary contributions and funds allocated by the ASP can be used to provide “psychological rehabilitation or material support for the benefit of victims and their families.”\textsuperscript{235} Trust Fund projects can help meet the specific needs of a larger scope of victims than afforded by Court-ordered reparations.\textsuperscript{236} This assistance can begin as soon as investigations begin, and unlike reparations are not continent on the results of Court proceedings. In this way, the Trust Fund can provide “interim relief” to victims awaiting criminal convictions.\textsuperscript{237}

According to Trust Fund Regulations, beneficiaries of assistance can be “victims of crimes under the jurisdiction of the court as defined in rule 85 of the rules of Procedure and Evidence, and, where natural persons are concerned, their families, who have suffered physical, psychological and/or material harm as a result of these crimes.”\textsuperscript{238} Unlike Court-ordered reparations, Trust Fund projects can thereby assist victims and families of victims of cases not necessarily prosecuted by the ICC, including individuals

\textsuperscript{233} Reg. 53, Trust Fund Regulations.


\textsuperscript{235} Reg. 50, Trust Fund Regulations.

\textsuperscript{236} Dwertmann, The Reparation System of the International Criminal Court, 287.

\textsuperscript{237} Ibid., 288.

\textsuperscript{238} Reg. 42 and 45, Trust Fund Regulations.
harmed more generally by the situation under investigation.\textsuperscript{239} In particular, the Board of Directors emphasizes assistance that places emphasis on “the most marginalized and vulnerable victims.”\textsuperscript{240} To target beneficiaries that fall under the assistance mandate, the Trust Fund uses two strategies to ensure victims fall within ICC jurisdiction.\textsuperscript{241} First, the TFV provides assistance to specific categories of victims, such as victims of sexual violence and youth associated with arms forces. Second, the TFV offers assistance to affected communities, including villages victimized by pillage, massacre, or displacement.

According to TFV Regulations, the Trust Fund has discretion over assistance projects that use money received through voluntary contributions.\textsuperscript{242} When the TFV Board of Directors decides to implement a project, it must notify the Chamber to ensure that the activity does not pre-determine issues to be determined by the Court, violate the presumption of innocence, or infringe upon the rights of the accused and a fair and impartial trial.\textsuperscript{243} This in effect gives the Chamber veto power over Trust Fund proposals.

The Trust Fund implements its support through partner organizations, which include local and international NGOs, hospitals, and community-based organizations.\textsuperscript{244}

\begin{footnotes}
\footnotetext{239}{Dwertmann, \textit{The Reparation System of the International Criminal Court}, 288.}
\footnotetext{240}{Ibid., 289.}
\footnotetext{241}{McCleary-Sills and Mukasa, “External Evaluation of the TFV,” 12.}
\footnotetext{242}{Reg. 50, Trust Fund Regulations.}
\footnotetext{243}{Reg. 50.3, Trust Fund Regulations.}
\footnotetext{244}{McCleary-Sills and Mukasa, “External Evaluation of the TFV,” 12.}
\end{footnotes}
The ICC’s Procurement Unit assists with partner selection, which often constitutes a competitive bidding process or sole sourcing.\textsuperscript{245} Partners are selected for projects after the Fund concludes a field-based assessment to discern the needs of targeted communities.\textsuperscript{246} Examples of these partners include international non-governmental organizations (NGOs) including AVSI, the Centre for Victims of Torture, and CARE International Uganda, as well as local organizations (often with international funding) including the Diocese of Northern Uganda and Watato Childcare ministries.\textsuperscript{247}

According to an external evaluation of the Trust Fund conducted by the International Center for Research on Women, the grant-making process prioritizes a few key principles:

- *participation* by victims in program planning,
- *sustainability* of community initiatives,
- *transparent* and *targeted* granting,
- *accessibility* for applicants that have traditionally lacked access to funding,
- addressing the *special vulnerability of girls and women*,
- strengthening capacity of grantees and coordinating efforts to ensure that the selection and management of grants is strategic and coherent.\textsuperscript{248}

The Trust Fund works with these partners to reach out to victims, their families, and communities to meet its goals of promoting accountability, ownership, dignity, and empowerment.\textsuperscript{249}

\textsuperscript{245} Ibid.; 12.

\textsuperscript{246} Interview by author, Kampala, Uganda, May 17, 2013.


\textsuperscript{248} McCleary-Sills and Mukasa, “External Evaluation of the TFV,” 12.

\textsuperscript{249} Ibid., 13.
TFV Programming

Under its assistance mandate, the Trust Fund implements projects that fall under three categories: material support, physical rehabilitation, and psychological rehabilitation. More specifically, according to the TFV Program Framework, Trust Fund projects are designed to address four themes: (1) promoting community reconciliation, acceptance, and rebuilding community safety nets; (2) mainstreaming gender to include addressing impact of gender-based violence and other sexual violence of women, men, and children in line with UN Security Council Resolution 1325; (3) integrating and rehabilitating child soldiers and abductees into communities, including support of intergenerational responses; and (4) addressing issues of victims’ stigma, discrimination, and trauma. The Trust Fund considers these goals crucial steps toward ending impunity for perpetrators and establishing peace and reconciliation in post-conflict settings, two goals that neatly align with transitional justice ideals.

Before issuing grants, the Trust Fund conducts field assessments to ensure that the projects directly address harms caused by the conflict under ICC jurisdiction and target the most vulnerable and marginalized victims. After the 2007 assessment, the Fund

250 Ibid., 12.


submitted 18 projects in northern Uganda to the Pre-Trial Chamber that focused on physical rehabilitation, psychological support, and material assistance to four categories of victims: (1) ex-child soldiers, abducted persons, and victims of sexual and gender-based violence; (2) mutilated victims and physical injuries; (3) handicapped victims and victims suffering mental trauma; and (4) victimized villages and traumatized communities. These projects have been administered in 18 northern Ugandan sub-districts within Acholi, Lango, Teso, and West Nile sub-regions. In 2013, these projects were estimated to have provided assistance to 39,750 victims under ICC jurisdiction.

In 2013, the Trust Fund began phasing out its material support in northern Uganda to place more emphasis on physical and psychological rehabilitation. The Trust Fund and Chamber justified continued physical and psychological support in the region because it is likely that these injuries are causally related to the conflict, while establishing a causal link between the conflict and material conditions is more difficult.

---


255 Ibid., 16.


Material Support

Material support includes access to safe housing, vocational training, reintegration programs for former child soldiers, support for village savings and loans associations, grants for education, and classes in literacy. 258 This support aims to improve the economic status of victims by responding to the destruction of property and the disruptive consequences of displacement. The establishment of Village Savings and Loan Associations (VSLAs) with implementing partners including CARE Uganda, COOPI, and the DNU is one effective way of supporting victims’ livelihoods. The VSLA model has also been used to mobilize dialogue on sexual and gender-based violence, as the VSLAs became a safe space for members to share their experiences with one another. 259

Other material assistance programs including the provision of vocational training for bee-keeping, improved agricultural techniques, tree-planting, and the increase of commercial crops. 260 One major example of material assistance programming is TFV support of the North East Chilli Producers (NECPA), which has coordinated about 30 groups of chili producers, mostly women, as a new source of livelihood.

According to the external support, TFV partners achieved or surpassed their objectives in material support, as portrayed by the high numbers of victims participating in communal savings groups or completing vocational training or literary programs. 261


261 Ibid.
These material support programs are designed to help beneficiaries attain a sustainable livelihood. This assistance directly responds to the looting of cattle, destruction of agriculture, and loss of property that occurred at the hands of both LRA and UPDA soldiers. Some of the projects, such as the VSLAs, have the immaterial benefit of providing victims with a support group of individuals who shared similar experiences.

**Physical Rehabilitation**

Physical rehabilitation may include the provision of prosthetic and orthopedic devices, bullet and bomb fragment removal, reconstructive and general surgery, and referrals to medical services for victims of sexual violence. These programs aimed to help victims recover and resume their roles of productive and contributing members of their societies. These projects addressed injuries including burns, mutilations of ears, noses, or lips, and loss of limbs due to amputation, burns, or landmines. Projects included provision of prosthetics, physiotherapy, corrective surgery, and psychological support.

Major implementing partners for physical rehabilitation include Stitching Interplast Holland, AVSI, AYINET, and Caritas. AVSI, the primary implementing

---


partner in the provision of prosthetics, included community outreach and a program of sensitization of public officials on the rights of persons with disabilities. In addition, AVSI helped with construction to improve accessibility to public buildings. An Interplast program, from 2008 to 2011, focused on cost-sharing and capacity building by providing reconstructive surgeries and training local medical staff and nurses in care for reconstructive surgery and burns. Implementing partners also refer victims, depending on their specific needs, to specialized providers for corrective surgery, fitting for and provision of prosthetics, and physiotherapy. The majority of beneficiaries of physical rehabilitation also were given access to psychological and material support, as designated by the TFV policy for an integrated approach.

According to the external evaluation, these programs provided victims “with an extensive degree of physical healing that enables them to function as normally as possible in their communities and to participate in regular community-based activities.” This success demonstrates a direct response to the needs victims expressed in post-conflict surveys and assessments, which prioritized rebuilding of livelihoods through physical rehabilitation. In addition, TFV support of the Gulu Regional Orthopedic Workshop (GROW), helped ensure the sustainability of the intervention. Through its partners, the TFV providing training of GROW employees to help care for prosthetics in the long-

---

266 The Trust Fund For Victims, “Programme Progress Report Summer 2012.”


268 “The Dust Hast Not Yet Settled,” 81.
term, with the support of AVSI.269 TFV funding also fostered capacity-building in local hospitals for corrective surgery.270 The Government of Uganda has yet to assume financial responsibility for these services, which means victims’ preference for government accountability remains unmet.271

**Psychological Rehabilitation**

Psychological rehabilitation includes individual and group-based trauma counseling, community-led rituals to heal memories, and community sensitization around the rights of victims to promote reconciliation.272 Crimes including murders, abductions, disappearances, forced marriage, and sexual violence fall under ICC jurisdiction and can have psychological consequences the TFV can address.273 These interventions include efforts to reduce stigma associated with psychological needs.

TFV efforts toward psychological rehabilitation in Uganda have taken the form of three types of interventions.274 First, the Center for Victims of Torture (CVT) provided training and mentoring in the provision of trauma counseling for implementing partners, including COOPI, Caritas, and CTV. Second, implementing partners trained community-based counselors to provide psychosocial support to victims and groups of victims.

269 Interview by author, Gulu, Uganda, May 15, 2013.


271 Ibid., 26.


Third, COOPI implemented community therapy sessions through community-based facilitators and by the Diocese of Northern Uganda through the Healing Memories Project. According to the external report, victims reported that the psychological support had helped them adopt a more positive outlook to life and to re-engage in community activities. The report also noted that many respondents, especially survivors of gender-based crime, said the assistance helped them stop blaming themselves for the crimes they experienced. Being able to work was attributed as the greatest factor contributing to positive mental health, again aligning with surveys suggesting that recovering livelihoods is a primary post-conflict need for victims.

Many TFV-sponsored psychological programs adopt a group-based model that employs a lay volunteer or psychological assistant to conduct the sessions. This approach helps expand psychosocial support to diverse and distant settings and assuages anxiety associated with seeing individual counselors. In addition, by providing a space for victims to share their stories, group therapy contributes to healing and truth-telling, which align with the goals of reconciliation and societal healing. TFV psychological support also provided capacity-building through a partnership CVT, which trained implementing partners to recognize and respond to psychological needs of victims.

**Reconciliation**

According to the ICRW external report, the Trust Fund integrated reconciliation and reintegration efforts into their programs in a concerted effort to pursue peace-
The conflict in northern Uganda left the region’s social fabric in ruins. Abducted children, survivors of sexual violence, and children born as the result of rape often face difficult reintegrating into society. Many children and young adults missed out on years of regular education, and women subverted usual gender norms by becoming the sole providers in their families, as husbands were targeted for killings, abductions, and recruitment into the conflict. These changes resulted in a disruption in the usual social culture of northern Uganda and pitted groups and individuals against one another.

Reconciliation efforts took the form of trauma and therapeutic counseling; distribution of reintegration kits; drama groups and community peace activities; youth camps’ peace schools with drama, discussion, and art therapy; vocational training; and training elders and traditional leaders on peace building and reconciliation strategies. Many of these projects align with other transitional justice efforts, which seek to promote societal reconciliation through truth-telling, reconstructing social identities, and reproducing a sense of security.

Interview Findings

Interviews conducted in May 2013 with key informants from partner and non-partner organizations of the Trust Fund for Victims generally aligned with the conclusions of the ICRW external report. Each type of assistance—material support, vocational training, and trauma and therapeutic counseling—played a role in facilitating reconciliation and healing.

---

277 Ibid., 37.
278 “The Dust Hast Not Yet Settled,” 46.
physical rehabilitation, and psychological rehabilitation—has made significant contributions to the rehabilitation of individuals affected by the conflict. Interviews with implementing partners also suggest that two eligibility requirements of Court-ordered reparations rarely prevent the accessibility of TFV assistance to individuals who suffered from the conflict. First, program managers at two major implementing organizations said they are flexible regarding the requirement that victims’ crimes occurred in 2002 or later, when the ICC jurisdiction began. If they cannot offer assistance under a specific TFV-funded project, the TFV support may free up other funding for the organization to assist the victim on its own. In some cases, the implementing organization will refer the victim to another organization who can implement the project without the time limitation.

Second, program managers said that assistance is offered to individuals who fall into any of the categories of victims specified by the TFV, regardless of whether the LRA, the Ugandan army, or another party committed the atrocity. This programming appeals to both normative goals of transitional justice. By responding to harms of past abuses, the TFV helps redress human rights violations. Through capacity-building and reconciliation efforts, the TFV helps prepare the society for a more justice future.

Despite these successes, interviews revealed two areas of shortcoming that raise questions about the Trust Fund’s ability to achieve justice for victims. First, nearly every interview participant raised concerns about TFV communication efforts. Individuals involved directly in the administration of TFV-sponsored programs said that beneficiaries of TFV assistance rarely had heard of the Trust Fund and did not understand the TFV’s relationship with the ICC. Only one respondent, a program manager at an international
NGO, said the TFV was actively explained to program beneficiaries. In addition, respondents in non-partner organizations, whose goals nonetheless closely aligned with the Trust Fund’s, said the partner selection process lacked transparency. While some had heard of the TFV through its outreach efforts, most respondents, despite their daily work in post-conflict rehabilitation and interest in the politics of the ICC, had a limited understanding of the TFV’s mission. Individuals at the Trust Fund acknowledged the weaknesses of their communication efforts, citing limited resources and administrative capacity as the culprits. The TFV lacks a distinct department or personnel devoted to communication and relies on the ICC’s Communication and Outreach Unit.281 These findings recall conclusions of population-based surveys that estimate very low levels of awareness and understanding of the ICC.282

A second concern that emerged in interviews regarded the principle of complementarity, which, according to the Rome Statute, stipulates that the ICC and TFV should only intervene to the extent that the national government is unable to prosecute perpetrators or provide redress for the crimes.283 This principle mirrors the consensus in transitional justice literature that when a perpetrator is unable to provide redress for a harm, that responsibility falls on the government.284 If the government is also unable to provide redress, that responsibility may extend to other actors, such as the international

281 Interview by author, Kampala, Uganda, May 17, 2013.


283 Art. 17(1), ICC Statute.

284 Freeman, “Back to the Future: The Historical Dimension of Liberal Justice,” in Repairing the Past, 39.
However, surveys of victims suggest that they feel the government bears the primary responsibility for the provision of post-conflict redress, and the extent to which the Trust Fund can or should assume this role is undetermined.\textsuperscript{286} The Trust Fund’s work with the Ugandan government is limited, as are Ugandan efforts to provide assistance through its Peace, Recovery, and Development Plan.\textsuperscript{287} A regional manager for the Ugandan Human Rights Commission in northern Uganda expressed a limited understanding of the TFV’s mandates or operations in her region, and a senior official in the TFV viewed attempts to work with the GoU as improbable.

Conclusion

This case study finds that the Trust Fund’s operations in northern Uganda make progress toward the normative goals of transitional justice by redressing past abuses and working to prevent future injustice. Material support, physical rehabilitation, and psychological rehabilitation address the array of crimes suffered by the northern Ugandan population. Flexibility at the level of implementation allows the assistance to be offered to a broad scope of victims. In this way, the TFV helps meet the immediate justice needs of victims in northern Uganda, while pursuing the normative goals embraced by transitional justice theorists and advocates.

\begin{itemize}
\item \textsuperscript{285} Ibid.
\item \textsuperscript{286} Pham et al., “When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda,” 49; “The Dust Has Not Yet Settled,” 72.
\item \textsuperscript{287} Pham and Vinck, “Transitioning to Peace,” 20-21.
\end{itemize}
To maximize its impact, the TFV should focus attention on the two programmatic weaknesses revealed in interviews: communication and transitioning responsibility. The tradeoff between increased communication and increased assistance to victims may seem like an obvious decision, but the connection between the TFV assistance and the beneficiary’s status as a victim of an international crime is crucial. An understanding of international condemnation of the harms suffered by victims contributes to victims’ psychological rehabilitation. Further, the relationship between the assistance and the harms suffered by victims complements the retributive mechanisms embodied by the Court with restorative ideals of justice. Without this symbolic distinction, TFV assistance is indistinguishable from other forms of international aid.

In addition to capacity building in hospitals and village communities, the Trust Fund must make direct efforts to transition responsibility to the government. Without this transition, the duration of the Trust Fund’s operations in the region will continue to be indefinite. Presumably, the Trust Fund would terminate its programming in an ICC situation region once the causal link between a victim’s harm and the conflict under ICC jurisdiction disappears or it deems the suffering of victims under Court jurisdiction sufficiently redressed. However, as acknowledged by TFV personnel in interviews, victims may suffer psychological and physical harm for decades following a conflict.

---


289 Hoyle, “‘Can International Justice Be Restorative Justice?’,” 207.

Ending operations before community members feel their suffering has been redressed could create resentment of the TFV, and, by association, the ICC and the international community at large, as indicated by interview participants who believed the Trust Fund’s termination of material support was premature. Actively working with the government could reduce this risk.291

291 Rombouts and Parmentier, “The International Criminal Court and its Trust Fund are Coming of Age,” 162.
5. Conclusion

As of April 2014, the Rome Statute had 139 signatories and 122 parties.\footnote{292} Even the United States, which has failed to ratify the treaty due to concerns of state sovereignty, has embraced the Court by referring cases through the UN Security Council.\footnote{293} This widespread international support suggests nearly universal approval, at least by states’ political elites, of the mechanisms of justice institutionalized by the Statute. Despite this support, many criticisms of the ICC system and transitional justice more broadly stem from concerns of their impacts on local populations or lack of significance and legitimacy to victims. This thesis has sought to move the debates on the ICC and transitional justice in a new direction, one that seeks to understand the implications of reparative assistance provided through a frame of international justice.

As argued in Chapter 2, the Rome Statute establishes a system directly concerned with the principles of transitional justice. All conceptions of transitional justice rely on the dual goals of redressing past abuses and transitioning to a better future, and the Rome Statute system seeks both these goals. The Court responds to past abuses through criminal prosecutions and Court-ordered reparations. These two mechanisms are both restorative and retributive; they punish perpetrators with reparations and other sentences,


deter future crimes, and provide a feeling of “justice served” that can be meaningful to victims.

At the same time, the Trust Fund operates on a primarily restorative model, redressing past abuses through various forms of assistance designed to help victims return to their previous standards of living. By focusing on physical rehabilitation, psychosocial support, and material support, the Trust Fund responds to victims’ immediate needs, which victims care more about than criminal accountability.\(^{294}\) In addition, the Trust Fund helps promote an improved future through capacity-building at the local level. Capacity-building begins to respond to the structural injustices that led to the crimes in the first place, but additional attention should be placed on transitioning responsibilities to the government, which victims perceive as the party most responsible for redress. While these mechanisms cannot address accusations that the Court is biased against Africa, they do resolve claims that the Rome Statute system epitomizes a “Western” form of justice.

The Trust Fund also responds to calls to incorporate local perceptions by designing annual projects based on evaluations of victims’ needs; however, these efforts could be expanded. It bears reminding that recent empirical research on transitional justice suggests that local participation is the most important feature of successful transitional justice programs.\(^{295}\) The TFV could further assist victims through additional

\(^{294}\) Pham et al., “When the War Ends,” 49; “Dust Has Not Yet Settled,” 72.

involvement of victims at the project design and implementation levels, which research has shown to have rehabilitative effects for victims. As suggested by Minow, “The process of seeking reparations, and of building communities of support while spreading knowledge of the violations and their meaning in people’s lives, may be more valuable, ultimately, than any specific victory or offer of a remedy.”

One unanswered question is whether the Trust Fund does enough to connect its programming with the ICC and, by extension, the international community. This connection between the Rome Statute, with its widespread international support, and the assistance offered to those who have suffered international crimes, has symbolic importance that can help victims recover. This international condemnation of harms’ suffered by victims elevates Trust Fund assistance from international aid to international justice. Future research on the Trust Fund should examine this question in the TFV’s second situation country, the DRC. TFV programming in DRC is distinguished from programming in Uganda because the ongoing violent conflict precludes TFV employees and partner organizations from acknowledging their connection to the ICC. The absence of an explicitly acknowledged connection to the Rome Statute raises questions about how the Fund is able to distinguish its assistance from international aid.


297 Minow, Between Vengeance and Forgiveness, 100.


299 Interview by author, Kampala, Uganda, May 17, 2013.
Future research on transitional justice should continue to examine the role of “reparative assistance.” Unlike reparations, reparative assistance does not rely on criminal prosecutions or a direct link between a harm suffered by a victim and a crime committed by a perpetrator. This acknowledges the often-ambiguous lines between victims and perpetrators in many conflicts and can expand reparative assistance to a broader scope of individuals affected by the conflict. Whether victims perceive this assistance as justice, in Trust Fund situations and elsewhere, warrants further study. In addition, future research should seek to understand what types of assistance are most meaningful to victims in transitional societies. Moving beyond top-down, “one-size-fits-all” approaches, future transitional justice endeavors may find the Trust Fund a worthy model to offer reparative assistance uniquely tailored to victims’ needs. Through the TFV’s reparative assistance, the Rome Statute has pioneered a mechanism of transitional justice ready for testing in other contexts.
Bibliography


Apuuli, Kasaija P. “The Impact of the International Criminal Court on Community Reconciliation: The case of Uganda.” Forthcoming in *Journal on Studies in Ethnicity and Nationalism*.


