

ANNEX I

Public

Report of the Refugee Law Project

March 2025

The Refugee Law Project (RLP) is a human rights organization established in February 1999 as an outreach project of the School of Law of Makerere University to address refugee rights in Uganda. Our mandate is to promote the protection, well-being and dignity of forced migrants and their hosts, and to empower forced migrants, communities and all associated actors to challenge and combat injustices in policy, law and practice. We also seek to influence national and international debate on matters of forced migration, justice and peace, and serve as a resource for forced migrants and relevant actors. In short, RLP mandate is to ensure that everyone enjoys their full human rights irrespective of legal status.

The Refugee Law Project has been closely following the impact of the International Criminal Court's intervention in Uganda for many years. Shortly after the December 2003 referral, the Refugee Law Project conducted extensive outreach and consultations with the affected community, cautioned the ICC about the futility of this referral, and urged the ICC to investigate all sides of the conflict. We emphasised the need to hold all sides to account for wholesome justice to be done.¹ Our position was grounded in the views of the community and their resistance to the ICC's intervention. At the time, religious, traditional and community leaders met with the Ugandan government, advocating for traditional justice mechanisms instead of international trials. They argued that the traditional Ugandan system fosters reconciliation and peace, creating a "win-win" situation for victims and survivors. They questioned why people would be tried away from Northern Uganda, which would circumvent the systems we have in place for ensuring both victims and survivors can live in peace.

Over time, the ICC Outreach Team began engaging in consultations, explaining the need for trials. In a region emerging from conflict, where people had lost everything, the promise of reparations became a key selling point in gaining the community's support. Many survivors viewed reparations as their only hope for recovery, given the extreme levels of poverty and lack of targeted development programs. This shift led some survivors to testify in the *Ongwen* case, many of them motivated by the promise of reparations. Still to this day, their expectations have not been met.

¹ https://www.refugeelawproject.org/index.php?option=com_content&view=article&id=36:peace-first-justice-later-traditional-justice-in-northern-uganda&catid=13&Itemid=101

Without the prospect of reparations, our consultations with victim communities reveal that the ICC's intervention is viewed as less appealing. We conducted focus group discussions in northern Uganda in 2023, to assess survivors' perspectives on the *Kony* proceedings, the results of which were published [on our website](#). Survivors were unwilling to be retraumatized without any hope of tangible benefits that could improve the lives of their families. Rather, they feel that justice efforts should be transitional and should acknowledge the broader harm suffered to the community, and focus on reconciliation, reintegration, and ensuring community reparations that are focused on economic, social, and cultural rights, and psycho-social support. In the words of one survivor, "Justice is expensive and starting the trial in his absence would not be the best use of the resources when victims are suffering." The replicable use of traditional mechanisms of justice that put agency in the hands of local communities is far more likely to achieve and build lasting peace, repair relationships, effect reintegration, realize needed compensation/reparation, and reconstruct physical property damaged in the conflict. The trial justice of ICC is ill-suited for realizing these outcomes.

Twenty years on from the referral of the situation, the ICC's engagement has done nothing to find solutions to the intractable political problems that have left legacies of violence in Uganda. Adversarial criminal trials, unlike inclusive models of transitional justice and reconciliation, mean that only some survivors and victims can have their voices raised, or access the reparations which have been promised. Although whole communities have been impacted - particularly in socio-economic terms - those who get visibility from an ICC perspective is highly selective. In this way, ICC proceedings necessarily divide people and communities, which is a setback for any kind of meaningful reconciliation and lasting peace.

For these reasons, it is unsurprising that the response of public and civil society to the ICC announcement that it will move to confirm the charges against Joseph Kony *in absentia* has been muted. While proceedings *in absentia* will undoubtedly propel the ICC and Joseph Kony back into the spotlight, there has not been enough reflection as to what will happen to the 4000 victims who participated in prior ICC proceedings and the many others who have been suffering silently.

The Prosecutor's application to hold an *in absentia* confirmation hearing was primarily focused on Joseph Kony and his arrest. The Prosecution stated that the ICC was seeking to increase the international community's efforts and commitment to apprehend Joseph Kony. The

Prosecutor further justified his request by stating that the proceedings “would also provide an opportunity to present the depth of evidence supporting the allegations of his criminal activities and allow for witnesses and survivors to provide their accounts to the Court”. However, justice must not only be done, but seen to be done. This principle will be absent for the victims in proceedings where Joseph Kony is not present. When the confirmation of charges hearing was announced, many people initially believed Joseph Kony had been arrested, and they attended an outreach event under the impression that he would be present there. This misconception underscores our broader concerns. Many people have been questioning the purpose of the process if it cannot be held with Kony himself. One participant in a focus group we held in Lamwo district expressed the view that, because the prosecution will have no physical person to accuse rather than a mere name, Joseph Kony, it will be a trial of a “dead person”, with no tangible outcome for the victims and survivors. Many focus group participants told us that they felt that the traditional Acholi justice system, *Mato oput*, would be more appropriate.

Since that time of initial confusion and misunderstanding in 2022, the ICC has conducted some outreach programs through radio and in-person meetings, but these have been limited in scope. While some community dialogues have taken place, the ICC is often perceived as detached and disconnected from the realities on the ground. This has exacerbated frustrations among victims and survivors, many of whom feel uncertain about what the process will achieve and how it will benefit them. When outreach events are held, the information provided is often one-sided and overly simplistic. The exclusion of the government from accountability for crimes it committed during the conflict has never been adequately explained.

While some people in the community still trust the ICC owing to its promise of reparations, this trust is becoming eroded the longer that those promises go unfulfilled. The problem being, that the ICC’s biggest entry point into the community was the promise of reparations. The ICC’s failure to manage expectations in the *Ongwen* case has already complicated perceptions and the Kony case poses even greater challenges. This is because, when victims hear about a case against Joseph Kony, they assume that all members of the entire community in northern Uganda will be entitled to reparations, because of his overall responsibility. Again, these expectations have no chance of ever being met.

For these reasons, we are concerned that the Prosecution’s intentions are not aligned with the needs of victims and the well-being of the community, which include public acknowledgement

and truth-telling, reparations and memorialisation. Furthermore, the risks of re-traumatisation through the proposed hearings are high. In the words of one focus group participant from Kitgum, “the trial of Kony will open a healing wound.” There are dangers of reviving memories not healed, or elevating expectations that were never met, and will never be met. The lack of a restorative component makes trial justice ill-suited for rebuilding communities. For Acholi survivors, a process that excludes reparations, whether through traditional or formal mechanisms, will not equate to justice.

In Kony’s case, traditional justice would require him to admit to the commission of crimes. If he did so, his clan would acknowledge his actions and negotiate with other clans. The clans would then apologise and reconcile through Mato oput, with agreement from all clans being necessary. The Acholi community’s tradition of never disowning its members, regardless of their actions, means that even Kony could be welcomed back through reconciliation ceremonies. The community would perform all necessary traditional justice processes, involving clan leaders, the Cultural Institution, and the Paramount Chief. For example, even after the ICC process for Ongwen and the ICD process for Kwoyelo, their communities will still perform traditional Acholi justice ceremonies to ensure reconciliation upon their release. Many northern Ugandans have a deep sense of sympathy. The seeds of redemption on which transitional justice can build and thrive already exist. What most communities need is space and platform to catalyse this sympathy in the community and public sphere so that, for instance, communal reconciliation happens and communities own and take reconciliation forward.

Lack of utility aside, we are also gravely concerned about the potential risks to the community. In November 2023, shortly after the Prosecution’s request was made, the Office of Public Counsel for Victims sought extra time to hold consultations on the Prosecution’s request for the confirmation of charges in absentia. This extension was needed to “re-establish contacts with the victims concerned” which had “progressively diminished” due to “inactivity of the case”. We have been unable to trace evidence of any meaningful public discourse relating to the request to re-establish contact with victims, or any civic education that would prepare witnesses for these proceedings. If indeed there are overtures to engage with victims, they are being conducted in the same opaque fashion as the initial investigations.

Additionally, we have come to learn that only a handful of victims are being considered for participation in the proceedings, and that there is limited appetite for wider consultations.

OPCV's observations appear to have been based on consultations with less than 40 people. For these reasons, we are extremely concerned to hear of "unanimous" agreement with the confirmation proceedings. A failure to include a broad spectrum of victims and to consult more widely minimises the experience of victims, limits participation to people chosen through a process that is unclear to the community, and denies them the right to shape the contours of accountability for the egregious crimes they have suffered. Above all, communities will no longer own the outcomes of justice. For justice to be meaningful, it is important but not sufficient to put faces to the victims of Kony's atrocities but to undertake the widest consultations possible. Without this, the confirmation hearings will polarise people, split communities, and jeopardise peace. We are aware that the ICC has no safeguards to ensure communities do not relapse into violence, and that people in northern Uganda have already expressed their fear that these hearings could lead to a second wave of war.

This fear that the ICC proceedings against Kony could rekindle the conflict is not unwarranted. The forgiveness and healing that has already occurred has led to a shift in the mindset of the community in northern Uganda resulting in changes in the sense of estrangement among communities, and provides the foundation for dialogue and reconciliation. This is also very much consistent with the views of some respondents from affected communities in the north that deeply believe in communal sense of fairness. If the ICC comes in with a narrative of estrangement between communities, this will create a rupture in this dialogue. People will be forced to relive the events and the story, whether they want to or not, including the young people who did not live it themselves.

There are other solutions. The arrest and trial of Joseph Kony is only one element of national unity in the long-term recovery of northern Uganda. The decision on the confirmation of charges must be complementary and aligned with a wider national and continental transitional justice framework. After a painstaking process of development, the Government of Uganda approved a National Transitional Justice Policy in 2019. This policy makes wide-ranging recommendations on trials, traditional justice, reparations and even a nation-building process. This is an important focus. An ICC confirmation hearing will risk competing with and detracting from this process, and potentially destabilise dialogue and reconciliation initiatives.

For these reasons, it is our role to highlight the short-sighted and one-sided nature of the proposed confirmation hearing. Ultimately, while some in the community hope to see Kony

arrested and tried, many believe that without reparations, formal trials will fail to deliver meaningful justice or healing. For Acholi survivors, a process that excludes reparations—whether through traditional or formal mechanisms—cannot achieve true justice. Trial justice will not help and succeed in restoring, rebuilding and transforming the broken relationships that the 22-year protracted conflict foisted on the communities in northern Uganda. The right to defend oneself is an important principle; people want the accused to be present. These *in absentia* proceedings risk achieving nothing, and the potential for real harm is there.

Authors

Dr. Pius Ojara is the Director of the Refugee Law Project. He is an expert in humanitarian and development operations with skills in impactful programming and transformational and leadership in donor and non-governmental sectors. He holds a PhD in Philosophy from the University of Zimbabwe, a Masters in Philosophy, and other postgraduate qualifications. He is widely published, and taught at Arrupe Jesuit University, Harare, Zimbabwe for five years, and was Visiting Professor at Marquette University, Milwaukee, Wisconsin, USA, 2002 and the Jesuit School of Philosophy in Ho Chi Minh City (Saigon), Vietnam; visiting Fellow at Georgetown University, Washington DC. He also worked on social justice at the Jesuit Conference, Dupont Circle, Washington DC. He obtained his MDiv from the Jesuit School of Theology at Berkeley, California, USA. He also served University Chaplaincy at the University of California, Newman Hall, Berkeley, California. He obtained his BPh (Honors) from Urbaniana University, Rome, and obtained his diploma in Philosophy and Religious Studies from Alokolum National Major Seminary, Gulu, Uganda. He brings a wealth of experience of over 20 years from different national and international organisations in humanitarian service he has worked with. Dr. Ojara previously served as Programme Director with Tearfund in Bangui, Central African Republic; Director of the NGO Forum in South Sudan; A2 Conflict Advisor with UK-DFID in South Sudan; and Recovery & Development Advisor with DFID-Uganda among others.

Francis Nono is a Field Coordinator in Transitional Justice, for the Refugee Law Project in Uganda. He has more than 15 years experience working in transitional justice, peacebuilding and human rights in post-conflict Uganda. Previously, he worked as the Centre Manager of the National Memory and Peace Documentation Centre in Uganda, providing overall leadership and setting the strategic direction for the transitional justice, peacebuilding and human rights components, generating advocacy to ensure accountability for large scale human rights abuses.

He also spent five years as the Refugee Law Project's Community Outreach Officer, designing and implementing outreach strategies with the affected communities in Northern Uganda.