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## The Post-*Ongwen* Case Period and the Reconciliation Process in Northern Uganda: Local Communities as a Site of Knowledge

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## 1. Introduction

The International Criminal Court's (ICC) trial of Dominic Ongwen, a former commander of the Sinia Brigade of the Lord's Resistance Army (LRA), accused of crimes he himself suffered – he was abducted by the LRA at the age of ten – has been described by many legal scholars as 'both the ICC's success story and the antithesis of what it stands for and fights against'.<sup>1</sup> Indeed, Ongwen is both the one who 'jeopardized the future of humankind'<sup>2</sup> by using children to participate in hostilities,<sup>3</sup> and a victim of this jeopardization of humankind who should have benefited from international legal protection.<sup>4</sup> That said, opening

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<sup>1</sup>T. B. Bouwknecht and B. Holà, *Dominic Ongwen: the ICC's Poster and Problem Child*, <https://www.justiceinfo.net/en/44014-dominic-ongwen-icc-poster-and-problem-child.html>, accessed 18 November 2021.

<sup>2</sup>Former ICC Prosecutor Luis Moreno Ocampo has described those who recruit children to take part in hostilities as individuals who have 'jeopardized the future of humankind'. See 'Statement by Luis Moreno-O'Campo, Press conference in relation with the surrender to the court of Mr Lubanga Dyilo', 18 March 2006.

<sup>3</sup>In the Sentence Decision, the Chamber IX considered this crime 'to be of very high gravity ... in fact particularly striking', and 'not incidental or a result of disregard for the age of the recruits, but ... a specific and methodically pursued organisation-wide policy, which Dominic Ongwen shared and actively sustained'. See ICC, *Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, Trial Chamber IX, Sentence, 6 May 2021, para. 358. On this basis, the Chamber sentenced him to a prison term of 25 years (See para. 373). The sentence was confirmed by the Appeals Chamber. See ICC, *Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15 A2, Appeals Chamber, Judgement, 15 December 2022, para. 374.

<sup>4</sup>In its first decision on child recruitment, the Lubanga Case, the ICC embeds the portrayal of child soldiers as individuals whose trauma from the violence they experienced had left them devastated and damaged for life, requiring specific protection. See M.A. Drumbl, 'The Effects of the Lubanga Case on Understanding and Preventing Child Soldiering', 15 *Yearbook of International Humanitarian Law* (2012) 100-110; B. Holà and T. B. Bouwknecht, 'Child Soldiers in International Courtrooms: Unqualified Perpetrators, Erratic Witnesses and Irreparable Victims?', in M.A. Drumbl and J.C. Barrett (eds.), *Research Handbook on Child Soldiers* (Edward Elgar Publishing, Northampton, 2019), pp. 366-368. Some therefore question the applicability of this rhetoric once the child soldier has come of age in the armed group. See R.L.A. Pangalangan, 'Dominic Ongwen and the Rotten Social Background Defence: The Criminal Culpability of Child Soldiers

the door to discussions of Ongwen's dual identity as both victim and perpetrator<sup>5</sup> from the outset of the trial<sup>6</sup> gave the ICC the opportunity to address the issue of child recruitment in northern Uganda in a comprehensive manner. Indeed, during the trial, the ICC highlighted that the forced recruitment of children affected communities as well as the child soldiers.

The acknowledgement of communities' sufferings was rendered possible by the prominent presence of victims in and outside the courtroom. A total of 4107 people from the villages identified as the sites of Ongwen's crimes – Lukodi, Abok, Odek and Pajule – were registered as victims in the trial.<sup>7</sup> Those who were unable to participate in the trial physically had the possibility to make it virtually through the video screening of the trial (video screening session) sponsored by the Danish Embassy in Uganda<sup>8</sup> and the restitution sessions held by the ICC Outreach Team and the Office of the Prosecutor (OTP).<sup>9</sup> On the one hand, such participation allowed the victims to express their feelings in court and have their voices echoed outside the courtroom. On the

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Turned War Criminals', 33(3) *American University International Law Review* (2018) 629-631.

<sup>5</sup>See A. Branch, 'Dominic Ongwen on Trial: The ICC's African Dilemmas', 11(1) *International Journal of Transitional Justice* (2017) 30-49; W. Nortje, 'Victim or Villain: Exploring the Possible Bases of a Defence in the Ongwen Case at the International Criminal Court', 17(1) *International Criminal Law Review* (2017) 186-207.

<sup>6</sup> See ICC, *Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, Pre-Trial Chamber, Decision, 23 March 2016, paras. 66-67.

<sup>7</sup>Human Right Watch, *Who will stand for us? Victims' legal representation at the ICC in the Ongwen case and beyond* (2017), p. xx.

<sup>8</sup> Personal interview, ICC Outreach Team, Gulu, 3 November 2018.

<sup>9</sup> See ICC, *Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, Trial Chamber IX, Judgement, 4 February 2021, paras. 1172-2008.

other hand, it allowed the ICC to testify to the lasting impact of the LRA's crimes on communities in northern Uganda and acknowledge the victims of a war that for years has been described as the world's largest forgotten and neglected humanitarian emergency.<sup>10</sup> Furthermore, and most importantly, it gave the Court the opportunity to address child recruitment in this region both from the angle of child soldiers and the victims child soldiers left on their path.<sup>11</sup> By emphasizing victims' sufferings, the ICC went beyond its scope and brought to light additional elements that deserve due consideration by peace initiatives in northern Uganda.

The element this paper explores is how the LRA's policy of child recruitment has shaped some community members' views of LRA child soldiers and what these views tell us about the justice needs of some communities and the ideas of human rights these justice needs rely on. According to testimonies collected throughout the trial, people in northern Uganda experienced first-hand the forced recruitment of children by the LRA. Either they were abducted or one of their relatives was. Under these circumstances, one would expect them to support the Defence. Paradoxically, their proximity to this harsh reality has not

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<sup>10</sup> Tek-Gungu, 'Wartime Sexual Violence in Northern Uganda', in P. Schulz (ed.), *Male Survivors of Wartime Sexual Violence. Perspectives from Northern Uganda* (University of California Press, Oakland, 2021), p. 48.

<sup>11</sup> For the purpose of this paper, *child soldier* means every human being below the age of 18 years associated with armed forces or armed groups (See art. 2 African Charter on the Rights and Welfare of the Child).

prevented them from strongly supporting Ongwen's punishment.<sup>12</sup> This position is not a real paradox as many empirical studies from northern Uganda and other war-torn societies show that communities victimized by child soldiers demand accountability before their social reintegration.<sup>13</sup> That said, this *paradox* is interesting to explore in the context of the Ongwen trial because it offers an opportunity to unearth and deepen existing knowledge about the victims of child soldiers. Particularly, it is an occasion to start a conversation as to what we know about the justice needs of victims of child soldiers in northern Uganda, how we know it and from whom.

Given that the recruitment of children by the LRA took place years before the period under investigation by the ICC, this paper suggests that the position taken in the Ongwen trial – supporting the prosecution of a former LRA child soldier – is one of many ways in which these communities view LRA child soldiers. In other words, there are likely to be other ways of viewing LRA

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<sup>12</sup> Human Rights Watch, *supra* note 7, p. xx.

<sup>13</sup>G. Akello *et al.*, 'Reintegration of Former Child Soldiers in Northern Uganda: Coming to Terms with Children's Agency and Accountability', 4 *Intervention* (2006) 235-236; E.K. Baines, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda', 1 *International Journal of Transitional Justice* (2007) 91-96; K. Fisher, *Transitional Justice for Child Soldiers: Accountability and Social Reconstruction in Post-conflict Contexts* (Palgrave Macmillan, New York, 2013); M. Schotsmans, 'No Return Home: The (non-) Reintegration of Youth Ex-Combatants in Sierra Leone as a Challenge to the Contextualisation of DDR and Transitional Justice', in I. Derluyn *et al.* (eds.), *Re-Member: Rehabilitation, Reintegration and Reconciliation of War-Affected Children* (Intersentia, Cambridge, 2012), pp. 189-214; C.K. Kiyala, 'Challenges of Reintegrating Self-Demobilised Child Soldiers in North Kivu Province: Prospects for Accountability and Reconciliation via Restorative Justice Peacemaking Circles', 16 *Human Rights Review* (2015) 99.

child soldiers that need to be identified and analysed to assess the extent to which they might influence current and future transitional justice mechanisms. Therefore, this paper will explore how some community members construct their victimization vis-à-vis their perpetrators – child soldiers – and what notions of human rights they draw upon to do so, to identify these other ways of envisioning child soldiers and the crimes they commit. To this end, it asks the following questions: How do victims of child soldiers construct their victimization? What can this formation process tell us about the justice needs of victims of child soldiers, and the value and relevance of peace processes to be implemented in the post-Ongwen era?

After presenting the context for this research and its methodological aspects, this paper briefly reviews the complex nature of the child soldier phenomenon in northern Uganda by looking at the history of child recruitment by the LRA. It then explores the extent to which it shapes the narratives on child soldiers developed by some community members and the different ideas of human rights that emerge. Then, it explores how these ideas of human rights may affect future transitional justice mechanisms to be designed in the global sphere and influence the relevance of current justice initiatives. It ends with a conclusion.

## **2. Research Context**

### ***2.1. Aim of the Study***

This research aims to discuss the potential impact of the local coexistence of different meanings of child soldiers on justice initiatives in northern Uganda, thus contributing to the advancement of current knowledge about the justice needs of LRA child soldiers' victims from a bottom-up approach. Northern Uganda is a suitable case study for two reasons.

First, a former child soldier from a Ugandan armed group has been identified as one of those responsible for ordering the commission of crimes against civilians in the region, and has been prosecuted by an international court.<sup>14</sup> Second, northern Uganda has, in the process of reintegrating child soldiers, benefited from significant support from foreign humanitarian actors that brought with them a vision of the child soldier that many communities resist. Many communities in northern Uganda resist the *victim* paradigm mobilized by humanitarian actors<sup>15</sup> and demand instead the use of accountability and reparation processes before considering the return of children to the communities.<sup>16</sup>

Empirical studies exploring the challenges faced by child soldiers upon their return to communities provide valuable insights into how communities in northern Uganda respond to

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<sup>14</sup>See ICC, *Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04, Pre-Trial Chamber II, Decision, 8 July 2005, para. 30.

<sup>15</sup>G. Akello, 'Child Agency and Resistance to Discourses within the Paris Principles in Rehabilitation and Reintegration Processes of Former Child Soldiers in Northern Uganda', in M.A. Drumbl and J.C. Barrett (eds.), *supra* note 4, pp. 437-440.

<sup>16</sup>K. Fisher, *supra* note 13, pp. 48-49.

these two visions of the child soldier. However, they provide little information on the different choices these communities make in relation to child soldiers, particularly the evolving process of their formation. The Ongwen case therefore provides an opportunity to begin this conversation and to explore how child soldier-affected communities are likely to perceive and act upon their vulnerability in the face of disruptive knowledge about child soldiers. Given the geographical limitations of this research, it is not intended to be broadly representative. It could, however, pave the way for more in-depth research in similar contexts to increase knowledge about the victims of child soldiers.

## ***2.2. The Conduct of the Research***

This research relied on qualitative data collected through semi-structured group interviews conducted with five groups of people in Lukodi, Abok, Odek, and Pajule from 2nd to 27th November 2018. The focus group was chosen as the method for gathering data as this research was interested in: 1) accessing both individual points of view on LRA child soldiers and the collective perspective; 2) capturing the way in which the significance of the concepts *child soldier* and *victim* are negotiated and co-produced in these four locations to ascertain what ideas about human rights circulate within these communities and how these ideas shape some community members' position in relation to LRA child soldiers. The focus

group is the appropriate method for collecting this kind of data because it takes into account both the dialogue with participants in the group and the interaction that occurs within the group, and it seeks to capture the ways in which meaning is co-produced and embedded in the group context.<sup>17</sup> Furthermore, it favors what Boyden calls ‘a form of collective intelligence.’<sup>18</sup>

The focus groups took place at the end of the video screening sessions and the restitution sessions. The video screening session was structured in the following way. Before the screening, the ICC Outreach Team’s focal point would briefly discuss the trial, the completed session, and provide a recap of the previous screening to the attendees. The video screening of the trial then followed, and finally, there was the question-and-answer session. I was allowed by the ICC Outreach Team in Kampala, Uganda, to attend these sessions. It was an opportunity to immerse myself in the trial’s atmosphere and become familiar with communities’ concerns before proceeding with the interviews. It was decided that at the end of the session, the ICC Outreach Team’s focal point would select interviewees from the residents who had gathered for both sessions.

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<sup>17</sup>J. Sim and J. Waterfield, ‘Focus Group Methodology: Some Ethical Challenges’, 53 (6) *Quality & Quantity* (2019) 3004.

<sup>18</sup>J. Boyden, ‘Anthropology under fire: Ethics, Researchers and Children in War’, in J. Boyden and J. de Berry (eds.), *Children and Youth on the Front Line: Ethnography, Armed Conflict and Displacement* (Berghahn Books, New York, 2004), p. 243.

In each location, people between the ages of 20 and 60 were selected. An element characterized the sample obtained. The focus group participants had either been forcibly abducted by the LRA in their childhood/adulthood or had had their children abducted. This was both an advantage and a disadvantage for the research. The disadvantage is that it could bias the ‘community’ dimension of this research, which would result in the research reflecting only the views of the parents of child soldiers and former child soldiers, rather than those of *ordinary* community members. In northern Uganda, one of every two people had been abducted by the LRA.<sup>19</sup> And some of them managed to escape and return in communities, which suggests that in the four locations studied, many people are former LRA abductees. Consequently, there is no clear delineation between abductees, including former soldiers, and other community members. Both identities apply to all in one way or another, as the abducted of yesterday are the community members of today, and vice-versa. This element was thus beneficial in that it led to a focus on the meaning which some community members in the four locations attach to key concepts of the research, namely *child soldier* and *victim*. Some of the interviewees had been abducted long before the period under investigation by the ICC, which did not affect the data collected as this research is unrelated to people

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<sup>19</sup>Some estimate that the LRA abducted 54000 to 75000 people between 1986 and 2006. See P.N. Pham and P. Vinck and E. Stover. ‘The Lord’s Resistance Army and Forced Conscription in Northern Uganda’, 30 *Human Rights Quarterly* (2008) 404.

registered as victims in the Ongwen trial. Five focus groups (ten people per group) were organized, two of which were held in Lukodi. A total of 50 people (nine women and 41 men) were interviewed.

Conducting interviews in a post-conflict context can, depending on the sensitivity of the topic, lead to a number of threats for the participants (e.g. risk of marginalization) and constraints for the researcher.<sup>20</sup> At the time of the data collection, there was a risk of clashes between two camps: those supporting Ongwen's trial and those opposing it. Although community leaders were working hard to de-escalate such tensions through regular meetings, a number of measures were taken to limit the risks with regard to this research. It was decided that the ICC Outreach Team Focal Point would make the initial contact with interviewees, introducing me and obtaining their consent beforehand. This decision was constraining as I was not the only one involved in the selection of the interviewees. That said, as the selection criteria were 1) residence before July 2002 in one of the four sites under investigation by the ICC 2) age (18 and over) and 3) a personal direct or indirect experience with LRA, the data were not significantly affected in the end. In addition, the involvement of the ICC Outreach Team Focal Point made the participants feel safe and comfortable talking to me about their

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<sup>20</sup> See E. Apio, 'Ugandan's Forgotten Children of War', in R.C. Carpenter (ed.), *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones* (Kumarian Press, Bloomfield, CT, 2007), pp. 96-97.

experiences with the LRA. In Pajule, where it was obvious that expressing conflicting views would lead to people's marginalization and further fragmentation of communities, an additional measure was adopted. The focus group would take place in the school close to the screening area to ensure the safety and privacy of the participants. During the focus group in the three other locations, when conflicting views that would lead to the interruption of the discussion were expressed, I followed the strategy proposed by Kitzinger and Farquhar<sup>21</sup>, that is, to avoid the closing of sensitive possibilities or pushing them too far and instead keeping the discussion at an appropriate level. After encoding and analyzing the data, I cross-referenced them with textual analysis results of the literature review using the intertextual approach.<sup>22</sup>

### **3. The Complexity of Child Soldiering in the Northern Ugandan Armed Conflict**

#### ***3.1. The History of Child Recruitment by the LRA***

The LRA earned notoriety for its brutal method of abducting children and using them to carry out bloody attacks on civilians, and for using fear as a weapon to terrorize the people of Acholiland. While this non-state armed group is not the first to

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<sup>21</sup>J. Kitzinger and C. Farquhar, 'The analytical potential of "sensitive moments" in focus group discussions', in R.S. Barbour and J. Kitzinger (eds.), *Developing Focus Group Research: Politics, Theory and Practice* (Sage Publications, London, 1999), p. 170.

<sup>22</sup>L. Hansen, *Security as Practice: Discourse Analysis and the Bosnian War* (Routledge, New York, 2006), p. 49.

use children in such a way, the logic behind the LRA policy is interesting to note. Its goal was to recreate an Acholi society receptive to Joseph Kony's ideals, for he believed his community had become impure and needed to disappear and be replaced by the pure ones, the abducted children. As a result, some have described the massacres committed by the LRA against the Acholi community as *auto-genocide*.<sup>23</sup>

As the Ongwen trial judgement indicates, the LRA's objective was to overthrow President Museveni<sup>24</sup> who seized power in 1986. After him becoming the president of Uganda, many human rights abuses were committed, particularly against the Acholi community, by the victorious rebels and supporters of Museveni's new government, especially when they invaded Acholiland.<sup>25</sup> Therefore, a succession of armed groups, among them the LRA of Joseph Kony, used military force to resist the government until Joseph Kony's armed group was defeated in 2006.<sup>26</sup> The LRA began fighting the central government and, by extension, the LRA's enemies, in 1988. The LRA saw anyone who collaborated with the Ugandan government as its enemy. The LRA initially gained the support of the Acholi community,

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<sup>23</sup>R. Doom and K. Vlassenroot, 'Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda', 98 (390) *African Affairs* (1999) 26.

<sup>24</sup> See ICC, *The Prosecutor v. Dominic Ongwen*, *supra* note 9, paras 1084-1147.

<sup>25</sup> A. Bogner and G. Rosenthal, 'Rebels in Northern Uganda after their Return to Civilian Life: Between a Strong We-Image and Experiences of Isolation and Discrimination', 51(2) *Canadian Journal of African Studies* (2017) 179.

<sup>26</sup> A. Bogner and G. Rosenthal, *supra* note 25, 179-180.

which perceived Yoweri Museveni as hostile to their people.<sup>27</sup> In the early years of the rebellion, large numbers of Acholi children and adults volunteered to fight Yoweri Museveni's government.<sup>28</sup> In time, the LRA 'became so powerful that it roamed Acholiland almost without a military challenge from the NRA'.<sup>29</sup> But this euphoria was short-lived.<sup>30</sup> Tired of the war, many Acholi turned away from Kony and began to work with the government army, the Uganda People's Defence Force (UPDF).<sup>31</sup> And in the 1990s, some Acholi formed a militia to fight the LRA.<sup>32</sup> To Kony, the loss of interest in the LRA's cause was the result of the betrayal by his people after they aligned with the Ugandan government.<sup>33</sup> The ultimate betrayal was when the Acholi went to live in 'protected' government-run internally displaced persons (IDP) camps.<sup>34</sup> Therefore, they had to be punished. According to Doom and Vlassenroot,

The most obvious change, in fact also the most terrifying one, was the change of conduct in regard to the Acholi people.

Violence was from the beginning a trademark of the

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<sup>27</sup>A. Borzello, 'The Challenge of DDR in Northern Uganda: The Lord's Resistance Army: Analysis', 7(3) *Conflict, Security and Development* (2007) 387-415; A. Branch, 'Uganda's Civil War and the Politics of ICC Intervention', 21(2) *Ethics & International Affairs* (2007) 180.

<sup>28</sup>E.K. Baines, *supra* note 13, 95.

<sup>29</sup>O. Otunnu, 'The Path to Genocide in Northern Uganda', 17(3) *Canada's Journal on Refugees* (1998) 7.

<sup>30</sup>A. Borzello, *supra* note 27, 387-415.

<sup>31</sup>A. Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford University Press, New York, 2011), pp. 75-76; R. Doom and K. Vlassenroot, *supra* note 23, 23.

<sup>32</sup>E.K. Baines, *supra* note 13, 100.

<sup>33</sup>C. Dolan, *Social Torture: The case of Northern Uganda, 1986-2006* (Berghahn Books, New York, 2009), p. 53.

<sup>34</sup>A. Branch, *supra* note 31, p. 77.

movement, but now the people as a whole seemed to be declared guilty.<sup>35</sup>

From that moment, Kony ‘used the people’s refusal to back him as a justification for inflicting horrific forms of violence’.<sup>36</sup> Around 1994, the LRA began targeting the Acholi population, particularly those living in the government-sponsored IDP camps, killing or maiming them by cutting off their noses, lips, and ears.<sup>37</sup> The culmination of this intragroup violence was the mass abduction of children.

The abduction of children should have achieved Kony’s plan to form the ‘nucleus of a new Acholi identity’ as they were ‘supposed to be a blank sheet of paper that may be filled in with Kony’s commandments’, and to build an Acholi society in conformity with his ideology. According to Jackson, ‘Kony views young Acholi as being the most susceptible to his own views – a blank sheet of paper. As such, they will form the nucleus of a new Acholi identity, the old one having proved unsuccessful.’<sup>38</sup> Then, children were used to exterminate the Acholi community Kony was seeing as impure.

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<sup>35</sup> R. Doom and K. Vlassenroot, *supra* note 23, 25.

<sup>36</sup> R. Jeffery, ‘Forgiveness, Amnesty and Justice: The Case of the Lord’s Resistance Army in Northern Uganda’, 46 *Cooperation and Conflict* (2011) 85.

<sup>37</sup>C. Blattman and J. Annan, ‘Child Combatants in Northern Uganda: Reintegration Myths and Realities’, in R. Muggah (ed.), *Security and Post-Conflict Reconstruction* (Routledge, New York, 2008), p. 123; P. Jackson, ‘The March of the Lord’s Resistance Army: Greed or Grievance in Northern Uganda?’, 13 *Small Wars and Insurgencies* (2002) 42-43.

<sup>38</sup>P. Jackson, *supra* note 37, 43.

### *3.2. The Use of Children to Exterminate the Acholi Community*

The children forcibly recruited as soldiers were used to destroy the social fabric of the Acholi community and to fragment families that the LRA suspected of colluding with the Ugandan government. In other words, child soldiers were Joseph Kony's instrument to achieve his malevolent policy of destroying any link between the old Acholi, who were considered impure, and the new Acholi, the children who would come from the LRA. To this end, the abductions were accompanied by violence and fear. Children were forced to kill family members at the time of their abduction or to witness violence against their families.<sup>39</sup> This socialization into violence at the time of recruitment was reinforced in the bush. Children were forced to kill their comrades who did not adapt to the training and those who tried to escape.<sup>40</sup> These children were then sent into their communities during LRA attacks to kill their neighbors, relatives and other community members.<sup>41</sup> Between 30,000 and 60,000 children between the ages of eight and 16 were reportedly forcibly abducted by the LRA between 1994 and 2005 to serve as

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<sup>39</sup>S. Vindevogel *et alii*, 'Forced Conscription of Children during Armed Conflict: Experiences of Former Child Soldiers in Northern Uganda', 35 *Child Abuse & Neglect* (2011) 555.

<sup>40</sup>K. Cheney, "'Our Children Have Only Known War': Children's Experiences and the Uses of Childhood in Northern Uganda', 3 *Children's Geographies* (2005) 28.

<sup>41</sup> G. Akello, *supra* note 15, 447.

combatants in its ranks.<sup>42</sup> These stories have been brought to the international judicial arena through victim testimonies.<sup>43</sup>

This comprehensive review of LRA policy suggests that in the northern Ugandan context, there was collective intragroup victimization, resulting in ‘multiple identity positions experienced by abductees’<sup>44</sup>:

the shocking, brutal reality of this war is that those who have been forcibly recruited, and those who are killed, raped or themselves abducted, all come from the same communities.<sup>45</sup>

Ongwen was no exception to this socialization to violence, having been abducted by the LRA on his way to school in 1986 when he was under 15.<sup>46</sup> Like many children, Ongwen was exposed to the harsh living conditions of the Acholi community before his abduction. According to Baines, despite the suffering inflicted on LRA children, Ongwen had a strong capacity for resilience.<sup>47</sup> As a result, he rose to the leadership of the Sinia Brigade, a branch of the LRA, and became what she calls a ‘complex political perpetrator’.<sup>48</sup> Stories vary about his

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<sup>42</sup> E.K. Baines, ‘Complex Political Perpetrators: Reflections on Dominic Ongwen’, 47 *The Journal of Modern African Studies* (2009) 164.

<sup>43</sup> See ICC, *Prosecutor v. Dominic Ongwen*, *supra* note 9, paras. 2312-2447.

<sup>44</sup> A. Veale and A. Stavrou, ‘Former Lord’s Resistance Army Child Soldier Abductees: Explorations of Identity in Reintegration and Reconciliation’ 13 *Peace and Conflict: Journal of Peace Psychology* (2007) 276.

<sup>45</sup> Z. Lomo and L. Hovil, ‘Behind the Violence. The War in Northern Uganda’ 87 cited by A. Veale and A. Stavrou, *supra* note 44, 276.

<sup>46</sup> A. Branch, *supra* note 5, 38.

<sup>47</sup> E.K. Baines, *supra* note 42, 170.

<sup>48</sup> *Ibid.*

motivation to take up positions in the LRA and become one of its leading figures. For some respondents in Lukodi, Ongwen enjoyed and valued his various positions.<sup>49</sup> For respondents in Odek, he had no choice since refusing Kony's orders would have put him in danger.<sup>50</sup> The latter view is based on Joseph Kony's alleged mystical power to control the minds of LRA soldiers and anticipate their conduct.<sup>51</sup>

The knowledge on which the focus group participants based their understandings of the *child soldier*, the *victim* and the *offender* came from various sources: their personal experience, the testimonies delivered in court and accessed during the video screening sessions, evidence gathered by the prosecution and the defence, and the stories from returnees.

#### **4. Some Communities' Understanding of Child**

##### **Soldiers**

According to Barbot and Dodier, victims of collective tragedies are often confronted with three questions that will shape their meaning of the notion of *victim*: Who should be the target of the legal action (the individual or the organization)? What action should be taken against those responsible? How should they construct and adjust their relationship to the damages paid in

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<sup>49</sup> Focus group, Lukodi, 14 November 2018.

<sup>50</sup> Focus group, Odek, 20 November 2018.

<sup>51</sup> *Ibid.*

money?<sup>52</sup> The definition of the targets of the legal action refers to making a choice between the individualization of the action (i.e., the prosecution of an individual) and the collectivization of the action (i.e., holding an organisation accountable).<sup>53</sup> The second question refers to choosing the suitable judicial mechanism (civil, administrative or criminal action) to convict those responsible for the damage suffered.<sup>54</sup> Finally, adjusting the relationship with the damage involves answering the question: ‘How can we avoid focusing solely on compensation?’<sup>55</sup> How victims approach these questions structures their relationship with their own situation.<sup>56</sup>

Some community members were confronted with the same questions during the focus groups in Lukodi, Abok, Odek, and Pajule. How they answered them structured their understanding of who is a LRA child soldier (including Ongwen) but also of their victimization, which LRA child soldiers essentially caused.

#### ***4.1. The Target of the Legal Action in Case of Crimes Committed by Child Soldiers***

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<sup>52</sup>J. Barbot and N. Dodier, ‘Se Confronter à l’Action Judiciaire. Des Victimes aux Carrefours des Différentes Branches du Droit’, 223-224 *L’Homme, Revue française d’anthropologie* (2017) 107.

<sup>53</sup> *Ibid.*, 107.

<sup>54</sup> *Ibid.*, 116-117.

<sup>55</sup> *Ibid.*, 118.

<sup>56</sup> *Ibid.*, 107.

After the video screenings sessions, attendees in the four locations asked the following questions during the question-and-answer session:

Is Dominic Ongwen responsible for all our misfortunes? Why are we blaming Dominic Ongwen who is a victim of the LRA like us? Doesn't Joseph Kony have any responsibility in all this? And the other members of the LRA, why aren't they worried?

These community concerns<sup>57</sup> about who is to blame for LRA crimes in these four locations reveal two trends in answering the question 'who the target of legal action should be'. In the first trend, the LRA is a homogeneous and interchangeable group of people. They are collectively and indistinctly responsible for crimes committed against their villages, whether they are adults or children.<sup>58</sup> As far as child soldiers are concerned, this trend sees them as Kony's soldiers, regardless of whether they have participated in military activities. Legal action must therefore target both adult and child members of the LRA.<sup>59</sup> We then have the second trend, for which a case-by-case assessment – and thus

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<sup>57</sup>Concerns were raised during the question-and-answer sessions following the screening of the trial in the four locations, which were attended by more than a hundred people. They were also echoed by religious and community leaders and traditional Chiefs, who were working on a model to be used to avoid another cycle of violence within communities between those who support the prosecution of Ongwen and those who oppose it. Personal interview, religious leader, Lukodi, 24 November 2018.

<sup>58</sup>Participants also raised this point during discussions with traditional Chiefs in Pajule, Abok and Lukodi.

<sup>59</sup>In Lukodi, 0/20 participants identified with this trend. In Abok, 3/10 participants identified with this trend. In Pajule, 6/10 participants identified with this trend. In Odek, 8/10 participants identified with this trend.

an individualization of the action – is required before a former member of the LRA can be targeted. This is evident both at the community level – with questions raised following the video screening sessions – and at the individual level through the dialogues within the group discussions, as Kony’s role in the conduct of criminal activities in these locations was repeatedly questioned.<sup>60</sup> In this trend, being a member of the LRA does not automatically mean being a target of legal action for a number of reasons. First, some abductees refused to align themselves with the LRA’s vision and managed to escape despite the violence of the armed group or returned after being granted amnesty by the government.<sup>61</sup> Second, some abductees did not participate in the commission of crimes. Thirdly, many of the children were successful escapees, proving that they never intended to embrace the ideology of this armed group.<sup>62</sup> Therefore, as all abductees did not align with the LRA’s vision, the action must be individualized. This trend includes the following groups of interviewees: those who escaped, those who did not participate in the commission of crimes while in the bush, those who carried loots into the bush and were then released, and those whose children were abducted.

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<sup>60</sup> During the group discussion in Abok, Odek, and Pajule, the role of Kony in the commission of crimes in these locations occupied a large part of the discussion.

<sup>61</sup> Focus group, Lukodi, 25 November 2018.

<sup>62</sup> Focus group, Lukodi, Abok, 14, 15, 25 November 2018.

By calling for the individualization of legal action, the second trend implies that the association with the LRA should not be a prerequisite for being targeted by legal action. Nor should it be a condition for being labelled a child soldier. In other words, with regard to children, being associated with the LRA does not turn an abducted child into a child soldier.<sup>63</sup> Determining the level of *belonging* to the LRA should be the key to distinguishing between a *child abductee* (a child who refused to subscribe to Kony's ideology and managed to escape) and a *child soldier* (a child who embraced Kony's vision and remained in the LRA).<sup>64</sup> Two criteria must thereby be considered for any legal action. The first criterion should be the child's deliberate intention to subscribe to Kony's murderous ideology. The second criterion to consider should be the willingness to achieve Kony's agenda through attacks on civilians.

Consequently, there are in the second trend two categories of people who should be targeted by legal action: 1) those who caused the suffering of the Acholi people, namely Joseph Kony, and 2) those who helped Kony achieve his goal, namely the child soldiers who refused to escape and became consequently

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<sup>63</sup>This vision of who is a child soldier differs from the definition promoted by international policy, which defines a child soldier as 'any person below eighteen years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes'. See point 2.1 of The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007.

<sup>64</sup> These interviewees described themselves and their children as abductees, not as soldiers.

Kony's soldiers, such as Ongwen.<sup>65</sup> Within this trend, Ongwen symbolically represents the abductees who have embraced the LRA's ideology, have accepted to serve its agenda, have consequently become child soldiers, and who should therefore be punished. The following categories should not be targeted for legal action: 1) those who were abducted and managed to escape<sup>66</sup> and 2) those who did not participate in criminal activities.<sup>67</sup>

Overall, whether a child falls into the category of *abductee* or *soldier* depends on the type of relationship with the LRA. Furthermore, as we will see in the next section, escape is seen by many interviewees as a reason to absolve children of the crimes they have committed and as an additional indicator to distinguish between a child soldier *victim* and a child soldier *criminal*.

#### 4.2. *Who Should be Entitled to Victim Status?*

Before considering the target of the legal action, focus group participants wanted to define themselves in relation to the child soldiers, as many people were abducted by the LRA<sup>68</sup>, by addressing these questions: 'Who deserves the victim status: the child soldier, the community, or both?' Focus group participants

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<sup>65</sup> Focus group, Lukodi, 14, 25 November 2018.

<sup>66</sup> 20 participants who were abducted identify themselves as abductees, not as LRA members. Focus group, Lukodi, Abok, 25, 15 November 2018.

<sup>67</sup> Focus group, Lukodi, Abok, 25, 15 November 2018.

<sup>68</sup>As a reminder, more than 200,000 people were abducted by the LRA in northern Uganda between 1994 and 2005.

in the four locations learned from their own experience or from other returnees (including their children) that life in the LRA was filled with unspeakable suffering.<sup>69</sup> As a result, communities expressed resentment towards LRA leaders, whom they saw as responsible for their children's suffering, and felt compassion for abducted children for years. When they were alerted to the case opened by the ICC, they welcomed the ICC's impending involvement in their situation.<sup>70</sup> After learning from Ongwen's legal team about his identity as a former child soldier<sup>71</sup>, interviewees took several – sometimes conflicting – positions.

A woman in Odek reported feeling confused when she heard Ongwen's story. Having had a child abducted who never returned, she expressed remorse for supporting the prosecution of someone who had experienced unspeakable suffering and who could have been her child. Three women in the focus group agreed by nodding their heads. However, this woman was quick to point out, as did the other nine interviewees, that Ongwen was prosecuted for crimes committed during his adulthood.<sup>72</sup> Participants in this focus group refused to answer the question : 'Would the answer be different if Ongwen was prosecuted for crimes committed before his 18th birthday?', claiming that a focus on his past as a child soldier was now irrelevant. He should

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<sup>69</sup> Focus group, Lukodi, Odek, Abok, 14, 20, 15, November 2018.

<sup>70</sup> Focus group, Lukodi, Abok, 14, 15, 25 November 2018.

<sup>71</sup> Except for a young woman from Abok who lived with Dominic Ongwen in the same military camp, none of the focus group participants in the four locations knew Dominic Ongwen's story before the trial.

<sup>72</sup> Focus group, Odek, 20 November 2018.

have stopped attacking people when he turned 18. The remorse expressed at the beginning of the group discussion was thus obscured by the OTP's decision to charge Ongwen for crimes committed after he reached 18. For these community members, therefore, Ongwen should be disqualified from the victim status because he committed crimes as an adult.

The Abok interviewees raised another set of issues. One young woman, who was abducted at the age of 12, reported living with Dominic Ongwen in the same military camp. She knew his story long before it was made public by the defence team. For her, even if people in the group discussion disagreed, Ongwen was merely subject to the treatment that all children were subjected to. It would thus be unacceptable to make him bear the burden of Joseph Kony's crimes. He should be seen as a victim.<sup>73</sup> Four participants in the focus group disagreed, saying that Dominic Ongwen should have done what other children did and run away from the LRA. If he had, he would have deserved to be treated as a victim. He refused to leave, even when President Museveni offered them amnesty. So he lost his status as a victim on his own.<sup>74</sup> This conversation suggests that, for these participants, members of their locations should be the only ones to be granted victim status. Child soldiers like Ongwen should be treated as criminals and punished.

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<sup>73</sup> Focus group, Abok, 15 November 2018.

<sup>74</sup> Focus group, Abok, 15 November 2018.

This last point was echoed in discussions with interviewees in Lukodi, particularly a man abducted by the LRA at the age of 15 in the 1990s. For him, Ongwen lost his privilege as a victim when he chose to stay with the LRA. When I asked him if he saw a difference between himself and Ongwen, he replied:

The difference between Ongwen and me is that I refused to stay in the armed group and to adapt to the LRA way of life. At my young age, I already had the knowledge of right and wrong. And I knew that killing was wrong. That's why I chose not to stay with the armed group and to run away despite Joseph Kony's mystical powers. And I am not the only one. Many children who had been forcibly enrolled managed to flee. And today the defence lawyer wants us to believe that Ongwen was unable to flee the armed group. He wanted to stay there, and that makes him different from the rest of us. Because of this difference, he should not be considered a victim because he finally refused that role.<sup>75</sup>

Lukodi's nine other focus group participants entirely agreed with him. To the question 'Would that answer be different if Ongwen was prosecuted for crimes committed before his 18th birthday?', their answers remained the same. Having been forcibly recruited or having had children who were forcibly recruited, they considered their children (and themselves) to be different from Ongwen because they refused to belong to the LRA. Therefore,

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<sup>75</sup> Focus group, Lukodi, 25 November 2018.

they vigorously claimed that any child who did not want to escape from the armed group should be treated as a criminal and any child who fled the armed group should be treated as a victim. In other words, they see themselves or/and their children as the only ones to be entitled to the status of victims.

In summary, the different answers to the question ‘Who deserves the victim status: the child soldier, the community, or both?’ reveal that *escape* is seen by the interviewees as the key indicator to consider in distinguishing between a child soldier *victim* and a child soldier *criminal*. Together with the responses to the question ‘Who should be the target of the legal action’, these elements suggest that for some community members in the four locations, association with the LRA does not make an abducted child a child soldier, nor does it make him or her a criminal child soldier. And Ongwen corresponds to the meaning some community members give to the notion of *criminal child soldier* as he remained in the armed group and continued to contribute to Kony’s project during his adulthood.

#### ***4.3. Reparation Aspects in the Case of Crimes Committed by Child Soldiers***

Following the focus group discussions, another issue arose; Joseph Kony’s alleged mystical power and its potential implications for reparations. During the video screening sessions, attendees repeatedly expressed concern about the

likelihood that the ICC would consider Joseph Kony's spiritual power.<sup>76</sup> In fact, during the trial, the defence called several traditional Acholi doctors to demonstrate that Joseph Kony had spiritual control over LRA members. According to traditional leaders<sup>77</sup>, if Joseph Kony were found to have exercised mind control over LRA members, child soldiers would have to be treated as manipulated and bewitched persons within these four locations. No action, including claims for reparations, could therefore be taken against them by communities.<sup>78</sup>

Interviewees from Lukodi unanimously had a different opinion.<sup>79</sup> For them, if Kony had the power to control people's minds, how could it be that many children managed to escape from the LRA without him being able to stop them through mind control or find them once they had escaped?<sup>80</sup> This question led them to the conclusion that, regardless of the issue of the trial, Kony has no mystical power. Therefore, regarding the success stories of escapees they presented during the group discussion, they emphasized that all child soldiers who did not want to leave the LRA pretending Kony had the power to control their mind

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<sup>76</sup> Screening session, Lukodi, Odek, and Abok, 14, 20, 15 November 2018.

<sup>77</sup> Personal interview, local Chief, Odek, 20 November 2018.

<sup>78</sup> *Ibid.*

<sup>79</sup> In Abok and Pajule, four and six participants, respectively, strongly believed that regardless of the ICC's consideration, Kony has mystical power that bewitched child soldiers. Therefore, child soldiers should be treated as victims as crimes they committed were not their fault. Focus group, Abok and Pajule, 15, 22 November 2018.

<sup>80</sup> Six participants in the group discussion were abducted in the 1990s but managed to escape, and four women had their children abducted who successfully left the LRA. Focus group, Lukodi, 25 November 2018.

should not be entitled to the status of victim. Rather, they must repair the damage caused by their actions.

As the discussions of the mystical power of Joseph Kony in Lukodi show, the will to defy Kony and his mystical power by running away is proof that a child has refused to embrace Kony's ideology. It is therefore a key to deciding which category of LRA child soldiers deserves the status of victim, and an additional indicator in distinguishing between a *victim* and a *criminal*. Children who have defied Kony and his power are, according to Lukodi's interviewees, the ones who deserve the status of victim. Former child soldiers like Ongwen must be treated as criminals.

Discussions in focus groups raised many points in answering these questions: Which of the child soldiers or the community should be considered a victim? Which of the child soldiers or Joseph Kony should be held responsible for the harm done to the Acholi people? and Which of the child soldiers or the victims of their criminal acts should be entitled to reparations? As the data suggests, the demarcation between child soldier *victims* and child soldier *criminals* is not constructed in a similar way by the interviewees – albeit the level of affiliation to the LRA seems to be the key condition – leading to different constructions of child soldiers and a lack of consensus among some community members on mechanisms to be implemented to ensure reconciliation in the region.

## **5. Implications for Peace-making Processes in the Post-Ongwen Case Era**

The use of restorative justice is highly recommended by scholars for its propensity to capture the victim–perpetrator identity of LRA child soldiers and to provide a space for child soldiers to ask for forgiveness and for their victims to forgive them. The different meanings given by some community members from Lukodi, Abok, Odek, and Pajule to the concepts *child soldier* and *victim*, as described in the previous sections, reveal three ways of approaching crimes committed by LRA child soldiers within these communities. These approaches are rooted in two different paradigms, namely the *it's not your fault* paradigm and the *unacceptable* paradigm.

The fact that community members rely on a diversity of paradigms suggests that the justice initiatives to be implemented in northern Uganda should creatively strike a local balance between child soldiers' needs and the needs of the communities they have victimized beforehand, to be a tool that effectively supports post-conflict reconstruction.

### ***5.1. Criminal Child Soldiers as the Unique Victims to be Acknowledged***

The first approach to crimes committed by LRA child soldiers views criminal child soldiers as *exclusive victims* because they were destroyed by the life in the bush and used by Kony's

mystical power as a tool to inflict harm among their communities. This approach is based on the idea of *it's not your fault*, whose meaning is different from the one deployed by humanitarian actors involved in the reintegration process of child soldiers in northern Uganda and elsewhere. The *it's not your fault* paradigm mobilized by humanitarian actors implies that, because child soldiers were necessarily forcibly recruited, they have been socialized into violence, so that any crimes they commit are not their fault. They cannot be blamed. Instead, adults must be held accountable because they forced the children to do harm.<sup>81</sup> This paradigm accompanies the reintegration of child soldiers in order to encourage families to accept them with ease.<sup>82</sup> As to the contemplations of certain participants in Abok, the foundation of their *it's not your fault* paradigm lies in Kony's mystical powers.<sup>83</sup> This means that, for this approach, child soldiers should not be seen as responsible for their crimes and should not be held accountable because whatever they did was not of their own volition and therefore not *their fault*. Their

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<sup>81</sup> S. Shepler, 'The Rites of the Child: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone', 4 *Journal of Human Rights* (2005) 200, 203; M. Utas, 'Building a Future? The Reintegration and Re-Marginalisation of Young Ex-Combatants in Liberia', in P. Richards (ed.), *No Peace No War: An Anthropology of Contemporary Armed Conflicts* (James Currey, Oxford, 2005), pp. 137-54; M.A. Drumbl, *Reimagining child soldiers in International Law and Policy* (Oxford University Press, Oxford, 2012), pp. 37-40.

<sup>82</sup> C. Ryan, *Children of War: Child Soldiers as Victims and Participants in the Sudan Civil War* (I.B. Tauris, London, 2012), p. 19; K. Hill and H. Langholtz, 'Rehabilitation programs for African child soldiers', 15 *Peace Review* (2003) 281-283.

<sup>83</sup> Focus group, Abok, 15 November 2018.

minds were controlled by Joseph Kony.<sup>84</sup> For this approach, therefore, child soldiers, including Ongwen, are the only victims to acknowledge.

This approach to crimes committed by child soldiers is also based on a specific meaning of the *unacceptable* paradigm. This specific meaning refers to the idea that the treatment children were subjected to during their life in the bush was the worst and was undeniably *unacceptable*. Child soldiers have become *animals* who are destroyed by life in the bush and the violence they have been constantly exposed to, not criminals. As a woman in Lukodi said:

My son does not know anymore how to live in society. He has lost the sense of right and wrong. I don't know what to do with him. He gets angry every time I try to tell him he has done wrong. He drinks too much; he beats people when he is drunk. He is not bad. On the contrary, he has been destroyed by life in the bush. There are many in the village. We don't know what to do to help them and how to live with them.<sup>85</sup>

For this reason, this approach perceives the victimization of child soldiers as more critical than the suffering of those who remained in IDP camps, even if they were attacked by the LRA.<sup>86</sup> Therefore, it is of the view that child soldiers should not be prosecuted or held accountable; instead, something should be

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<sup>84</sup> *Ibid.*

<sup>85</sup> Focus group, Lukodi, 25 November 2018.

<sup>86</sup> Focus group, Lukodi, 14, 25 November 2018.

done to help them heal from the trauma. Regarding how to deal with criminal child soldiers, this first approach aligns with the *it's not your fault* paradigm mobilized by humanitarian actors, as it advocates for the healing of child soldiers rather than their prosecution, which it sees as an injustice.

### ***5.2. Criminal Child Soldiers as a Continuity of Community Suffering***

The second approach to crimes committed by child soldiers is based on the second variant of the *unacceptable* paradigm, which refers to the idea that children were manipulated by malevolent adults who implemented the policy of terror that characterized the LRA. In other words, this approach sees LRA child soldiers as people who were used as tools to carry out the LRA's agenda, namely exterminate the Acholi community. They killed civilians because they were forced to and they had to survive, not because they agreed with the LRA's criminal ideology. The evil adult behind the misfortunes of the Acholi people, Joseph Kony, should be held accountable for these crimes, not the children, even if they have reached adulthood. For that reason, this approach perceives the victimization experienced by people in the four locations as an extension of the one experienced by child soldiers. As most of the children were forced to commit crimes in their neighborhoods<sup>87</sup>, this approach sees LRA child soldiers

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<sup>87</sup> Some focus group participants in Lukodi witnessed the violence inflicted on children to commit crimes. Focus group, Lukodi, 14, 25 November 2018.

as *irresponsible criminals*. As a result, it disapproves of the prosecution of child soldiers like Ongwen and seeks to circumvent it by advocating for the use of traditional rites of reconciliation for children and the prosecution of adults who abducted children.<sup>88</sup> Interviewees supporting this approach are people whose children have been forcibly abducted or have experienced forced recruitment. This variant of the *unacceptable* paradigm is closer to the *it's not your fault* paradigm mobilized by humanitarian actors as it advocates for cleansing rituals instead of accountability for child soldiers.

### ***5.3. Criminal Child Soldiers as Individuals to be Held Accountable***

We finally have the third way of constructing criminal child soldiers among interviewees from Lukodi, Abok, Odek, and Pajule, which corresponds to the third variant of the *unacceptable* paradigm. The *unacceptable* refers here to the idea that children should be considered criminals from the moment they have willingly embraced the LRA project by refusing to escape. Because they did not escape, it is unacceptable not to punish them, as this could promote a culture of impunity within communities. As noted above, some focus group participants have argued that many children have succeeded in escaping from the LRA. As a result, the mystical powers of Joseph Kony or the

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<sup>88</sup> Focus group, Abok, 15 November 2018.

assumption that abductees might be killed if they failed to escape is an unacceptable ground to forgive those who remained in the LRA for years, such as Ongwen. Following these arguments, what is *unacceptable* for this approach is forgiving the actions of former LRA child soldiers who decided to stay in the bush. It therefore strongly supports the conviction of former child soldiers like Ongwen and sees Ongwen's prosecution as a reminder to all former child soldiers that they will be punished. We have an example of how this approach is mobilized on the ground from one interviewee's personal story as a former abductee in Lukodi.<sup>89</sup> The LRA abducted him in Lukodi in the 1990s. After several years, despite Joseph Kony's alleged mystical powers, he escaped from the armed group. Because of his willingness to leave the armed group, this participant believes that it is unacceptable to treat child soldiers who chose to remain in the LRA as victims. Only those who refused to identify with the armed group and did everything in their power to escape should be considered victims and forgiven. In sum, for this approach, those who stayed in the armed group, held positions, and remained complacent should bear responsibility for their crimes. Forgiving them would be unacceptable.

#### ***5.4. Lack of Unanimity over the Mechanisms to be Implemented in the Post-Ongwen Era***

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<sup>89</sup> Focus group, Lukodi, 25 November 2018.

The diversity in the meaning some community members attach to the notion *criminal child soldier* leads to a lack of unanimity as to which mechanism to implement to ensure accountability of those considered as the target of legal action, and to promote reconciliation in northern Uganda. This element is consistent with previous observations that this lack of unanimity is due to the difficulty communities have in ‘distinguishing the “collaborators” and “sympathizers” from those acting under duress’.<sup>90</sup>

Interviewees who rely on the second approach – the one viewing LRA child soldiers as irresponsible criminals – expressed dissatisfaction and concern about the injustice that Ongwen was facing in The Hague.<sup>91</sup> For them, child soldiers should go through traditional cleansing mechanisms, such as the *Mato Oput*, as they believed this is the only mechanism to heal the trauma they have experienced. At the same time, it is the only mechanism that can restore their trust in these former child soldiers. However, as trying Ongwen was the only way to access reparations, these interviewees were reluctant to mention his victimhood during the video screening sessions or advocate for its consideration by the judges.<sup>92</sup> One interviewee from Lukodi, however, highlighted the difficulties of using this traditional

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<sup>90</sup> R. Jeffery, *supra* note 36, 85.

<sup>91</sup> Focus group, Abok, 15 November 2018.

<sup>92</sup> *Ibid.*

justice mechanism. *Mato Oput* is not a cleansing mechanism but primarily a dispute resolution mechanism.<sup>93</sup> As a result, victims are unlikely to use the *Mato Oput* for fear of getting into disputes with former child soldiers. On the other hand, if a former child soldier who has become an adult confesses responsibility for the commission of crimes, he or she could see the confession used against him or her in criminal proceedings. Therefore, few returnees would be willing to go through such mechanisms, especially since the government has granted amnesty to all children who have returned or been released from captivity.<sup>94</sup>

Focus group participants who align with the third approach – the one that sees LRA child soldiers as criminals – do not believe that the criminal justice system should be used. They indicated in Lukodi that they do not trust the Western system because it will not bring out the full complexity of the crimes committed by LRA child soldiers like Ongwen.<sup>95</sup> They are of the view that criminal child soldiers should instead be held accountable through the *Mato Oput* and then ask for forgiveness according to Acholi culture. As such, they would have access to reparations and reconciliation under the guidance of paramount Chiefs. After the discussion with the OTP's representatives, these Lukodi interviewees took a more nuanced view. They started to

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<sup>93</sup> Focus group, Lukodi, 14 November 2018.

<sup>94</sup> Focus group, Lukodi, 14 November 2018.

<sup>95</sup> *Ibid.*

see the ICC trial as the key to access reparations, and the *Mato Oput* as the starting point for the peace process after Ongwen's return to society.<sup>96</sup>

The Ongwen trial has made this lack of unanimity over the mechanism to be implemented in the post-Ongwen era invisible, due to community expectations of reparations. Indeed, whether or not they were convinced of the children's autonomous role in the commission of the crimes, interviewees who were registered as victims in the trial were expecting to receive reparations for the harm done. Accordingly, the need for reparations outweighed concerns about who should bear responsibility for the suffering of the Acholi people.

## **6. Conclusion**

Discussions from focus groups in Lukodi, Pajule, Abok and Odek reveal that the meanings these community members give to the notions *child soldier* and *victim* are far different from the traditional definition provided by international law and policy. In this case, the level of *belonging* is the key condition to be called an *LRA child soldier* or a *criminal*, not the simple association with the armed group as international law and policy commonly approach child soldiering. These discussions also reveal that there are different approaches to the crimes committed by LRA child soldiers among these community

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<sup>96</sup> Focus group, Lukodi, 25 November 2018.

members, as not all villages were affected by the crimes committed by child soldiers in the same way, and not all interviewees experienced child recruitment in the same way. We have a first approach that sees them as *exclusive victims*, a second approach that sees them as *irresponsible criminals*, and a third approach that sees them as *criminals*. The Ongwen trial has hidden this complex reality behind the child soldiering in northern Uganda as those registered as victims in the trial will have access to reparations as Ongwen has been sentenced, and this shared expectation has apparently put them in the same box. Indeed, as this paper has shown, the Ongwen trial has masked the fact that some community members are far from reaching a consensus regarding how to deal with LRA child soldiers who have committed crimes or how to respond to communities affected by such crimes. The distinction between child soldier *victim* and child soldier *criminal*, and between *child abductee* and *LRA child soldier* is not made by focus group participants in the same way.

These elements suggest that peace initiatives in northern Uganda should not assume that all communities will support the criminal justice process or restorative justice to address crimes committed by child soldiers, or that all communities will see child soldiers in the same way. Instead, further research should be undertaken at the regional scale to collect all ideas of *child soldiers* and *victims* that circulate within these communities, keeping in mind

that the child recruitment started long before the ICC investigation. Then, they will come with a comprehensive material composed of diverse local understandings of *unacceptable, child soldier, it's not your fault, belonging* and *accountability* that will constitute the starting point for assessing the justice needs of child soldiers' victims and tailoring creative responses to each community. In other words, this paper suggests that peace initiatives should adopt a bottom-up approach that will be the most inclusive of various communities' needs and concerns. Under this condition, they will provide answers that will reflect those needs and concerns while remaining in line with the goals of global policies and transitional justice. As such, peace initiatives will be a valuable tool in supporting local chiefs to de-escalate violence between supporters of Ongwen's punishment and supporters of Joseph Kony's single punishment and prevent potential struggles in the Post-Ongwen case era.