

ANNEX D

Public

Report of the Acholi Heritage Foundation



A report on the relevance to Acholi of confirmation of charges in absentia of the Joseph Kony case before the ICC:

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March 11, 2025
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Introduction

This report by Acholi Heritage Foundation (AHF) provides an opinion on the intention of the Pre Trial-Chamber of the ICC to hold a confirmation of charges hearing in absentia, in the case against Joseph Kony, the leader of the Lord's Resistance Army (LRA), a rebel group in northern Uganda, indicted for war crimes and crimes against humanity by the ICC on July 8, 2005. This in effect recommences ICC action on the case. AHF goes further to illuminate some of the contextual considerations that are important in the delivery of justice by the ICC regarding the case. AHF contends that the ICC processes, though valid according to established formal justice mechanisms, remain controversial given wide ranging contextual realities within the traditional and cultural setting of the communities affected by the LRA conflict. These contextual realities have served the people over the ages, helping in dealing with societal contradictions and other societal ordering issues. It should be noted that AHF in this report is not contesting the legality of the ICC process, contesting the occurrence of crimes during the conflict in Northern Uganda and neither is it condoning impunity occasioned by the LRA conflict. AHF is only offering a different outlook into the issues at hand in the trial of Joseph Kony before the ICC from the interpretations and perspectives of the community affected and highlighting how justice is construed among this conflict affected community.

AHF is a local organization formed by a group of professionals in Acholi in northern Uganda. It aims to preserve, protect and promote Acholi heritage and attendant traditions and culture. Meanwhile using the attributes inherent in Acholi heritage to advance sustainable peace, stability, growth and development. It also sets out to intellectualize the understanding of Acholi heritage, make it better understood and universally consumable. In light of post conflict recovery in northern Uganda and Acholi specifically, AHF sets out to support the conflict affected communities in Acholi to build resilience by reinserting all positive attributes in Acholi heritage, degraded by conflict, back into their lives as a foundation for recovery, growth and development, as it promotes healing and peaceful co-existence.

Acholi People of northern Uganda

The Acholi are a stock Luo speaking Nilotic people of Northern Uganda. They are part of the migratory peoples who moved south along river Nile. The history of the

Acholi people in their present-day location in Northern Uganda dates back to the 1400's. The Acholi like other Luo speakers bear distinct traits embedded in their rich heritage, traditions and cultures which are expressed through their beliefs, norms, values and practices. Acholi today remains a traditionally and culturally astute people. They, to a large extent, still uphold their heritage, cultures and traditions and use them to manage affairs of the society. The existence of the Ugandan state and its overarching systems has not affected much these intricate traditional workings of the Acholi society. In essence the two have found a way of co-existing and, working along their own lines in dealing with issues before them, regarding the conflict. However, it is evident that many aspects of Acholi traditions and cultures are facing significant pressure leading to its gradual degradation. This is attributed to a number of reasons like conflicts, social, economic, political and cultural mal-adjustments and a protracted assault on the foundations of Acholi heritage by forces of advancement. Regardless of the degradation, many issues in Acholi, especially those that are intricate in nature are still dealt with using traditional beliefs norms, values and practices. In essence, tradition takes precedence when dealing with intricate issues. Over time, the traditional approaches have sometimes clashed with contemporary approaches. This clash sometimes has affected the outcomes when dealing with societal issues. The strength of Acholi tradition and culture has largely been responsible for its resilience in the face of adversity.

This is the dilemma that today confronts traditional and contemporary approaches towards justice and determines how people view the different approaches. It however has to be noted that both traditional and contemporary approaches, pursue justice and accountability as an end product to a viable justice and accountability process. The variation in approach is what sometimes causes a conflict among actors and obscures the path to justice. AHF believes that traditional and contemporary justice can complement each other for so long as they understand each other and communicate between them. They need to harmonize differences that exist in understanding each other's approach. AHF believes that the nature of the conflict, its causes and persistence should determine the best approach towards dealing with the conflict. Therefore, understanding the underpinning issues and contextual realities is important because it is from that point that an appropriate approach is developed to tackle the problem.

Conflict in Acholi

Acholi has experienced numerous conflicts over the ages. The migratory character of the Acholi was influenced largely by conflicts but also exposed them to many conflicts. Fortunately, the strength of their heritage fortified the resilience of the Acholi people and they were able to cope with the effects of these conflicts.

More recently Acholi has gone through a number of conflicts. These conflicts have affected them in many ways. Examples of such conflicts have been those related to the slave trade, colonialism and those that occurred during post-colonial governments. In all these conflicts wanton atrocities against the people have been a key feature. During the slave trade, Acholi was a major slave trading region and a main source of slaves for the Arabs in north Africa. Multitudes of Acholi people were brutally captured, tortured, many times killed, their properties destroyed during the process of slave raiding. The path to slavery was equally painful and dehumanizing. During the colonial era Acholi suffered at the hands of colonialists largely because they resisted colonial intrusion. During the Lamogi rebellion for instance, the colonialists brutalized, destroyed properties and displaced in caves, the people of Lamogi. Many other areas of Acholi like in Paimol east of Acholi, suffered similar fate. In post-colonial times especially during Idi Amin's regime and more latterly during the multiple insurgencies against the present government, such as Uganda People's Democratic Army from 1986 to about 1988, the Holy Spirit movement from 1987 to 1988 and the LRA from 1988 to about 2005/2006. Then there is the intermittent Karimojong livestock rustling from time immemorial, which continues to wreak havoc on the people living on the eastern flanks of the Acholi region. They have rustled cattle, pillaged property, tortured and killed people causing immense suffering in the areas affected. Despite all the untold suffering, Acholi emerged resilient, relying on their tradition and cultures to overcome their suffering and pain.

Joseph Kony and the LRA conflict

The LRA conflict is a very sensitive subject in the Acholi region. It has been presented and misrepresented in many ways and this has led to certain positions being taken regarding the conflict, some of these positions have had serious consequences to the people affected by the conflict. The LRA conflict has been construed in many ways, to some it is thought of as a rebellion against government

of Uganda and thus bears pseudo-political outlook, to others it is a pseudo religious war to propagate some kind of religious belief, to others it is a spiritual war of vengeance against the Acholi to atone historical ills. This position was relayed by Joseph Kony himself as part of the command issued to him by spirits that possessed him. In some instances, it was considered a proxy war propagated by external forces, a position advanced by the government of Uganda, by it claiming the LRA as being a proxy of the Sudanese government, being sponsored to destabilize Uganda. This was claimed by the Sudanese government to be a reciprocal action for Uganda supporting Sudanese rebels. In reality, all these considerations applied to the LRA war at one point or another. This made understanding the LRA conflict extremely difficult due the multiple complexities inherent in the situation.

Regardless of all that is said about the LRA conflict, it is important to underscore the fact that the conflict was unusual because of its unconventional nature. It had no clear ideological grounding that could be relied on to define its character. The conflict kept changing form, content and objective from time to time. Much of what happened occasioned by the LRA is said to have been because of some form of spiritual influence over Joseph Kony. These spirits were said to be responsible for whatever Joseph Kony did during the conflict. The spirit possession is confirmed by the fact that, Joseph Kony had a normal life prior to him becoming possessed. Joseph Kony is said to have been born and grew up as any other normal person, he went to school as all other children and ascribed to the catholic faith to the point of participating as an altar boy in the catholic church. What became of Joseph Kony after possession leading to his acts and atrocities, is said to be a culmination of societal failures in playing certain critical roles to protect society against evil spirits.

It should be noted that there were other conflicts before the LRA. But those other conflicts did not have as dramatic an impact on the community as that of the LRA. The first rebellion by the Uganda People's Democratic Army (UPDA) started after 1986 when the present National Resistance Movement (NRM), overthrew the military government. After a protracted peace process, the UPDA signed a peace accord on June 8, 1988 and that rebellion fizzled out. Intermittently, a new spirit-based rebel outfit, The Holy Spirit Movement (HSM) emerged led by a spirit medium Alice Lakwena. When the HSM was defeated around about 1987/1988, that is when Joseph Kony and the LRA emerged. The spirits that possessed Joseph Kony are said to have moved on from Alice Lakwena after her rebellion collapsed.

The reason for the collapse of the HSM rebellion is sometimes attributed to the angering of the spirits that possessed her as its leader. This was to have been as a result of spirits abandoning her after she strayed from some of their ('the spirits') prescribed rules. According to tradition, it is said that spirits keep moving from one medium to another for so long as the conditions conducive for them to exist and operate in an individual exist. It is important to note that the spirit agency existed along specific genealogical lines. That is why it is known that Alice Lakwena and Joseph Kony were relatives and this is how the spirits moved from Alice Lakwena to Joseph Kony.

Spirit possession is not unusual in Acholi and probably around the world. The spirits that possess an individual influence what that individual (medium) does. The spirits influence could either be towards good or bad acts, helpful or harmful acts. Bad spirits (*Cen*) herald evil, they influence various ills and harm to society. Good spirits portend good to society, they help to cure society of evil and harm. They also curve positive pathways to society and its members to follow. Many times, the spirits override human consciousness and action and direct humans to behave in a certain manner. The behaviour of an individual possessed by spirits sometimes bears good or disastrous consequences to society. Despite this, the society has mechanisms to contend with the actions of spirits. Through these mechanisms, the society is able to redirect itself towards a viable path for its survival and sustenance or even in the worst case scenario for its destruction. For the case of Joseph Kony, society was not able to protect itself because it was undergoing societal malaise and tribulations due to conflicts and societal disintegration. These conditions led to the absence of resources, time and space in society to let it take action that protected it from the evil spirits that had possessed Joseph Kony. This state of affairs left opportunities wide open for the evil spirits to take advantage of the resultant vulnerability of the society leaving the spirits to permeate the defences of the society and the commission of acts of evil. This leads to a dilemma in determining whether under these unusual circumstances, Joseph Kony had control over himself to do what he did in harming society. To get to the bottom of understanding this dilemma, interpretations over the matter should be sought using an understanding of the contextual realities that obtained leading to the commission of the heinous acts by the LRA.

Given traditional interpretation of the circumstances around Joseph Kony, it is apparent that he was alien to the acts he committed. This is because his actions abrogated all human considerations due to a person normally in control of oneself. The most intricate factor in such human consideration is that of blood relations. This did not apply to Joseph Kony and the LRA as some of their victims were their own kith and kin. A case in point is in the Atiak massacres where the crimes were commissioned by Vincent Otti against his own relatives. Committing heinous acts against one's own relatives, was used as a strategy to alienate the LRA from their own people. This also withdrew a sense of feeling for humanity from the LRA fighters.

In the case of the LRA, the characterization of the LRA insurgency as a typical armed rebellion against the state of Uganda did not exist. Over time due to the persistent violence against the people and the fact that it had become apparent that the government could not contain the rebellion on its own. The people were left with no option but to resort more to their traditional means of resolving conflict. Together with other actors, traditional leaders pursued more the approaches that engaged in non-retributive means of attaining peace and reconciliation. The principal outcome of this effort was the enactment of the Amnesty Law by the parliament of Uganda in the year 2000 to encourage the LRA to surrender and become integrated in society and the establishment of the Amnesty Commission that was set up to facilitate the implementation of the Amnesty Act. The other outcome was the Juba peace process that resulted in several peace agreements, the most notable of which was the ceasefire between the LRA and Government of Uganda in August 2006. In all these, the principle of non-retribution and peaceful approaches became the centre piece for advocacy and action towards ending the conflict. Key actors in the effort, like NGO's, Religious and Cultural leaders, Civic and political leaders of the region, used it to advocate to Government of Uganda and the LRA to commit to peace and seek in part accountability and reconciliation.

The use of traditional mechanisms in promoting peace and reconciliation during the LRA conflict, helped to build confidence, galvanize and derive meaning to the efforts geared towards ending the conflict in the community. Even after the end of violence in 2005 the people continued to use traditional approaches to deal with the effects of the conflict including residual conflicts that kept emerging due to post conflict adjustments taking place, for instance the persistent land conflict now

prevailing. Today Acholi has a semblance of reprieve where typical signs of a conflict having taken place are not easily visible if no one talks about the ills of what happened, because of the ability of the community to rebound after the conflict. This is in part attributed to the non-retributive approaches used to confront the effects of conflict and build the resilience of the people. These non-retributive approaches have inadvertently broken the cycle of violence in northern Uganda unlike in conflicts around the world where after the end of an episode of violence another keeps emerging because of the inadequacy and insensitivity in approaches of dealing with the intricate elements in the conflict that keep fueling it.

Snippets into post conflict Acholi

After the end of violence in northern Uganda, efforts towards consolidating peace grew as did the necessity for reconciliation, rehabilitation and reconstruction. Generally, the magnitude of what had happened during the conflict was immense. It required a multi-dimensional strategy to contend with all the issues at hand. There was a question of dealing with displaced populations in Internally Displaced Persons (IDP) camps, returned abducted persons, ex LRA fighters, war victims of both physical and psychological trauma and overall, the question of justice and accountability. Indeed, all these were attended to in different measures. However underlining these efforts, was the fact that the degraded foundations of society had to be reset and rebuilt. To help out in this resetting and rebuilding in post conflict northern Uganda, traditional approaches played an important role with restorative justice sitting as a central driving issue. Fortunately, the government of Uganda and various partners also realized the importance of traditional mechanism to propagate peace and adopted it as the most viable route for peace in Uganda.

Acholi justice mechanisms

Acholi traditional justice underscores the indispensability of restorative community driven approaches in contemporary justice. It prioritizes healing over punishment and addresses gaps in retributive justice frameworks especially in post conflict contexts and in largely traditional societies. As legacies of violence are considered in such contexts, the integration of time-tested traditional practices adopted to modern equity standards offers a direction towards sustainable justice. Acholi traditional justice has served the Acholi people for ages. It guaranteed peace and stability and acted as a portent deterrence to any form of violence and impunity.

Acholi traditional justice relies on divine power and omnipotent authority as the principal adjudicator of justice. It upholds divine reverence and the belief in transcendent power, where the pursuit of justice goes beyond the precincts of human conception. Traditional justice is crafted on a foundation of fairness, truth and honesty, while upholding the sanctity of humanity. It bears the recognition that human failings are inevitable but that at all times when they do occur it is important that society reconcile itself to restore not only parity and normalcy but also strike a balance with the spiritual realms of universal providence. Restoration of balance in society is achieved through dialogue, truth telling, acceptance of guilt and other forms of engagement, rites and rituals which include cleansing, symbolic compensation and communion.

The other attribute of traditional justice is the principle of collective justice. This means that a whole unit of relatives around an offender is held responsible for an offence or is guilty of the offence committed by its member and on the other hand, a whole unit of relations around a victim are considered victims too. The principle of collective justice eases the burden of delivering justice by broadening the definition of actors, spreading out opportunities for mobilizing resources required for the traditional justice process, spreading out responsibility for decision making, serving as a deterrence against future commission of offences etc. Collective justice also serves as a way of owning up failures of the perpetrators community to discipline its members. The parameters of collective justice are clearly defined in the structure of the Acholi society that bears an inverted pyramidal structure. This is where the smallest unit is the individual "*dano*" who exists in a homestead "*Keno/Gang*", a homestead exists in a family "*Ot*", a family exists in an extended family "*Dogola*", and an extended family exists in a sub clan or a clan "*Kaka*", depending on the genealogical construction and a clan or sub clan exists in a chiefdom "*Ker*". The different levels in this structure play important roles in the dispensation of justice. Within all these units are structures that adjudicate cases or represent the unit in cases they are involved in; within the structure are also clear lines of referral, where cases move up or down depending on at what level a case can best be handled. In dealing with traditional justice in Acholi, the determination of the first offender is important as the first offender is the principal perpetrator for whom acceptance of guilt must be sought and delivery of justice and accountability commences. Upholding truth at all moments is considered

cardinal and that once truth is void then justice and accountability is equally void. Argument without the foundation of truth is meaningless. Equally logic without truth is meaningless in the dispensation of justice in Acholi. There is no room for bias within the traditional justice system and even in the decisions made. To guarantee fairness and maintaining a just process, in the delivery of justice divine reverence is considered at the centre of the whole process. This omnipotent presence that superintends over the justice process, as the ultimate authority (God) is revered.

The absence of a perpetrator either by fleeing or death does not necessarily freeze the justice process. However, for the process to go ahead or not is dependent on the nature of the conflict and the factors therein. In the case of an offence with no complexities, the relatives of a perpetrator, using collective justice, can take responsibility over the case. However, where complexities do exist as in the case of Joseph Kony, where spiritual influence is attributed as the cause of Joseph Kony's offences, the relatives of the alleged perpetrator cannot take responsibility because even to them, the explanation as to why things happened the way they did is beyond their conception. However, as part of the justice process, it remains the responsibility of the community to undertake predetermined processes to deal with the spiritual influence causing harm to society. The community engages in other traditional processes that include, rites and rituals of cleansing and exorcism to free themselves of the influence of evil spirits. This traditional process is known as *Moyo Piny* (cleansing the land of evil spirits), and *Ryemo Ayweya* (casting away demons) depending on which is most applicable to the circumstances.

Once these are achieved the perpetrator and his/her relative cease to be looked at as perpetrators and likewise the victim ceases to be a victim. All that ever happened is kept in memory for future reference "*ongon*". The principles of restorative justice are deeply embedded in the way of life of the Acholi people. It is considered that, regardless of whatever breaches occur in society, there is always an opportunity for reconciliation. This guarantees that an offender has the opportunity to once again become a useful member of society.

Acholi Tradition pursues justice and accountability at three levels, the physical/material level, the psychological level and the spiritual/divine level. This is what constitutes its understanding of holistic justice. This is where harmony is

struck between humans, nature and the spiritual world. Across the three levels evading justice is not possible or rather it is difficult not to be satisfied that justice is delivered. Any act of eluding justice evokes divine retribution where divine punishment is meted on an offender who eludes justice. This divine punishment occurs in terms of physical, spiritual or psychological retribution. In instances where it is determined that during the conflict, Joseph Kony acted outside the influence of evil spirits, this is where he has to be present to answer for such cases in person. Without the presence of Joseph Kony, we remain speculators in explaining these other cases. Speculation can never be used to deliver justice.

The credibility of traditional justice has equally been a subject of contention especially due to the claim that it falls short of meeting acceptable standards for delivering justice. This argument, given the understanding and experience of the Acholi people in dealing with traditional justice, is fallacious because from time immemorial traditional justice has served the people. To address these concerns, the following questions then need to be answered, "Do traditional justice mechanisms work?" and "Do people believe traditional mechanisms helps to serve justice as in the case of the LRA conflict?" To answer these two questions, we draw from precedents set over the years, even before the conflict and after the conflict, where traditional justice has been used and continues to be used to deliver justice and restore peace in Acholi. The strength in belief of divine intervention, so inherent in traditional justice, galvanizes people's acceptance that traditional justice is able to deliver justice.

Today in Acholi, cases that involve intricate matters like death or any other harm to society still have to be subjected to traditional justice to come to a conclusion. This is even if they are before a formal court of law or have been concluded by the formal courts. It is believed that cases that don't get concluded using traditional justice remain inconclusive and obscures justice. Any formal court's conclusion of such intricate cases remains incomplete even if an offender is convicted and jailed or even hanged. The element of collective justice renders that despite incarceration, as noted earlier, the relatives of the offender remain responsible for the offence because they equally bear guilt. This therefore implies that, though not legally recognized, there is a dualistic approach to justice in Uganda involving certain cases. As a matter of fact, the application of the non-retributive approaches to ending conflict and securing justice is deeply engrained in Acholi psychic and

cannot be understated. In relation to the acknowledgement of the importance of alternative justice mechanisms to the formal justice processes, the Ugandan justice sector in its reforms is increasingly focusing on Alternative Dispute Resolution (ADR) as a mechanism of resolving certain cases. This is a positive innovation in the Ugandan justice system that will deepen the meaning delivery of justice in Uganda. It will make delivery of justice even in the formal courts of law resonate with the understanding of the people. ADR is known to incorporate substantial elements of traditional justice processes.

The ICC and the LRA

Through the indictment of five LRA commanders including Joseph Kony, the ICC became an influential party on issues regarding the LRA conflict. Its involvement brought in a new dimension to dealing with the conflict and probably added to the complexity of what was already happening. This however did not mean that the community believed that the arrival of the ICC would help them attain justice or peace. They viewed the ICC approaches as being not in tandem with how people perceived that justice could or could not be delivered. By the time of the ICC indictment of the LRA leaders, multiple initiatives to end the LRA conflict and secure justice were already in place. Underpinning these actors' approach was the acknowledgement of the importance of employing non-retributive approaches to dealing with the problem.

This is reinforced by the fact that the Government of Uganda took a stance not to pursue legal action against belligerent fighters of the LRA and others, who were either captured or surrendered. The government instead opted to rehabilitate them and help them resettle in the community. This is with exception of Thomas Kwoyelo, who was only brought before formal courts of law in Uganda, under the instigation of the ICC and other proponents of international justice as a means of emphasizing the domestication of the Rome Statute.

When the ICC indicted the five LRA commanders including Joseph Kony, there were serious reservations and fears in Acholi about the risks and dangers that such a move would pose to the people. Experience had shown that, in the past, brutality escalated whenever the LRA felt threatened by any act that targeted them. The fears were galvanized by the fact that over the years when this happened, the people remained exposed and unprotected from harm. Importantly the people also

believed that the ICC indictments would aggravate and complicate more the situation, making it more difficult to engage the LRA in any meaningful peace process. Many of these fears came to pass, the LRA became more violent and committed serious atrocities against communities they encountered now not only in Uganda but also in the Democratic Republic of Congo, South Sudan and Central African Republic, although Joseph Kony became more elusive and most contact with him was lost. Even as the Juba peace talks progressed, Joseph Kony remained elusive and did not participate let alone sign any of the agreements. Yet before the ICC indictment, he had been available and met many emissaries in the jungles of the Democratic Republic of Congo, South Sudan and Central African Republic. The manifestation of the people's reservations regarding the ICC indictment was shown in lack of mass enthusiasm over the trial and conviction of Dominic Ongwen by the ICC. The population generally took a neutral posturing and today even after the conviction of Dominic Ongwen, the case lives more in a distant memory in the people. Similar scenario played out in the trial and conviction of Thomas Kwoyelo, a non-ICC indicted LRA commander captured in 2009 and arraigned before the International Crimes Division (ICD) of the High Court in Uganda. There were similar reservations in the population that elicited a passive response in the population to the process of his trial and conviction. On the case of Thomas Kwoyelo, the Acholi people were left wondering why he had been specifically targeted for prosecution, yet various LRA commanders like him, some more senior and also known to have participated in offences were not prosecuted and have been resettled in the community. The case of Joseph Kony will not be any different in case he is brought before the ICC. The selective nature of choosing who to prosecute and who not to prosecute, denies justice to all who deserve it. The sense of equality and equity in delivering justice gets lost in such circumstances.

It should be noted that twenty years after the indictment of Joseph Kony and others, so much has transpired rendering certain considerations that led to the indictment redundant today. The initial excitement that existed in different quarters regarding the case has waned. Many things have happened regarding the LRA that is rendering any processes now at the ICC irrelevant. For instance, peace in Northern Uganda is sustained and chances that Joseph Kony can reemerge and wreak havoc is growing less and less. Many feel Joseph Kony would rather be left the way he is now, rather than creating a scenario of him feeling hunted and may

reemerge. The government of Uganda has also changed approach, focusing more on reconciliation as has been witnessed in how it has handled recent ex LRA returnees. The ICC processes now look more diversionary taking people away from the progress they were making towards restoring societal parity.

Options other than the ICC have existed and continue to exist to contend with the LRA question. These have included the Amnesty law that continues to provide restitution for those involved in insurgencies in Uganda and the Juba peace process that yielded tangible benefits towards peace and stability in northern Uganda affected by the LRA insurgency. A number of recovery programmes of the government of Uganda and its partners were also instituted to consolidate peace and stability and initiate progress towards growth and development. These programmes included the Northern Uganda Social Action Fund (NUSAF), Peace Recovery and Development Plan (PRDP) and many others. The outcomes and impact of these programmes, though can be debated to determine their effectiveness because most were embroiled in serious abuse. Within Acholi itself many efforts promoting reconciliation at community level are going on and have succeeded in dealing with many of the community contradictions. All these efforts are a clear indication that with or without the ICC, there are time tested mechanisms within Uganda and more so in Northern Uganda to not only deliver justice and accountability but also to promote healing, recovery, growth and development.

Recently, the President of Uganda, realized the need to further non-retributive approaches towards the LRA and other fighting groups and has pursued a reconciliatory policy towards most adversaries of government including the LRA. For instance, of late he supported the family of Joseph Kony in Uganda and also accepted back and met one of the sons of Joseph Kony who returned from the Central African Republic. Joseph Kony's son, together with other returnees are being resettled without being subject to any form of retribution despite the knowledge that they could have participated in a number of offences.

Today in Uganda, more focus is laid on securing and consolidating peace and stability. This is not at the expense of justice and accountability because these can be attained using alternative means like traditional justice and more importantly invoking the values of forgiveness inherent in traditions and cultures of the people.

Coupled with this is the fact that, twenty years after the end of conflict, new realities have set in, new generations of people without any experience of the insurgency have come of age with new priorities in life, and are driving the agenda of the day in another direction. New more pressing priorities have emerged in the community affected by conflict. This has relegated the issue of the LRA way below other priorities. The insurgency is thus getting more and more remote in the minds of the people. The notion of “time heals” is bearing great relevance in the case of Northern Uganda. As seen, this is helped by the tradition and culture of the people.

Much as the quest for justice and accountability is unquestionable in Acholi, the means of ascertaining it is even more important as it validates the outcomes. The absence of a convergence point for the ICC process and Acholi traditional justice implies that the ICC processes seem parallel to traditional justice. AHF takes cognizance of this as a problem in attaining justice and accountability. In this context the overbearing character of international justice and the need to prove a point that it works is suppressing the realistic consideration of the people regarding justice and accountability. This overbearing nature has taken advantage of the weakening of traditional systems, to assume traditional justice no longer works. This argument is fallacious in Acholi because traditional justice to a large extent has been responsible for the return of peace, stability and promotion of reconciliation in Acholi. The perception that the people are receptive of the ICC is equally fallacious because the presumed receptiveness of the people has largely been due to a mobilization strategy by the ICC in its modus operandi, where the affected communities are issued with enticements of benefits in terms of reparations if conviction is secured. This undermines the true meaning of justice and renders justice meaningless. The use of material values to determine justice is not a consideration and any material exchange is nominal and symbolic because to Acholi justice is priceless and therefore holds no material value; justice is intrinsic. The use of material benefits to alter the understanding of justice is unjust and obscures the path to justice.

Other Key concerns regarding the ICC case against Joseph Kony

The narrow focus and scope of the ICC in the Joseph Kony case leaves out a big proportion of the problems related to the conflict, in terms of the shortened time span and the limited number of charges the ICC considers. This is converse to the

fact that the conflict, literally touched every segment of Acholi society. There is no family that doesn't have a sad story to tell of how much they suffered. It could have been death, pillage and plunder, abduction, displacement, torture, maiming like cutting off lips and limbs and many others. In the case against Joseph Kony, the ICC only deals with 33 charges in a limited area and only from the time the ICC was constituted. The fact that justice cannot be served retrospectively is unjust to those it leaves out. Serious questions then do arise. *Can this limited scope and span be representative? What happens to those not covered by the ICC? Who will listen to them? In whose interest therefore is the ICC working?* If the case progresses to conviction and compensation accrues to the limited number of victims, what of the rest? What will be their feeling and who will deal with any fallout in the community? Is the ICC not sanctioning the split of communities in terms of beneficiaries and non-beneficiaries or victims and non-victims? These together with many more questions make the ICC case on the LRA, problematic.

The other shortcoming related to the narrow scope of ICC's case against Joseph Kony, is the existence of other atrocities committed by non LRA forces in Acholi. It is a known fact that the then national army, the National Resistance Army committed serious atrocities against the people. There were various massacres like that of Namokora, Acholibur, Burcoro etc. and operations like "Operation North" where people were subjected to immense suffering that included torture and death, sodomy and detention without trial of people. In this case a new terminology "Lodgers" was coined to define the status of those detained without trial. Many suffered severe mistreatment and died in detention. To those released, no explanation was given as to why they were ever incarcerated and neither were they offered compensation for the suffering they went through. The bitterness these atrocities elicited is equated or worse than those of the LRA in some instances. The people continue to question why the perpetrators of these atrocities are not held to account.

It is also believed by the Acholi people that the government commissioned and abetted the raiding of livestock in Acholi by armed Karimojong warriors, who operated by rustling livestock of neighboring peoples. The Karimojong wiped out livestock in Acholi, consequently destroying the base of household economies, a critical element in Acholi heritage, identity and livelihood. In other places in Acholi, the government army itself too, raided livestock from the population eliciting the

same devastation as that of the Karimojong. The people of Acholi are so unforgiving of these acts more especially when the government of Uganda has failed to put in place any viable restitution measures like compensation for the losses. By comparison the Acholi consider these losses on a par with the atrocities of the LRA. The ICC process therefore exhibits a sense of selective prosecution for the injustices committed against Acholi. By not looking into some of these atrocities and ills, the people believe the ICC is complicit in the covering up other grievous crimes against the people of Acholi.

During the conflict other factors became responsible for exacerbating and complicating the conflict. The tension between Uganda and Sudan leading to each side supporting rebel activity against the other made the conflict deadlier. Sudan for instance became the rear base for Joseph Kony where he recuperated and trained his forces, received logistical support and ideological guidance. The fact that the ICC does not consider this political dimension leaves out a large proportion of person complicit in the crimes committed by the LRA. It is clear that without support from Sudan, the LRA conflict would have ended around about 1993 when Joseph Kony had lost a lot of ground and was suing for peace. This is a fact that reigns in the minds of the people when considering culpability for war crimes and crimes against humanity committed by the LRA.

It should be noted that a lot of progress is still being made towards resolving the LRA conflict through other initiatives other than the ICC. Today we see efforts of organizations like Pax Christi and Invisible Children register significant progress in facilitating the continued return of LRA fighters. These are initiatives that the people believe are needed today to bring to a conclusion the LRA conflict. The ICC process thus risks undoing many of these achievements as it hardly recognizes the outcomes of these processes. It could be argued that the ICC has not stopped any other process and that the other processes could fill the gaps left by the ICC. The question then would be, was the ICC necessary if it was going to be insufficient in dealing with the broader context of the problem? Why commit substantial resources and effort to a process that remains nominal and inconclusive?

The other question relates to the confirmation of charges. Questions are asked as to whether the confirmation of charges means giving up on looking for Joseph Kony to answer charges brought against him. Much as it is looking more apparent that

Joseph Kony or the LRA may never return to wreak havoc in Acholi, people need guarantees that they will be better protected in case of any eventualities regarding the LRA and Joseph Kony. Previous attempt of government to provide such guarantees as in the what was known as "Operation Iron Fist" did not succeed in protecting the people when the LRA reemerged with greater vengeance.

In a related matter, what happens to the people who are still with Joseph Kony and continue to filter back? Would Joseph Kony seek retribution on them? Doesn't this close out or limit possibilities of their escape? It is AHF's understanding that for so long as people remain in captivity or operating under Joseph Kony probably against their will, it is important that opportunities be left open for them to return unhindered by our actions. The unpredictable nature of Joseph Kony, requires that no excuse is granted to him to harm more people. On February 26, 2025, a new group of Joseph Kony's immediate family consisting of one of his wives and three children returned to Uganda and was received by government. They will undergo traditional rites of return and cleansing, be supported and reintegrated in the community. It is anticipated that if the ICC indictment was not there, Joseph Kony would have contemplated returning home since the conditions at home were not worrisome or threatening to his personal safety.

It should be noted that the ICC and its processes are considered alien and being imposed on a local context with its own inter play of local dynamics. This is despite the fact that Uganda is a signatory to the Rome statute. The domestication of the Rome statute is insufficient and therefore not clearly understood especially in how much it aligns to local context as in Acholi.

Going by the principle "justice delayed is justice denied" and drawing from the previous cases of Dominic Ongwen and Thomas Kwoyelo that lasted nearly a decade, where then is the sense of justice in a process that goes on forever and risks losing its meaning for the affected people? This delay is symptomatic of justice denied. It is widely considered that the ICC concentrate more on their process and go at length to guarantee it. This regardless of the pain those affected have to endure. Many of the ICC technicalities are too complex and too many for ordinary people to understand. As much as the ICC outreach tries to reach out and explain these complex processes to the community, they remain difficult to understand because of its alien nature and given the fact that the outreach may not get to all.

As it has been noted the ICC outreach focuses more on the prosecution's case than the defence and therefore that message that gets out sounds biased against Joseph Kony and thus creating a sense of injustice.

The urgency to commence proceedings against Joseph Kony seems to be motivated by other factors other than going ahead with the Joseph Kony case. Apparently, the status of Joseph Kony being alive or not is unknown. Should the presumption that he is alive be relied upon? What if it turns out that he is actually dead? Will the need for the hearing of confirmation of charges change? Many circumstances remain uncertain because of the unavailability of Joseph Kony. Raising tempers among conflict affected communities in an uncertain case exerts significant psychological anguish on the people. If it is just for the question of justice and accountability, the people have already discounted a lot, forgiving many ex LRA known to have been involved in some crimes but have returned and are settled in the community or have died. On the part of the indictees, the communities have discounted the three indictees confirmed to be dead and have resorted to finding ways of healing. Is this a worthwhile and realistic proposition? If affected people have recognized the futility of seeking justice in absentia in those other cases where the indictees are not present or are dead, isn't commencing the Joseph Kony case a cosmetic attempt to address a difficult situation? Isn't the ICC escalating a situation it is not in control of? Until such a time it can marshal control of the case, it is better to allow the community to get along with managing life without this outside interference.

This is why when the ICC wants to conduct confirmation of charges hearing in the Joseph Kony case in 2025, twenty years after the end of violence, people are left wondering about its usefulness anymore. They may be forced to contend with situations for which many facts are forgotten and people would rather keep them in that past. The lukewarm attention the ICC risks getting in Acholi in the confirmation of charges and other processes will not be surprising. The confirmation of charges will best be used to cure curiosity, and serve as reference for legal practitioners, academics and human rights activists. It would be more of an exercise to qualify a legal theory.

As the Pre Trial-Chamber of the ICC contemplates conducting confirmation of charges hearing in the Joseph Kony's case in absentia, serious thought must go into

understanding some of the risks arising out of a such a process in a given context. The relevance of the confirmation of charges process is compromised by the absence of Joseph Kony because many of the issues regarding the case can only best be addressed by him. Therefore, for the process to be just and fair even to Joseph Kony his presence is of paramount importance so that he can explain the circumstance under which what he is accused of happened. The unconventional nature of the conflict limits the ability of persons other than Joseph Kony to stand in for him. Going ahead with the hearing makes the ICC insensitive to these realities and makes whatever outcomes short of being valid. It depicts the inability of the ICC in dealing with the intricate issues regarding Joseph Kony. This is made worse by the fact that the ICC limited mechanisms of incorporating or referring to traditional justice in dealing with the matter.

Without the presence of Joseph Kony in court, the confirmation of charges against him is ill advised. It is better that the process awaits such a time that Joseph Kony can be made available before court to answer charges against him. Various obtaining circumstances militate against such a move.

In conclusion, in the quest for justice and accountability, the Joseph Kony case remains an overarching desire for humanity. But the reality stands out that in whatever circumstance, delivery of justice must bear in mind the context in which the desire for justice takes place. As for the Joseph Kony case before the ICC twenty years after his indictment, serious consideration must be made to reevaluate the ICC's stance on the matter. AHF believes that it is important to adopt a dynamic posturing that takes cognizance of local dynamics and makes use of them to deliver justice. The fact that Joseph Kony himself is not before the court is a dynamic that has to be considered, regardless of the time elapsed, there is no need for going ahead with a process that raises more questions than provides answers. The level of violence has died down, people are picking up their lives and moving on, Joseph Kony has fizzled out in oblivion. Since urgency is not an issue, the Joseph Kony case has to be reexamined and appropriate decisions made as to whether it is worth going ahead with the confirmation of charges derived way back in time and more importantly in Acholi where the ICC will encounter a lackluster reception with no apparent enthusiasm. It is important that the ICC studies the judicial reforms in Uganda especially the aspect of Alternative Dispute Resolution (ADR). This would

help guide its understanding on how some of the intricate matters before court are dealt with.

Signed

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Date: March 11, 2025