

3 | *The Big Tent of Justice in Uganda*

Along an unpaved road outside of the city of Gulu in Northern Uganda is the village of Lukodi. As you travel the road from Gulu, you pass family compounds ringed with traditional Acholi huts, round rooms made from mud and topped with pointed grass roofs, surrounded by fields of millet and casava. Lukodi is a small village with a weekly market and a primary school. Peaceful now, on May 19, 2004, the village was the site of a brutal massacre by the Lord's Resistance Army (LRA). Initially the assault targeted the Army and Home Guard stationed in the village, but once the military was defeated, the rebels turned on the civilians. Huts were set ablaze, people and farm animals were burned alive, and those that tried to escape were shot. "The rebels simply went about killing everyone they found," said one woman who survived that day by hiding in an unfinished pit latrine (Justice and Reconciliation Project, 2011: 14). By the time the LRA left the village, more than sixty men, women, and children had been killed and many more abducted.

Conducting research in Northern Uganda in 2020, I was invited to Lukodi to visit a memorial and museum of that massacre. The modest museum is housed in a room of the local primary school. One exhibit includes personal descriptions and photos of the victims of the massacre. Another display includes a locally famous bicycle that saved the life of a villager when an LRA bullet hit the bike's frame instead of him. At the museum, I met with survivors of the Lukodi massacre, and we spoke, among other things, about their hopes for justice and accountability for the harms they suffered. While transitional justice and human rights have been near-omnipresent buzzwords for the Ugandan government and the international donor community over the last fifteen years, the people I met in Lukodi spoke of a lack of accountability and justice for the harms they experienced. Although the massacre was committed by the LRA, villagers expressed a deep resentment toward the government and blamed the military for not

doing a better job to protect their community despite the army's presence in the area. An elder attributed the current government's marginalization of the Acholi community as a punishment for the ethnic group's past allegiances to the opposition regime. Villagers called for accountability for these harms, but they voiced little hope for meaningful change.

Back in Kampala, the government of Uganda has seemingly approached its professed commitment to transitional justice with gusto. In 2003, Uganda became the first state to refer a case to the International Criminal Court (ICC). In addition to its ICC referral, the government has supported accountability and reconciliation efforts through the creation of the International Crimes Division (ICD) within the Ugandan High Court and the revitalization of customary chieftain structures. In 2019, the Cabinet passed a sweeping National Transitional Justice Policy (NTJP) with the goal of addressing the legacies of past violence in Uganda from independence to the present day. Yet transitional justice in Uganda has yielded comparatively little by way of justice for the people of Northern Uganda and has failed to hold members of the Ugandan military or government accountable for past abuses. In this way the people in Lukodi feel gaslighted: being told they are receiving justice when there is no justice to be found. In the presence of transitional justice, meaningful accountability has not materialized. How could this gap between the promise and reality be so large?

While transitional justice has proliferated in Uganda, these efforts have been stymied within existing governing institutions under the control of the Ugandan government, allowing government actors to avoid punishment for their wrongdoings while appeasing international demands for accountability – *a strategy of containment*. While provisions for reckoning with government wrongdoings are included in the mandate of the ICD, through the work of customary justice practices, and the NTJP, the containment of transitional justices within the government's "big tent" of governance has effectively blocked state accountability and weakened the transitional justice response. Rather than risk the creation of a new and independent accountability institution, the government, under the leadership of President Yoweri Museveni and the National Resistance Movement (NRM), has contained its norm response. The government of Uganda has addressed demands for accountability through institutions closely monitored and

controlled by the government to minimize the risks of compliance to NRM rule. Containment is an effective strategy given the governance capabilities of the Uganda government along with the domestic constraints of a hybrid regime. My theory of strategic adaptation suggests that governments with mid-range capacity for control of their norm response, such as that of Uganda, are most likely to engage normative pressure by containing their response within existing power structures. Transitional justice in Uganda demonstrates this strategy of containment.

In this chapter I present the Ugandan government's strategy of containment, wherein transitional justice is enmeshed within existing structures of power, which allows the government to monitor and control the risks of norm compliance. The chapter begins with a discussion of the history of armed conflict in Uganda, particularly the war against the LRA in the north of the country and the government's abuse of Acholi civilians. I then examine the Ugandan government's adaptation of transitional justice to identify and evaluate the containment strategy in which the threat of accountability is managed by integrating transitional justice into government-controlled institutions, functionally rendering impunity for the state. I explore the containment strategy through three components of transitional justice in Uganda: the ICD, state-regulated customary justice practices, and the NTJP. Next, I present alternative explanations for impunity in Uganda. To explore the strategy beyond the case of Uganda, I examine transitional justice in Côte d'Ivoire, another case in which a mid-range capacity for control has led to strategic adaptation through containment.

Four Decades of War in Uganda

In 2012, a small US-based NGO, Invisible Children, produced a documentary called *Kony 2012*, which called for a global campaign to arrest the leader of the LRA, Joseph Kony, by the end of that year. With support from celebrities like Oprah Winfrey, Justin Bieber, Bill Gates, and Kim Kardashian, the video spread virally, eventually amassing more than 100 million views on YouTube. In just a few days the plight of Northern Uganda was rocketed to the center of the world stage. The video portrays Joseph Kony as a crazed cult leader and

ruthless killer, abducting innocent children and fighting only for his own power. But the *Kony 2012* message has been criticized for “peddling dangerous and patronizing falsehoods” by promoting a “let’s get the bad guy script” that is the problem, not the solution to instability in Uganda (DeWaal 2012). Alex DeWaal, Executive Director of the World Peace Foundation, has argued that this demonization of Kony elevates a military solution over a political one and negates the long history of marginalization of the people of Northern Uganda (DeWaal 2012).

While *Kony 2012* offers a one-dimensional view of the barbarity of Joseph Kony, the story of the conflict in Uganda is much more complex. The video, along with other international media, has dismissed the members of the LRA and Kony himself as spiritual crackpots, “mad”¹ and “messianic”² warlords, with no coherent political agenda, yet there is a richer debate over the LRA’s true political and military motivations (Branch 2015). The group and its struggles represent a long fight based on deeply rooted grievances and calls for greater representation and inclusion for the Acholi people in Ugandan politics (Finnström 2008). Furthermore, while particularly brutal, the conflict with the LRA is not the only recent episode of violence in Uganda. Uganda’s political history has been marred by civil wars, coups, and state repression. There has not been a peaceful transition of power in Uganda since the country gained independence from Great Britain in 1962.

Ugandan’s current president, Yoweri Museveni, and the National Resistance Army/Movement (NRA/M) came to power in January 1986 following a civil war that ousted then-President Milton Obote. Having captured the capital Kampala, the NRM formed a broad-based government. Ideologically, the NRM’s government reflected an anti-sectarian stance and formed an inclusive “big tent” government, but the rise of Museveni’s NRM party did not end the cycle of violence in the country. By the early 1990s, more than twenty rebel groups were at war with the new government (Lewis 2020; Lindemann 2011). Yet no group would rise to the same level of acclaim or threat as the LRA.

While in power, much of Obote’s army had been comprised of soldiers from the Acholi ethnic group originating in Northern Uganda. As a direct reaction to the perceived alliance of the Acholi

¹ www.theatlantic.com/international/archive/2011/10/the-bizarre-and-horrifying-story-of-the-lords-resistance-army/246836/ (accessed October 29, 2023).

² www.csmonitor.com/World/Africa/Africa-Monitor/2011/1108/What-is-the-Lord-s-Resistance-Army (accessed October 29, 2023).

with Obote, following the NRM's military victory, Museveni excluded Acholi leadership from his coalition government and launched a counterinsurgency campaign into Acholi strongholds to root out potential future challengers. These actions amplified already existing ethnic tensions between the north and the south of the country, which is home to Museveni's ethnic group, the Banyankole, and the Baganda, the largest ethnic group in Uganda. The conflict between the LRA and the government of Uganda was, in part, a reaction to the exclusion and marginalization of the Acholi community once Museveni took power.

In the early years of the war, the LRA fought a guerilla campaign against military and police targets. But by the mid-1990s, Acholi support for the LRA weakened, recruitment began to wane, and supplies ran low. Faced with diminishing local support and a lack of voluntary recruits, the LRA pivoted to a tactic of forced recruitment and abductions, conducting raids to loot food and other supplies to maintain its fighting capacity. The LRA preyed on the very community it was alleging to represent. At times these abuses were barbaric, including body mutilations and decapitations.³ John-Baptist Odama, Archbishop of the Roman Catholic Archdiocese of Gulu since 1999, described this pattern of violence in an interview:

*The local people here refused war because they thought the earlier rebellion of 1986 through 1988 was enough. They refused to continue to support the LRA. They said, "No, you should come back [from the bush]. There should be no more problems." When this happened, the LRA got angry with the local population. That's why they became very aggressive: cutting off hands, chopping ears, noses, lips, and so on. This was what I would call a revengeful aggression.*⁴

Over time the conflict spread from Northern Uganda south and east into the Lango and Teso subregions and north and west into South Sudan, the Democratic Republic of Congo (DR Congo), and the Central African Republic. This "revengeful aggression" led to the deaths of tens of thousands of civilians and more than 66,000 children abducted as soldiers and sex slaves (Blattman & Annan 2010: 135). The LRA is still at large in DR Congo and the Central African Republic.

³ <https://reliefweb.int/report/uganda/uganda-alice-i-saw-my-friend-being-beheaded-and-his-body-cut> (accessed July 23, 2024).

⁴ Interview with Archbishop John-Baptist Odama, Gulu, Uganda, September 9, 2013, notes on file with author.

Civilian Abuses in Northern Uganda by the Uganda Peoples' Defence Forces

During those days of war people used to cry. They are tired of living in the camps, it's like death. The Acholi children are crying. They want to come back home.

Lyrics from "Living in the Camps," by Opira Morise Kato⁵

While international attention has remained focused on the brutality of the LRA, the Museveni government has caused massive suffering on its own account, specifically through its mistreatment of Acholi citizens. "Our community was sandwiched in between the government and the LRA," said Rosalba Oywa, a committed human rights activist and Acholic community leader. "Atrocities were being committed against civilians rather than directed at the fighters themselves."⁶ Starting in 1996, under the auspices of protecting the population from LRA raids and abductions, over ten years the Ugandan government moved almost the entire rural Acholi population to internally displaced persons (IDP) camps. The Acholi often resisted this relocation, which occurred under threat of violence by the Uganda Peoples' Defence Forces (UPDF),⁷ including killings, bombings, and the burning of villages (Branch 2015). A focus group participant in Atiak described his move in this way:

*When [the government] told us to come to the camps they did not explain to us what this meant. For some of us it was not easy to come to the camps. People's huts were burnt to force us to leave home. [The soldiers] beat us with canes. Many people doubted the intentions of [the government] because we were not allowed to leave the camps to farm. We thought the government just wanted to grab our land.*⁸

An estimated 1.8 million people (nearly 90 percent of the total population of Northern Uganda) were moved into 242 camps by 2005 (Russo 2007). In the camps, the government failed to provide adequate aid or

⁵ Kato is a popular Acholi folk musician playing in the traditional Acholi style. A full recording of the song can be seen here: www.youtube.com/watch?v=q5wPk9xSAFM (accessed October 29, 2023).

⁶ Interview with Rosalba Oywa, Kampala, Uganda, October 2, 2013, notes on file with author.

⁷ The National Resistance Army changed its name to the Uganda Peoples' Defense Force in 1995.

⁸ Focus Group, Atiak, Uganda, July 21, 2020, notes on file with author.

protection for its citizens. Away from their homes, people were unable to grow the food they needed to survive. Sanitation conditions in the camps were poor and led to outbreaks of cholera and high levels of HIV infection. Furthermore, LRA raids continued, often with the UPDF using the civilian population as human shields. In the village of Lukodi that I visited, the army detachment and Home Guard stationed themselves at the center of the village rather than around the perimeter, effectively setting up a civilian buffer for their own forces. Over time the insecurity and lack of food in the camps led to a massive humanitarian crisis with mortality levels reaching approximately 1,000 people per week (Branch 2015).

The population relocation further caused immense social and cultural fragmentation, uprooting Acholi cultural practices and resulting in what activist and scholar Chris Dolan refers to as “social torture” (Dolan 2011). Focus group members from the village of Atiak described the lasting damage that camp life had on their community:

Acholi culture was destroyed. Music, dance, drama has changed. The roles of men in traditional dances are now being played by women. That’s all a result of camp life. For instance, in the Larakaraka dance the men used to be the ones drumming and hitting the calabashes while the women danced shaking their waist, but today all this is being done by women. Tradition has been destroyed. Even the system of community healing has been weakened. Traditionally in Acholi for a judgment to take place, the offender had to first accept guilt and ask for forgiveness. Today offenders no longer want to acknowledge their guilt.⁹

Bringing people to the camps disorganized communities. As people returned to their homes, some families had lost all their elders during the war. Only children were left. Farming became a challenge because people no longer knew the land boundaries and often engage in land conflicts.¹⁰

The IDP camps, rather than the violent civil war, drew the attention of the international community to the atrocities in the North. After a visit to Kitgum and Gulu districts in Northern Uganda in 2003, Jan Egeland, then–United Nations Under-Secretary-General for Humanitarian Affairs, famously labeled Northern Uganda as “one of the worst humanitarian crises in the world.”¹¹

⁹ Focus Group, Atiak, Uganda, July 21, 2020, notes on file with author.

¹⁰ Focus Group, Atiak, Uganda, July 21, 2020, notes on file with author.

¹¹ AFR/750-IHA/820 2003, <https://press.un.org/en/2003/af750.doc.htm> (accessed October 29, 2023).

More direct atrocities by the UPDF have also been documented. In one particularly heinous incident, in the village of Burcoro sixteen kilometers northeast of Gulu, the UPDF (then still named the National Resistance Army) detained several hundred people over the course of four days. Between April 14 and 18, 1991, detainees accused of collaborating with the LRA were forced to dig a large pit where the accused were confined night and day. During this incident, villagers were interrogated, tortured, and sexually assaulted. The Justice and Reconciliation Project, a local human rights NGO, has thoroughly documented the experiences of survivors of this abuse, but no soldiers or commanders have been held to account.¹² Beyond the atrocities at Burcoro, Amnesty International has reported on systematic violations of human rights by the Uganda military, including extrajudicial killings, illegal detentions, and torture.¹³ “The government oversimplified by telling the world that all Acholi were rebelling against the government,” Acholi activist Rosalba Oywa lamented. “Kony was Acholi so all of us became Kony. We were all treated like rebels.”¹⁴

Northern Ugandans are widely aware of the abuses by the UPDF. A 2007 UN study found that the majority of the conflict-affected population in Northern Uganda considered both the LRA and the government to be responsible for the harms they suffered (Clark 2015). In a survey conducted by Uganda’s Justice Law and Order Sector in 2008, 50 percent of respondents affirmed that the government security forces had committed human rights abuses in their community. Acknowledgment of government wrongdoings translated to calls for accountability. In the same 2008 survey, 24 percent of respondents believed the Ugandan government should be held responsible for past wrongdoings and 13 percent specifically wanted government security agencies held to account. These numbers compare with 25 percent of respondents who thought LRA rank-and-file should be held accountable and 74 percent who held the LRA leadership responsible (Justice Law and Order Sector 2008).

¹² http://justiceandreconciliation.com/wp-content/uploads/2013/07/Burcoro-Final_SM-2013-07-25.pdf (accessed October 29, 2023).

¹³ www.amnesty.org/download/Documents/200000/afr590201991en.pdf (accessed October 29, 2023).

¹⁴ Interview with Rosalba Oywa, Kampala, Uganda, October 2, 2013, notes on file with author.

As violence from the LRA increased, domestic and international observers became concerned that the government of Uganda did not appear committed to resolving the crisis, but rather was benefiting from insecurity in the North (Vision Reporter 2004). Critics argued that the Museveni government was using the conflict with the LRA strategically to justify military expenditures and campaign on a platform of state security (International Crisis Group 2004). In 2003, the “Ghost Soldier” scandal revealed that UPDF generals had been billing salaries for dead soldiers in Northern Uganda. Media reports estimated that the government had paid more than US\$324 million over twenty years for units of imaginary soldiers.¹⁵ The humanitarian crisis in the IDP camps coupled with the exposure of a military corruption scandal moved the international community to pressure the Museveni government to end the violence. The breadth and complexity of the violence in Uganda generated widespread grievances across the population in Northern Uganda, leading to pressure on the government for accountability.

Calls for Accountability at Juba

In 2006, with pressure from the international community mounting to end the conflict, the Ugandan government and the LRA entered a ceasefire and negotiations, which would eventually become the 2008 Juba Peace Agreement. The Juba Agreement sought to bring about an end to the two-decade-long conflict; however, after two years, the LRA left the negotiation table with the agreement unsigned. The government and the LRA entered the Juba talks with the attention of the international community, pressure for peace from domestic civil society, and the threat of outstanding indictments from the International Criminal Court. The issue of accountability was thus central to the negotiation agenda. Despite the ultimate failure at Juba to end the war, the international community went on to hold the Ugandan government to many of the commitments it made, particularly an ambitious transitional justice plan.

The negotiations at Juba mark an important point for the discussion of transitional justice in Uganda. Ceding to international and domestic pressure for accountability, in June 2007, the government of Uganda

¹⁵ www.monitor.co.ug/uganda/news/national/high-profile-corruption-scandals-registered-under-nrm-1536538 (accessed July 1, 2021).

and the LRA signed an Agreement on Accountability and Reconciliation (AAR) (Macdonald 2019). The AAR provision (specifically Article 2.3) stipulated the need for “a comprehensive, independent and impartial analysis of the history and manifestation of the conflict, especially the human rights violations and crimes committed during the course of the conflict.” This mandate included provisions for a domestic war crimes division of the Ugandan High Court, a call for reparations for victims, a prominent role for traditional justice mechanisms, and a truth body to inquire into human rights violations committed during the conflict. Furthermore, the AAR inferred the inclusion of government crimes in its call for justice. It would later be telling which of these provisions were advanced and which have been ultimately sidelined.

Despite the government of Uganda and the LRA signing the AAR, the commitment of both actors to accountability is questionable. Macdonald (2019) argues that the political engagement with the AAR “was not rooted in commitment to [transitional justice’s] normative underpinnings,” but rather the accords were “reactive and hastily drafted, signed off by both delegations in order to sidetrack the ICC, pay lip service to [civil society’s] demands and allow the talks to continue” (232). Accountability was not a central priority for either of the negotiating parties, so the AAR was used as a “political decoy” to move the talks forward in the shadow of the outstanding indictments by the ICC (Macdonald 2017: 639).

Disregarding the true intentions of the government and the LRA, international donors were quick to fund the implementation of the AAR and to lend rhetorical weight to its potential to build peace and strengthen democratic governance (Macdonald 2019). The AAR galvanized international attention behind the transitional justice effort in Uganda and led donors to prioritize reconciliation and accountability in the post-Juba period. Yet because of Museveni’s shrewd strategy of containment, the call for a comprehensive and impartial analysis of the past would not lead to accountability for government abuses. The AAR would go on to serve as the backbone for Uganda’s transitional justice policy and the primary foil through which government impunity was pursued.

The Threat of Accountability for the NRM

In a semi-authoritarian state like Uganda, the very ingredients that combine to make [transitional justice] a reality – an independent judiciary,

respect for civil and political rights, and fair and equal treatment of all persons before the law – also constitute a serious threat to executive dominance and control.

(Macdonald 2019: 237)

Disregarding the failure of the negotiations at Juba, international and domestic pressure mounted for the government to address the massive human rights violations that had taken place over the previous three decades. Donors offered financial support, capacity training, and ultimately direct budget support to advance accountability. Yet, the government of Uganda had much to lose by exposing its own cadre to international and domestic scrutiny. The NRM government, now in its third decade, was beginning to fracture and its hold on power was becoming more tenuous. The government's control over the military helped it maintain a high level of repression, but the democratic trappings of the Ugandan bureaucracy put constraints on the government's capacity to control its norm response. Reacting to the pressure to comply with international norms and the potential risks of accountability, the government worked to contain its transitional justice response within existing state institutions already under government control. Rather than adopt new institutions in an unpredictable political environment, the government engaged a strategy of containment that, to date, has been effective in ensuring that government actors and allies are not held accountable for their past wrongdoings. Transitional justice has been contained within those state institutions under NRM control, weakened and sidelined when NRM power was threatened. The need for strategic adaptation was driven by the international pressure for transitional justice and domestic risks of state accountability. The following section details the international pressure on the Ugandan government to comply with the accountability norm and the risks to the NRM government of accountability.

The Justice Cascade in Uganda

The fingerprints of the international community are evident in almost all areas of Uganda's transitional justice policy. Donors and international NGOs have been central to the push for transitional justice through rhetorical support, technical expertise, and generous financial resources. For example, Uganda's referral of the LRA case to the ICC

highlights the influence of donors who, along with the Office of the Prosecutor, strongly encouraged this move as part of a larger prosecutorial agenda in the fight against the LRA (Nouwen 2013). Since 2012, donor funding for transitional justice has been allocated through sector budget support, project support, and the Justice Law and Order Sector (JLOS). Transitional justice is therefore driven by an international pressure for accountability that is often detached from local politics or local needs. “[Transitional justice] is image building to the people outside, not for us,” community leader Rosalba Oywa argued. “[The government] can do anything to us. As long as the international community thinks [the government is] going in the right direction, then [the government is] okay.”¹⁶ The Ugandan government is responsive to this international pressure because of its reliance on international aid as well as President Museveni’s own reputation concerns.

For the last thirty years, Uganda has been highly dependent on foreign aid and, as such, highly susceptible to normative pressure from the international community. In the late 1990s, President Museveni was hailed as a “new generation of African leader” as the country made progress on economic development, tourism, and the reduction of HIV/AIDS.¹⁷ World Bank figures show that economic growth in Uganda averaged 6.7 percent a year (more than twice the regional average) from Museveni’s first year as president in 1986 all the way through 2008 (Izama & Wilkerson 2011). These achievements kept Uganda in the international spotlight and ensured that the country was in a favorable position for foreign aid and international investment. Positive development trends elevated Uganda to the status of “donor darling” – a country receiving a disproportionate amount of international attention and foreign funding (Swedlund 2017), which strengthened both the overall resources of the country and the NRM’s hold on power.

Continued support from the international community, however, has led to aid dependence, particularly regarding the government’s use of patronage as a method of political control (Mwenda & Tangri 2005). Patronage refers to the distribution of government positions or state resources in return for loyalty and support. The NRM’s patronage

¹⁶ Interview with Rosalba Oywa, Kampala, Uganda, October 2, 2013, notes on file with author.

¹⁷ www.nytimes.com/1998/03/25/world/clinton-in-africa-the-region-a-new-model-for-africa-good-leaders-above-all.html (accessed July 1, 2021).

system has proven to be incredibly expensive. Leading up to the 2011 presidential election, for example, the NRM party spent one-third of the entire state budget (approximately US\$1.3 billion) in a single month (Izama & Wilkerson 2011). “The manner in which Museveni won [reelection] demonstrates both the shrewdness and the insecurity of a regime determined to stay in power at any cost” (Izama & Wilkerson 2011: 65). The financial costs of the patronage strategy leave the NRM beholden to foreign financial support to maintain the system and the party’s hold on power (Tripp 2010).

Museveni has also proven to be personally vulnerable to international condemnation. Observers have noted that Museveni enjoys being held up by the international community as an exemplar of African leadership and uses that positive reputation to his political advantage.¹⁸ Museveni is an expert at what Fisher (2012) refers to as “African image management,” which has allowed the president to weather numerous crises (e.g., a scandal regarding corruption and resource theft from Sudanese refugees) (Titeca 2022). Museveni’s personal reputation has also brought benefits through military alliances and aid in the War on Terror (Fisher 2013). Observers argue that Museveni’s posturing for the international community is more significant than strategically kowtowing to funders; rather, it demonstrates a personal desire on Museveni’s part to maintain a strong international reputation.¹⁹ International reputation costs thus further constrain the president’s behavior – an important factor in understanding his transitional justice strategy.

The government’s heavy reliance on international support has ensured that the government is highly susceptible and responsive to international pressure for accountability despite the risks. One example of this interaction is the government’s call for ICC indictments. In December 2003, Museveni garnered international attention when he contradicted his government’s previous public commitment to amnesty under the 2000 Amnesty Act and referred the case of the LRA to the ICC, making it the first ever state referral case. In his referral, Museveni called on the ICC to assist Uganda in investigating LRA crimes and holding upper-level commanders of the LRA responsible

¹⁸ Interview with Prof. Morris Ogenga-Latigo, Gulu, Uganda, October 4, 2013, notes on file with author.

¹⁹ Interview with Prof. Morris Ogenga-Latigo, Gulu, Uganda, October 4, 2013, notes on file with author.

for their abuses. Following this request, in October 2005, the Office of the Prosecutor, led by Luis Moreno Ocampo, issued arrest warrants for five LRA commanders: Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen. The charges encompassed a wide range of violations including war crimes and crimes against humanity including murder, rape, enslavement, sexual enslavement, and the forced enlistment of children.²⁰ Initially, as Museveni intended, the ICC investigation focused exclusively on LRA atrocities while overlooking UPDF wrongdoings.

The timing of Uganda's referral to the ICC is noteworthy. The referral came months after UN Under-Secretary-General Jan Egeland drew international attention to the conditions of the IDP camps in Northern Uganda.²¹ The government of Uganda was under pressure to resolve the conflict in the North and had not been successful at militarily defeating the LRA.²² International attention and condemnation threatened Uganda's donor support and Museveni's international reputation. At the time, international lawyers in Uganda drew attention to the benefits of an ICC investigation for the country's reputation and succeeded in convincing the government of the proposal's merits (Nouwen 2013).

It is likely that Museveni did not fully understand the implications of the ICC referral (Nouwen 2013). There was confusion within the government about what the ICC could and could not do within its mandate. For example, Betty Bigombe, a chief mediator in the peace initiative that led to the Juba Agreement, argues that President Museveni believed that, as the complainant in the matter before the ICC, he had control over how the case proceeded and could choose to drop the charges at any time if he chose.²³ Nouwen (2013) argues that it is unlikely that the government of Uganda and the ICC discussed the "nature and ramifications" of the referral in advance of the request, further leading to this confusion (113, fn. 9). When the government of

²⁰ Kony et al. The case can be found at www.icc-cpi.int/uganda/kony (accessed July 1, 2021).

²¹ <https://news.un.org/en/story/2004/11/120812-top-un-relief-official-spotlights-crisis-northern-uganda> (accessed July 1, 2021).

²² Interview with Patty Akunda, Kampala, Uganda, October 1, 2013, notes on file with author.

²³ Interview with Betty Bigombe, Kampala, Uganda, October 7, 2013, notes on file with author.

Uganda made the referral, Museveni likely believed that he would ultimately have greater control over the process than he was granted. This would serve as an important lesson for Museveni in complying with international accountability norms in the future.

President Museveni was initially very enthusiastic about Uganda's engagement with the ICC. After the indictments were released, Museveni held a press conference in Uganda with ICC Prosecutor Ocampo showcasing Museveni as a strong proponent of international law and garnering positive press. Things changed, however, once ICC investigations were underway. Rather than exclusively examining crimes committed by the LRA, the Office of the Prosecutor began to investigate atrocities by the UPDF. Museveni was furious. Later during the Juba Peace talks, Museveni attempted to withdraw his ICC referral and offer Joseph Kony and his commanders amnesty (Essoungou 2007). When a withdrawal proved impossible and the accountability risks of the ICC became more apparent, Museveni's relationship with the court soured. He went on to become a fierce opponent of the ICC and even advocated Kenya's withdrawal from the Rome Statute when the ICC began investigations into that country's 2007–2008 election violence.²⁴ The case of the ICC demonstrates that Museveni's susceptibility to international pressure did not supersede the risks of accountability.

The Domestic Risks of Accountability

Susceptibility to international pressure prompted the government to act on the promises made at Juba to adopt transitional justice. International pressure, however, did not supersede the domestic political risks of accountability for the government of Uganda. The risks of accountability were high given the increased fracturing of Museveni's governing coalition and the government's reliance on support from the military. With blood on its hands, the Museveni government could not risk its wrongdoings being brought to light.

By all indicators, President Museveni is a shrewd politician. Museveni took the country from civil war to single-party democracy to a decentralized multiparty system all while maintaining his hold on

²⁴ www.reuters.com/article/us-africa-icc/ugandas-museveni-calls-on-african-nations-to-quit-the-icc-idUSKBN0JQ1DO20141212 (accessed October 11, 2023).

power. Nowhere is his political savvy more evident than in his ability to successfully stand for and win six consecutive (albeit democratically flawed) presidential elections while strengthening vote share for the NRM party (Conroy-Krutz & Logan 2012; Izama & Wilkerson 2011; Khisa 2016). In his thirty years in office, Museveni has worked tirelessly to consolidate his political power and legitimate his regime. Based on a strong system of patronage both within the civil service and the army, Museveni entrenched his power in the country (Izama & Wilkerson 2011).

In the post-Juba period, however, the power of Museveni's regime was beginning to show its cracks. Splits grew in the NRM as Museveni's personal ambitions became a contested issue within the party (Izama & Wilkerson 2011). In 2005, Museveni fired three popular cabinet members who opposed the president's unchecked power, his manipulation of parliament to lift term limits, and his rumored goal of grooming his son, Muhoozi Kainerugaba, for the presidency. The internal organization of the NRM became thin as Museveni began using cabinet positions and other state offices to project his personal influence (Izama & Wilkerson 2011).

On the other side, a steady presence of opposition candidates emerged (Izama & Wilkerson 2011). The 2006 presidential election was marred by election violence and the fierce targeting of opposition politicians. In the lead-up to the 2011 presidential election, there was a rise in political contention within the NRM party at both the parliamentary and local levels where incumbents were being voted out of office in primary elections and then ran as independent candidates in general elections. In the 2021 presidential election, held during the COVID-19 pandemic, Museveni resorted to high levels of repression and voter intimidation to defeat popular opposition candidate Bobbi Wine, which resulted in the detention of more than 700 opposition party members (Burke & Okiror 2021).

Considering fracturing political and popular support, the NRM increased its reliance on the military to secure the party's political position. "Museveni has always been a military man who believes that the best way to organize, to control people, to dominate society, is to have the gun," argued Moses Khisa, a Ugandan political scientist (quoted in Taylor 2022). The original leadership structure of the NRM emerged from its roots as a rebel group in the mid-1980s, and little has changed. Accountability for the military would be a risky

endeavor given the centrality of the army in Museveni's rise to power and hold on office. Fracturing within the NRM and the rise of a vibrant political opposition signal Museveni's weakening legitimacy within the NRM and the general population. At this time more than ever it would be tenuous to pursue a policy that could threaten the government's relationship with the military. Accountability for wrongdoings would only serve to further weaken the governments' hold on power.

Strategic Adaptation under the NRM

Some people think that being in government for a long time is a bad thing. But the more you stay, the more you learn. I am now an expert in governance.

President Yoweri Museveni (2012)²⁵

International pressure for accountability for wrongdoings in Northern Uganda mounted despite the very real domestic risks to the NRM regime of holding its own security forces to account. While the government was not in a position to disregard international calls for transitional justice, the NRM responded to international pressure and its associated risks by strategically adapting its transitional justice response. My theory of strategic adaptation suggests that the government's adaptation strategy is impacted by the capacity of the government to monitor and control its norm response. The government of Uganda has strong governing capabilities maintained through a history of engaging repression to advance government goals and its robust patronage network. The hybrid nature of the Ugandan state, however, constrains the government's actions. The trappings of democracy, such as internationally monitored elections, the presence a free press, a semi-independent judiciary, and a robust civil society, restrict the government's ability to control its norm response and increase the risks of norm adoption. Understanding this domestic political context helps explain the government's chosen strategy of containment and how that strategy has helped the government escape justice.

²⁵ Butagira, Tabu, "President Museveni Says Long Ruling Good for Africa." *The Citizen*. February 20, 2012. www.thecitizen.co.tz.

The NRM government maintains control through repression and coercion. One of the legacies of colonialism in Uganda was the creation of police and paramilitary forces more loyal to those in power than to the citizenry (Tripp 2010). The early 2010s saw a proliferation of paramilitary groups and what the Advisory Consortium on Conflict Sensitivity labeled an increased “militarization of public spaces.”²⁶ The Consortium warned that the “prominent role of the army in politics at central and local levels of governance [was] narrowing . . . the political space as state repression increases through the projection of power by the police and UPDF.” This trend has continued. In its most recent report, Freedom House (2023) declared:

Power [in Uganda] is concentrated in the hands of the NRM leadership, the security forces, and especially Museveni, who retains office through various undemocratic means. Ministers have little ability to influence legislation in which the government has a particular interest, though there is more consultation on ordinary policy matters. The executive secures passage of key legislation through inducement, harassment, and intimidation of the legislative branch. (C1)

Loyalty in the military is maintained through patronage that extends through kickbacks, overbilling on sales of military supplies and equipment, and allowing soldiers to plunder and loot in wealthy areas (e.g., DRC) (Tripp 2010). When possible, Museveni incorporates top commanders from rival insurgent groups into his government offering ministerial positions, high salaries, and a presidential pardon akin to a blanket amnesty for all crimes. In 2013, I interviewed Musa Ecweru, a member of parliament from Amuria District and current Minister of State for Relief, Disaster Preparedness & Refugees.²⁷ Ecweru had risen to the top ranks of the insurgent Uganda People’s Army²⁸ but had taken advantage of a presidential pardon and is now a prominent member of the NRM party. Similarly, rank-and-file rebel soldiers who surrendered were often incorporated into the national army.

²⁶ Advisory Consortium on Conflict Sensitivity, Northern Uganda Conflict Analysis, September 2013. On file with author.

²⁷ Interview with Ecweru Musa Francis, Kampala, Uganda, September 10, 2013, notes on file with author.

²⁸ The Uganda People’s Army was a rebel group active in Uganda from 1987 through 1992. The group was comprised primarily of former soldiers in the special forces of the Uganda National Liberation Army and opposed the NRA.

To project its power beyond overt repression, the NRM government enacted a robust patronage network operating throughout the country. The NRM's patronage strategy involves buying off opposition politicians who challenge the party through awarding cabinet posts or ministerial positions as well as local leadership positions, army command posts, and parliamentary seats and providing public and private goods to opposition communities (Mwenda & Tangri 2005). The patronage system is evident in the growing number of administrative and ministerial positions in the government. In 1996, the NRM cabinet had twenty-one ministers. Five years later, the cabinet size had increased to sixty-five members. By 2011, Uganda had the third largest cabinet in the world, with seventy-four appointed ministers (*New Vision*, June 8, 2011). Museveni today has more than 160 presidential advisors (*The Observer*, September 14, 2016). According to the presidential spokesperson, "There are reasons why such people are appointed; [it] may be to please certain people, to give you a job, or because of the contribution you made earlier" (quoted in *The Daily Monitor*, April 3, 2013).

Patronage in Uganda also involves the direct transfer of resources, particularly during elections, to individuals or groups who challenge the government's hold on power. Museveni is well known for "handing brown envelopes full of cash to local leaders and supporters, or for funneling hefty 'travel reimbursements' to local officials summoned to presidential audiences in Kampala" (Izama & Wilkerson 2011: 67–68). The government has used an internationally supported program of decentralization of national services and budget control to reward NRM party supporters and create a dynamic network of local leaders and bureaucrats all reliant on Museveni's political and financial support. Goods transfer of this type allows the government to co-opt rivals into the NRM, strengthening the party while weakening political threats. Rather than marginalize opponents, these individuals become supporters of the very regime they had previously opposed.

In the face of state repression and government patronage, there are still vibrant democratic components within Ugandan society that constrain the government's capacity to control its norm response. Uganda is a hybrid regime – an authoritarian regime with the trappings of democratic institutions (Tripp 2010). Museveni must regularly compete in elections and contend with a free press and a relatively

independent judiciary.²⁹ These democratic components of his government increase the risk of strategic adaptation and the likelihood that given transitional justice adoption, the government could be held to account for past wrongdoings. For example, open and active media in Uganda has been effective in highlighting government abuses. In 2003, a national newspaper, *The Monitor*, broke the story about the “ghost soldier” scandal, which revealed that UPDF generals had been billing the salaries for dead soldiers in Northern Uganda.³⁰ News of the scandal caused public outrage from both civil society and international donors and forced a restructuring of the UPDF’s budgeting model. Contested elections and a viable political opposition in Uganda have meant that Museveni and his party are responsible to their constituency despite the strong hand with which they rule the country.

A robust civil society in Uganda has been central to drawing attention to state atrocities committed during the war with the LRA and influential in supporting earlier efforts at transitional justice, such as the passage of the 2000 Amnesty Act. As early as the 1990s, domestic human rights NGOs such as Human Rights Focus were conducting education campaigns about the rights of individuals in Northern Uganda as well as monitoring both government and rebel atrocities during the conflict. Human rights groups, together with the Northern Parliamentary Forum, a group of parliamentarians from Northern Uganda, were vital in keeping issues of justice and human rights in the national news during the war with the LRA. Northern parliamentarians were also effective in convening a parliamentary panel to investigate atrocities in the North and educate fellow members of parliament about the LRA conflict.

Yet, civil society and NGOs in Uganda have often been subject to government control. In 2016, Museveni signed the NGO Act, with the declared intention to “strengthen and promote the capacity of NGOs and their mutual partnership with the government.” This law tightened the rules for NGOs and established a bureau with the power to

²⁹ The independence of the judiciary in Uganda has been questioned in recent years due to some controversial judicial appointments as well as the government’s delay in appointing judges to the Supreme Court, effectively stalling several prominent cases, particularly those pertaining to the legality of the 2000 Amnesty Act (Freedom House 2023).

³⁰ www.monitor.co.ug/uganda/news/national/high-profile-corruption-scandals-registered-under-nrm-1536538 (accessed July 1, 2021).

suspend or revoke organization permits. Activists immediately expressed concern that the registration and monitoring required by the Act would lead to greater restrictions on NGO operations (Fallon 2016). Indeed, in November 2019, more than 12,000 charities were denied official registration and shut down (Mwesigwa 2019). Meanwhile in the same year, a coalition of 149 human rights NGOs, known as the National Coalition of Human Rights Defenders, reported that its member organizations had experienced 34 office break-ins since 2011, none of which were investigated by the police (Mwesigwa 2019). Furthermore, direct targeting of human rights organizations and other groups calling for state accountability has created a climate of fear among civil society (Mwesigwa 2019) with NGOs afraid that if they challenge the government or its policies, they could be denied registration and forced to close. State targeting of civil society has created a chilling effect on dissent.

Despite the government's high governance capabilities, its behavior is constrained, in part, by hybrid democratic institutions weakening its overall capacity for control of its norm response. These conditions would suggest a strategy of containment where compliance with international norms is best subsumed within existing government power structures. If the government were to create new transitional justice institutions, it could not ensure that those same institutions would not be used to hold state actors to account. By incorporating its norm response into existing institutions, the government can ensure its ability to monitor and control its norm response. In the case of Uganda, the government's response to the norm of accountability has been to embed transitional justice under the "big tent" of governance upheld through repression and patronage. In what follows I explore how this strategy is adapted in the creation of the ICD and the co-optation of customary tribal justice and explore the implications of this strategy for the NTJP.

Escaping Justice through Containment: Justice under the Tent

Majumba makubwa husitiri mambo

[Big houses conceal a lot]

Swahili proverb

Following the Juba Agreement, international pressure for accountability mounted despite the very real risk to the NRM government. Rather

than rebuff international pressure for transitional justice, the Ugandan government created a “big house” within which to conceal government violence and abuse. Transitional justice was incorporated into a robust patronage structure that the NRM was able to monitor and control. In this way, transitional justice in Uganda has been adapted to incorporate calls for accountability into existing state institutions in favor of securing impunity for the ruling party – *a strategy of containment*. Because of the democratic constraints on the Ugandan bureaucracy, it proved too risky for the government to adapt new transitional justice institutions that could threaten the government’s hold on power. Containing the government’s norm response within government-controlled institutions minimizes the likelihood of state accountability. The government of Uganda has a history of extending its control through appropriating potentially threatening political institutions (Kigambo 2013; Tripp 2010). Throughout his rule Museveni has worked to develop robust systems of coercion and patronage; it is these systems that he relies on when he contains his norm response.

Uganda’s containment strategy has facilitated an array of carefully monitored transitional justice responses. Museveni entered the post-Juba period with a strong mandate from the international community to address the human rights violations of the past conflict. This mandate focused on addressing the abductions and abuses of the LRA, but also the IDP camp program and conflict abuses of the UPDF. The government advanced this mandate through the creation of the ICD within the Ugandan High Court and the mobilization of customary justice initiatives. These efforts, however, have been driven by a strategic norm response rather than a genuine commitment to accountability and adherence to international norms as promised in the Juba Agreement. The result has been a series of highly controlled and weakly resourced institutions that have been unsuccessful at holding government perpetrators to account. Museveni has repressed those individuals and institutions under his control and weakened institutions that could threaten his rule.

The containment strategy has been implemented entirely under the watch of an international donor community and civil society, neither of which has been effective in pressuring the government for greater accountability. While donors have actively monitored transitional justice in Uganda and championed a broad agenda of accountability (Macdonald 2019), the international community has been ineffective

in driving specific policy outcomes. A UN official, interviewed by Anna Macdonald, calls this “the checklist approach” in which donors are seeking to achieve certain policy adoptions, such as transitional justice, without a broader conversation about the intended goals and strategies of those policies (Macdonald 2019: 238). The NTJP, discussed further below, is an example of how the government of Uganda has been successful at assuming the trappings of the institution while ensuring that there will be no actionable constraints on its power. International donors have often been unwilling or unable to effect transformative change in Uganda. This is due, in large part, to what Macdonald calls a “deterministic statebuilding logic,” which “prioritized ‘building capacity’ for [transitional justice] . . . but neglected the ‘real politics’ of war crimes accountability in Uganda” (Macdonald 2019: 243). The international community has set the transitional justice agenda but allowed for what Andrews and Bategeka (2013) call isomorphic mimicry in which “looks like” substitutes for “does.” While this phenomenon is not unique to Uganda, the international community’s lack of attention to the structure of transitional justice has played particularly deftly into the Ugandan government’s ability to escape justice.

Taken as a whole, transitional justice in Uganda demonstrates the ways in which the government has been effective at containing transitional justice to deflect the threat of accountability against the government. Through an effective strategy of containment, Museveni has again demonstrated his shrewdness as a politician as he appropriated the international mandate for transitional justice to strengthen his hold on power. While international resources have been generous in the pursuit of transitional justice, the threat of accountability for the Ugandan government has incentivized strategic adaptation, which has advanced state impunity. In the following sections, I trace the adoption and adaptation of transitional justice in Uganda. I focus the discussion on three prominent policies outlined in the Juba Agreement’s Agreement on Accountability and Reconciliation: the creation of the ICD of the Ugandan High Court, the revitalization of customary justice initiatives, and the NTJP.

International Crimes Division

One of the most concrete transitional justice outcomes from the Agreement on Accountability and Reconciliation provisions in the

Juba Agreement has been the creation of the ICD within the Ugandan High Court (originally called the War Crimes Division). Established in July 2008, the ICD has jurisdiction over serious international crimes³¹ including any offenses relating to genocide, crimes against humanity, war crimes, terrorism, human trafficking, and piracy. Yet, the Court's impact has been limited since its establishment. At the time of this writing only two cases of war crimes and crimes against humanity have been brought before the court³²: the case of Thomas Kwoyelo, a former LRA commander, and the case against Jamil Mukulu, a former Allied Democratic Forces (ADF) commander.³³ A functioning ICD would be one capable of holding LRA perpetrators and alleged UPDF violators of human rights to account for their actions. Yet the weakness of the institution demonstrates a genuine attempt on the part of the government to undermine rule of law, preventing the growth of democratic institutions that could potentially threaten the government's hold on power. The government is able to marginalize the ICD because of the influence it holds over the Ugandan High Court.

The creation of the ICD was, in part, a response to outstanding investigations at the ICC, including increasing pressure for the ICC to investigate alleged atrocities by the UPDF. The ICD was established at a time when Museveni was highly critical of the ICC and its role in Africa. By creating a "complementary" institution, the Ugandan judiciary could demonstrate its ability to prosecute international crimes and subsequently retain control of allegations and investigations against government forces.³⁴ Museveni learned his lesson after initiating the LRA case at the ICC and now sought to establish a domestic institution that would be easier to monitor and control.

Containing the ICD within the Ugandan judiciary, rather than creating a new transitional justice institution, has allowed the government to monitor and regulate accountability claims. The judiciary in Uganda

³¹ Jurisdiction is prescribed in the Practice Directions of the ICD (Legal Notice No. 10 of 2011, gazetted May 31, 2011).

³² The International Crimes Division has been more successful in prosecuting human trafficking and domestic terrorism.

³³ Jamil Mukulu (*Uganda vs. Kabambwe Ali and 37 others*), the principal founder of ADF, was charged along with thirty-seven of his co-accused of charges related to the war, including giving orders to commit murder.

³⁴ Complementarity refers to the international legal principle whereby the ICC is only afforded jurisdiction in cases where the host state is unable or unwilling to prosecute crimes domestically.

is increasingly under government influence. In its most recent report, Freedom House outlines the following concerns about judicial independence:

The Ugandan judiciary suffers from lack of investment, executive influence, and systemic corruption, which weaken judicial independence. Many critics see the judiciary as a political tool for the NRM, particularly as it consistently rules in line with President Museveni's interests. (Freedom House 2023)

President Museveni controls the selection of High Court justices, including those who serve as judges for the ICD. High Court justices are selected by the president after recommendation from the Judicial Services Commission; the members of the Judicial Service Commission are themselves appointed by the president with approval from parliament (Freedom House 2023). In 2022, the NRM proposed to expand the Supreme Court from eleven to twenty-one judges in a move that was seen as increasingly politicizing the court in the NRM's favor. Efforts to expand the court were seen by many as a means of expanding the NRM's patronage system (Freedom House 2023).

The government has sought to directly influence the work of the ICD in several ways. First, the ICD has never had a consistent bench, and there continues to be substantial turnover in judges (Matsiko 2020). While it has historically been common to have a high level of rotation among judicial staff in Uganda (Human Rights Watch 2012), the turnover of justices in the ICD stymies the development of the institutional knowledge needed to deliver justice effectively in complicated cases such as those for war crimes and crimes against humanity – trials that often last many years. Second, the government has systematically underfunded the ICD. When the ICD was first created, there was a concern that, given NRM influence of the judiciary, the court would be used purely as a form of victor's justice, prosecuting political opponents and targeting threats to the government. Museveni, however, has shown little interest in using the court this way; he has largely marginalized and ignored the institution altogether. A probable explanation is that any attempt to engage the court on war crimes such as those committed by the LRA raises attention to the role of the government in atrocities in the North (Macdonald 2019). The government considers it undesirable to draw any additional attention to these events and thus finds it politically safer to contain and marginalize the work of the ICD.

Government influence over the ICD has led to distrust in the judiciary among conflict-affected populations. Focus group participants in Northern Uganda expressed perceptions of corruption and injustice in the judiciary. Feelings of mistrust extend beyond transitional justice to undermine one of the key components of a functioning democracy – rule of law. Some people I spoke with attributed judicial corruption and inefficiency to the war itself, while others saw it as a larger problem of corruption in Ugandan formal institutions. The focus group in Pabbo discussed the direct impact of the war in the North on lawyers and judges:

*I think the judiciary is not functioning well as a result of the war. Lawyers have become very corrupt and only seek money. There is no fairness because judges only seek money. They keep postponing cases when they get more money.*³⁵

Another respondent echoed these concerns:

*For me I think the war has caused a lot of misconduct in the judiciary. Even in the villages people have become great liars. Elders are scheming to grab land from helpless children. This is all a result of how force was used to end the conflict. The magnitude of this wickedness is too much. If not handled quickly this will only get worse. The Local Council leaders are not honest. Everybody has become a liar.*³⁶

A focus group member in Atiak expressed concerns about corruption:

*The courts have been turned into a business. Firstly, if you refer a case and the other person has more money, you are said to be the one in the wrong. I think the war really spoilt people. Everybody focuses on what benefits him. The judiciary looks at relatives, friends, and in-laws. As long as you have a relative in a big position in the judiciary, you have no problem.*³⁷

Concerns for the integrity of the judiciary extended to the ICC, which, respondents noted, was willing to hold LRA perpetrators to account but not the government. In a focus group conducted in Pabbo, one respondent said:

The ICC is seen as biased because two groups [UPDF & LRA] fought here. When Ocampo came to see us, he got questions from the Acholi who were

³⁵ Focus Group, Pabbo, Uganda, July 28, 2020, notes on file with author.

³⁶ Focus Group, Pabbo, Uganda, July 28, 2020, notes on file with author.

³⁷ Focus Group, Atiak, Uganda, July 21, 2020, notes on file with author.

saying, “Why are you investigating only one side and leaving the other?” Ocampo had no answer. Even to this day Acholi do not believe in the ICC because of that one-sided justice.³⁸

A dynamic Acholi human rights activist, Roseabla Oywa, expressed similar concerns based on her work with community groups in Northern Uganda:

*Members of my community have been demanding “Why are we not sending the Army to the ICC whom we know committed a lot of atrocities against us? We suffered the most during Operation North in 1991. Our people were buried in graves. The people in Teso were burnt in a train wagon. So many other horrific things happened.” This violence was being commanded by General Tinyefuza whom we see walking around with other commanders today. We know who they are and what they did to us. Nobody is mentioning their name for prosecutions. They tried to hide all these facts at that time when Northern Uganda was sealed from the rest of the world.*³⁹

Given the control that the NRM government has over the judiciary, transitional justice through the ICD has been effective in securing government impunity.

Customary Justice

As international pressure for accountability increased, Museveni shifted his transitional justice focus from one of international justice through the judiciary to one of reconciliation and reliance on local, traditional Ugandan mechanisms of dispute resolution.⁴⁰ Contrary to the more institutionally focused intervention of the ICD, since the mid-2000s there has been a concerted pivot on the part of the Ugandan government to embrace customary or traditional justice options.⁴¹ This pivot corresponds with an international recognition of the importance of more localized or traditional forms of dispute resolution in the adjudication of past crimes (e.g., Lundy & McGovern 2008; Waldorf

³⁸ Focus Group, Pabbo, Uganda, July 28, 2020, notes on file with author.

³⁹ Interview with Rosalba Oywa, Gulu, Uganda, February 25, 2020, notes on file with author.

⁴⁰ Interview with Rosalba Oywa, Gulu, Uganda, February 25, 2020, notes on file with author.

⁴¹ I rely on Joanna Quinn’s distinction of “customary” mechanisms for those processes which are commonly used and founded on long-continued practices even if they are not “traditional” (Quinn 2007: 31).

2006). But the move toward the local also supports the government's policy of containment, incorporating the government's norm response into institutions that the government can leverage and control.

The AAR provision of the Juba Agreement included the possibility of using customary justice mechanisms as a solution for accountability that departs from a historical reliance on prosecutions. The idea was to channel donor and state funding to the promotion of "traditional authorities" that could lead a cultural revival and restore social order among the Acholi people through mechanisms of traditional justice (Branch 2015: 622). A turn to customary justice was a response in part to conflicting demands within the victim community between a push for amnesty and reintegration for child soldiers and a need for information and accountability for past atrocities. By enhancing traditional Acholi justice options, the government accomplished these diverging objectives. A revival of *mato oput* (roughly translated as "drinking the bitter root") is an example of this strategy. *Mato oput*, the best-known Acholi mediation ceremony, is used in cases of accidental or purposeful killings and encompasses the same principles of truth, accountability, compensation, and restoration of relationships associated with transitional justice (Baines 2007; Finnström 2008). As a mechanism of transitional justice, Acholi communities were encouraged to engage *mato oput* to address the harms committed by LRA fighters allowing them to be integrated back into their communities. Several international NGOs, including an interagency US government initiative, actively supported the reinvigoration of local Acholi rituals, leading to claims that these rituals meant more to foreign proponents than to local communities (Clark 2015).

Customary justice has allowed for accountability to be dealt with locally and under government control. Yet the turn to customary justice, or "ethnojustice" as Adam Branch (2015) has labeled it, has also been effective in embedding power hierarchies and injustices that have proven to be useful to the Ugandan government. For example, the male-dominant authority model that underpins *mato oput* silences those who may challenge that hierarchy, such as widowed women or war orphans (Branch 2015). The appeal to Acholi customary justice legitimates a singular tradition of justice and reconciliation and a singular Acholi identity that historically does not have much validity (Branch 2015). The turn to customary justice also concentrates the responsibility for justice in the hands of a few local leaders. These

leaders can then be identified and co-opted through the government's patronage networks. Local Acholi leaders have been financially rewarded for performing their community function. Quinn (2007) cites payments of 5,000,000 UGX, or about US\$1,300, per month funded with donor support. Through customary justice the government can continue its tried-and-true strategy of using state resources to infiltrate and ultimately buy off transitional justice.

Furthermore, Acholi traditional justice is not empowered to prosecute the state (Branch 2015). The Institution of Traditional or Cultural Leaders Bill limits the scope of customary institutions "stating that [cultural leaders] shall not have or exercise any administrative, legislative or executive powers of government or local government" (Institution of Traditional or Cultural Leaders Bill: No. 24, December 7, 2010). The addition of traditional justice to the transitional justice canon further complicates issues of accountability for government wrongdoings by creating multiple venues in which cases can be tried through competing sources of authority, serving to further state impunity.

In July 2012, the Justice Law and Order Sector (JLOS) released a report on the potential of engaging traditional dispute resolution mechanisms for addressing transitional justice. They cited the appropriateness of traditional mechanisms because they were seen by research participants as "credible, free from corruption, user friendly, easily accessible, free from bias, participatory and inclusive, and emphasise reconciliation and reintegration of wrongdoers in the community" (JLOS 2012: 118). This was not, however, the message I heard in focus groups conducted in the North. People I spoke with cited the lack of authority of traditional elders:

*Before [the war] people were fearful of hearing that an issue had been referred to Rwot [traditional chief], but today they do not respect him anymore.*⁴²

The containment of customary justice within the government's power structure undermines the independence of customary leadership and weakens the legitimacy of customary authorities within Ugandan society. Rather than serve as an alternative forum for transitional justice, customary justice has been co-opted by the government of Uganda to advance state impunity.

⁴² Focus Group, Atiak, Uganda, July 21, 2020, notes on file with author.

National Transitional Justice Policy

One evening in 2013, on the rooftop terrace of a bar in Kampala, I was taking field notes from that day's interviews when I was joined by a fellow political scientist in town for a research consultancy on the work of the ICC. He sat down at my table and began to thumb through my copy of the most recent draft of the NTJP, a thirty-six-page document bound with a glossy cover. I had attended a public stakeholder consultation early that week, and my copy was filled with post-it notes and annotations. "What do you think?" I asked my colleague. "Oh," he said, "I'm impressed you have actually read it." That conversation stands out in my memory because it is almost the same exchange I had with the founder of a human rights NGO in Gulu seven years later. The final version of the NTJP had been passed by the Ugandan Cabinet the previous June, and I asked the founder if she had any thoughts on the final version. "I haven't read it," she said, "If you do, tell me if there is anything that is new."

The NTJP gives insight into the methods through which the Uganda government contained and co-opted international pressure for domestic accountability. Driven by close collaboration with international donors and technical staff, the NTJP originally proposed a range of transitional justice initiatives, including a truth commission and reparations program, in line with the accountability commitments made at Juba. Given the domestic political conditions in Uganda, new institutions such as those suggested by the NTJP would potentially threaten the NRM government's hold on power. The NRM may be unable to prevent new initiatives from ultimately holding the government accountable for past wrongdoings. While the government has not been able to deflect international pressure for compliance with the accountability norm, shrewd political maneuvering has ensured that little progress has been made to advance government accountability. International engagement has made it difficult for the NRM to monitor and control the NTJP. The response has been a strategy through which the government has effectively marginalized its proposals, weakening and underresourcing the policy and ensuring its own impunity.

In 2008, under the auspices of the Ugandan Justice Law and Order Sector secretariat, a Transitional Justice Working Group was created and mandated to "develop a national policy and law on transitional justice for Uganda" (JLOS 2012). The Transitional Justice Working

Group included technical staff from government ministries and agencies, as well as development partners and civil society representatives. The working group was tasked with developing a national policy and law on transitional justice for Uganda. The activities of the working group were almost exclusively donor-funded and carried out in close collaboration with a donor stakeholder group.⁴³

After a few years of consultation and research, the Transitional Justice Working Group produced the first draft of a national transitional justice policy. It was the Transitional Justice Working Group's attempt to fulfill the AAR provision of the Juba Peace Agreement, which calls for "a comprehensive, independent and impartial analysis of the history and manifestation of the conflict, especially the human rights violations and crimes committed during the course of the conflict" (AAR, Section 2.3). The NTJP broadly purports to be a response to the legacy of past injustices suffered across Uganda (Republic of Uganda, 2019: v). The original public draft of the report proposed to address human rights violations and war crimes through a range of criminal justice processes, truth telling, traditional justice mechanisms, reparations, and the social reintegration of conflict-affected communities. The proposals in the NTJP were wide-reaching and included a call for a truth commission to investigate the full range of wrongdoings committed in Northern Uganda. The NTJP proved to be particularly threatening to the government of Uganda because it proposed the creation of new institutions not contained within existing NRM power structures.

Unable to dismiss the NTJP outright, the government has worked to contain the process and undermine its goals. For example, in more recent drafts the NTJP blends its discussion of "development, recovery and peace," conflating existing development spending and local patronage scheme with accountability and reconciliation. The NTJP cites the government's Peace, Recovery and Development Plan (PRDP), launched in October 2007 to build infrastructure, such as roads, schools, and health centers, as a form of government-sponsored reparations already underway (Republic of Uganda, 2019: 12–13). PRDP

⁴³ Major contributors to the effort include Austria, Denmark, Ireland, the Netherlands, and Norway as well as several multilateral members, including the UN Development Programme, the Office of the UN High Commissioner for Human Rights, the UN International Children's Emergency Fund, and UN Women (Macdonald 2019).

allowed the distribution of state (and donor) resources to previously conflict-affected areas as a tool of patronage for areas of the country previously less supportive of the NRM party. The NTJP's discussion of "reparative options" includes "social services for the affected communities," effectively allowing patronage to be conflated with transitional justice. These development strategies have not, however, provided resources for accountability or reconciliation. Lino Owor Ogora, the founder of the Foundation for Development and Justice Initiatives in Gulu, complains that the "P" for peace is missing from PRDP. "It is the difference," he said, "between hardware and software. The government provides hardware for roads and schools, but no psychosocial support or software."⁴⁴

Furthermore, calls for a truth commission presented in earlier drafts of the NTJP have been replaced with rhetoric about nation building. Rather than proposing an investigative mechanism to analyze the history and cause of the conflict as stipulated by the AAR, the most recent version of the NTJP calls for "truthtelling mechanisms" that can contribute to "reconciliation and nation-building." This change effectively allows the government greater control over transitional justice, containing claims for accountability within a broader narrative of national suffering. The result lacks a genuine attempt at reconciling social grievances in the North and holding violators of wrongdoings to account. Furthermore, the focus on strengthening the nation has left little room for an open conversation about the abuses committed by the government and armed forces.

The NRM government has further contained the risk of the NTJP by limiting its reach and resources. In June 2019, after more than a decade in the making, the Ugandan Cabinet passed the policy; however, as of this writing, a bill has not been passed by parliament. The government has demonstrated less concern with enacting the policy than with using the legislative process surrounding the NTJP to make symbolic gestures to antagonize or placate various domestic and international opposition groups at critical moments (Goodfellow 2014). Rosalba Oywa, the founder of the Gulu-based peacebuilding NGO People's Voice for Peace, lamented that the NTJP had been written just to please

⁴⁴ Peace in a Pod, Episode 42 – Justice in Uganda. May 27, 2021. https://open.spotify.com/episode/13dzb4Yy0RIwcEkzwiJSn6?si=9yFDNVatSjmDGVxv_-ZgUQ&nd=1 (accessed February 12, 2025).

the international community. “It took 10 years to get the plan passed, but before it could get approved the government removed everything we wanted from it.” Oywa specifically cited the lack of truth-telling mechanisms or commitment to investigating the IDP camp program. She then went on to give the grave prediction: “Just wait and see, there will be no money put behind it.”⁴⁵

Oywa’s premonition has so far proven correct. In addition to controlling the focus of the NTJP, the government has effectively slowed its progress. During a consultation phase as early as 2015, donors raised concerns about “waning political momentum” for transitional justice (Otim & Kihika, 2015: 7). While the political leadership has never rejected drafts of the NTJP, there has been little explicit political or budgetary support for enactment. Given in large part to the delay of a NTJP, in a 2016 performance review of the Justice Law and Order Sector secretariat, donors graded its progress on transitional justice as “unsatisfactory” and criticized the “lengthy, excessive delay in submission of TJ policy to cabinet” (Macdonald 2019: 235). Political momentum changed quickly in February 2019, however, when the African Union adopted a transitional justice policy.⁴⁶ Following suit, on June 18, 2019, Uganda became the first country to adopt a national transitional justice policy. This sudden action is in line with Museveni’s characteristic focus on cultivating his international reputation; however, the adoption has not been accompanied by greater momentum for transitional justice itself. The NTJP has not been passed by parliament, leaving the implementation of the policy in limbo.

The strategy of containment has not gone unnoticed. Conflict-affected people in the North see a clear line between the government’s containment of transitional justice and the government’s own culpability in the violence. One member of a focus group conducted in Atiak, a town in Northern Uganda on the primary trade route between Uganda and South Sudan, summarized:

We have complaints against the government and that is why [the government] is afraid of turning the National Transitional Justice Policy into law.

⁴⁵ Interview with Rosalba Oywa, Gulu, Uganda, February 25, 2020, notes on file with author.

⁴⁶ African Union Transitional Justice Policy (AUTJP). https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf (accessed April 23, 2019).

*They know they are not clean! That is why this policy has been in a draft form for over 10 years. There is no justice to me! The process of achieving true justice should begin by acknowledging guilt.*⁴⁷

Alternative Explanations

In this chapter I make the argument that state impunity in Uganda can be understood as a process of strategic adaptation in which the NRM government adopted transitional justice to advance its international reputation while working to escape justice. Given the domestic political condition in Uganda, the government pursued a strategy of containment where the risks of accountability were minimized by situating its transitional justice response within institutions already under government control. I argue that government impunity in Uganda is a result of the successful strategic adaptation of the accountability norm. Alternative explanations for state impunity in the age of accountability suggest that the norm of accountability is either not domestically resonant in Uganda or the government lacks the resources to pursue state crimes. There is little evidence to support either of these claims.

State impunity in Uganda has not been the result of a lack of domestic calls for justice and accountability. Human rights NGOs have been a strong presence in Uganda throughout the conflict in Northern Uganda, monitoring human rights abuses and seeking restraint. Groups such as the Acholi Religious Leaders Peace Initiative have been central in organizing and lobbying religious communities and Northern Ugandan parliamentarians around calls for justice and accountability for violations in the North. Despite the presence of these organizations, domestic civil society has been unable to mobilize around a unified transitional justice strategy. Calls for accountability, for example, have often been in conflict with appeals for amnesty for child soldiers returning from the Bush. The Ugandan government has been central to fomenting these conflicts through resource competition and restrictive state policies against civil society. Yet even in the face of these constraints, there has been domestic pressure to comply with international norms of accountability.

Furthermore, there is little evidence that Uganda lacks the institutional capacity to pursue accountability for state wrongdoings. Historically Uganda has had a robust judiciary and strong tradition

⁴⁷ Focus Group, Atiak, Uganda, July 21, 2020, notes on file with author.

of rule of law, making it unlikely that the government lacks the resources or capacity to pursue accountability. Government policies around HIV prevention are an example of the organizational capacity of the Ugandan state. The success of other domestic initiatives suggest that state accountability is stalled by political will rather than a lack of capacity to hold government actors to account.

Containment of Transitional Justice in Côte d'Ivoire

A similar pattern of strategic adaption through containment can be seen in Côte d'Ivoire. After election violence in 2010, the government adopted a series of transitional justice processes, including the establishment of a Special Investigative Unit housed within the judiciary and the creation of the Commission for Dialogue, Truth and Reconciliation. While both processes have been successful at holding perpetrators of human rights violations to account, the government has successfully escaped justice. The government of Côte d'Ivoire exercises mid-range control over its norm response. For this reason, the case of Côte d'Ivoire offers an additional example of the theory of strategic adaptation in a post-conflict state with limited governance capabilities but with few domestic constraints.

In Côte d'Ivoire, the conflict between the predominantly Muslim northern and predominantly Christian southern parts of the country reached its peak after the 2010 election between then incumbent Laurent Gbagbo and challenger Alassane Ouattara. The conflict was a resumption of a civil war in the early and mid-2000s that left unresolved ethnic and religious animosities. Tensions subsided, allowing a presidential election to be held in 2010, but violence resumed when Gbagbo refused to accept Ouattara's victory. The contested election led to a conflict that killed more than three thousand people and displaced one million. Forces on both sides engaged in extrajudicial killings, torture, and sexual violence. The conflict ended when Gbagbo was captured and Ouattara was installed as president. Gbagbo was tried before the ICC, and the Ouattara government initiated a series of transitional justice processes, including the establishment of a Special Investigative Unit within the state judiciary (later the Special Inquiry and Investigation Unit) and the creation of the Commission for Dialogue, Truth and Reconciliation (International Center for Transitional Justice n.d.; Uppsala Conflict Data Program n.d.).

Once Ouattara was installed as president, the international community pushed the government to hold perpetrators of election violence to account. The international community was highly involved in the conflict from the beginning; French and UN troops engaged in the April 2011 assault on the presidential palace that captured Gbagbo. Not long after the end of the conflict, in October 2011, the ICC started an investigation into the violence. The following month, the court issued an arrest warrant for Gbagbo, and the former president was transferred to The Hague to stand trial (International Criminal Court n.d.). There was also pressure on the new Ouattara government to implement domestic transitional justice. Following a 2012 visit, the UN Assistant Secretary-General for Human Rights emphasized that the victims of wrongdoings committed during the conflict were awaiting justice, adding that “the failure to hold the perpetrators of horrendous crimes accountable creates a grave risk of continuous violence” (UN News 2012). Furthermore, international development assistance to Côte d’Ivoire was substantial, giving the international community economic leverage over the government.

Despite international pressure for transitional justice, the Ouattara government faced domestic costs of accountability. In the 2010 presidential election, Ouattara won 54 percent of the vote; however, there was still a relatively sizable opposition to the government during its first years in power. This opposition was a political not a violent threat, since their leader Gbagbo had been captured. Yet, an investigation into the wrongdoings of Ouattara supporters had the potential to destabilize this balance and undermine the legitimacy of the Ouattara government. It was therefore necessary for the government to walk a fine line between appeasing the demands of the international community and maintaining its own hold on power.

The Ouattara government had a mid-range capacity to control its transitional justice response. In contrast to the NRM in Uganda, the government lacked complete control over the armed forces, which could hinder its capacity to address domestic threats. In the post-conflict period, the armed forces were dominated by opposition commanders with parallel command-and-control systems that impeded the control of the civilian government over the military (Freedom House 2016). The lack of control over the military weakened the government’s coercive capabilities. Domestic constraints, on the other hand, were minimal. The government exercised a high level of control over domestic institutions. According to Freedom House (2016), the

country lacked an independent judiciary, and state institutions were highly susceptible to corruption. Yet, international and national NGOs, as well as labor unions, generally operated freely in the country, adding to the domestic constraints on the government (Freedom House 2016).

As theorized, given its mid-range capacity for control, the Ouattara government engaged in a strategy of containment in which transitional justice is housed within existing state institutions. Specifically, the Special Investigative Unit was created within the judiciary in 2011 to direct judicial proceedings relating to crimes committed during the post-election violence. Like the ICD in Uganda, this unit is charged with coordinating violations of international humanitarian law and serving as a complementary institution to the work of the ICC. Like the situation in Uganda, the new government under Ouattara was applauded for inviting the ICC to investigate alleged violations committed in the country, but it subsequently has taken a harder line about which cases will be transferred to the ICC and which will be dealt with domestically. While the government transferred Gbagbo, for example, they have been unwilling to transfer his wife. The Special Investigative Unit has given the government more direct control over who is prosecuted and for which crimes.

In 2012, the government established the Commission for Dialogue, Truth, and Reconciliation (CDVR) with a mandate to identify the root causes of the conflict, patterns of violations, and strategies to advance victims' rights. The establishment of the CDVR offers a different pattern from that in Uganda. The government in Côte d'Ivoire risked the creation of a new institution, albeit one that has been highly controlled by the government. To mitigate the risks of this norm response, the Ouattara government structured a commission that it would be able to influence. The government had control over the make-up of the commission from the outset and was able to appoint one of Ouattara's political affiliates as its head (Human Rights Watch 2015).

The strategy of containment has proven successful. Through the Special Investigative Unit, scores of suspects have been indicted for charges ranging from economic crimes to crimes of genocide. However, all those charged have been Gbagbo loyalists. No members of the armed forces have been brought to trial for grave crimes. The CDVR completed its work in December 2014, when it submitted its final report to the government. However, the report was not made public. While President Ouattara has committed to holding perpetrators of wrongdoings during the 2010–2011 violence accountable, his

government has exclusively prosecuted Gbagbo supporters. Election violence was committed by both Gbagbo loyalists and those loyal to President Ouattara. Despite functioning transitional justice initiatives, government forces in Côte d'Ivoire have not been brought to justice. State impunity has been advanced through a strategy of containment in which transitional justice has been strategically adapted to comply with international pressure for accountability while avoiding the domestic costs of holding the government to account.

Conclusion

The containment of transitional justice in Uganda has created an arena of shattered expectations for victims of state violence in Northern Uganda. Rather than denying culpability for the violence, the practice of overpromising justice while underdelivering accountability has led to a gaslighting of sorts where victims of violence are told their needs are being addressed despite the obvious lack of accountability for government wrongdoings. Pressure for accountability from the international community forced the government to advance transitional justice. However, rather than acknowledging its own wrongdoing, the NRM government has chosen to contain transitional justice within its "big tent" of governance, appeasing international demands while strengthening its own hold on power.

While it is likely that the government of Uganda would prefer to pursue a more Rwanda-like strategy of coercion, domestic constraints on the government have pushed the NRM toward a more risk-adverse strategy. Rather than co-opt transitional justice to advance the legitimacy and control of the regime, the NRM must work to contain the risks of its norm response. The strong position of the security forces in Uganda makes state accountability particularly risky for the government. Containing transitional justice within existing power structures works to reduce the likelihood that the country's norm response could be expanded to include government wrongdoings. To be sure, Uganda has the apparent making of an ideal case for internationally supported transitional justice with a government that is highly susceptible to international pressure because of aid dependence and international reputation costs. However, the Uganda case demonstrates the ways in which the strategic adaptation of transitional justice effectively undermines international visions for accountability.