

# The role of NGOs in the domestic implementation of the African Union Transitional Justice Policy Framework: perspectives from Uganda

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**ABSTRACT:** This article explores the role of non-governmental organisations (NGOs) in the domestic implementation of the African Union Transitional Justice Policy (AUTJP). It uses Uganda as a prism through which to examine the implementation of two key constitutive elements of the AUTJP: criminal prosecutions and traditional justice. Besides reflections based on the author's experience in Uganda, the analysis rests on an extensive study and review of literature and qualitative interviews. The article argues that NGOs have the potential to sequence the constitutive TJ elements of the AUTJP, where there are competing narratives of peace versus justice. While local NGOs are pivotal in fostering local ownership of TJ, the findings reveal the critical role of NGO networks in the domestic implementation of TJ. The article concludes that there is a compelling case to be made for the continued involvement of NGOs in the domestic implementation of TJ.

## TITRE ET RÉSUMÉ EN FRANCAIS:

**Le rôles des organisations non-gouvernementales dans la mise en œuvre nationale de la politique de justice transitionnelle de l'Union Africaine: perspectives de l'Ouganda**

**RÉSUMÉ:** Cet article explore le rôle des organisations non-gouvernementales (ONG) dans la mise en œuvre nationale de la politique de justice transitionnelle de l'Union Africaine (PJTUA). Il utilise l'Ouganda comme prisme pour examiner la mise en œuvre de deux éléments constitutifs clés de la PJTUA: les poursuites pénales et la justice traditionnelle. Outre les réflexions fondées sur l'expérience de l'auteur en Ouganda, l'analyse s'appuie sur une étude et un examen approfondi de la littérature et d'entretiens qualitatifs. L'article soutient que les ONG ont le potentiel de séquencer les éléments constitutifs de la justice transitionnelle de la PJTUA, où il existe des récits concurrents de la paix contre la justice. Alors que les ONG locales sont essentielles pour favoriser l'appropriation locale de la justice transitionnelle, les résultats de cette étude révèlent le rôle crucial des réseaux d'ONG dans la mise en œuvre nationale de la justice transitionnelle. L'article conclut qu'il existe des arguments convaincants en faveur de l'implication continue des ONG dans la mise en œuvre nationale de la justice transitionnelle.

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**KEY WORDS:** transitional justice, African Union Transitional Justice Policy, International Criminal Court, Uganda, non-governmental organisations, legitimacy

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**1 INTRODUCTION**

A growing body of scholarship gives attention to the implementation of transitional justice (TJ) across local, national, regional and global levels.<sup>1</sup> TJ is defined as redress for gross violations of human rights following periods of authoritarian rule or armed conflict.<sup>2</sup> These include criminal accountability, truth commissions, reforms and reconciliation. As argued by Brankovic and Van der Merwe, the practice of TJ will shape future understanding of its boundaries, goals, strategies and definition.<sup>3</sup>

There are scholarly questions regarding North-South gaps in the understandings and beliefs about what TJ is and what it can achieve. Whereas Parmentier explicitly agrees that this gap exists,<sup>4</sup> a North-based understanding of TJ is illustrated in what Dolan terms ‘North-based transitional justice operators’, that often obscure local contexts in favour of criminal accountability.<sup>5</sup> Inevitably, Dolan raises an interesting argument for ‘South-based transitional justice’, creating new spaces for non-state actors, as opposed to state-controlled truth telling and prosecutions.<sup>6</sup> There are calls for the rethinking of TJ, in order to provide closer attention to its context.<sup>7</sup> Similarly, Palmer adds to the inclusivity critique, arguing for legal pluralism and bottom-up

1 A Macdonald ‘Somehow this whole process became so artificial: exploring the transitional justice implementation gap in Uganda’ (2019) 13 *International Journal of Transitional Justice* 225-248; F Teksen ‘Implementation of transitional justice initiatives in Bosnia and Herzegovina: the need for an inclusive approach’ (2019) 39 *Journal of Muslim Minority Affairs* 199-215.

2 R Duthie & P Seils (eds) *Justice mosaics: how context shapes transitional justice in fractured societies* (2017).

3 J Brankovic & H van der Merwe (eds) *Advocating transitional justice in Africa: the role of civil society* (2018) ix.

4 L Fletcher & H Weinstein ‘North-South dialogue: bridging the gap in transitional justice – workshop transcript’ (2018) 36 *Berkeley Journal of International Law* 227.

5 Fletcher & Weinstein (n 4) 228-229.

6 As above.

7 M Mutua ‘What Is the future of transitional justice?’ (2015) 9 *International Journal of Transitional Justice* 1-9.

approaches to TJ.<sup>8</sup> To this end, this article underlines the need to implement TJ in ways that resonate with country specific realities.

In February 2019, the African Union (AU) adopted a regional framework, in form of a Transitional Justice Policy (AUTJP).<sup>9</sup> The backbone of the framework rests on four broad areas. First, it contains the principles and values that show an overall objective to offer 'guidelines, possible benchmarks and practical strategic proposals for the design, implementation, monitoring and evaluation of African TJ processes'.<sup>10</sup> Second, it consists of a normative framework and indicative elements of TJ. Third, it highlights crucial cross cutting issues related to gender and broader inclusivity of vulnerable groups. Finally, it presents an outline on implementation mechanisms. This comprehensive policy framework affirms the arguments that Africa is actively engaged in the development of human rights law.<sup>11</sup> But how should this policy be implemented across specific country contexts in Africa?

This article explores the role of NGOs in the domestic implementation of the AUTJP. Lühe's work shows the contribution of NGO expertise in the development of the AUTJP.<sup>12</sup> Wachira's theoretical analysis of the AUTJP highlights how the policy would fit within the general structure of governance in Africa.<sup>13</sup> He notes the expansive conception of the notion of justice that includes restorative, redistributive and transformative justice, as unique developments.<sup>14</sup> Beyond the development of regional standards in TJ, he argues that the AUTJP presents a unique opportunity to address impunity in Africa.<sup>15</sup> This article goes beyond the theoretical analysis of the TJP, to explore ways in which it would be implemented.

The article uses the case study of Uganda as a prism through which to explore the domestic implementation of the policy. Due to the political and normative disagreements around TJ, the AUTJP is viewed

8 N Palmer *Courts in conflict: interpreting the layers of justice in post-genocide Rwanda* (2015) 181.

9 African Union, Transitional Justice Policy, 12 February 2019 (AUTJP).

10 AUTJP (n 9) para 9.

11 M Killander 'African human rights law in theory and practice' in S Joseph & A McBeth (eds) *Research handbook on international human rights law* (2010) at 413

12 U Lühe 'Developing the African Union transitional justice policy: an assemblage perspective' in B Jones & U Lühe (eds) *Knowledge for peace: transitional justice and the politics of knowledge in theory and practice* (2021).

13 GM Wachira 'The African Union transitional justice policy framework and how it fits into the African Governance Architecture (AGA)' in C Jalloh, KM Clarke & VO Nmeielle (eds) *The African Court of Justice and Human and Peoples' Rights in context: development and challenges* (2019).

14 Wachira (n 13) 164.

15 Wachira (n 13) 163.

as an important development for both institutionalisation and diversification of TJ processes in Africa.<sup>16</sup> Using the Robben Island Guidelines as an example, Long and Murray show the potential of thematic instruments of the African Commission to positive reforms in domestic contexts.<sup>17</sup> This suggests a need to consider how the AUTJP would be implemented at national levels.

The AUTJP envisions a network of actors at local, national and regional levels, including non-state actors.<sup>18</sup> The African Commission on Human and Peoples' Rights (African Commission) is the body responsible for monitoring implementation of AU human rights framework, including the AUTJP. However, as argued by Killander, there are considerable challenges in the implementation regime, that requires innovations.<sup>19</sup> More generally, Long and Murray are concerned about the implementation gap of African Commission soft-law instruments at the national and regional levels.<sup>20</sup>

Murray's comparative research recommends multifaceted approaches towards national implementation of regional human rights standards, encompassing a broad range of stakeholders including victims and NGOs.<sup>21</sup> This article lends support to Murray's argument that empathises the centrality of NGOs in both development and functioning of the African human rights system.<sup>22</sup> It will thus explore how NGOs can contribute to the national implementation of the AUTJP.

There are calls for more rigorous conceptualisation of the roles of NGOs in TJ.<sup>23</sup> It is thus useful to examine how the AUTJP applies in domestic contexts. It is even more important to understand how it can be implemented. Van der Merwe and Brankovic locate the work of NGOs in five dimensions: implementers, opponents, reframers, alternatives and mediators.<sup>24</sup> Surprisingly, while there is considerable scholarly attention on NGO roles in TJ and human rights in general, the question of how this links with the regional framework has not

16 V Arnould 'Regionalisation of transitional justice frameworks in Africa and Europe' *Leuven Transitional Justice Blog* <https://blog.associatie.kuleuven.be/ltjb/regionalisation-of-transitional-justice-frameworks-in-africa-and-europe/> (accessed 30 April 2021).

17 D Long & R Murray 'The role and use of soft law instruments in the African human rights system' in S Lagoutte, T Gammeltoft-Hansen & J Cerone (eds) *Tracing the roles of soft law in human rights* (2016) at 96.

18 AUTJP (n 9) para 127.

19 Killander (n 11).

20 Long & Murray (n 17).

21 R Murray 'Addressing the implementation crisis: securing reparation and righting wrongs' (2020) 12 *Journal of Human Rights Practice* 1 at 11.

22 R Murray 'The role of NGOs and civil society in advancing human security in Africa' in A Abass (ed) *The role of NGOs and civil society in advancing human security in Africa* (2010).

23 P Gready & S Robins 'Rethinking civil society and transitional justice: lessons from social movements and 'new' civil society' (2017) 21 *The International Journal of Human Rights* 956-975.

24 H van der Merwe & J Brankovic 'The role of African civil society in shaping national transitional justice agendas and policies' (2016) 1 *Acta Juridica* 230.

garnered similar scrutiny. Yet, the potential for implementation of the ATJ framework through NGOs appears substantial.

Thus, the article offers an analysis of NGO work in TJ, using the concept of implementation as a theoretical framework. The key question relates to the role of NGOs in the domestic implementation of TJ. This dimension is useful when designing strategies to ensure that both elements of criminal accountability and traditional justice are implemented, without undermining the broad goals of the AUTJP.

As a methodological choice, this article is based on a combination of research methods. First, it lies on the case study method of TJ in Uganda. This is a good case study since Uganda adopted a National Transitional Justice Policy, three months after the adoption of the AUTJP.<sup>25</sup> This case study also allows the article to draw on reflections based on the author's experience as a legal practitioner in Uganda.

Second, due to the methodological deficits in the orthodox doctrinal legal research method, the article uses a socio-legal approach. As argued by Hellum, there is need for research approaches that view human rights as socially constructed, in order to transcend normative debates within law and anthropology.<sup>26</sup> This socio-legal research is applied in order to address the key question regarding the role of NGOs in the domestic implementation of the AUTJP framework in Uganda. It also allows for empirical assessment through the use of a variety of data sources like semi-structured interviews and participant observations.

Finally, the analysis rests primarily on an extensive study and review of secondary sources regarding the TJ process and the formulation of the Uganda national TJ Policy of 2019. As a secondary source, it relies on qualitative semi-structured interviews with a range of NGO representatives, victim representatives, prosecutors, judges, academics and defence lawyers. The participants were selected on the basis of their work in Uganda's TJ process. For the NGO representatives, the primary goal was to understand how their policies and interventions feed into the two key constitutive elements of the AUTJ Policy. It also aimed to identify the common themes that pervade their work.

Due to the COVID-19 disruptions, the interviews were conducted through a mixture of telephone and online using video technology. Salmon's qualitative e-research framework was used as a tool for organising and designing the interviews.<sup>27</sup> The University of Portsmouth ethical guidelines and usual ethical principles guiding socio-legal research applied during the entire process. This was vital in order to have verifiable research participants, and provide informed consent before participating in the online interviews.<sup>28</sup> The findings

25 Uganda national transitional justice policy, 2019 (Uganda TJP).

26 A Hellum 'How to study human rights in plural legal contexts: an exploration of plural water laws in Zimbabwe' in BA Andreassen, H Sano & S McInerney-Lankford (eds) *Research methods in human rights: a handbook* (2017) at 437.

27 J Salmons *Doing qualitative research online* (2016).

28 J Salmons 'Designing and conducting research with online interviews' in J Salmons (ed) *Cases in online interview research* (2012) 8.

were analysed systematically, to identify the discursive elements that relate to elements of criminal prosecutions and traditional justice.

The article is organised in four main sections. Following this Introduction, section two sets the scene analysing the key indicative elements of the AUTJP justice and accountability, and the use of traditional mechanisms. The section closes with a discussion on the role of NGOs in the implementation of TJ. Next, section three turns to the case study of Uganda, giving empirical perspectives of NGO work in TJ. Finally, in section four, the article concludes that there is still a compelling case to be made for the involvement of NGOs in the domestic implementation of TJ.

## **2 CONTESTED JUSTICE IN AFRICA**

This section examines two key indicative elements of the TJP-Justice and accountability, and the use of traditional mechanisms. The aim of the section is to explore the interconnectedness, but also contestations around the two dimensions. These discussions will be relevant for the implementation of the AUTJP in the domestic contexts.

### **2.1 Justice and accountability**

The dimension of justice and accountability is a key element of the AUTJP, providing for the prosecution of crimes at the national levels, extraordinary chambers or hybrid courts and international tribunals with competent jurisdiction.<sup>29</sup> Arnould makes a critical comparison between the AUTJP and the European Union TJ policy regarding the aspect of criminal justice.<sup>30</sup> She reveals that unlike the latter that places international criminal justice at the centre of its approaches, the AUTJP prioritises national trials and regional courts.<sup>31</sup> It is thus important to explore how criminal accountability is understood within the African context, in order to determine effective implementation mechanisms.

Previous years have seen an increasing engagement of the AU in international criminal justice as a form of TJ. This evolving role is exemplified through the creation of regional and sub regional bodies, for example, the extraordinary African chambers for the trial of former Chadian president Hissène Habré. However, there are scholarly concerns in relation to how such mechanisms relate to the broader goals of TJ, suggesting for a cautious implementation approach.<sup>32</sup>

The African Union backlash against the ICC in the previous years presents a ground to analyse the normative developments under the

29 AUTJP (n 9), paras 77-79.

30 Arnould (n 16).

31 Arnould (n 16).

32 See GM Musila 'The role of the African Union in international criminal justice: force for good or bad?' in EA Ankumah (ed) *The International Criminal Court and Africa* (2016).

TJP.<sup>33</sup> In particular, a key question could arise on how states will implement global international criminal justice as a form of TJ. The African Union (AU) is determined to establish a criminal chamber within the African Court of Justice and Human Rights (the criminal chamber). Critics of the ICC intervention in Africa are optimistic about the potential role of the African Court of Justice and Human Rights (ACJHR) in TJ.<sup>34</sup> In what he calls a 'differentiated accountability system', Murithi stresses the regional accountability mechanism as a core body under the AU's TJ framework.<sup>35</sup>

The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014) (Malabo Protocol) is a key development within the TJ framework.<sup>36</sup> However, the controversial provision for immunity for incumbent Heads of State and other senior officials elicits concerns about the relevance of the Malabo Protocol within the context of TJ.<sup>37</sup> Besides limiting the mandate of the African Court, the immunity provision has the potential to negatively impact on the TJ capacities of *ad hoc* courts.<sup>38</sup> Consequently, there are arguments for African states to respect their obligations arising from the principle of universal jurisdiction and Rome Statute.<sup>39</sup> For example, the ICC is seen as a relevant mechanism in contexts where national courts fail to prosecute top commanders.<sup>40</sup>

Besides its potential merits, Kemp highlights significant problems like lack of adequate finances and human resources, that might impede the functioning of the proposed international criminal law section of the African Human Rights Court.<sup>41</sup> He argues for the continued role of

- 33 J Oloka-Onyango 'Unpacking the African backlash to the International Criminal Court (ICC): the case of Uganda and Kenya' (2020) 4 *Strathmore Law Journal* 41-68; P Brett & LE Gissel *Africa and the backlash against international courts* (2020).
- 34 T Murithi 'The advent of a differentiated accountability system: the African Court of Justice and Human Rights and the AU transitional justice architecture' in C Jalloh, KM Clarke & VO Nmehielle (eds) *The African Court of Justice and Human and Peoples' Rights in context: development and challenges* (2019).
- 35 Murithi (n 34) 166-179.
- 36 Malabo Protocol.
- 37 D Nsereko & MJ Ventura 'Perspectives on the international criminal jurisdiction of the African Court of Justice and Human Rights pursuant to the Malabo protocol (2014) in C Jalloh, KM Clarke & VO Nmehielle (eds) *The African Court of Justice and Human and Peoples' Rights in context: development and challenges* (2019); see also Malabo protocol (n 36) art 46A
- 38 NC Ani 'Implications of the African Union's stance on immunity for leaders on conflict resolution in Africa: the case of South Sudan and lessons from the Habre case' (2018) 18 *African Human Rights Law Journal* 438 at 462.
- 39 CB Murungu 'Towards a criminal chamber in the African Court of Justice and Human Rights' (2011) 9 *Journal of International Criminal Justice* 1087.
- 40 EC Lubaale 'The dominant role of commanders in the Sudanese military justice system and accountability for international crimes' (2018) 26 *African Journal of International and Comparative Law* 391-406.
- 41 G Kemp 'South Africa's (possible) withdrawal from the ICC and the future of the criminalization and prosecution of crimes against humanity, war crimes and genocide under domestic law: a submission informed by historical, normative and policy considerations' (2017) 16 *Washington University Global Studies Law Review* 435.

the ICC in Africa, under the broad notion of ending impunity.<sup>42</sup> However, it is also vital to consider the nexus between the ICC and the context specific realities.

The challenges surrounding the involvement of the ICC in contexts like Libya and Sudan illustrate the need to examine how accountability mechanisms are implemented.<sup>43</sup> Within the context of TJ, Okafor and Ngwaba relate the ICC role to that of a football referee, making observations with a potential for alternative justice.<sup>44</sup> In light of the calls for regional accountability mechanisms, it is important to consider the challenges of implementing TJ, most notably, in the absence of regime changes at the domestic levels.<sup>45</sup>

## 2.2 Traditional justice under the AUTJP

Besides formal justice and accountability, the AUTJP stresses the importance of traditional and complementary justice mechanisms:<sup>46</sup>

Alongside its focus on holding perpetrators accountable, and hence on retribution, in the African transitional setting the justice and accountability element should involve conciliation and restitution. Procedures should involve granting compensation to victims and facilitating full participation of victims and community members in proceedings and reconciliation and healing.

These traditional mechanisms resonate with empirical research findings on possible alternative conceptions of justice: (i) restoration of relationships through compensation and rituals; (ii) ending ongoing violations through peace talks; (iii) redistribution of wealth and compensation; (iv) justice as accountability and punishment where the perpetrators confess and live with the affected people; and (v) justice as equality through the prosecution of all perpetrators including state agents.<sup>47</sup> Concerns about the application of cosmopolitan notions of justice have triggered calls for alternative forms of justice rooted in the African context, as a way of peacebuilding.<sup>48</sup> In a nutshell, the dominant use of criminal accountability as a tool for global justice is criticised for failure to take account of diverse conceptions of justice.<sup>49</sup> Consequently, there are strong arguments for legal pluralism within

42 Kemp (n 41) 435.

43 See Lubaale (n 40); M Kersten 'Justice after the war: the International Criminal Court and post-Gaddafi Libya' in KJ Fisher & R Stewart (eds) *Transitional justice and the Arab spring* (2014); and M Kersten *Justice in conflict: the effects of the International Criminal Court's interventions on ending wars and building peace* (2016).

44 OC Okafor & U Ngwaba 'The International Criminal Court as a 'transitional justice' mechanism in Africa: some critical reflections' (2015) 9 *International Journal of Transitional Justice* 107.

45 Murithi (n 34).

46 AUTJP (n 9).

47 SMH Nouwen & WG Werner 'Monopolizing global justice' (2015) 13 *Journal of International Criminal Justice* 165.

48 C Zambakari 'Two paradigms of justice: Criminal vs survivor justice in Africa' (2019) 22 *Contemporary Justice Review* 122-138; C Zambakari 'To punish or to reform? Survivor justice in Africa' (2016) *Conflict Trends* 3-11.

49 Nouwen & Werner (n 47).



international criminal justice.<sup>50</sup> The use of traditional justice mechanisms is particularly suited in post-war contexts, where it fosters reintegration of former combatants.<sup>51</sup>

Notable traditional justice mechanisms include *Gacaca* in Rwanda, *Magamba* spirit mediums in Mozambique, *Fambul Tok* or 'family talk' in Sierra Leone, *Bashingantahe* or counsel of wise elders in Burundi and the *Mato Oput* system in Northern Uganda.<sup>52</sup> More generally, the AU peace and security architecture recognises the pivotal role of the panel of the wise (elders) in the conflict prevention and resolution.<sup>53</sup>

Consequently, one could think of ways in which the TJP would influence the policies of both state and non-state actors, on traditional justice mechanisms. However, the practical implementation of traditional justice remains a critical challenge.<sup>54</sup> It is important to note that legal pluralism triggers tensions within the communities, due to the divergent normative orders between formal and traditional justice.<sup>55</sup>

In light of this dilemma, a key question arises: What strategies can the AU invoke to ensure that both criminal accountability and traditional justice are implemented, without undermining the broad goals of the TJP? Crucially, the role of non-state actors like NGOs becomes vital. The next section explores the role of NGOs within TJ, specifically their work and policies regarding the two key indicative elements of the TJP—Justice and accountability, and the use of traditional mechanisms.

### 2.3 Implementation of TJ through NGOs

The past years have seen growing NGO engagements within the African human rights mechanisms through advisory opinions and strategic litigation, within the broader context of human rights.<sup>56</sup> Another notable role that we could think of relates to the monitoring of state compliance with TJ processes, since NGOs are part of broader compliance constituencies that also include the judiciary and media.

50 EC Lubaale 'Legal pluralism as a lens through which to appreciate the role and place of traditional justice in International Criminal Justice' (2020) 52 *Journal of Legal Pluralism and Unofficial Law* 180-202.

51 C Rose & FM Ssekandi 'The pursuit of transitional justice and African traditional values: a clash of civilizations' (2007) 4 *SUR International Journal on Human Rights* 101-107.

52 African Commission on Human and Peoples' Rights 'Study on transitional justice and human and peoples' rights in Africa, 2019 <https://www.achpr.org/news/viewdetail?id=185> (accessed 22 June 2021).

53 A Jegede 'The African Union peace and security architecture: can the panel of the wise make a difference?' (2009) 9 *African Human Rights Law Journal* 409-433.

54 E Brems, G Corradi & M Schotsmans *International actors and traditional justice in sub-Saharan Africa: policies and interventions in transitional justice and justice sector aid* (2015); Lubaale (n 50).

55 Brems, Corradi & Schotsmans (n 54).

56 M Killander & MG Nyarko 'Human rights developments in the African Union' (2018) 18 *African Human Rights Law Journal* 732-757.

However, human rights scholars argue that such constituencies can either advance or obstruct the domestic implementation of regional human rights standards.<sup>57</sup> It is thus therefore important to identify the various ways in which NGOs influence the adoption and implementation of TJ mechanisms at the national and local levels.

According to Long and Murray, ownership of the African Commission soft law instruments can be demonstrated by NGOs, in addition to national human rights institutions and states.<sup>58</sup> As a tool to encourage implementation of human rights decisions made by regional bodies, NGOs play critical roles in increasing visibility and publicity around human rights while pressuring states to comply.<sup>59</sup>

NGOs organise workshops where stakeholders hold discussions outlining what TJ should look like. For example, discussions within NGO workshops in the Democratic Republic of the Congo (DRC) proposed a decentralised approach to TJ through the use of local committees, due to the context sensitive dynamics.<sup>60</sup> Another important suggestion relates to what Arnould regards as a 'grounded decentralisation' requiring the implementation of TJ based on victims' own conceptions of justice, instead of normative positions.<sup>61</sup> In the opinion of the author, such decentralised approaches would be a good basis for implementation of the TJP element of traditional justice.

NGO coalitions play a pivotal role in legitimising truth and justice mechanisms through their engagement with the public, media, donors, governments and these TJ mechanisms.<sup>62</sup> As a solution to what she terms as 'renewed authoritarianism' in Egypt, Aboueldahab advances a TJ approach that prioritises social justice, judicial activism and the strengthening of civil society.<sup>63</sup> She uses the Egyptian case to empathise the importance of NGOs in shaping TJ, particularly in authoritarian contexts.<sup>64</sup>

From a normative perspective, NGOs fill the gaps where the states lack capacity, by drafting TJ legislation and working directly with the victims.<sup>65</sup> It can be argued that by articulating TJ norms from an

57 A Donald & A Speck 'The dynamics of domestic human rights implementation: lessons from qualitative research in Europe' (2020) 12 *Journal of Human Rights Practice* 59.

58 Long & Murray (n 17) 107.

59 C Sandoval, P Leach & R Murray 'Monitoring, cajoling and promoting dialogue: what role for supranational human rights bodies in the implementation of individual decisions?' (2020) 12 *Journal of Human Rights Practice* 86-87.

60 V Arnould 'Reflections on a decentralized approach to transitional justice in the DR Congo' (2021) 33 *Africa Policy Brief* 1-10.

61 Arnould (n 60) 7.

62 LK Bosire & G Lynch 'Kenya's search for truth and justice: the role of civil society' (2014) 8 *International Journal of Transitional Justice* 256-276; C Sperfeldt 'The trial against Hissène Habré: networked justice and reparations at the extraordinary African chambers' (2017) 21 *International Journal of Human Rights* 1243-1260.

63 N Aboueldahab 'Transitional justice policy in authoritarian contexts: the case of Egypt' (2017) *Brookings Doha Center* 3-5.

64 Aboueldahab (n 63) 3-5.

65 Brankovic & Van der Merwe (n 3).

African perspective, NGOs have the potential to legitimise the constituent elements of the TJP in contexts where TJ is contested. We cannot underestimate the role of local NGOs in the implementation of traditional justice mechanisms. Community based NGOs have the potential to question top-down approaches that may not be culture-congruent'.<sup>66</sup> Ultimately, the local ownership of the TJP is critical in order to guarantee its successful implementation.

NGOs are pivotal in the work of specialised criminal tribunals. The Special Court for Sierra Leone (SCSL) had a cordial relationship with NGOs and needed their support, particularly the Office of the Prosecutor.<sup>67</sup> NGOs were influential in the interpretation of the Special Court Agreement (Ratification) Act 2002, in regards to the contested legal relationship between the Tribunal and the Truth and Reconciliation (TRC).<sup>68</sup> As the two TJ mechanisms operated in parallel, there were legal concerns regarding the use of evidence and overlap in their mandates. Therefore, the interpretative role of NGOs can be regarded as a form of legitimisation of the tribunals, since it sets a new normative foundation for TJ.

Despite the aforementioned merits of NGOs, it is important to consider the structural dynamics surrounding NGO work. International NGOs are considered as 'gatekeepers' in the TJ field, since they not only do advocacy, but also operationalise particular TJ elements.<sup>69</sup> In an arena of multiple social and political dimensions, NGOs may not always reflect the views of the local constituencies of TJ -victims, but accentuate donor goals.<sup>70</sup> These donor dynamics have a negative implication on TJ in the local context, as top-down approaches are not always appropriate for the underlying societal needs. In relation to implementation, local NGOs can either adapt or resist TJ concepts and institutions.<sup>71</sup>

Against the background of the critical role of NGOs in TJ, a crucial question arises in respect to how the TJP could be implemented in domestic contexts. The next section will make a qualitative analysis of the case study of Uganda, to identify the constructive role that NGOs play in implementation of TJ.

66 LE Fletcher & HM Weinstein 'Writing transitional justice: an empirical evaluation of transitional justice scholarship in academic journals' (2015) 7 *Journal of Human Rights Practice* 191.

67 Interview with DM Crane, Founding Chief Prosecutor, 1 March 2021.

68 WA Schabas 'Internationalized courts and their relationship with alternative accountability mechanisms: the case of Sierra Leone' in CPR Romano, A Nollkaemper & JK Kleffner (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia* (2004) 166.

69 S Dezalay 'The role of international NGOs in the emergence of the field of transitional justice: a case-study of the International Center for Transitional Justice' in C Lawther, L Moffett & D Jacobs (eds) *Research handbook on transitional justice* (2017).

70 A Jeffrey, L Staeheli & DJ Marshall 'Rethinking the spaces of civil society' (2018) 67 *Political Geography* 112.

71 Van der Merwe & Brankovic (n 24).

### **3 IMPLEMENTATION OF TRANSITIONAL JUSTICE IN UGANDA: PIVOTAL ROLE OF NGOS**

The Uganda case study aims to show the critical role of NGOs in the implementation of TJ. The section starts by giving a historical account of TJ in Uganda. Against this background, it then links the NGO work to the constitutive elements of the ATJP. The analysis rests on two dimensions: First, the work of transnational networks and coalitions and second, the role of NGOs in fostering local ownership of TJ. Local ownership will be analysed through the victim-oriented discourses on TJ within the post-conflict affected communities.

#### **3.1 Brief historical overview of conflict and TJ in Northern Uganda**

Northern Uganda erupted into a civil conflict in 1987, one year after President Yoweri Museveni took charge of the country. The Lord's Resistance Army (LRA), a new rebel movement, was formed by Joseph Kony. The LRA were implicated in acts of sexual violence, murder and recruitment of children as soldiers. These atrocities caused massive internal displacement of more than 440 000 persons in Northern Uganda.<sup>72</sup>

In 1994, there was a temporary ceasefire and a peace agreement was close to being reached between the Government of Uganda and the LRA.<sup>73</sup> However, the LRA returned to the bush and the violence escalated in the coming subsequent years. In July 2006, the Ugandan government and the LRA commenced peace talks, convened in Juba, South Sudan. These talks collapsed in December 2008.<sup>74</sup> Either side viewed the other with suspicion and the Ugandan government opted for a military operation to end the insurgency.<sup>75</sup>

72 Office of the special representative of the Secretary-General for children and armed conflict 'The lord's resistance army and children' (2012) <https://childrenandarmedconflict.un.org/2012/06/the-lords-resistance-army-and-children/> (accessed 19 June 2021).

73 Agreement between the Uganda government and the Lord's Resistance Army (LRA) (Gulu ceasefire) (1994) file:///C:/Users/Admin/Downloads/UG\_940202\_The%20Gulu%20Ceasefire.pdf, (accessed 10 March 2021).

74 D Hendrickson & K Tumutegvereize *Dealing with complexity in peace negotiations: Reflections on the Lord's Resistance Army and the Juba Talks* (2012) 5.

75 'Army doubts Kony peace offer' *New Vision* 25 May 2006.

Due to the demand for peace, the Ugandan government enacted an Amnesty Act in 2000, which offered immunity and resettlement packages to LRA fighters who surrendered. Consequently, over 26 000 people in the whole country responded positively and returned home.<sup>76</sup> In 2002, the Ugandan government began an intensive military drive named 'Operation Iron Fist', exerting further pressure on the LRA.<sup>77</sup> Despite its initial success, the number of internally displaced persons (IDPs) grew to over 800 000 at the end of 2003.<sup>78</sup> One year after the ICC started its work in 2002, the Ugandan government referred the situation to the ICC for investigation.

On 6 May 2005 the Office of the Prosecutor (OTP) filed an application to Pre-Trial Chamber II for warrants of arrest for five of the most senior commanders in the LRA, and they were subsequently issued on 8 July 2005.<sup>79</sup> Subsequently, arrest warrants relating to crimes against humanity and war crimes, were issued for the LRA's top 5 commanders in 2005. Dominic Ongwen, one of LRA's top commanders surrendered in 2015, and his trial before the ICC commenced in 2016.<sup>80</sup> In 2008, the ICC trust fund for victims started its assistance mandate operations in Uganda, as a way of repairing the post-war affected communities.<sup>81</sup>

It is important to note that the Juba peace talks and the domestic implementation of the Rome Statute led to the creation of a hybrid court in Uganda, the International Crimes Division (ICD).<sup>82</sup> Thomas Kwoyelo, a commander of the LRA, was arrested and prosecuted at the ICD for atrocities he committed in Northern Uganda. At the time of writing this article, Kwoyelo's trial was underway.

On 4 February 2021, the Trial Chamber IX of the ICC convicted Ongwen of 61 out of 70 counts of war crimes and crimes against humanity, and on 6 May 2021, sentenced him to 25 years

76 Conciliation resources 'Undermining the LRA: Role of Uganda's Amnesty Act' <https://www.c-r.org/news-and-views/comment/undermining-lra-role-ugandas-amnesty-act> (accessed 22 June 2010).

77 A Macdonald 'In the interests of justice? The International Criminal Court, peace talks and the failed quest for war crimes accountability in Northern Uganda' (2017) 11 *Journal of Eastern African Studies* 631.

78 KC Dunn 'Uganda: The Lord's Resistance Army' (2004) 31 *Review of African Political Economy* 141.

79 See International Criminal Court 'Statement by the Chief Prosecutor on the Uganda arrest warrants', 14 October 2005, at 3, [https://www.icc-cpi.int/nr/rdonlyres/3255817D-fd00-4072-9F58-fdb869F9B7cf/143834/lmo\\_20051014\\_English1.pdf](https://www.icc-cpi.int/nr/rdonlyres/3255817D-fd00-4072-9F58-fdb869F9B7cf/143834/lmo_20051014_English1.pdf) (accessed 1 September 2020).

80 See International Criminal Court 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, following the surrender and transfer of top LRA Commander Dominic Ongwen' 21 January 2015 <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-21-01-2015> (accessed 20 June 2021).

81 KJ Fisher 'Messages from the expressive nature of ICC reparations: complex-victims in complex contexts and the trust fund for victims' (2020) 20 *International Criminal Law Review* 318-345.

82 High Court (International Crimes Division) practice direction, legal notice No 10 of 2011, section 6(1). The ICD was set up in 2008 to prosecute international crimes under the ICC Act of 2010, the Geneva Conventions Act 1964 and Ugandan criminal law.

imprisonment.<sup>83</sup> Ongwen's prosecution elicited mixed views on the role of international criminal justice within the broader TJ context, considering the fact that Ongwen was both a victim of the brutality of the LRA as well as a perpetrator of gross crimes.<sup>84</sup> Besides the criminal accountability, other forms of TJ include amnesty and reconciliation.

In June 2019, Uganda adopted a National Transitional Justice Policy,<sup>85</sup> three months after the adoption of the AUTJP. The policy was founded upon the peace negotiations in Juba and the Agreement on Accountability and Reconciliation (AAR), that acknowledged the 'need for an overarching justice framework that will provide for the exercise of formal criminal jurisdiction, and for the adoption and recognition of complementary alternative justice mechanisms'.<sup>86</sup> Uganda's TJ Policy mirrors the key constitutive elements of the AUTJP-formal accountability and traditional justice mechanisms.

### 3.2 Implementing accountability mechanisms through networks

The TJ element of formal accountability is reflected through the application of international criminal justice in Uganda. One notable mechanism relates to the intervention of the ICC in Uganda. The initial relationship between the Ugandan government and the ICC, had been perceived as a 'marriage made in heaven'.<sup>87</sup> However, all was not smooth, as the Court navigated its way through the affected communities and other stakeholders, including NGOs.

At the domestic level, the Northern Ugandan Transitional Justice Working Group (NUTJWG), a collation of over sixty NGOs was formed in 2008 to engage with TJ mechanisms.<sup>88</sup> Workshops convened under the auspices of NUTJWG aimed at 'building consensus among civil society in northern Uganda to promote collective and collaborative engagement on issues of transitional justice'.<sup>89</sup>

So, what do we make of these NGO coalitions within the context of implementing TJ? In Northern Uganda, the coalitions hosted

83 *The Prosecutor v Dominic Ongwen*, ICC-02/04-01/15, trial chamber IX, sentence, 6 May 2021; TR Kirabira, 'Ongwen at the International Criminal Court' (2021) 25 *ASIL Insights*.

84 A Branch 'Dominic Ongwen on Trial: The ICC's African dilemmas' (2017) 11 *International Journal of Transitional Justice* 39; EK Baines 'Complex political perpetrators: reflections on Dominic Ongwen' (2009) 47 *Journal of Modern African Studies* 163-191.

85 Uganda TJP (n 25).

86 'Annex to the agreement on accountability and reconciliation between the government of the Republic of Uganda and the Lord's Resistance Army/Movement (Annex to June 29 Agreement), Juba, Sudan, June 29, 2007, February 19, 2008' para 5.2.

87 Oloka-Onyango (n 33) 47.

88 Justice and reconciliation project annual report (2009) 7 [http://justiceandreconciliation.com/wp-content/uploads/2009/01/JRP\\_AnnualReport\\_2009-SM.pdf](http://justiceandreconciliation.com/wp-content/uploads/2009/01/JRP_AnnualReport_2009-SM.pdf) (accessed 11 April 2021).

89 Justice and reconciliation report (n 88).

consultative dialogues within the affected communities to reflect on indicted Ongwen's 'Justice Dilemma,' emphasising the importance of both the ICC and domestic justice mechanisms.<sup>90</sup> NUTJWG's work diminished significantly as the ICC case progressed'.<sup>91</sup> One possible reason for the redundancy of the coalition can be attributed to shifting donor and international NGO priorities in the preceding years, as revealed earlier from Macdonald's empirical work in Northern Uganda.<sup>92</sup> Crucially, it can be argued that donor priorities have some influence on how TJ is implemented.

NGO networks were pivotal in the victims' participation process at the ICC. As one local leader and NGO noted:

Many of the international partners wanted the victim's voices to be heard and some of them even facilitated the victims to the Hague so that they can be part of the process. They also wanted the court to put in consideration of the victim's feelings. Some victims were also facilitated in the court seat so that they can watch the trial and be a part of it.<sup>93</sup>

NGO representatives from Uganda Victims Foundation (UVF) participated in meetings of the Assembly of States Parties (ASP) to the ICC.<sup>94</sup> The UVF network facilitates dialogues and 'Victim Empowerment Training'.<sup>95</sup> It is important to note that due to the sensitivity about ICC intervention, UVF operated under a broad coalition of NGOs named Uganda Victims' Rights Working Group (U-VRWG). A founding member of UVF noted: 'There were fears from retaliation when talking about the ICC in the North'.<sup>96</sup> On a global level, the victims work was part of a wider Victims' Rights Working Group (VRWG) hosted by REDRESS in London.<sup>97</sup> Crucially, the issue of victims' rights and justice remained central within the discourses and work of NGO networks.

Another notable network was the Ugandan Coalition for the International Criminal Court (UCICC), formed in 2004 and hosted by the Human Rights Network Uganda (HURINET-U). It was envisioned as a broad network 'to bring together key players in civil society, government and the international community to map out, as well as endorse a strategy to be employed in the campaign for the ICC in

90 'Ongwen's Justice Dilemma' *IFAIR*, 18 March 2015 <https://ifair.eu/2015/03/18/ongwens-justice-dilemma/> (accessed 12 April 2021).

91 Interview with NGO representative, 2 March 2021.

92 Macdonald (n 1) 233.

93 Interview with local leader and NGO representative, 6 March 2021.

94 Interview with a legal representative for victims in the *Dominic Ongwen* case, 12 April 2021.

95 TrustAfrica 'Strengthening victim participation in accountability processes: Learning from the experiences of the victim support initiative (VSI)' *TrustAfrica*, 5 August 2019 <https://www.trustafrica.org/en/resource/news/item/3435-strengthening-victim-participation-in-accountability-processes-learning-from-the-experiences-of-the-victim-support-initiative-vsi> (accessed 12 April 2021).

96 Interview with founding member of UVF, 12 March 2021.

97 VRWG <http://www.vrwg.org/about-vrwg/who-we-are> (accessed 13 April 2021).

Uganda'.<sup>98</sup> There were contestations among local NGOs regarding who should host the UCICC.<sup>99</sup>

UCICC was not just an advocacy network, but was also involved in the implementation of TJ programmes as the ICC case against Ongwen progressed. According to one of its former coordinators, 'the coalition was just implementing activities, yet it was supposed to be synergising NGO efforts'.<sup>100</sup> This observation illustrates the critical role of NGO networks in legitimising international criminal justice. It also opens up space for closer analysis of how networks might impact on the way in which the AUTJP is implemented in domestic contexts.

During the review conference of the Rome Statute that took place in 2010 in Uganda, the UCICC directly engaged with both ICC staff and delegations. Among other goals, they aimed 'to bring ICC closer to the people affected'.<sup>101</sup> In addition, local events debunked the perception of the ICC as biased against African countries.<sup>102</sup> In the opinion of the author, the legitimacy of formal accountability mechanisms is intricately connected to the discourses among the affected communities.

From a normative perspective, the UCICC was instrumental in the ratification and domestic implementation of the Rome Statute in Uganda.<sup>103</sup> At the time of writing this article, the UCICC was technically not in operation. Two reasons are provided for this situation: First, its operations were largely done by one NGO, HURINET-U, which created conflicts among member NGOs.<sup>104</sup> The other critical aspect relates to the funding. As explained by a former Coordinator, 'The priorities of donors changed along the way, there were some serious challenges'.<sup>105</sup> This is akin to Kendall's observation regarding the Special Court for Sierra Leone, in what she terms 'donors' justice'.<sup>106</sup> Crucially, it can be argued that NGO work in the field of TJ is to some extent dependant on priorities of other actors like donors and the state. Within the context of Uganda, these donor dynamics also have a negative impact, since certain TJ mechanism like amnesty and reconciliation are obscured.

98 Information about UCICC published on the Victims' Rights Working Group (VRWG) <http://www.vrwg.org/about-vrwg/ucicc> (accessed 12 April 2021).

99 Interview with a former coordinator of the UCICC, 2 March 2021.

100 Interview with a former coordinator of the UCICC, 2 March 2021.

101 Coalition for the International Criminal Court <https://www.coalitionfortheicc.org/country/uganda> (accessed 12 April 2021).

102 Coalition for the International Criminal Court (CICC) 'ICC challenges: Perspectives from Uganda's student community' Coalition for the International Criminal Court 27 September 2017 <https://www.coalitionfortheicc.org/news/20170927/icc-challenges-perspectives-ugandas-student-community> (accessed 12 April 2021).

103 Interview with a former coordinator of the UCICC, 12 March 2021. The country adopted the International Criminal Court Act (ICC Act 2010) in June 2010.

104 Interview with a former coordinator of the UCICC, 2 March 2021.

105 Interview with a former coordinator of the UCICC, 12 March 2021.

106 S Kendall 'Donors justice: recasting international criminal accountability' (2011) 24 *Leiden Journal of International Law* 585-606.



International NGOs do both advocacy and implementation of TJ. The International Centre for Transitional Justice (ICTJ) has operated in the country since 2005, mainly offering technical support and capacity building.<sup>107</sup> Similarly, *Avocats Sans Frontier* (ASF) works in the thematic areas of victims and reparations under the TJ process.<sup>108</sup> From the author's observations, some transnational NGO networks are akin to donor beneficiary relationships. Ultimately, it can be argued that these relationships have a bearing on the way in which TJ is implemented. One argument could be that international NGOs mirror particular objectives of the AUTJP, in line with their goals.

As the *Dominic Ongwen* case progressed, international NGOs further engaged in support for international criminal justice-oriented elements of TJ. For REDRESS, important aspects relate to the issue of reparations for victims. REDRESS works with local intermediaries to build capacity in the domestic accountability for international crimes.<sup>109</sup> This intervention somewhat overlaps with that of ASF and ICTJ. Nonetheless, NGOs were pivotal in the *Ongwen* case, as revealed by Benjamin Gumpert, the lead prosecutor in the trial:

The experience was mixed. Some NGOs were supportive and prepared to provide information and assistance, since they believed this would be for the benefit of their clients. Others were defensive and uncooperative. They did not always give reasons. My feeling was that it depended very much upon the pre-formed attitudes of influential NGO staff to the ICC and its work in Uganda.<sup>110</sup>

In light of the aforementioned observation, the impact of transnational NGO networks in TJ cannot be underestimated. In a broader perspective, the observations resonate with Lohne's research findings on the role of NGO networks in global justice.<sup>111</sup> As asserted by Howard Morrison, a judge in the Appeals Chamber of the ICC, 'NGOs may be the principal force in pushing for universal jurisdiction'.<sup>112</sup> However, considering the need for legal pluralism in TJ, it is also vital to explore how NGO work impacts on the implementation of alternative forms of justice besides criminal accountability.

Regarding the element of traditional justice, the work of the Coalition for Reconciliation in Uganda (CORU) empathised reconciliation and healing. CORU was established by NGOs, academics,

107 ICTJ-Uganda <https://www.ictj.org/our-work/regions-and-countries/uganda> (accessed 10 April 2021).

108 ASF <https://www.asf.be/blog/category/country/ouganda/> (accessed 10 April 2021).

109 For a detailed analysis, see REDRESS 'Not with us: strengthening victim participation in transitional justice processes in Uganda' (2020) <https://redress.org/wp-content/uploads/2020/07/Not-Without-Us-Report-for-Web.pdf> (accessed 27 May 2021).

110 Interview, 6 May 2021.

111 K Lohne *Advocates of humanity: human rights NGOs in international criminal justice* (2019).

112 Interview, 5 March 2021.

religious leaders and other actors in 2006, as a forum to build reconciliation in Northern Uganda.<sup>113</sup> The NGOs proposed a National Reconciliation Bill, while maintaining strong discourses against the ICC intervention. Oola highlights that, '[I]t was clear to many CSOs at this stage that formal trials would not address the full extent of impunity in Uganda'.<sup>114</sup> However, just like the NUTJG, CORU became redundant following the shifting of many donors towards the domestic prosecution. As one local leader revealed:<sup>115</sup>

The availability of resources makes certain modes of justice be preferred like for example the traditional leaders don't even have facilities to conduct their local reconciliation processes and yet the court process have very many parties willing to support [them] making it [international criminal justice] more preferred than the traditional ones.

The failure of such NGOs is one way to illustrate why it is important to build a strong NGO network as a way of implementing TJ. The element of traditional justice was subdued by dominant international NGO discourses on accountability through international criminal justice. The implementation of TJ is also linked with broader institutional practices at both domestic and global levels. Ultimately, NGO networks have the potential to sequence the constitutive TJ elements of the AUTJP, where there are competing narratives of Peace versus Justice.

To a large extent, the work of international NGOs mirrors the objectives of the AUTJP framework, in terms of promoting criminal accountability. However, less attention is given to the restorative, redistributive and transformative justice elements of the AUTJP. This policy gap can be closed by supporting more grass roots NGOs to access donor and state support. Like has been illustrated in the discussions, transnational NGO networks have a strong influence on the design and implementation of TJ.

### 3.3 Fostering local ownership of TJ

The AUTJP underlines the need for national and local ownership of TJ initiatives by centralising victims and members of the affected communities in design and implementation of TJ.<sup>116</sup> It is important to note that the dominance of legal approaches in TJ can trigger resistance from the affected communities.<sup>117</sup> Therefore, we can think of ways in which NGO work aligns TJ to local needs and aspirations of the victims.

Of particular importance to the implementation of TJ, is the issue of local outreach. A group of local NGOs, most notably, Justice and

113 S Oola 'The coalition for reconciliation in Uganda (CORU): important lessons for proactive civil society engagement in catalyzing transitional justice discourse', *Advocating justice: Civil society and transitional justice in Africa* (2010) 5 [https://peaceinsight.s3.amazonaws.com/media/images/wp-content/uploads/2010/09/Stephen-Oola\\_TJ-Advocacy-in-Uganda.pdf](https://peaceinsight.s3.amazonaws.com/media/images/wp-content/uploads/2010/09/Stephen-Oola_TJ-Advocacy-in-Uganda.pdf) (accessed 13 May 20210).

114 Oola (n 113) 7.

115 Interview with local leader, 4 April 2021.

116 AUTJP (n 9).

117 See generally B Jones & T Brudholm 'Introduction: rethinking resistance to transitional justice' (2016) 2 *Conflict and Society* 68-73.

Reconciliation Project (JRP) and the Refugee Law Project (RLP) carried out outreach programmes in Northern Uganda. JRP was particularly involved in the understanding of traditional justice processes, but also engaged extensively in the documentation of atrocities and re-integrating former LRA combatants within the societies in northern Uganda.<sup>118</sup> Local NGOs also assisted victims to fill out application forms to participate in the ICC case, before the appointment of victims' lawyers.<sup>119</sup>

It is important to note that the Peace vs Justice debates had an effect on the way TJ was implemented in Northern Uganda. As the ICC intervention emanated from a self-referral by the Ugandan government, the Prosecutor and the government had close working relationships. However, it also had an impact on the sociological legitimacy of the Court before the affected communities. As recalled by one NGO staff: 'when the ICC centred their work around the president, this undermined their legitimacy in Northern Uganda'.<sup>120</sup> The local NGOs were therefore the voice of the affected people. Therefore, the Court had to work more with the affected communities, with lesser engagement with the government. It was noted that 'NGO criticisms strengthened the way the ICC approached it'.<sup>121</sup>

Some of the local NGOs involved in the ICC work, including community leaders and victims representatives could be categorised as Intermediaries of the ICC.<sup>122</sup> However, this categorisation is problematic when used within the context of TJ, as many of the NGOs, do not solely depend on the ICC for their existence and mandates.

Local ownership of TJ can be achieved through involving victims in the domestic accountability mechanisms. Within the Ugandan context, NGOs support victims to achieve justice in the *Thomas Kwoyelo* case. The trial has had numerous delays due to majorly legal procedural and technical capacity challenges.<sup>123</sup> Another cause of the delays is premised on the Uganda government's lack of interest in criminal prosecution as a TJ approach.<sup>124</sup> This created a need for external intervention in order to pursue justice for victims.

Domestic and INGOs thus play a critical role in both the operations of the ICD and the prosecution of Kwoyelo. ASF and ICTJ helped in the drafting of the court's rules of Procedure and technical capacity

118 JRP <https://www.justiceandreconciliation.org/> (accessed 11 April 2021).

119 Interview with a legal representative for victims in the *Dominic Ongwen* case, 18 March 2021.

120 Interview with NGO founder, 26 February 2021.

121 Interview with NGO founder, 26 February 2021.

122 L Ullrich 'Beyond the global-local divide: local intermediaries, victims and the justice contestations of the International Criminal Court' (2016) 14 *Journal of International Criminal Justice* 543-568.

123 Interview with former judge of the ICD, 4 March 2021.

124 Interview with criminal lawyer, 3 March 2021.

building by training judges and lawyers. Justice Rapid Response provides direct technical support to the prosecutors,<sup>125</sup> while REDRESS supported the victims' lawyers to collect additional evidence.<sup>126</sup> This work was implemented through its local intermediaries Emerging Solutions Africa (ESA) and the UVF.

An NGO representative pointed out that, 'at times, we help the court to do the outreach'. It is important to note that when Kwoyelo's trial started, there were no rules to govern how victims would participate in the case. Against this background, ASF, together with ICTJ and Victim Support Initiative (VSI), developed a criterion on who would be considered a victim in 2018.<sup>127</sup> Nonetheless, there was contestation and debates about the role of victims in this new hybrid system. According to Kwoyelo's lead lawyer, this debate has never been settled.<sup>128</sup> One notable aspect that we observe, is the relevance of court outreach and engagement with victims. As observed in other contexts like Sierra Leone, outreach enhances the sociological legitimacy of the Court in the affected communities.<sup>129</sup>

The AUTJP goal of local ownership can be implemented through NGO discourses on victims. As one NGO representative noted: 'In all my engagements, I speak about victims and survivors'.<sup>130</sup> Both domestic and international NGO reports detail the need of victims including reparations.<sup>131</sup> The Victim Support Initiative (VSI) facilitates ICC-ICD dialogues and victim empowerment training.<sup>132</sup> These activities are part of a wider and global Victims' Rights Working Group (VRWG) under the auspices of the CICC, hosted by REDRESS.<sup>133</sup> A victim representative noted:

125 Justice Rapid Response 'Uganda: victims are central to prosecuting mass atrocity crimes' Justice Rapid Response (2019) <https://www.justicerapidresponse.org/uganda-victims-are-central-to-prosecuting-mass-atrocity-crimes/> (accessed 13 April 2021).

126 Interview with NGO Representative, 26 March 2021.

127 Interview with NGO Representative, 20 March 2021.

128 Interview with C Alaka, Kwoyelo's lead lawyer, 6 March 2021.

129 Interview with DM Crane, Founding Chief Prosecutor, 1 March 2021.

130 Interview with NGO Representative, 16 March 2021.

131 OB Kasozi 'Does the International Criminal Court's verdict offer psychological relief for Dominic Ongwen's victims in Northern Uganda' refugee law project 8 April 2021 [https://refugeelawproject.org/index.php?option=com\\_content&view=category&id=27&Itemid=101](https://refugeelawproject.org/index.php?option=com_content&view=category&id=27&Itemid=101) (accessed 13 April 2021). See also Avocats Sans Frontières 'Reflections on victim participation before the International Crimes division in Uganda' (2019) Policy brief; SK Kihika & E Kallweit 'Building blocks for reparations: providing interim relief to victims through targeted development assistance, *International Center for Transitional Justice* (2020) Research report [https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_Uganda\\_InterimRelief\\_Web.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_Uganda_InterimRelief_Web.pdf) (accessed 21 November 2020); Justice Rapid Response (n 125).

132 TrustAfrica (n 95).

133 VRWG information [https://asp.icc-cpi.int/iccdocs/asp\\_docs/20a/VRWG%20Information%20Sheet.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/20a/VRWG%20Information%20Sheet.pdf) (accessed 29 September 2021).

Other NGOs like the DRC, Refugee Law project and others that I cannot remember now came to us and trained us on our human rights and also the different processes that take place in a court hearing ...<sup>134</sup>

This observation underscores the relevance of increased communication with victims and affected communities where there are multiple sites of justice.<sup>135</sup> More broadly, it can be argued that the victim-oriented work had a direct influence on how victims and affected communities viewed the international criminal justice mechanism.

Domestic NGOs continue to engage in issues of victims' rights, as implementing partners of the Trust Fund for Victims (TFV) in Northern Uganda.<sup>136</sup> The TFV has an office in Uganda where they implement their assistance mandate. Since the start of its Uganda operations in 2008, the TFV has more than 25 NGO domestic NGO implementing partners, whose work has benefited more than 56 000 people across Northern Uganda.<sup>137</sup> Crucially, it can be argued that victim-oriented work mirrors the AUTJP goal of local ownership of TJ.

Local ownership is also implemented through NGO work and discourses on two elements of TJ in Northern Uganda: Amnesty and traditional justice. Boniface Ojok, a co-founder of JRP emphasises the relevance of traditional justice as a complement to criminal accountability, noting: 'Ongwen may escape the heavy sentence on the basis that there is a traditional mechanism that would help to re-integrate him in society'.<sup>138</sup>

Finally, both domestic and international NGOs were pivotal in the discussions and drafting of Uganda's TJ Policy, as evidenced from the legislative history and activities.<sup>139</sup> However, the effective implementation of the Policy requires the adoption of formal legislation as a normative guideline for critical aspects like reparations. Consequently, NGOs are continuing to advocate for this legal framework.<sup>140</sup> In a nutshell, NGOs have the potential to determine the reach and outcomes of the AUTJP, through the various strategies that they use for the implementation of TJ.

134 Interview with local victim Representative, 14 April 2021.

135 Palmer (n 8).

136 TFV <https://www.trustfundforvictims.org/en/locations/northern-uganda#:~:text=The%20TFV%20has%20been%20implementing,6%2C0o6%20direct%20beneficiaries%20in%202018> (accessed 13 April 2021).

137 Interview with TFV Programme Manager for Uganda, 23 March 2021; see also, TFV <https://www.trustfundforvictims.org/en/locations/northern-uganda#:~:text=The%20TFV%20has%20been%20implementing,6%2C0o6%20direct%20beneficiaries%20in%202018> (accessed 13 April 2021).

138 Interview with NGO representative, 26 February 2021.

139 Of particular importance, Avocats Sans Frontières and International Centre for Transitional Justice provided technical expertise and support to the government during the drafting process.

140 Interview with NGO representative, 26 February 2021.

## 4 CONCLUSION

The aim of the article is to explore how NGOs could contribute to the national implementation of the AUTJP. The theoretical analysis on the AUTJP has explored the interconnectedness, but also contestations around the two dimensions of criminal accountability and traditional justice. In light of this dilemma, the article has explored a key question: What strategies can the AU invoke to ensure that both criminal accountability and traditional justice are implemented, without undermining the broad goals of the AUTJP? The article has thus made a compelling case for the continued involvement of NGOs in the TJ framework.

The Ugandan case study has shown that NGOs have the potential to sequence the constitutive TJ elements of the AUTJP, where there are competing narratives of Peace in relation to Justice. Furthermore, NGOs play a pivotal role in not only advocacy, but also implementation of TJ. The empirical findings reveal the critical role of NGO networks in the domestic implementation of TJ. In the opinion of the author, while it is important to establish umbrella structures for the coordination of TJ, we need to be cognisant of the actor-oriented and bottom-up approaches that centralise the affected communities.

In light of the aforementioned recommendation, the Ugandan case has demonstrated how local ownership of the AUTJP can be achieved through NGO work and discourses on victims and affected communities. The article shows fundamental similarities between Uganda's TJ Policy<sup>141</sup> and the AUTJP, to allay any concerns that might portray the AUTJP as a top-down initiative. Crucially, the article has emphasised scholarly calls for creative and multifaceted responses to TJ in Africa, with a central focus on participatory processes at the domestic and local levels.<sup>142</sup>

While Northern Uganda has been used as an example, it is not the only post-war context or state in transition. The root of the research question was more on the desirability of the case study's type of outcome, as a way of implementing the AUTJP. The question relating to the implementation of the AUTJP invites a broader range of arguments, depending on the actors involved. As the evidence has suggested, one could argue that NGO work makes the AUTJP elements more legitimate, but this is not the only argument one could make. Another possible angle could relate to how NGOs might delegitimise particular elements of the AUTJP. In sum, the article makes a compelling case for increasing involvement of NGOs in TJ.

141 Uganda TJP (n 25).

142 See, V Ladisch & C Yakinthou 'Cultivated collaboration in transitional justice practice and research: reflections on Tunisia's voices of memory project' (2020) 14 *International Journal of Transitional Justice* 80-101; D Mazambani & NT Tapfumaneyi 'A vehicle for peacebuilding or cloak of impunity? the Zimbabwe national peace and reconciliation commission' (2020) 4 *African Human Rights Yearbook* 278-297; MB Lykes & H van der Merwe 'Critical reflexivity and transitional justice praxis: solidarity, accompaniment and intermediarity' (2019) 13 *International Journal of Transitional Justice* 411-416.