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Chapter 1. Introduction

"What compensation could you ever give that would be adequate for the loss of a loved one? You could not possibly ever replace the one who is no longer there. However, frequently, symbols can be powerful. [With the Trust Fund,] a country, a nation, the international community says, symbolically: 'We cannot compensate you, but we want to show you that we care, we want to demonstrate that we hope that this small thing that we do for you will somehow pour balm on your wounds and help those wounds to heal. . .'" Archbishop Desmond Tutu, Board of Directors of the Trust Fund, April 2004 ((AP, 2004)

The right of victims of gross violations to reparation is a fundamental principle of international law. For the first time in the history of international criminal justice, victims now have recourse to a mechanism that allows them to claim reparations before an international tribunal. Before the establishment of the International Criminal Court, no international regime existed that allowed victims to apply for and receive reparations from individual perpetrators (De Grief, 2006).

Victims are unable to claim reparations before the International tribunals for former Yugoslavia and Rwanda (ICTY and ICTR), and judges are only able to make orders for the restitution of property. The only hope that victims have of obtaining any compensation is to pursue their claims before national courts by convictions rendered by the international tribunals.

The ICC is the first international court to be given powers to make reparations orders directly against perpetrators to compensate victims of crimes committed under the Court's jurisdiction. This development in enhancing the strength of the ICC has been cited as "a significant step forward in the recognition of the rights of victims in international criminal proceedings (Di Giovanni, 2006)". In particular, it represents a shift in the international criminal law, from a purely retributive to a more restorative focus, which is "more significant and fair" to victims (Di Giovanni, 2006). Indeed, victims are accorded a central status in the ICC's framework, for instance, with a Victims, and Witnesses Unit established under the Court's Registrar (Di Giovanni, 2006).

Since its establishment by the Rome Statute of the International Criminal Court in 1998, the International Criminal Court (ICC) was envisioned to prevent impunity for atrocities through its jurisdiction over four crimes. This set of crimes includes crimes against humanity, war crimes, genocide, and the crime of aggression (ICC, 2011). The ICC's establishment fulfilled a vision first presented in the 1948 Genocide Conventions by creating a permanent international institution that

could hold individuals accountable for massive crimes. No longer could war criminals commit atrocities with impunity, hiding behind the shield of national sovereignty.

Also, the Rome Statute goes beyond determining criminal responsibility by mandating the Court system to contribute to efforts to restore and maintain peace and security and "to guarantee lasting respect and enforcement for international justice." The Rome Statute's most ground-breaking provisions established a Trust Fund for Victims (TFV) as a mechanism to deliver Court-ordered reparations, including restitution, rehabilitation, and compensation, against convicted persons to victims, as stipulated in Article 75 (ICC, 2011).

The Trust Fund for Victims (Trust Fund) is one of the most important and innovative aspects of the Rome Statute's provisions for victims. It was established pursuant to Article 79 (1) of the Statute, Rule 98 of the Rules of Procedure and Evidence, and Resolution 6 of the Assembly of States Parties, adopted on 9 September 2002, "for the benefit of victims of crimes within the jurisdiction of the court, and of the families of such victims" (The Trust Fund for Victims, 2015).

The statutes of the ICTY and ICTR did not provide for the establishment of trust funds. The effect of non-provision for the creation of the trust fund by the previous tribunals later turned to be seen as a major defect in the contribution of these courts to justice for victims. Indeed, the Trust Fund was created partly as a result of the experiences of these two predecessors of the International Criminal Court.

The Trust Fund has two primary roles. Firstly, under Article 75 (2), the Court may make awards to victims through the Trust Fund rather than to victims directly (ICC, 2011). In such cases, the Trust Fund will be responsible for the implementation of the reparations orders. Secondly, the Trust Fund has a wider mandate: to use the voluntary contributions that it receives to carry out projects aimed at assisting larger groups of victims, who may not have necessarily suffered directly from the particular crimes of the particular individuals who are prosecuted before the ICC (ICC, 2011). This dual mandate gives the Trust Fund the power to act on behalf of a larger scope of victims and at an earlier date than would be afforded by the Court-ordered reparations mandate alone. The Trust Fund may begin rehabilitation or support as soon as the Chief Prosecutor initiates an investigation responding to victims whose suffering may require attention before criminal convictions in the Court.

While the ICC shares the goal of ending impunity for mass atrocities with its predecessors, these provisions for the TFV institutionalize concern for the victim. The statute also provides for victim participation in criminal proceedings, but such involvement will necessarily be limited in cases of mass atrocity by the vast scope of victims. By moving beyond victim participation in procedure

and Court-ordered reparations, the Trust Fund has the possibility of bringing assistance directly to those who have suffered international crimes, bestowing the Rome Statute system with a unique mechanism to bring international justice to local populations.

From the time of its establishment by the United Nation, the Court, and the TFV can be considered an international endeavor into transitional justice, a field which, broadly speaking, concerns responses to mass atrocity and repression. By permanently establishing a Court for international crimes and a fund to assist victims and their families, the Rome Statute institutionalizes principles of restorative and retributive justice encompassed by contemporary conceptions of transitional justice (Keller, 2007).

1.2. Research Question

The distinction between victim and survivor is closely related to the tension between reparations and expectations. As Martien Schotsmans, a scholar of restitutive justice rightly points out “victims can never be satisfied: what happened to them can never be undone”. However, through a mechanism of reparations victims can become “full citizens again; citizens with the particular characteristic of having been victimized by past events”. With an effective reparations scheme, victims of gross violations of human rights have an escape out of their suffering (de Feyter, 2005). Here, as Schotsmans argues, monetary reparations are not necessarily invoked as the final solution, but reparations in the form and shape of a commitment to the victim's cause are what offer them a new life. Here, "to consider their expectations and needs is to put them at the same point of departure as their fellow citizens in the reconstruction of life after the war" (de Feyter, 2005).

While the debate on trials in ongoing conflicts remains contested, a growing consensus among post-conflict criminologists and justice theorists transcends the clash of retributive and restorative justice, acknowledging that principles of both practices can coexist and effectively respond to post-conflict realities. This position recognizes that, in addition to achieving punitive retribution, prosecutions can have reparative effects by mobilizing reparations to victims, documenting the truth about the crimes, and formally condemning injustices. Trials should be combined with other measures such as reparations or amnesties, but are necessary for transitional justice to achieve its goals. This complementarity of restorative and retributive principles is reflected in the Rome Statue, which integrates a reparations regime into the Court system.

This study understands the Rome Statute's reparations regime as an attempt to incorporate restorative principles of justice into international criminal law. The Trust Fund's second mandate, to provide assistance to victims outside of Court-ordered reparations, particularly appeals to restorative ideals. By focusing on victims and their families, the TFV can counter allegations that the Rome Statute system focuses on retribution—the punishment of perpetrators—rather than restoration. More broadly, reparative assistance provided in an international transitional justice context challenges accusations that transitional justice is inherently biased for the West.

By evaluating the Victim Trust Fund (VTF) of the ICC, The research investigates the extent to which assistance mandate of reparation can play a role in addressing the justice gap among victims of conflict in northern Uganda.

Main Research Question:

How effective has the TFV been in addressing justice for the victims of conflict in Northern Uganda?

Specific Research Questions:

1. How has the TFV been applied to the victims of war in Northern Uganda?
2. Has the TFV successfully fulfilled its mandate in Northern Uganda?
3. What gaps are there in the implementation of the TFV in Northern Uganda?

1.3. Research Strategy

Research for this thesis will focus on the topic of Transitional Justice through reparation and in meeting its objectives, this paper will evaluate the adequacy of the TFV of the International Criminal Court to the victims of the LRA war in Northern Uganda region. This researcher aspires for a general framework concerning the link between reparation and the victims of war in the area of transitional justice. Chapter 2 begins with an exploration of the methodological considerations used in the writing of the thesis.

Chapter 3 will focus on the discussion of the various scholarly views about the topic under research. It will focus on transitional justice and its genesis. This background will help to enlightened the reader as the paper goes on to discuss the various mechanisms of achieving justice through the transition. In discussing the mechanisms, the section will look at the three basic mechanisms which are retributive justice, restorative justice, and reparative justice. Each is presented to give the reader a wider knowledge of the choices available in achieving justice.

The chapter shall also focus on the ICC and the concept of reparation in Uganda. By discussing this idea, the chapter shall enlight the reader through bringing into perspective the history of the conflict in northern Uganda and how the ICC became interested in the crisis. It will proceed by exploring the ICC courts in Uganda as well as the controversy surrounding the courts activities in Uganda.

The section will continue the study by discussing in-depth the TFV and its operations, implementations and implementers of its programming in Uganda. Particular attention shall be geared towards discussing the three types of programming which are: material support, Physical Rehabilitation, and Psychological Rehabilitation.

This section will also discuss the chosen theory for the Study. The normative theory of Recognition and Redistribution advanced by Ernesto Verdeja will be debated, and emphasis shall be placed on its principles of Restoring victims' sense of dignity and moral worth, removing the burden of disparagement often tied to victimhood and Return their political status as citizens (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006).

Chapter 4 is about the findings in the original interview conducted for this research in the month of April-May, 2016. The results of this interviews coupled with the literature will help to illuminate some of the challenges faced in the implementation of the programs of the TFV. The study through the interview findings concludes that despite some challenges involved, TFV is playing a paramount role in post-conflict Uganda by contributing physically and materially to the societal recovery.

Chapter 5 concludes the study by making reference to the major findings of the interviews and the scholar debates in the field of transitional justice. The operation of the TFV in northern Uganda presents a positive response to the critics of transitional justice concept of restoration. It concludes that in as much as the TFV has registered some success in its implementation, it is not without some shortcomings and if this can be modified and overcome, the reparative assistance program may play a significant role in changing the lives of victims in post war areas and in shaping the field of International Transitional Justice.

Chapter 2 Methodology

This section contains considerations about the overall methodology and how the questions about the problem statement are answered. Because methodology is the foundation of a good research work, the most suitable methods in line with social science research was applied in conducting this research for the master thesis. The approach adopted, and methods of data collection selected for study depended on the nature of the inquiry and the type of information required for the research.

2.1 Data Collection

Upon the fact that the survey is both theoretical and empirical, this places much demand for the use of real data and analysis from various sources. The available evidence was gathered primarily from the interviews carried out in the region, and secondary sources were explored. Diligent care was taken to try and limit the flaws and be accountable for all the research work that is done in this thesis. Primary data was collected through interviews from the districts of Gulu, Amuru, Nwoya and Lira for the study because these are the communities in Northern Uganda where the TFV initiative through its assistance mandate under the Rome Statute is being implemented, and it also constitutes the larger part of Northern Uganda that was affected by the over 20-year-old insurgency of the Lord Resistance Army led by Joseph Kony and his cronies. The interviews were administered to the respondents in both Luo and English, Luo being the dialect of the local people who hail from the districts where the data was collected and the interviewer being an individual who hails from that region, therefore, did not require an interpreter. The data was gathered from a total of 23 (twenty-three) respondents taking into account the issue of gender as well.

Secondary data is employed in this thesis by examining the available literature and publications about the phenomena under investigation. A high level of reliability, replicability and validity were obtained. Reliability as (Bryman, 2012) indicates, it deals with the idea of if the results from a particular research can be repeated. Bryman further states that reliability is important in research because it ensures consistency on social science concepts. Replicability, on the other hand, deals with the question of whether the research being carried out can be a replication of any the investigation. For a concept to be reliable, the process of arriving at its results must be replicable by somebody else. Also, Bryman further indicates that validity deals with the integrity of research. This means that the study can measure that which it was intended to measure (Bryman, 2012). The researcher used diverse sources of data and information that aim to ensure replication. These data sources were chosen to ensure reliability and viability of this inquiry.

Registrations of the dates where the material and document for the thesis were found and used was made so that through a test of examination would be possible to use the same sources (Yin, 2009). The information and facts collected enabled the researcher to answer the problem formulated and contribute to its solutions through recommendations (Miller, 1991).

2.2 The Target group

This case study focused on the Trust Fund for Victims targeted respondents who included the members of the public who were direct beneficiaries of the ‘assistance mandate’ of the TFV, NGO

community, members of other civil society organizations, Traditional/cultural leaders, government officials and faith leaders who operate, have knowledge and implement the TFV initiative in Northern Uganda. This, in essence, necessitates the adoption of qualitative design since this design allows for selection of respondents to this study as indicated above. The time constraint involved in conducting this research, made this choice better since it would make it more focused on the key participants hence falling within the timeline.

In his book *Case Study Research Design and Methods*, Yin defines a case study as, “*an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between the phenomenon and the context are not clearly evident*” (Yin, 2003, p. 13). The case study method is thus used when one purposely wants to cover related situations, believing that they may be pertinent to the phenomenon of study (Yin, 2003). The case study approach is thus relevant to this thesis because the focus will be on the adequacy of the Trust Fund for Victims (TFV) as a component of reparatory justice system under the ICC to the survivors of war in northern Uganda. However as Yin states in his book, the strategy has its limitations and many researchers disregard it for some reasons. First, there is concern over the lack of rigor of case study research (Yin, 2003). He further submits that case study researchers become sloppy, do not follow procedures and allow evidence or biased views to influence the direction of the findings and conclusions. The second limitation is that case studies provide little basis for scientific generalizations because it is hard to generalize from a single study. Case studies are neither generalizable to populations or universes but theoretical propositions. A case study does not represent a sample and the goal when one is using a case study is to expand and generalize theories and not to enumerate frequencies. The third limitation is that case studies take too long, and the outcome is massive and unreadable documents (Yin, 2003)

2.3 Table 1: Presentation of participants

Interviewee Code Name	Age Range	Gender	Category	Date interviewed	Location/District
Interviewee 1	70-80	Male	Cultural Chief	10/04/2015	Gulu
Interviewee 2	60-70	Male	Implementing Partner/ NGO	06/04/2016	Gulu
Interviewee 3	42-50	Male	Beneficiary/Victim Survivor	11/04/2016	Gulu
Interviewee 4	30-40	Female	Implementing Partner/NGO	12/04/2016	Gulu
Interviewee 5	30-40	Male	Civil Society Organization (CSO)	5/04/2016	Lira
Interviewee 6	30-40	Male	Beneficiary	13/04/2016	Gulu
Interviewee 7	30-40	Female	Beneficiary	13/04/2016	Gulu
Interviewee 8	60-70	Male	Cultural Chief	26/04/2016	Gulu
Interviewee 9	50-60	Male	Religious Leader/NGO	2/05/2016	Gulu
Interviewee 10	30-40	Male	Local Government Representative	20/5/2016	Gulu
Interviewee 11	60-70	Male	Religious Leader/NGO	15/05/2016	Gulu
Interviewee 12	40-50	Male	NGO/Implementing Partner	28/04/2016	Lira
Interviewee 13	51-60	Male	Beneficiary	19/04/2016	Gulu
Interviewee 14	42-50	Male	Beneficiary	19/04/2016	Gulu

Interviewee 15	43-50	Male	Beneficiary	20/04/2016	Amuru
Interviewee 16	41-50	Female	Beneficiary	20/04/2016	Amuru
Interviewee 17	30-40	Female	Beneficiary	20/04/2016	Amuru
Interviewee 18	30-40	Male	Beneficiary	21/04/2016	Nwoya
Interviewee 19	40-50	Male	Beneficiary	21/04/2016	Nwoya
Interviewee 20	40-50	Male	Beneficiary	21/04/2016	Amuru
Interviewee 21	40-50	Male	Beneficiary	21/04/2016	Amuru
Interviewee 22	50-60	Male	Implementing Partner/NGO	03/5/2016	Gulu
Interviewee 23	40-50	Male	Senior Official ICC	25/05/2016	Kampala

2.4 Reasons behind the target group choice

The individuals who were targeted for interview were chosen based on their activities in the area under study and must in one way or the other participated in the TFCV initiative as a beneficiary, implementer or either as an individual or as part of an organization. This was the key guiding principle for the choice of the respondents. This means that the target group would be in a position to share their experience regarding how the TFCV operates and how the chosen beneficiaries have been able to gain access to the fund for their usage. Emphasis on the choice of the Religious and cultural leaders as target group was based on their objectives in the area with particular focus on peacebuilding components, transitional justice mechanism and their undying quest for peace and reconciliation in the northern Uganda. These are also people of authority due to their social position, economic or political and could to a great extent influence the behavior of their community members. Those who were specifically chosen were those who had dealt with the ICC in various

aspects and having been critical of the activities of the ICC, and the Cultural leaders are those in whose areas the TFV are being implemented and also where the LRA committed mass atrocities.

The choice of the Local government officials was based on the nature of their duties and responsibilities regarding peace and security. This is because any NGO or donor body wishing to implement its projects in a particular district has to inform the elected District Chairpersons of the area for purposes of supervision. They also offer an informed insight on how they cooperated with the NGOs implementing the projects in the region and other factors in regards to the objectives of the project.

NGO/Implementing Partners were targeted as well. This is because they were directly in charge of implementing the aims of the TFV of the ICC, their roles included identification of the victims, grouping them according to priority and assigning what kind of assistance each beneficiary is to get. They also provide information on as to how the beneficiaries have been fairing since the start of the projects they are implementing and how best the project can be executed based on their experience in the implementation process. Further, they would provide information how they coordinate the planning with other agencies like Hospitals that were in charge of the physical rehabilitation of the victims of war, local leaders in the identification of such victims.

In similar fashion, the victims of war were targeted because they are the actual people who directly benefit from the TFV, their importance in this research is crucial since they provide first-hand information on as to whether the TFV is helpful or not. They also give the much-needed information regarding the limitations of the fund and how they as beneficiaries feel the TFV should be implemented. This made them be in a better position to give an insight on how the whole TFV project has impacted upon them and how it operates in their respective areas where they are the target group.

ICC as the leading donor funder of the TFV was targeted to get a proper insight on how they started the whole concept of TFV initiative. This included getting to know how they chose who their partners for purposes of implementation of their funding and also which region the fund is supposed to be implemented in and the period for implementation of the fund in the specific area. Further, it also helped to get better particulars on how they identify their target groups for the purpose of implementing the TFV initiative.

2.5 Limitations of the Study

- The first major challenge was access to the Regional field program officer TFV program; there is only one person in charge of Uganda, Congo, Kenya and the Central African Republic, this respondent turned down the researchers' request for interview both on mail and through a phone call on several occasions. The Researcher, therefore, had to start with the Respondents who are beneficiaries of the TFV without this valuable first-hand information. However, at last, he offered the researcher the opportunity to have an interview one day to the researcher leaving the country. This was crucial since he helped to provide the much-needed information I would have missed entirely by failing to question him.
- The northern region is vast, and it was, therefore, impossible to carry out interviews in the whole area, and this is why the researcher narrowed it down to Amuru, Nwoya, Gulu and Lira Districts. The Four districts were chosen for the research because the respondents from these districts have relevant information for the study.
- Some respondents were hesitant to participate in the interview because they thought the researcher was gathering information for a government institution especially for security agencies basing on the current shift in tone by the government against the work of the ICC.
- Some of the questions asked especially about how one became a beneficiary were sensitive to the respondents. Therefore, much care had to be taken during the interview so as not to cause any anger among the respondents. The respondents were also less willing to offer valuable information unless the interviewer can listen to their side of the story first. Therefore the interviews had, to begin with, confidence-building discussions before going into the real area of focus.
- The poor road network made moving difficult and much time was spent connecting from one point to another. Most of the Respondents stay miles apart from each other and the center of many trading areas.
- One the other main challenge was that the research was being conducted at the time the ICC was also conducting information sharing workshops and follow-up of their projects in the region. The implementing partners were therefore very skeptical about the researchers'

intentions, and several appointments were turned down on the basis that they do not want to lose funding.

2.6 Research Design

This research adopted a qualitative research design. This is because it seeks to unearth the detail in the narratives about the efficacy of the TFV and how it has been applied to the situation in Northern Uganda. Alternatively, as John Kuada argues that this design, “engage in a detailed examination of cases.” This method has also been chosen because it allowed participants to express their feelings and offer their perspectives in their words (Kuada 2012). In this way, the members' opinions and views on Trust Fund for Victims were expressed hence proving the details needed to answer the research question conclusively.

Qualitative researchers are concerned with understanding individuals perceptions of the world and according to Judith Bell the researchers, *“doubt whether social facts exist and question whether a scientific approach can be used when dealing with human beings”* (Bell, 2010). The qualitative method will thus help to redirect the mind of the researcher from already known facts and help to contribute to a state of wider awareness of the social phenomena, TFV, which is the primary focus of the thesis and possible ways to implement it to benefit all the victims of human rights violations in Northern Uganda region.

Furthermore, various interviews and observation were used in the collection of the data employed in this research. The semi-structured qualitative interviews were conducted to obtain the data. This was chosen because qualitative interviewing is flexible and responds to the direction in which interviewees take the conversation and adjusting the emphases in the research as a result of significant issues that emerged in the course of the interview (Bryman 2012). This flexibility was crucial in enabling the interviewees to express their feelings and views freely hence providing in-depth information needed for this research. The room to move off target and follow-on replies by respondents offered by this method made it even more desirable.

The semi-structure was chosen over the unstructured in this research since it involves comparative study. This enabled the interviewer to have similar perspectives on the working and implementation of the TFV from the different respondents involved. The fact that semi-structured interview allowed for asking questions outside the interview guide made it appropriate for this study which is comparative. It has been observed that “by and large, all the issues will be asked, and a similar

wording will be used from interviewee to interviewee” (Bryman 2012). This enabled the research to be exhaustive in all the aspects it was investigating.

Inductive and deductive methods of analysis were employed in this study because the two occur in collaboration. The inductive method was used to acquire new knowledge and also contribute to the existing body of knowledge. This method was used to analyze concrete empirical work on the thesis topic in the region. However, to do justice to the study, not only inductive approach is employed in this research. It is because there is a known theory to work from and be tested. The choice, therefore, informed the researchers opinion to also employ deductive approach in the research. The deductive approach will be used to look at the views of the people of Northern Uganda about the reparative mechanism in place, what the people have to say about Trust Fund for Victims of the ICC. Systematic knowledge of new areas was applied to the deductive method and problem statement was put to the test.

The Research also employed an Interpretative approach in this study to generate and grasp the meaning and realities surrounding the reparation through the TFV. As expressed by Allan Bryman, this method aims to explain how members of a social group interpret the world around them (Bryman, 2012). In this regards, the research seeks to interpret documents from the ICC and its allied Aid Agencies, scholarly articles on Trust Fund for Victims and reparation with particular emphases on Northern Uganda, the internet, and the selected theory of study. The interpretative approach will be relevant for the study because social reality has a meaning for human beings and these realities and meanings are access through observation, human interaction, and through interpretation of the text (Bryman, 2012). The research will also focus on secondary data relating to ICC and TFV, and meaning can only be attained by interpreting those documents. In this sense, the focus of the interpretations will be based on ICC mode of reparation through the TFV assistance mandate and how that is impacting on the victims of human rights violations in Northern Uganda.

2.7 Data Sources and Sampling Technique

Sampling is one of the techniques of conducting qualitative research, and this piece of the investigation was no exception to its use. The selection of participants in this study was purposive to ensure that beneficiaries in each of the assistance categories were included in sufficient numbers to provide triangulation of the data collected. As noted by Bryman, purposive sampling is a non-probability form of sampling which goal is to sample cases and participants in a strategic way, so that those samples are relevant to the research questions being posed (Bryman, 2012). Therefore

because of the nature of the research question and the respondent target, the researcher had to employ purposive sampling methodology mixed with snowballing sampling choosing sources with a direct stake in the LRA conflict and the TFV of the ICC. Other interview partners were selected for being in a unique position to relate to the events (mostly direct personal involvement). The different implementing partners who formed the case study were, therefore, able to suggest other primary samples and these samples were then used to expand on the research.

The Chairperson Local Government for Gulu District was interviewed. He is amongst the few Chairpersons who retained their positions as a result of the elections that took place in February 2016 and having been the chairperson for the past five years. TFV initiative is being implemented in four Sub-Counties in his District. By virtue of the fact that activities of NGOs in a particular district are coordinated by the chairpersons, and also the fact that they work in close collaboration with community members and elders to monitor the implementation of the donor funded projects, this in essence made him to be at the center of information hence vital for this research.

The TFV coordinator of the region was also interviewed to get the information needed for this research because it focuses on the TFV initiative which falls directly under his office. This study would not have met its requisite value without the input from the trust fund coordinator. However to fix an appointment to interview him was a difficult task, he is the only focal person in the TFV office coordinating the regions of Uganda, Kenya, Congo and now the Central African Republic. At the time of this research, the ICC was conducting an information workshop and also evaluating the performance of the implementing partners to (or “intending to”) extension or withdrawal of support under the TFV initiative. With all these happenings patience had to be involved to meet and interview the targeted respondent to get the much wider knowledge about the operation of the fund, the target groups of the fund, the choice of implementing partners, the area of focus or regions where the fund is to be applied and the difficulties the fund gets in the process of meeting its mandate under the TFV initiative. The targeted respondents’ input provided a great source of insight for this research.

The Cultural community leaders also participated in the interviews. These are individuals who command respect and sometimes following from their community members. The respect that emanates from their successes in Community policing and guidance. In Uganda, there has been a revival of cultural leadership under our constitution. The Luo mainly occupies the Northern Uganda region and the Regions of Gulu, Amuru, and Nwoya all fall under one chiefdom headed by the Paramount Chief. However under the paramount chief, there are various chiefdoms called “Rwot” (Traditional Cultural Chiefs) of different cultures. These Rwots (Traditional cultural Chiefs) are

consulted on matters that affect the community members and their opinions shape the direction the community takes about such matters of concern. The cultural leaders chosen for this research are Chiefs in the areas where trust fund for Victims are being implemented, and some of them received training to conduct reconciliation in their various communities. The cultural leaders preside over the victims of war as subjects and are therefore highly respected and valued by the society. They equally helped implementers of the TFV in the identification of their target groups for purposes of implementing the task assigned to the project. This is why they were chosen for the research, and their access was not difficult since they are also the gatekeepers for the community.

There were quite some civil society organization representatives who were interviewed. They included the representatives of Refugee Law Project (RLP) based in Northern Uganda and Acholi Religious Leaders Peace Initiative (ARLPI) which are civil society organizations operating in Northern Uganda dealing with the aspect of Transitional justice, promoting peace and development. These organizations have been major critics of the work and modalities of how the ICC conducts its activities in northern Uganda, they have been sensitive of how the lack of consultation would breed discontent in the implementation of the work of the ICC including the TFV initiative. Further, they have been championing the cause of justice by suggesting alternatives to what the ICC is implementing. These, therefore, acts as a critique to the TFV initiative as well as the overall activities of the ICC. This action makes them distinctly unique for this research since their views help focus the research as far as evaluation of the success of the TFV hence making their representatives be a target for the interviews. I was able to identify and locate this organization through the help of a long-time schoolmate who happened to work at the Justice and law order Sector and policy advisor to the government on Transitional Justice, through her support, the researcher was availed a directory of the civil society organization dealing with transitional justice programmes and NGOs implementing the TFV under the ICC.

NGOs also were interviewed. In this, the chosen NGOs were the direct implementers of the TFV program in northern Uganda. The researcher was able to interview representatives of Uganda Victims Fund, Gwed-G, and AVSI. These organizations were unique in their various areas of operation. For example AVSI an international NGO has been implementing trust fund for Victims project through physical and Psychological rehabilitation since 2008, and they work in close cooperation with a government facility to replace lost limbs and arms in their line of operation, they cover all the districts of northern Uganda with their orthopedic workshop based at Gulu Regional Referral Hospital. The longest serving staffs at ASVI who have been great implementers of the TFV

initiative gave different perspectives of how they have worked with the beneficiaries in the process of implementing the project. The assistance proved very insightful to this research.

In the same vein, Uganda Victim Fund (UVF), a local NGO, operating in Lira district in Northern Uganda was also a beneficiary of the funding from TFV basket as an implementing partner. They started implementation in 2008, and they had components of Medical rehabilitation, livelihood program, and Psychological and Sex Gender Based Violence (SGBV) program. This project covered four sub-counties in the Lango sub-region in the districts of Lira, Oyam, and Kole.

Gwed-G is also one of the implementing partners covering the districts of Gulu, Amuru, and Nwoya in Acholi sub-region of Northern Uganda. Their first project was through HOPE project under an international organization called CARE from 2012-2013 and this project only operated in Gulu District. During this project period, the components being implemented included Psychological rehabilitation, Livelihood/economic programs, Physical recovery and peacebuilding. Their second project started in 2014 to date and covered the three districts with a component of Physical recovery and psychosocial rehabilitation.

This research would not be complete without interviewing the victim survivors of war themselves. They are the direct and indirect beneficiaries of the fund from the TFV basket under the ICC. To get to the victims, the researcher had to use the services of the NGOs who were implementing this fund from the TFV basket. The researcher was, therefore, able to get a list of beneficiaries from Gwed-G an NGO, which covers a large area in northern Uganda and operating in three Districts. The researcher was also able to get a list of recipients from AVSI. AVSI covers the whole of northern Uganda in implementing the physical rehabilitation component of the fund. The beneficiaries included both male and female recipients who have got assistance ranging from counseling, physical rehabilitation to livelihood support. Their first-hand information on the success constraints and what can best be done to make them benefit better from the TFV basket was of great importance to this research. It provided the benchmark upon which to draw the analysis and conclusion of the research.

2.8 Study Limitations

This Research focusing on TFV and its effectiveness in the post-war Northern Uganda situation shall only be limited to this area. Further, it will focus only on the outcome of the implementation of the TFV and will consider beneficiaries who have had access to the support from the fund. In the same vein, it will look only at the second mandate of the TFV which is the assistance mandate. This

is because the first mandate which is the implementation of Reparation as a result of the judgment of the court is not yet feasible. No court hearing has yet been concluded in regards to the suspect before the ICC court and therefore it would be a wild chase to consider that aspect. The research is further limited within the three districts of Gulu, Amuru, Nwoya and Lira, these being the districts that were also a center of the rebel activities in northern Uganda and also districts where TFV is being implemented. It will also be limited to the period when the TFV initiative was rolled out in the region, and that is the period 2008 to date and the areas in which they are being implemented. This means therefore that any assistance mandate of the TFV under investigation not falling within the purview of the areas above shall not be considered.

A further limitation was also in the bracket of the respondents especially those victim survivors who were beneficiaries of the material support under the HOPE project from 2008-2013. The phasing out of the material support marked the end of the relationship between TFV and the recipients under that project. Therefore, their views could not be solicited to enrich this research, and this could form a sound basis for future studies.

Chapter 3 Literature Review and Theoretical Consideration

The literature that is used and applied in this paper has been a different collection of journals both published and unpublished. Most are sources from the Internet such as journal articles, news articles, and government web pages and any other relevant documents to the study in question.

3.0 Transitional Justice and Its Genesis

Transitional justice concerns the various responses to widespread violations of human rights in the aftermath of authoritarian rule or violent conflict. Though the term “transitional justice” emerged in the 1990s to describe responses to the falls of authoritarian regimes in the 1980s, it encompasses mechanisms of justice that stem at least as far back as the Nuremberg Trials in 1945 and 1946 (Teitel, 2003). Since then, the field has developed to include a variety of goals and mechanisms that aim to redress abuses of human rights (Teitel, 2003).

The modes of this various conflicts were characterized by severe systematic human right violations and extreme repression, which "tore apart the social fabric of some countries, thereby having different repercussions like leaving a toll of deaths, injuries, broken lives, trauma, and deepened antagonism (Hoogenboom, 2014). Due to this numerous conflicts, many of the countries that experience the various conflicts were left with intense political and social divisions. The result was

that political changes swept over many of these countries, subsequent governments, international communities and this led to them to struggle with a set of moral and legal and policy challenges (Hoogenboom, 2014). As described by Hayner, "the fundamental question, that of how to reckon with massive past crimes and abuses, raises a broad range of difficult issues" (Hayner, 2002). To respond to this episode, the international community, led by the United Nations (UN), had to accept that, after such mass atrocities, the concept of "justice" needs to be promoted. This need for justice is what became regarded as the driving rationale for the field of transitional justice.

Transitional justice has been defined in various ways. However, the definition remains contested, but, in general, refers to the legal and non-legal mechanisms that societies can adopt in the wake of mass human rights violations. Transitional justice as a unique field of study has its genesis in the late 1990s to early 2000s (Hoogenboom, 2014). Led by legal scholars like Diane Orentlicher and Neil Kritz, the field quickly gained popularity and is now thoroughly enmeshed in academia with its journals, centers of research and academic programs (Hoogenboom, 2014). In addition to the academic side, various non-governmental organizations, including the International Center for Transitional Justice (ICTJ), support the work of transitional justice practitioners. Though legal scholars initially dominated this field of study, the early focus of the field was on questions of accountability in democratic transition (Hoogenboom, 2014).

As Ní Aoláin and Campbell points out, this "led to the development of 'transitional justice' as an identifiable set of discourses in the first instance" (Campbell & Ní Aoláin, 2005). This field of transitional justice has also since developed to encompass a variety of goals and mechanisms that aim to redress abuses of human rights. The goals of transitional justice include restoration of the rule of law; judicial retribution; recompense and the affirmation of the dignity of victims; reform of institutions; social and political reconciliation; nation building and reconstruction of the past.

Conceptually, the range of crimes covered under this definition can be broad; however, the field of transitional justice has tended to focus principally on Genocide, Crimes against Humanity, War Crimes, grave breaches of the Geneva Conventions, and violations of civil and political rights (Hoogenboom, 2014). These crimes reflect the primary concern of transitional justice: states in transition from the repressive authoritarian rule and armed conflict to peace. Historically, these "transitional" states have struggled with a set of moral, legal, and political challenges including what to do about the past and how to move forward (Hoogenboom, 2014). Fueled by fears of never-ending cycles of conflict, the field of transitional justice emerged to promote specific mechanisms to aid in the transitions to democracy and peace.

It is observed that this expansion of transitional justice beyond its legalistic beginnings generated much debate between those who advocated for criminal prosecutions in the wake of mass human rights violations and those who promoted truth commissions, and the search for truth as vital following the intense conflict. Connected to this was the debate between retributive justice, restorative justice and the new field of reparative justice. Taking on a more philosophical tone, this discussion centered on the “underlying philosophy of justice that should inform accountability for past violence” (Amstutz, 2006). These concepts are discussed in the following sections.

3.0.1 Retributive Justice

At the international level, Retributive justice paradigm has been the central approach for dealing with perpetrators of mass atrocities and crimes against humanity (Gray, 2010). Beginning with the International Military Tribunal at Nuremberg (1945) and the International Military Tribunal for the Far East (1946). In the aftermath of the Second World War, retributive justice has been the basis of the international community’s approach to mass atrocities, as evidenced by the formation of the International Criminal Tribunal for the former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994), and the permanent International Criminal Court (2002) (Gray, 2010). Besides these, international courts, hybrid courts, which consist of both international and domestic justice actors, have also been established including the Extraordinary Chambers in the Courts of Cambodia (1997) and the Special Court for Sierra Leone (2002) (Gray, 2010).

There have been arguments that criminal prosecution as a result of mass atrocities is an imposition of Western justice. To the contrary, the international community, led by the United Nations has given much priority to it over all other mechanisms (Gray, 2010). While there is a consensus regarding the importance of criminal prosecutions, there is little agreement over the actual value of such proceedings (Gray, 2010).

Legal Theorist and Philosophers have advanced several justifications for the use of criminal prosecutions, and this has been classified into two categories of consequentialism and retributivism (Hoogenboom, 2014). Central to the consequentialist, the argument is that criminal prosecutions can change the behavior of both the individual perpetrator who is on trial as well, as other would-be wrongdoers. In other words, it is a deterrent measure towards future crimes. In contrast retributivist justifications focus purely on the restoration of justice. To the Retributivist theorists, the contention is that an offender has “taken an unfair advantage in committing a crime, which can only be corrected by the administering of punishment” (Hoogenboom, 2014).

A retributivist justification is, therefore ‘backward-looking’ because its *raison d’être* is rooted in the past, in the commission of the act. This argument for criminal prosecution seems to tap into a raw emotion of retaliation (Hoogenboom, 2014). Hoogenboom while quoting Mani captures this sentiment, suggesting that the basic retributive urge is that wrongdoing must be punished just because the wrongful act merits condemnation and punishment (Mani, 2002). However, a retributivist justification is more than an urge for vengeance (Hoogenboom, 2014). A retributivist maintains that there is a moral obligation to inflict suffering on a wrongdoer. Another Scholar Drumbl argues that “the infliction of punishment repairs the moral balance insofar as punishment is what the offender deserves. Punishment, therefore, is to be proportionate to nature, and extent of the crime” (Drumbl, 2007, p. 61) According to Elster, retribution as a theory of punishment likely has the most appeal for victims of mass atrocities. He writes, “the idea that wrongdoers deserve punishment for their acts, irrespective of the consequences of punishing them, is one that probably has a wider appeal in the population as a whole than among criminal law scholars” (Elster, 2006, p. 38).

Drumbl identifies two consequentialist justifications for criminal prosecutions in addition to retribution: *general deterrence* and *expressivism*. While implementing the general deterrence concept, the state through the institutionalization of justice removes away the need for personal vengeance by the victims who have suffered through the actions of the wrongdoer (Drumbl, 2007). Similarly, Blewitt captures this view when he writes that “*all victims expect, and in my opinion are entitled to see, that the persons most responsible for the crimes against them, their families and loved ones, are brought to justice. If justice is not achieved on their behalf, then their feelings of grievance and their desire for revenge could lead to them taking the law into their hands to achieve justice, or what they perceive in their eyes as justice – an eye for an eye!*” (Blewitt, 2008, p. 39).

In support of this argument, Blewitt suggests that the Prosecutor of the ICTY was able to prevent any atrocities actually from occurring during a build-up of tension between ethnic Albanian rebels and the Macedonian government following the conflict in Kosovo (1998). According to Blewitt, the Prosecutor of the ICTY made it explicitly clear to the Macedonian authorities that the jurisdiction of the ICTY remained in existence and encompassed the entire territory of the former Yugoslavia; a tract of land that included Macedonia. Consequently, Macedonian authorities were made aware of the legal consequences that would occur if such violations took place (Blewitt, 2008).

In terms of mass breaches of human rights committed by one ethnic group against another, Meernik, Nichols and King suggest that “*by pointing the finger of blame squarely at those who conceived, organized, and ordered the commission of War Crimes, Crimes against Humanity, and Genocide,*

criminal prosecution is theorized to contribute to deterrence by lessening the perceived need for one ethnic group to take revenge against another” (Meernik, 2010, p. 312). This justification is premised on the belief that the threat of punishment will create a hostile world for those who commit human rights violations and, as a result, potential violators will give weight to the threat of judicial accountability when deciding their course of action. Of course, advocates of this theory recognize that enforceable international law will likely not deter *all* potential violators, but suggest that their existence in the international community is still better than the alternative—that is to say, complete anarchy (Meernik, 2010).

Expressivism is the second consequentialist justification for criminal prosecutions. This reasoning asserts that punishment provides a necessary signal of change for a newly emerging regime. Juan Mendoza of the early human rights activists captures this sentiment when he writes:

Scholars like Mendeza argues that redressing the wrongs committed through human rights violations is not only a legal obligation and a moral imperative imposed on governments. He went further to state that it also makes good political sense in the transition from dictatorship to democracy. According to him, the pursuit of retrospective justice is an urgent task of democratization, as it highlights the fundamental character of the new order to be established, an order based on the rule of law and respect for the dignity and worth of each human person (Mendeza, 1997, p. 1).

Furthermore, to Osiel, criminal prosecutions can positively contribute to post-conflict society building through the growth in social solidarity that emerges when parties can rely on institutions to peacefully resolve disputes. Osiel continues to argue that, in this case, the organization's effectiveness reaffirms its importance in society (Osiel, 1997). In addition to rebuilding the status of the rule of law, many of the transitional justice scholars argue that criminal prosecutions can play a vital role in the promotion of reconciliation (Hoogenboom, 2014). While previous trials like the *ad hoc* tribunals for the former Yugoslavia and Rwanda were largely considered ineffective in this respect, scholars like Kerr and Mobekk suggest that with the right approach (for example, locating the trials in the country in which the crimes occurred as well as ensuring community buy-in) judicial courts can make a contribution to peace and reconciliation (Hoogenboom, 2014).

Finally, it should be noted that criminal prosecutions grounded in the retributive justice paradigm are the Centre piece of the international community's response to conflict and authoritarianism. Guided by the dictates of international law, at the heart of which are the civil and political rights related to bodily integrity, criminal prosecutions are rooted in a liberal conception of the world. The

focus of the retributive justice paradigm is the prosecution and subsequent incarceration of individual perpetrators of mass atrocities. In the transitional justice community, a strong argument still holds that accountability through criminal proceedings remains a vital component in a state's transition from conflict (Hoogenboom, 2014).

This recognition of the relative unimportance of the victim in the justice process as seen above from the retributive paradigm perspective has been the central focus of the restorative justice process. In response, the international community has adopted an array of mechanisms to accompany legal prosecutions. These mechanisms include Restorative Justice Paradigm, which is akin to truth telling and the various reparative mechanisms.

3.0.2 Restorative Justice

The growing belief that the world must take action in cases of gross human rights violations forms an integral and central part to the field of transitional justice. Criminal prosecutions, rooted in retributive justice, are only one approach that has been legitimated by the field; however there are other methods associated with transitional justice, and this includes among others truth commissions and their underlying philosophy of justice, restorative justice. As it is noted with the retributive model, the victim is, for the most part, removed from the process and replaced by the state, in the restorative paradigm, victims, as well as the wider community, are viewed as integral actors in the justice process (Hoogenboom, 2014). While proponents of restorative justice have identified some mechanisms, including healing circles, as an alternative to criminal prosecutions, one cannot discuss restorative justice paradigm in isolation of truth commissions which has become the mechanism most closely associated with this model.

As Hayner defines it, a truth commission is a body that *"(1) focuses on the past; investigates a pattern of abuses over a period of time, rather than a particular event; (3) exists temporarily, typically in operation for six months to two years, and completing its work with the submission of a report; and (4) is officially sanctioned, authorized, or empowered by the state"* (Hayner, 2002, p. 14). Following the military dictatorships in Latin America in the 1970s and 1980s, the concept of truth commissions became so popular, particularly when previous regimes had *"insisted upon amnesties or pardons as a precondition for stepping aside"* (Hayner, 2002, p. 14). Based on this, it led to subsequent governments to seek out alternative mechanisms of justice, at least in the immediate period following the transition away from authoritarian rule. In this respect, the truth commission was more of a political compromise more than an imperative; however, the truth

commission offered valuable information for families of victims who had disappeared without a trace (Hayner, 2002).

In Argentina, a truth commission was adopted not as an alternative, but, rather, as a first step. Following the election of Raúl Alfonsín as President, he adopted the *National Commission on the Disappearance of People* (CONADEP). However, this did not stop the setting up of prosecution mechanism to investigate the crimes of the military junta eighteen months later in the wake of the transition (Hoogenboom, 2014). For Argentina, where criminal prosecutions initially looked impracticable, the truth commission was seen as an immediate mechanism to delegitimize the previous regime's human rights violations but, in the end, did not close the door on criminal prosecutions (Hoogenboom, 2014).

The truth commission in Argentina was the first prominent commission of its kind. Since then, approximately 40 such commissions have been appointed to date, but the truth commission has mostly become identified with the democratic transition in South Africa. The new government in South Africa under the leadership of the African National Congress after the fall of the apartheid regime, adopted the Truth and Reconciliation Commission (TRC) to investigate the mass human rights violations under the previous regime (Teitel, 2003).

It should be noted that since the South African TRC, truth commissions have gained considerable legitimacy at both the international level, and numerous advocates in the international community, including international human rights non-governmental organizations (NGOs), such as International Center for Transitional Justice; commissioners and staff of previous truth commissions; academics from around the world; and proponents within the United Nations. All of these suggest that truth commissions are a necessary component of the justice process in supporting peaceful transitions (Teitel, 2003).

To different scholars, the restorative justice paradigm has become the moral regulatory force behind the growth of truth and reconciliation commissions following mass atrocities. Restorative justice develops from a unique view of wrongdoings in which crime breaks down the very social fabric of a community. In response, restorative justice emphasizes the "transformation of subjective factors that impair a community, such as anger, resentment, and desire for vengeance." Thus, crime and the response to it needs to have a focus beyond the individual perpetrator to include the damaged relationships within the community (Hoogenboom, 2014).

As Hoogenboom suggests, the retributive paradigm eliminates this relational aspect by removing all elements of the victim and inserting the state in his or her place. In this sense, the retributive

focus on a single criminal offense becomes a contest between the state and the offender, to the exclusion of any outside actors (Hoogenboom, 2014). In one of the early academic pieces that greatly influenced the restorative justice paradigm, Christie described the conflict as property and argued that the judicial system rob victims of this property (Christie, 1977). Christie claimed that this is a misstep on the part of the modern state, to the detriment of the victim and the wider society. In Christie's view, "current criminal control systems represent one of the many cases of lost opportunity for involving citizens in tasks that are of immediate importance to them" (Christie, 1977). Furthermore, "the victim is an unusually heavy loser in this situation. Not only has he/she suffered, lost materially or become hurt, physically or otherwise... however, above all, he has lost participation in his case" (Christie, 1977, p. 7).

On the other hand, restorative justice paradigm promoters argue that damaged relationships represent both the effects of a crime, and the cause of that offense. That is, a criminal act further damages the societal fabric of a community but it, perhaps more importantly, also signals an existing brokenness within the community; a crime both implicates the community and contributes to its deterioration (Hoogenboom, 2014). Any response to such collective brokenness must acknowledge the importance of bringing the community, including the victim into the justice process to restore the basic fabric of society (Hoogenboom, 2014). Zehr highlights this, suggesting that restorative justice is a process to involve, to the extent possible, those who have a stake in a particular offense. It calls for an obligation to identify collectively and address harms, needs, and commitments, to heal and put things as right as possible (Zehr, 2015, p. 44).

In contrast to the criminal justice paradigm where "violations create guilt," the restorative justice model suggests that "violations create obligations." (Hoogenboom, 2014). Whereas guilt necessitates some form of punishment by the state, as evidenced in the criminal paradigm, the restorative model suggests that obligations are owed to both the victim and the wider community "to put things right" (Hoogenboom, 2014). For example, this could include dialogue between these stakeholders, in which all "share their stories and come to a consensus about what should be done (Hoogenboom, 2014)". The approach of the restorative paradigm stands in marked contrast to the retributive model for its emphasis on the victim. In doing so, restorative justice looks to "prepare the way for victims and perpetrators, their respective families, their communities and the nation as a whole to learn to live together after years of enmity." (Hoogenboom, 2014, p. 139)

The convoking of the TRC by South Africa forced a reconsideration of the accepted notions of justice. Apartheid was a system of racial oppression established by the white National Party in 1948 and sustained through brutal "manipulation, coercion, and violence." Its entrenchment in South

Africa created a society "premised on lies, secrecy and the abuse of fundamental human rights." Chaired by Archbishop Desmond Tutu, the TRC created a forum for victims to tell their stories and promised perpetrators amnesty or leniency in exchange for confessions (Hoogenboom, 2014, p. 139). The commission received 21,290 statements in which 19,050 individuals were identified as victims of human rights violations. Another 2975 victims were identified through the amnesty process. The 3,500-page report was released on October 29, 1998 (Hoogenboom, 2014). For Tutu, the truth commission offered a "third way" between criminal prosecutions and blanket amnesties and was often justified using alternative concepts derived from Christian or African ethics like reconciliation, forgiveness, and *Ubuntu* (Hoogenboom, 2014). To Archbishop Tutu, *"retributive justice is primarily Western. The African understanding is far more restorative—not so much to punish as to redress or restore a balance that has knocked askew. The justice we hope for is restorative of the dignity of the people"* (Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, 1998, p. 81) In addition to restoration, the TRC relied on concepts like reconciliation to characterize its vision.

3.0.3 Reparative Justice

Transitional justice is also based on the assumption that gross human rights violations cause serious harm to its victims and should, therefore, be redressed. As Spelman appropriately points out, *"we, the world we live in, and the objects and relationships we create are by their very nature things that can break, unravel, fall to pieces"* (Spelman, 2003, p. 236). Mass violence frequently lead to the destruction of the social fabrics of a country, thereby causing grave sufferings to its citizens. In response to this strain of violence, reparative justice attempts to address this brokenness (Val-Garijo, 2010).

Dealing with the aftermath of grave violence, therefore, forms the foundation of the restorative paradigm: that humans and the relationships we build need to be repaired from time to time. This assumption is widely upheld about state responsibility and relation to individual criminal responsibility. Firstly, under international law, any country that breaches its international obligations (by action or omission) has the duty to produce reparation (International Law Commission, 2001). So, for example, when states are involved in the commission of human rights violations (like disappearances or torture), as happened in Chile and Argentina during their respective dictatorships, the state is liable under international law to produce reparations for its victims if, at the time of the commission of such atrocities, it was bound by international law (treaty and/or custom) not to commit such violations. Secondly, international law also recognizes individual criminal responsibility for crimes against humanity, war crimes, genocide, and

aggression. Perpetrators of such crimes should also repair the harm they caused to their victims (Rome Statute, Article 75). These two forms of reparation (state and individual) are well founded in international law (magarrell, 2007).

It is also common to see countries engaging in a reparations process without acknowledging any legal responsibility for the human rights violations or crimes that were committed, but rather appearing to act to help their people or others to move forward. In Colombia, for example, the government established the *Programa de Reparación Individual por Via Administrativa* (Administrative Reparations Programme) so that the state could provide reparations to victims of crimes (such as disappearances, torture, and arbitrary killings) committed by the guerrillas or paramilitary groups (not state forces) before 22 April 2008 (magarrell, 2007).

On other occasions, states other than the states where the atrocities were committed also contribute to the reparations process, not because they acknowledge the existence of an international obligation to this end but because they decide to cooperate with such a process. For example, the United States, through USAID, helped to finance the comprehensive health program created for the victims (Lira, 2005), known as PRAIS (*Programa de Reparación y Ayuda Integral en Salud y Derechos*) (magarrell, 2007) in Chile.

Reparative justice, therefore, is rooted in the concept of reparation, which has historically been understood as monetary compensation intended to counteract any losses as a result of a crime committed. Weitekamp described the current rationale behind the concept of reparation as that of an “*act of restoring; restoring to its rightful owner; the act of making good or giving an equivalent for any loss, damage or injury; and indemnification*” (Weitekamp, 1993, p. 70). In post-conflict societies, the concept of reparation is broadened from its historically narrow focus on monetary compensation. As pointed out by Hoogenboom, in the transitional justice literature, the term refers to several legal and social measures, including material reparations like cash payments or provisions for education, health, and housing, restitution, or broader symbolic measures like commemorations, memorials, and apologize (Hoogenboom, 2014).

For scholars like Minow, “the core idea of reparations stems from the compensatory theory of justice. Injuries can and must be compensated. Wrongdoers should pay victims for losses. Afterward, the slate can be wiped clean” (Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, 1998, p. 104). According to Mani, reparations can address “two principal kinds of injustices suffered by the victim: first, the legal injustice, such as injury, loss of life, employment or property.” (Mani, 2002, p. 174) Traditionally, at this level,

reparations should, “as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed” (Mani, 2002). Second, “reparations should address the moral or psychological injustice, that is, victimization, trauma, and loss of dignity” (Mani, 2002, p. 174).

While falling short of complete restitution, i.e. a return to a hypothetical state of being as before the abuse, Philpott argues that such reparations programs can provide recognition for victims and can go a long way towards alleviating or compensating victims for the harm they have suffered, both physical and mental (Hoogenboom, 2014). Similarly, Minow also argues that “monetary payments... symbolically substitute for the loss of time, freedom, dignity, privacy, and equality” (Minow, *Between Vengeance and Forgiveness: South Africa's truth and reconciliation commission*, 1998, p. 102). In other words instead of understanding the payments as an attempt to replace what has been lost, such action was taken by the government is, perhaps, lauded because it is a symbolic gesture, which is finally aimed at recognizing a group of victims (Hoogenboom, 2014).

While monetary reparations fulfill a seemingly “straightforward obligation on the part of the political community to compensate for property and goods that were lost due to political injustices,” such actions are far more complex. This gesture has not gone without criticism, some critics in the transitional justice world suggest that reparations “amount to ‘blood money,’ money that appears to pay off victims so that they drop further demands; they equate the injustice victims’ suffered from financial goods; or even that they buy victims’ silence” (De Grief, 2006, p. 454).

A typical example cited is in the case of South Africa where “large numbers of people asked the [Truth and Reconciliation] Commission to compensate them financially for their losses” (Lyster, 2000). Such calls were initially noted by the TRC, as “the commission felt that this was appropriate and that, in accordance with the principles of national and international law and practice, financial compensation should be granted to people that the commission found to be victims of gross human rights violations” (Lyster, 2000, p. 190) In response, “the TRC Act identified the problem of reparations and the rehabilitation of victims as one of its three major concerns” (Lyster, 2000). Of course, this is reflected in the composition of the Commission, which is comprised of three committees including the Reparations and Rehabilitation Committee, the Human Rights Violations Committee, and the Amnesty Committee. Ultimately, the TRC recommended, “six annual payments of 17,000 to 23,000 [South African] Rand per person” (Backer, 2010, p. 447).

Though there was a recommendation from the South African TRC to compensate the victims, the South African government was relatively slow to act and, when it finally did, the amount was much

lesser than recommended. However in 2003, it finally provided a one-off payment of 30,000 Rand per person (Backer, 2010, p. 447). For Backer, this was an important step and can be “viewed as meaningful progress, building on the TRC, insofar as the compensation acknowledged the harms victims suffered and the hardships they continue to experience as a result” (Backer, 2010, p. 447). Yet, he argues that the government’s initial resistance be curious. Of particular concern for this project has been the government’s rhetoric regarding reparations. According to Backer, despite the “enrichment of political elites since the transition,” the “then President Thabo Mbeki, among others” have opposed reparations arguing “that the liberation movement was not fought for money and that reparations are tantamount to putting a price on losses that are fundamentally irreparable.” Colvin, too, suggests that the government has been rather “dismissive toward some victims labeling them ‘opportunists’ and ‘unrepresentative’” (Backer, 2010, p. 447).

Also, to monetary reparations, the field of transitional justice has also identified *symbolic* reparations including apologies, memorials, and commemorations. Symbolic reparations provide a government with the opportunity to “acknowledge the fact of harms, accept some degree of responsibility, avow sincere regret, and promise not to repeat the offense” (Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, 1998, p. 112). Implicit in such symbolic reparations is a desire to move forward; to build a new, rights-respecting state (De Grief, 2006). Nicholas Tavuchis provides insight into a meaningful apology: “To apologize is to declare willingly that one has no excuse, defense, or justification... for an action.”

A government apology is an “admission of wrongdoing, a recognition of its effects, and, in some cases, an acceptance of responsibility for those effects and an obligation to its victims. However, these are all different levels of acknowledgment that together create a mosaic of recognition by perpetrators for the need to amend past injustices”. For Eyal Brook and Sharon Warshwsky-Brook, “at the heart of apology lies a genuine display of appeal to sorrow, as opposed to an appeal to reason” (Brooks & Warshwsky-Brook, 2010, p. 516). For Brook and Warshwsky-Brook, the key components of an apology include an expression of remorse or regret, acceptance of responsibility, compensation, and a promise to avoid such behavior in the future.” An apology, then, is an act of role reversal: “the person apologizing relinquishes power and puts him- or herself at the mercy of the offended party, who may or may not accept the apology. This exchange, which is a dramatically compelling encounter, providing the victim with a moral supremacy, is at the heart of the healing process and contributes toward a change in the dynamics between the parties” (Brooks & Warshwsky-Brook, 2010, p. 516). Such an authentic act allows the “victim to heal and the offender

to take responsibility for the harmful act, be accepted back into society, and, therefore, have less reason to commit future offenses” (Brooks & Warshwski-Brook, 2010)

There are, however, certain hesitations in the literature regarding apologies. For example, Minow suggests some potential problems with apologies, including “insincerity, no clear commitment to change, [or] an incomplete acknowledgment of wrongdoing” (Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, 1998, p. 112). There are concerns regarding the use of apologies in the case of genocide or mass human rights violations. Specifically, an apology might be meaningless for victims if it comes from people who have no actual ability “to accept or assume responsibility, or who have only remote connections with either the wrongdoers or the victims” (Minow, *Between Vengeance and Forgiveness: South Africa's truth and reconciliation commission*, 1998, p. 112) For Minow, a vital concern is a government that uses an apology as an easy out; that is, an apology that is “purely symbolic, and carries no concrete shifts in resources or practices to alter the current and future lives of survivors of atrocities” (Minow, *Between Vengeance and Forgiveness: South Africa's truth and reconciliation commission*, 1998, p. 112).

Such a use of apology will only further exacerbate an already difficult situation for victims of mass human rights abuses. In addition to apologizing, governments have also set up memorials in response to mass human rights violations. The process of memorialization “satisfies the desire to honor those who suffered or died during the conflict” (Minow, *Between Vengeance and Forgiveness: South Africa's truth and reconciliation commission*, 1998, p. 112). Such a process includes both physical memorials, as well as public spaces, days of commemoration, and educational programs (Hoogenboom, 2014). For example, such a process can range from the bodies of the deceased put on display, as has been done in places like Rwanda and Cambodia, to educational programs in South Africa that remind the youth of the pain and suffering that their parents and grandparents had to endure under the apartheid regime (Hoogenboom, 2014).

According to Barsalou and Baxter, once “other transitional justice processes have finished their work, the public is likely to understand better aspects of the conflict that were previously hidden or repressed. For these reasons, memorialization at the national level ideally follows truth-telling and legal accountability processes and is intimately linked to educational efforts to engage the public and school children in a dialogue about the past.” Memorialization, then, is an integral component in continuing the work of traditional, transitional justice mechanisms (Hoogenboom, 2014).

3.2: ICC and the Concept of Reparation in Uganda

Uganda is a landlocked country in East Africa lying astride the equator bordered on the north by South Sudan, on the east by Kenya, on the west by the Democratic Republic of Congo, on the southwest by Rwanda and the south by Tanzania. It is comprised of a population of about 35 million. Since its establishment as a British protectorate in 1894, the country has suffered from decades of violent governance and conflict. In the past 20 years, international attention has focused on Uganda due to a violent conflict that terrorized its northern region. These narratives have focused on the Lord's Resistance Army (LRA), and in particular its leader Joseph Kony, as an inexplicable source of brutal violence and destabilizing chaos (Branch, 2007). Though no one would dispute the LRA's brutality, the northern conflict, like all conflicts, is the product of intricately intertwined political, economic, and social realities (Branch, 2007). While a comprehensive attempt to understand the conflict and its roots is beyond this study's scope, brief reviews of the emergence of conflict in the north, and the International Criminal Court's investigation in Uganda set the foundation for an examination of the Trust Fund's operations in the region.

3.2.1 History of Conflict in Northern Uganda

Since 1986, Northern Uganda has experienced one of Africa's longest and most destructive civil wars between the Ugandan government and the Lord's Resistance Army (LRA) (Clark, 2015). It is observed that during this period of political turmoil, civilian population suffered widespread atrocities ranging from murder, rape, torture, abduction, looting and mass displacement into internally displaced persons (IDP) camps. This grave suffering led to immense social and cultural fragmentation among northern communities, especially in Acholi, Lango and Teso sub-regions (Clark, 2015). Clark further states that a government policy of forced displacement drove an estimated 1.7 million people, nearly 90% of the total northern Ugandan population, into 200 squalid IDP camps that have only recently been dismantled (Clark, 2015). A 2007 UN study of perceptions among northern Ugandans suggests that the majority of the affected population considers both the government and the LRA responsible for the immense harm it has suffered (OHCHR 2007) (Clark, 2015).

As noted by Clerk, one of the key feature of this conflict points to the fact tens of thousands of everyday Ugandan civilians have perpetrated violence against other civilians, who are often their neighbors and family members (Clark, 2015). The nature of the LRA violence against civilians have involved the abduction of thousands of children from the Acholi and other groups. These group of kids are after that trained to commit atrocities back in their home communities since they are easy

to brainwash. The dual victim-perpetrator identities – as well as the very young age – of many of these abductees are central issues in Uganda's transitional justice realm (Clark, 2015).

Different debates have been taking place over Joseph Kony's and the LRA's precise political and military objectives (Branch 2005: 4-9). Some commentators dismiss the LRA as a collection of spiritual cranks or mercenaries with no coherent political agenda (e.g., BBC 2003) (Clark, 2015). To the contrary, at the heart of many of Kony's and other LRA leaders' public pronouncements, however, is a consistent political message regarding the need to recognise long-standing Acholi grievances, greater integration of Acholi into Ugandan national life, the dismantling of the IDP camps, as well as more spiritual claims concerning the need for cleansing and purification of northern Uganda (Clark, 2015). Clark persuasively argues that one factor that complicated the interpretations of the LRA's objectives was that, in seeking the greater involvement of Acholi in national affairs, the LRA used violence against the Acholi population as a military tactic. This effort never paid off thus weakening its ability to win popular support, while also pursuing the objectives of its regional backers, principally the Government of Sudan (Clark, 2015).

Worth noting is also the fact that the 29-year civil war is still not over, which means that transitional justice occurs in a context of ongoing conflict and instability (Waddell and Clark 2008). Clark at el further states that while the severely exhausted LRA has ceased military operations in northern Uganda, and peace has returned to this part of the country, the rebels continue similar patterns of violence elsewhere in the region from bases in the Democratic Republic of Congo and the Central African Republic (Clark, 2015). Many of the northern Uganda citizens interviewed express a fear that, as long as the LRA exists anywhere in the region, violence could return to their communities, as historically most LRA atrocities were committed by small groups of fighters crossing from neighboring countries (Clark, 2015).

3.2.2 ICC involvement in the Northern Uganda Crisis

The precision of observation would suggest that the ICC was perhaps hasty in how it first took up the case in Northern Uganda. Although the international community welcomed the Prosecutor's announcement about Uganda and the LRA, the ICC's intervention soon "sparked considerable controversy in Uganda" (Di Giovanni, 2006, p. 38). The Court's critics emerged mainly from Northern Uganda and included religious and traditional leaders, especially of the Acholi people, as well as local and international organizations advocating on behalf of the displaced population. It is argued that some of the critics question: "whether the Ugandan government should be allowed to limit the terms of the referral to crimes committed by the LRA" (Otim & Wierda, 2010).

From the onset, perhaps sensitive to the politicized nature of his investigation, the Prosecutor has stated that he would investigate all crimes in Northern Uganda, regardless of who committed them. However, the Prosecutor announced the initial referral of the case in the company of President Museveni. The move was criticized and interpreted as a sign that the Prosecutor would not “investigate the UPDF with the same rigor as the LRA” (Di Giovanni, 2006, p. 39). More specifically, the referral of the case has been viewed as an attempt by President Museveni to shore up international support and “reassert his democratic credentials”. The timing of the referral is significant. Before the referral, the government had been the object of increasing criticism from both within Uganda and the international community for its handling of the conflict, and for its failure to work towards a peaceful resolution (Otim & Wierda, 2010). Di Giovanni argues that in making the referral, the government of Uganda thus sought to supplant international focus on the effects of the war and the need for peaceful negotiations with “discourses on justice and punishing perpetrators of crimes against humanity and war crimes” (Di Giovanni, 2006, p. 39).

In a similar view, it was reported that there was a growing sense of fear by some advocates that the ICC case would undermine the efforts to achieve peace in progress at that time, and, in the long-term, the prospects for a wider process of reconciliation within Uganda (Otim & Wierda, 2010). These concerns became heightened after the ICC had already formally commenced its investigation in Northern Uganda, as Bigombe’s new peace negotiations started to produce initial success and to generate optimism. Against this background, Bigombe was so concerned about the possible deleterious impact of the ICC case on the peace process that she threatened to step down as peace negotiator were the case to proceed, and led a delegation to the Hague to meet with the Chief Prosecutor. (In the immediate aftermath of the indictments, and despite some initial uncertainty, however, Bigombe announced that she would continue in her role as mediator and would attempt to start fresh peace talks with the LRA (Di Giovanni, 2006).

Critics of the ICC case also feared that the Court’s intervention would thwart an amnesty process which has been in place since 2000 and has since managed to lure a large number of LRA combatants out of fighting (Di Giovanni, 2006). In principle, the amnesty process would be largely untouched by the ICC case. However, concerns were nonetheless voiced that the case could risk undoing much of the progress achieved by the amnesty process by creating confusion and distrust (Di Giovanni, 2006).

As one official from the Amnesty Commission has noted, it has taken a long time to build proper awareness about the amnesty process. The ICC case was thus seen as a potential threat to this already delicate process (Di Giovanni, 2006). The impetus for initiating the amnesty process came mostly

from advocates in Northern Uganda as part of a larger alternative approach to achieving peace. This method, in contrast to the government's military campaigns, "aims at a negotiated settlement followed by widespread reintegration" (Di Giovanni, 2006). To facilitate the rehabilitation process, traditional Acholi leaders have advocated for the use of traditional justice ceremonies and have already begun reintroducing them (Di Giovanni, 2006). The priority given to these ceremonies reflects yet another general critique of the ICC, namely, that it will not allow the Acholi "to respond to the legacy of past atrocities in their way, and employ means that resonate and accord with local traditions" (Di Giovanni, 2006, p. 40). More radically, it was argued by some groups that the ICC should refrain from intervening altogether, and that traditional, restorative processes for justice, such as the Acholi *mato oput*, should be used instead. To this groups, the ICC is a divisive adversarial process, and thus a possible barrier to societal reintegration (Otim & Wierda, 2010).

Moreover at a deeper level, it is argued that the divisive nature of the ICC case has been framed regarding the historical divisions in Uganda. The ICC case has been viewed as an attempt by the government to impose an end to the Northern Ugandan conflict by dictating, in the form of the ICC referral, the processes and notions of justice for doing so, but without addressing the underlying grievances that pre-date the fight with the LRA (Di Giovanni, 2006). As such, the case would risk feeding into a historical cycle of violence and revenge which has replicated itself in post-independence Uganda, whereby each succeeding group holding power has sought to both marginalize its opponents through violence and to avoid accountability for its acts. By potentially playing into this cycle, the fear was that the ICC's intervention would work against any hope for long-term peace and reconciliation in Uganda (Di Giovanni, 2006).

Stemming from the above, and in response to this series of criticisms, promoters of the ICC's intervention have argued that the case has had a positive impact on the situation in Northern Uganda. For one thing, the case "has contributed to a renewed focus on the conflict in Northern Uganda," which has in turn "helped prompt Sudan to stop supporting the LRA" (Di Giovanni, 2006, p. 41). In a similar vein, it is argued that the opening of the ICC case in Uganda has been credited as the reason for the LRA's participation in the 2004 peace process. As explained by the International Center for Transitional Justice (ICTJ), "[s]upporters argue that many factors beyond the Court have contributed to a continuation of the violence and that a permanent peace will have to be accompanied by accountability" (Otim & Wierda, 2010, p. 3).

Finally, it is not clear that the debate over the ICC's intervention, and, in particular, it is either/or quality, was representative of the views of the population affected by the conflict (Di Giovanni, 2006). Di Giovanni while quoting a population-based survey entitled *Forgotten Voices* that was

conducted in Northern Uganda to gauge the population's attitudes concerning peace and justice, he noted that outcome of the study revealed that the population does not make such a clear-cut distinction between pursuing peace and fairness (Di Giovanni, 2006). While the population polled stated predominantly that its most immediate needs were peace and food, there was also an explicit recognition of need and desire for accountability for the atrocities committed by both the LRA and the government forces in the region (Di Giovanni, 2006). There was no agreement as to how the pursuit of peace and justice should be sequenced, and even disagreement over who should be held accountable. In the Acholi regions, which have suffered the majority of the abductions, there was a majority preference for pursuing only senior LRA leadership and not the rank and file members (Di Giovanni, 2006). By contrast, in other non-Acholi regions, the majority preference was for pursuing all LRA members. Interestingly, the population was largely unaware of the ICC, but where they were, they exhibited strong expectations of what the Court could accomplish (e.g. that it could arrest LRA members, contribute to peace and provide justice for past abuses) (Di Giovanni, 2006). Finally, the population surveyed expressed a strong desire for additional transitional justice mechanisms, such as truth telling, remembrance and reparations. The study identified sustained peace and the availability of food as the top priority of victims. Accountability for crimes committed by all sides was also a priority, with 66 favoring the punishment of perpetrators and 22 percent preferring forgiveness, reconciliation, and reintegration (Di Giovanni, 2006).

A follow-up survey in 2010 found that security improved dramatically since 2007, with 80 to 90 percent of respondents saying they felt "safe" or "very safe" in their communities. Despite this improvement, civilians in the region continue to face challenges regarding sustaining a livelihood, with socio-economic indicators showing little or no improvement since 2007. A vast majority, percent, still wanted accountability for crimes, but justice priorities shifted from peace and security to the fulfillment of basic needs, such as food, agriculture, education, and health care. Many of the challenges civilians faced in meeting the satisfaction of basic needs stemmed from injustices that occurred during the conflict. Reparative mechanisms could help victims by providing assistance for victims to regain access to their homes or land, funds to help cultivate land, access to education and vocational training, physical and mental health services for victims of burns, mutilations, rape, and other violence.

More timely, however, are the post-conflict needs of the northern Ugandan population. Survey data suggests that for years following peace in the region, victims reported needs that appeal to both restitutive and restorative values (Otim & Wierda, 2010). The community has consistently demanded accountability and rejected amnesty for perpetrators of war crimes. At the same time, the

population has increasingly prioritized socio-economic needs, which have remained unmet since the conflict devastated the community's livelihoods. These mixed wants and needs lend support to the holistic approach to transitional justice, which calls for the incorporation of various approaches to justice depending on the unique situations of the harmed individuals and society. It is in this context that the Trust Fund's broad focus on reparative assistance can complement the Court's criminal prosecutions.

3.3. Trust Fund for Victims in Uganda

In discussing TFV program in Uganda, the section will examine the institutional and regulatory framework of the Trust Fund for victims which will in effect present a clear picture of the motives and structural hurdles on the implementation of the TFV. The section will also continue in its discussion to consider the TFV three types of programs that are Material support, Physical rehabilitation, and Psychological Rehabilitation and attempts to answer the sub-question 1 in the problem formulation. That is ***“How has the TFV been applied to the victims of war in Northern Uganda?”***

The ICC is the first international court with the power to order reparations directly against individual perpetrators. The use of international mechanisms to compensate victims of grave violations of human rights and humanitarian law is not new (Di Giovanni, 2006). Previously, however, any reparations at the International level could only be sought against states, for instance, as a matter of state responsibility for human rights violations. In this vein, regional human rights tribunals have made reparations orders against States for past human rights abuses against their citizens. More recently, a reduced power to make awards for the restitution of unlawfully taken property was included in the Statutes of the International Criminal Tribunals for Yugoslavia and Rwanda (Di Giovanni, 2006). This power has been termed an indirect approach to reparations because victims can only obtain compensation (based on the Tribunal's awards) by initiating an action before “national courts” or “other competent body” (Di Giovanni, 2006, p. 42). To date, neither Tribunal has made use of its compensation scheme. In this sense, the inclusion of broader reparations powers under the *Rome Statute* represents an attempt to overcome some of the difficulties the earlier Tribunals have faced in implementing their compensation schemes (Di Giovanni, 2006).

As further explained by Giovanni, it was perceived as part of a more general effort by the drafters of the *Rome Statute* to grant broader participation rights to victims in the ICC's proceedings. Indeed, the ICC's reparations powers marked a very explicit decision on the part of the drafters to move

away from the purely retributive approach to justice of the ICTY and ICTR to justice in a wider sense:

“There was a gradual realization that there had to be a recognition in the Statute that the victims of crimes not only had ... an interest in the prosecution of offenders but also an interest in restorative justice, whether in the form of compensation or restitution or otherwise” (Di Giovanni, 2006, p. 44).

The uniqueness of the ICC’s scheme then is that reparations can be awarded directly at the international level, against individual defendants, to compensate victims for harms arising from crimes under the *Rome Statute* (Di Giovanni, 2006). The Rome statute had to establish an independent division of itself that would deal directly with victim’s needs regarding reparation in an effort to achieve its objectives.

TFV is one of the complementary institutions created by the Rome Statute in 2002 alongside the International Criminal Court whereby the later was set up for prosecuting and judging those responsible for genocide, war crimes, and crimes against humanity, and the Trust Fund for Victims (TFV) for providing support to victims of these crimes and their families within the jurisdiction of the ICC (The Trust Fund for Victims, 2014). Through this creation, TFV became the first of its kind in the global movement to end impunity and promote justice. In doing so, the TFV had to address the harm resulting from the crimes under the jurisdiction of ICC by assisting victims to return to a dignified and contributory life within their communities (Trust Fund for Victims, 2013). Its goals were to relieve the suffering of victims, and contribute to ensuring justice by:

- Identifying and raising awareness on the situation of victims of genocide, crimes against humanity, and war crimes;
- Mobilizing resources and partners in reaching out to these victims and helping them rebuild their lives and the ones of their communities; and
- advocating for and facilitating a dignified reconciliation within the affected families, communities, and states, striving to prevent the reoccurrence of such crimes in the future.

These goals are achieved by fulfilling two mandates, namely: 1) implementation of awards for reparations ordered by the Court against a convicted person, and 2) putting to use other resources (voluntary contributions and private donations) to provide victims and their families in situations under Court jurisdiction with physical rehabilitation, psychological rehabilitation, and/or material support (The Trust Fund for Victims, 2014). The assistance mandate enables victims and their

families to receive support separate from and before a conviction by the Court, using other resources. This support is not linked to the decision against the accused person before the criminal court, but the key to helping repair the harm that victims have suffered, by providing assistance to victims in a timelier manner than may be allowed by the judicial process. Also, assistance is targeted to victims of the broader situations before the Court, regardless of whether the harm they suffered stems from particular crimes in a specific case. By directly addressing the needs of the victims who have suffered violent crimes of various nature, the TFV can localize international justice through its reparative programs (The Trust Fund for Victims, 2015).

3.3.1: How has the mandate of the TFV been applied to the victims of war in Northern Uganda?

The TFV began its operations in Uganda in about 2007 when it implemented a study to identify the necessary types of assistance interventions that can benefit the victims of war. The implementation of its assistance mandate began in 2008 in northern Uganda and the Democratic Republic of Congo (DRC), following approval by the ICC pre-Trial Chamber (McClearly-Sills & Mukasa, November 2013). Since that time, the TFV has provided support to over 110,000 victims of crime under the jurisdiction of the Court through integrated physical and psychological rehabilitation and or material support at both individual and community level. Of these beneficiaries, over 5000 survivors of sexual and gender-based violence including girls abducted and conscripted and sexually enslaved by armed groups, and children of women victimized by campaigns of mass rape and displacement have been supported (McClearly-Sills & Mukasa, November 2013).

At its inception in 2008, a total of 34 projects were approved for both northern Uganda and DRC. As of 2014 some of these projects have been completed or phased out and currently there are 13 active projects (The Trust Fund for Victims, 2015). To meet its assistance mandate, TFV generates its funds from various sources. The mode of generation of funds includes fines, forfeiture, and donations, and for the purpose of reparation awards must be used by the ICC rules of procedure. The Assembly of state parties can also contribute to the basket of the TFV and determine their use. There are also voluntary contributions from governments, individuals, corporations. The funds collected constitutes a substantial portion of the Trust fund's budget (McClearly-Sills & Mukasa, November 2013).

According to TFV Regulations, the Trust Fund has discretion over assistance projects that use money received through voluntary contributions. When the TFV Board of Directors decides to implement a plan, it must notify the Chamber to ensure that the activity does not pre-determine issues to be determined by the Court, violate the presumption of innocence, or infringe upon the

rights of the accused person before the court and a fair and impartial trial. This in effect gives the Chamber veto power over Trust Fund proposals (The Trust Fund for Victims, 2015).

The Trust Fund implements its support through partner organizations, which include local and international NGOs, hospitals, and community-based organizations. Examples of these partners include international non-governmental organizations (NGOs) including AVSI, the Centre for Victims of Torture, and CARE International Uganda, as well as local agencies (often with foreign funding) including the Diocese of Northern Uganda, Gwed-G, Uganda Victims Fund and Watoto Childcare Ministries (McClearly-Sills & Mukasa, November 2013).

According to an external evaluation of the Trust Fund conducted by the International Center for Research on Women, the grant-making process prioritizes a few fundamental principles:

Participation by victims in program planning, *sustainability* of community initiatives, *transparent* and *targeted* granting, and *accessibility* for applicants that have traditionally lacked access to funding, addressing the *particular vulnerability of girls and women*, *strengthening capacity* of grantees and *coordinating* efforts to ensure that the assortment and administration of grants is strategic and coherent (The Trust Fund for Victims, 2014). The Trust Fund works with these partners to reach out to victims, their families, and communities to meet its goals of promoting accountability, ownership, dignity, and empowerment.

Under the assistance mandate, the TFV implements projects that fall under three categories; material support, physical rehabilitation, and Psychological rehabilitation. In meeting the three objectives, the TFV are designed to address four core themes (1) promoting community reconciliation, acceptance, and rebuilding community safety nets; (2) mainstreaming gender to include addressing impact of gender-based violence and other sexual abuse of women, men, and children in line with UN Security Council Resolution 1325; (3) integrating and rehabilitating child soldiers and abductees into communities, including support of intergenerational responses; and (4) addressing issues of victims' stigma, discrimination, and trauma. The Trust Fund considers these goals crucial steps toward ending impunity for perpetrators and establishing peace and reconciliation in post-conflict settings, two goals that neatly align with transitional justice ideals.

Before issuing grants, the Trust Fund conducts field assessments to ensure that the projects directly address harms caused by the conflict under ICC jurisdiction and target the most vulnerable and marginalized victims (Trust Fund for Victims, 2013). After the 2007 assessment, the Fund submitted 18 projects in northern Uganda to the Pre-Trial Chamber that focused on physical rehabilitation, psychological support, and material assistance to four categories of victims: (1) ex-child soldiers,

abducted persons, and victims of sexual and gender-based violence; (2) mutilated victims and physical injuries; (3) handicapped victims and victims suffering mental trauma; and (4) victimized villages and traumatized communities. These projects have been administered in 18 northern Ugandan sub-districts within Acholi, Lango, Teso, and West Nile sub-regions. In 2013, these projects were estimated to have provided assistance to 39,750 victims under ICC jurisdiction (The Trust Fund for Victims, 2014).

In 2013, the Trust Fund began phasing out its material support in northern Uganda to place more emphasis on physical and psychological rehabilitation. The Trust Fund and Chamber justified continued physical and psychological support in the region because it is likely that these injuries are causally related to the conflict while establishing a causal link between the conflict and material conditions is more difficult (The Trust Fund for Victims, 2014).

Material Support

As part of its core objectives, the TFV program responses in the area of material support was geared towards the improvement of the economic status of the victims through education, economic development and rebuilding of community infrastructures, and the creation of employment opportunities (McClearly-Sills & Mukasa, November 2013). During periods of civil unrest such as that which happened in Northern Uganda, properties are often destroyed as a result of forced displacements and loss of income-earning family members. The TFV initiative was tailored to deliver responses that can salvage such a situation. Program activities within this area included the establishment of community-based savings and solidarity groups as a primary intervention. In northern Uganda, the key implementing partners included CARE Uganda, North East Chilli Producers Association, COOPI and the Dioceses of Northern Uganda. According to the report by the TFV programs in Northern Uganda, these groups were mainly structured on the village savings and loan association (VSLA) modeled pioneered by CARE International. The program later became a safe space for members to share their experiences with one another (McClearly-Sills & Mukasa, November 2013).

Other material assistance programs including the provision of vocational training for bee-keeping, improved agricultural techniques, tree-planting, and the increase of commercial crops. One major example of material assistance programming is TFV support of the HOPE project under care in Northern Uganda (West Nile Region, Acholi Sub-Region, and the Lango Sub-Region) which coordinated and led to the creation and establishment of 290 VSLA groups with a cumulative savings of over 216,650,000/= (Trust Fund for Victims, 2013). The material support enabled the

victims to acquire livelihood and household assets such as goats, pigs, and cows and start small businesses. The initiative did not also leave the element of opportunity job enhancement as 230 (128 men and 102 women) victims were trained in various vocational skills-arts and crafts, bakery, catering, tailoring, driving, hairdressing, art, and design, small electronic repair and provisioned startup kit. In the same livelihood support, 460 goats were distributed to war victims to enhance household assets (The Trust Fund for Victims, 2014). By May 2013, the goats have multiplied to over 900 goats. The support has aided some of the beneficiaries. According to the external support, TFV partners achieved or surpassed their objectives in material support, as portrayed by the high numbers of victims participating in communal savings groups or completing vocational training or literary programs (The Trust Fund for Victims, 2015).

These Material support programs are designed to help beneficiaries attain a sustainable livelihood. This assistance directly responds to the looting of cattle, destruction of agriculture, and loss of property that occurred at the hands of both LRA and UPDA soldiers. Some of the projects, such as the VSLAs, have the immaterial benefit of providing victims with a support group of individuals who shared similar experiences, it also improved the acceptability of victims in the communities and brought peaceful co-existence.

Physical Rehabilitation

Physical rehabilitation component of the TFV assistance mandate included the provision of prosthetic and orthopedic devices, bullet, and fragment bomb removal, reconstructive and general surgery, and referrals to medical services for victims of sexual violence (McClearly-Sills & Mukasa, November 2013). These programs aimed to help victims recover and resume their roles of productive and contributing members of their societies. In the situation in northern Uganda, the program activities for physical rehabilitation was in respond to human rights violations and losses experienced by the victim survivors ranging from burns, mutilations of ears, noses, or lips, and loss of limbs due to amputation, burns, or landmines incidents. This assistance is given through the provision of or referral for corrective surgery (plastic and general surgery), prosthetic, physiotherapy and psychological support to victim-survivors (McClearly-Sills & Mukasa, November 2013)

To realize this mandate, TFV appropriately engaged implementing partners that could respond to the variety of Physical rehabilitation needs. Some of these organizations included AVSI, Interplast, AYINET, and Caritas Uganda. AVSI has been the primary implementing partner in the provision of prosthetics through Gulu Regional Referral Hospital (McClearly-Sills & Mukasa, November 2013). Further intervention by ASVI included community outreach and a program of sensitization

of public officials on the rights of persons with disabilities. Also, AVSI helped with construction to improve accessibility to public buildings. An Interplast program, from 2008 to 2011, focused on cost-sharing and capacity building by providing reconstructive surgeries and training local medical staff and nurses in care for reconstructive surgery and burns. The report also stressed that implementing partners do make a referral of victims who needs corrective surgery, fitting for and provision of prosthetics to specialized service providers according to their specific needs and gravity of the case. The majority of beneficiaries of physical rehabilitation also were given access to psychological and material support, as designated by the TFFV policy for an integrated approach (McClearly-Sills & Mukasa, November 2013).

According to the external evaluation, these programs provided victims “with a significant degree of physical healing that enables them to function as normally as possible in their communities and to participate in regular community-based activities.” The success of the physical support was particularly evidenced in Northern Uganda where physical rehabilitation was part of the program response. According to program review report presented by AVSI, the follow-up visits showed that on average 80% of victim survivors used their prosthetics and orthotics from GROW entirely on a 12-hour basis daily (McClearly-Sills & Mukasa, November 2013). This success demonstrates a direct response to the needs victims expressed in post-conflict surveys and assessments, which prioritized rebuilding of livelihoods through physical rehabilitation (The Trust Fund for Victims, 2015). Also, TFFV support of the Gulu Regional Orthopedic Workshop (GROW), helped ensure the sustainability of the intervention. Through its partners, the TFFV providing training of GROW employees to help care for prosthetics in the long-term, with the support of AVSI (McClearly-Sills & Mukasa, November 2013). TFFV funding also fostered capacity-building in local hospitals for corrective surgery (The Trust Fund for Victims, 2015). The Government of Uganda has yet to assume financial responsibility for these services, which means victims’ preference for government accountability remains unmet.

Psychological Rehabilitation

As a result of crimes committed during the conflict in northern Uganda, victims have suffered deliberate disfigurement and mutilations including amputations of ears, the nose, and lips. The engendered nature of these acts has meant that a significant number of women have been afflicted, and their lives have been negatively affected psychologically, socially, and economically.

As a victim of facial mutilation, the process of social reintegration has become a challenge for these women within their communities. Furthermore, other groups of persons have suffered various

injuries including burns, amputation, blindness, disfigurement, and bullet and shrapnel wounds. Activities under the psychological rehabilitation category was therefore meant to address trauma and other psychological consequences experienced as a result of incidences of war, conflict, sexual violence and other crimes (McClearly-Sills & Mukasa, November 2013).

The aim of Psychological rehabilitation is to reduce stigmatization of victims and to promote a greater sense of trust, shared responsibility, and peaceful coexistence among the community members (McClearly-Sills & Mukasa, November 2013).

For instance in Northern Uganda, the implementing partners consisting of AVSI, COOPI, Centre for Victims of Torture and Diocese of Northern Uganda have all provided psychological support in various ways. According to the external report, victims have indicated that psychological support has helped them adopt a more positive outlook on life and to re-engage in community activities (McClearly-Sills & Mukasa, November 2013). The report also noted that many respondents, especially survivors of gender-based crime, said the assistance helped them adjust to living in the community and stop blaming themselves for the crimes they experienced. Being able to work was attributed as the greatest factor contributing to positive mental health, again aligning with surveys suggesting that recovering livelihoods is a primary post-conflict need for victims (McClearly-Sills & Mukasa, November 2013).

AVSI, for instance, provides counseling to amputees and other conflict-related physical disabilities during its outreach and at GROW Centre, where such patients may be admitted or served on an outpatient basis. Also, for cases needing more support, home visits are conducted to provide additional counseling and strengthen the network of support from family members (The Trust Fund for Victims, 2014).

COOPI implemented community therapy sessions through community-based facilitators and by the Diocese of Northern Uganda through the Healing Memories Project. Before the end of operation of COOPI in January, the organization had operated four counseling centers as a key component of its efforts to prevent and respond to physical, sexual, and psychological violence perpetrated mainly against women and girl victims of war. In the same vein, a three-day healing of memories workshop facilitated by dioceses of northern Uganda attracted 35 participants who were all victims of torture and mutilation (19 female and 16 male), and one of the participants had this to say *"The workshop helped me to embrace the sense of forgiveness in me, I realize that we cannot change the past, but we can work together to make our lives better* (McClearly-Sills & Mukasa, November 2013)."

Many TFV-sponsored psychological programs adopt a group-based model that employs a lay volunteer or psychological assistant to conduct the sessions. This approach helps expand psychosocial support to diverse and distant settings and assuages anxiety associated with seeing individual counselors. Also, by providing a space for victims to share their stories, group therapy contributes to healing and truth-telling, which align with the goals of reconciliation and societal healing. TFV psychological support also provided capacity-building through a partnership CVT, which trained implementing partners to recognize and respond to psychological needs of victims.

Reconciliation

According to the ICRW external report, the Trust Fund integrated reconciliation and reintegration efforts into their programs in a concerted effort to pursue peace-building. The conflict in northern Uganda left the region's social fabric in ruins (McClearly-Sills & Mukasa, November 2013). Abducted children, survivors of sexual violence, and children born as the result of rape often face difficulty reintegrating into society. Many children and young adults missed out on years of regular education, and women subverted usual gender norms by becoming the sole providers in their families, as husbands were targeted for killings, abductions, and recruitment into the conflict. These changes resulted in a disruption in the common social culture of northern Uganda and pitted groups and individuals against one another (McClearly-Sills & Mukasa, November 2013).

Reconciliation efforts took the form of trauma and therapeutic counseling; distribution of reintegration kits; drama groups and community peace activities; youth camps' peace schools with drama, discussion, and art therapy; vocational training; and training elders and traditional leaders on peace building and reconciliation strategies (McClearly-Sills & Mukasa, November 2013). Many of these projects align with other transitional justice efforts, which seek to promote societal reconciliation through truth-telling, reconstructing social identities, and reproducing a sense of security.

3.4. Theoretical Consideration

In social science research, theories are regarded as an essential part because research that undermines the importance of theory will end up with irrelevant data and in the words of Neuman, the data will fall into the trap of confused and ambiguous thinking, faulty logic and imprecise concepts (Neuman, 2007; 24). The theoretical approach used in this thesis will, therefore, give the reader concepts, basic assumptions as well as ways to make sense out of the data collected. The theory will be used to link the thesis topic to data gathered. The normative theory of Recognition and Redistribution by Ernesto Verdeja will be employed because the model gives a greater

conceptual clarity to the possibilities and limits of reparation and it helps us access how successful the actual programs of reparation are. Besides, the theoretical considerations will assist in determining or denying the answers that will be arrived at in an attempt to meet the research questions. Nevertheless, it is imperative to make it clear that, these will be used together with other relevant documents to generate a shared meaning and understanding as far as the relationship is concerned.

Thus, this section proposes that a theoretical framework, like that proposed here, helps to improve the actual implementation of reparations as a justice mechanism. Ultimately, theory guides not only how we think about and understand the role of reparations in transitional justice, but also importantly how to assure the quality control of their design and implementation. As Laplante observed, understanding the justice aims of reparations and what they are in theory supposed to achieve is an indispensable starting point for initially choosing the right approaches to pursue (Laplante, 2014). It, therefore, serves as an important ruler against which the process of implementation can constantly be checked to assure fidelity to promised goals. Lastly, the theory allows us to look back and evaluate whether a reparation program met its planned purpose.

The Normative Theory of Recognition and Redistribution

Ernesto Verdeja is an Associate Professor of Political Science and Peace Studies in the Department of Political Science and the Kroc Institute for International Peace Studies, As a political theorist, his research interests include large-scale political violence (genocide, war crimes, crimes against humanity), transitional justice, forgiveness and reconciliation, trials, truth commissions, apologies, and reparations (Verdeja, Kroc Institute for International Peace Studies, 2016). Other interests include contemporary political theory, particularly democratic and critical theory, the Frankfurt School, and feminism. Verdeja in his article a “normative theory of reparations in transitional democracies” contends that Nations evolving from a recent history of mass atrocity or violent authoritarian rule faces some ethical and practical challenges. They must deal with how to accomplish some degree of social and political stability and must create a functioning government, legal order, and economy. Additionally, that they must confront what is often a sizable number of victims and offenders and thus must decide to what extent culpability can be sought without undermining peace (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006).

To Verdeja, any model of reparation must consist of those strategies and policies that strive to restore victims’ sense of dignity and moral worth, remove the burden of disparagement often tied to

victimhood, and return their political status as citizens (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006).

In an attempt to meet the stated model of reparation, Verdeja introduces the dualistic model of reparation based on the theory of Recognition and Redistribution which relies on the four dimension approach of: “symbolic” and “material” along one axis (a typology of acknowledgment), and “collective” and “individual” along another (a typology of recipients). To buttress this further Verdeja holds that any theory of reparations must include both material and symbolic components and work toward achieving what Nancy Fraser calls “status parity” among victims and the rest of the population (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006, p. 1).

Furthermore, Verdeja presupposes that recognition is a reciprocal relation where subjects see each other as equals with legitimate claims to respect. Recognition is thus a principal aspect of subject formation. In his writings, Verdeja argued that human beings become full individuals through reciprocal recognition, underscoring the fundamentally intersubjective that is, and social nature of identity formation (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006). This idea that recognition through social praxis is crucial to stable and healthy identities has been developed and expounded by some different scholars and authors. Scholars such as Axel Honneth in support of the recognition concept suggest that a healthy notion of the self is a fundamental element of the good for individuals, and he elaborates the requirements for undistorted identity as consisting of three core components: *self-confidence*, developed through effective relations between intimates and others who are emotionally proximate; *self-respect*, accorded through the legal discourse of rights and implying the individual’s capacity for autonomous moral action; and *self-esteem*, developed through participation in communal activities and contributions to a meaningful, ethically substantive social life (Honneth, The Struggle for Recognition: The Moral Grammar of Social Conflicts, 1996). Honneth asserts further that, these components are all developed through the dialogical interactions with other, equal subjects. Moreover, they are crucial for a healthy subject; without them, the individual risks degenerating into pathologies of self-hatred and denigration.

Verdeja also asserted that in most cases of large-scale atrocity, crimes are directed at groups of some type, such as cultural, ethnic, religious, national, ideological, racial, or economic groups and that frequently, targeted groups span different categories (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006). Furthermore, that the victim group may contain other transversal categories such as gender whose members were the targets of specific types of violations such as

sexual enslavement (Jones 2004). Steaming from the preceding therefore and because of this broadly collective dimension, Verdeja argues that reparation requires theorization of a common symbolic element of acknowledgment of the wrong done and recognition of the various groups that were victims of the wrongdoing by the perpetrators.

To Verdeja, Recognizing targeted groups means bringing public attention to the fact that violations were not simply discrete “excesses” but the result of planned strategies of repression (and occasionally extermination) against designated “enemies” (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006, p. 3). To the extent that victims were part of a (perpetrator-defined) group of “objective enemies” (Arendt, 1973) the crimes contained a distinctly systematic element. Scholars such as Arendt asserts that Symbolic recognition of groups, then, means recognizing *(a) the way strategies of repression targeted them as groups and (b) society and the state’s obligation to meet the demands of groups to recognize their experiences and treat them as equal citizens. Commitment to the latter means fighting discourses arguing that groups somehow ‘deserved’ what befell them because of their group identity* (Arendt, 1973)

Verdeja also emphasized that crimes need not be merely collective to warrant recognition of a group. That the concept of individual symbolic acknowledgment consists of the need to recognize victims as people and not simply to place them in a residual category, reducing them to an amorphous group of passive, voiceless survivors (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006). To Verdeja, this kind of acknowledgment includes developing ways of underscoring how oppression and terror affected individuals as such; how the term victims’ experiences are not merely the aggregate of mostly similar stories but reflects actual, distinct individuals whose lives were changed in personal and profound ways. Further that it must include, in other words, sensitivity to the multiplicity of distinct experiences that victims recount (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006).

While Verdeja admits the difficulty in practical application of the concept of individual symbolic recognition, he appreciates the idea because individual symbolic recognition emphasizes the importance of remembering that victims are not merely a statistic but actual people who often suffered intolerable cruelties and violence at a personal level. The suffering of an individual whoever it may be will always be more than a symbol of systematic crimes; suffering is always deeply personal, and proper recognition requires attention to this fact (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006).

In tandem to the above, Verdeja observed that sensitivity to victims as individuals is a major step to reaffirming their status as citizens, for it reflects respect for fellow humans that is a necessary element of any political order based on democratic principles of equality. It is observed further that while individual symbolic recognition is not the same as providing people with the full panoply of liberal democratic rights that accompany citizenship (negative and positive rights, access to the political process, and so on), it is an essential prerequisite, to Verdeja, without recognition of victims as individuals and as equals deserving respect it is unlikely that they will secure their status as citizens (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006).

In a similar vein, it has been argued that symbolic recognition both individual and collective be fundamental for helping victims regain their sense of dignity and self-worth. However, the symbolic aspects are not enough. Often it is noted that the effect of systematic violence and oppression caused through the devastating act of human rights violation also leaves victims in a position of economic vulnerability and helplessness. Therefore symbolic recognition cannot be the only means to solve this kind of suffering. Hence, victim recognition also requires a concern for distributive justice or what is otherwise known as socio-economic Justice (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006).

The common material element of reparatory justice focuses on distributive justice issues. Verdeja asserts that the aim of status parity should be to provide resources to victimized groups with the goal of creating the material basis and security necessary for them to become full participants in social, political, and economic life (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006). This perspective understands that the causes of violent conflict (which, in turn, cause civil and political human rights violations that need to be remedied) most often arise out of deep-rooted social and economic inequalities (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006). Verdeja, therefore, argues that responding to these structural problems not only repairs the harm suffered by victim-survivors but also prevents new cycles of violence. Thus socioeconomic justice can be seen to blend ‘financial or other material compensation, restitution or reparation for past violations or crimes (historical justice)’ with that of ‘distributive justice in the future (prospective justice)’ (Lambourne 2009: 41).

It is worth noting that theoretical concepts are no exceptions to criticism and theory of Recognition and Redistribution as advanced by Verdeja does not fall short of such. Critics such as Seyla Benhabib (2002) takes a point of departure from the arguments of Taylor and others such as Will Kymlicka by stating that their reasoning falls into the traps of cultural essentialism, reifying group identities and privileging validity claims above basic equality concerns.

In a similar vein, Nancy Fraser voiced her criticism of these unduly psychologized multicultural approaches for a variety of reasons, Fraser contend that the apart from approach having a limitation to ably define satisfactory criteria for distinguishing between just and unjust authenticity claims (and the implicit essentialism on which such claims rest), it also has the inability to define their reductive assumptions about the primacy of symbolic recognition over injustices rooted in political-economic relations, and their failure to theorize from a more objective, sociologically informed position that can distinguish between institutionalized or systematized patterns of subordination, which require justice, versus culturally salient differences which do not (Fraser, *Justice Interruptus: Critical Reflections on the ‘Postsocialist’ Condition*, 1997).

As Fraser pointed out, the claims of self-realization are significantly more restricted than justice claims specifically because they are based on more “historically specific horizons of value” (Fraser, *Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation*, 2003). It is argued that this is because of the potential development of so-called cultures of victimhood, where similar experiences become a shared horizon of authenticity that demands certain respect based not on the content of any particular claim but rather on the status of the speakers (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006). In other words, in some scenarios victim group elites may transform their condition as victims into moral capital to make morally suspect claims (such as a right to oppress internal members), or point to their status as a way to dismiss otherwise valid criticisms or challenges. The questions that remain unanswered there are; What if the elites of a particular group that suffered massive human-rights violations, say an indigenous group, argue that proper recognition of their identity require that the State does interfere with the internal subordination of a particular subgroup, such as women (Okin, 1999)? Should the State accede, on the principle that this particular group was victimized and now requires ethical recognition? Of course, victim demands are not always morally dubious. In fact, they are often legitimate, but the principle of ethical self-realization does not give us the conceptual tools necessary to decide which claims are legitimate and which are not. For Taylor and Honneth, intersubjective recognition is a condition for achieving undistorted, healthy identity.

Honneth holds that such a theory of ethical self-realization must serve as the grounds for assessing acceptable and unacceptable forms of social organization. Indeed, the “conception of ethical life” can articulate “the entirety of intersubjective conditions that can be shown to serve as necessary preconditions for individual self-realization” (Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, 1996). Honneth notes further that, what is a concern here is not with the general conception of intersubjective identity formation, which seems plausible and whose

significance is particularly relevant where victims have historically been misrecognized and maltreated by the state, and thus have suffered from a damaged sense of self. Rather, the concern is with privileging a full theory of ethical life that does not speak to broader claims binding on all persons in other words, to concerns of justice (Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, 1996). To Honneth, basing a theory solely on claims of ethical self-realization has the effect of leaving us incapable of distinguishing between what can be called justice claims attempts to address systematic forms of economic oppression or marginalization, as well as symbolic misrecognition, which is a product of political violence and (non-universalizable) authenticity claims (Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, 1996).

Furthermore, a theory of recognition, preoccupied as it is with concerns about symbolic acknowledgment, risks ignoring forms of material inequality. Honneth, for example, focuses on forms of symbolic misrecognition while subsuming economic marginalization under the former “the conception of recognition, when properly understood, can accommodate, indeed even entails, a modified version of the Marxian paradigm of economic distribution” (Honneth, “Introduction.”, 2003). Nevertheless, it is well documented that mass atrocity often results in leaving many survivors and victims in a state of economically destitute, this is common particularly in cases where an entire ethnic or indigenous group was targeted, and material forms of inequality require theorization on a par with symbolic forms.

Therefore, what is of paramount importance is to ensure that any model of victim reparation should include both material and symbolic components and that it should be cautious of claims premised wholly on ethical self-realization. However, Verdeja argues that in pursuit of this goal, all attempts should be put in place to safeguard against privileging only liberal individualist rights at the expense of common claims (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006). Because in doing so would miss the systematic and large-scale nature of the violations as a result of the atrocities committed within that particular society. Furthermore, this also does not mean there should be a difference between policies that seek to protect culturally essentialist authenticity claims, on the one hand, and those that aim to create status parity among citizens, on the other. Because both misrecognition and economic maldistribution may prevent citizens from participating as equals, both will need to be addressed in any satisfactory theory of reparations (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006).

According to Fraser, the primary goal of the concept of recognition should be to remove any form of cultural barriers that prevent individuals from recognizing each other as fellow citizens, or to

achieve what Fraser refers to as the “intersubjective condition” of parity of participation (Fraser, *Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation*, 2003). Further that, at its most general, recognition would involve the positive evaluation of “disrespected identities” and diversity in general, as well as the deconstruction of value patterns that justified violence and continued misrecognition (Fraser, *Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation*, 2003).

Finally, Verdeja observed that in regards to material redistribution, the goal is to address economic marginalization that prevents individuals from participating as equal citizens, and so achieve the “objective condition” of parity of participation (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006). According to Verdeja, this could include such forms of economic redistribution as compensation and restitution, as well as increased investment initiatives by the state in areas greatly affected by the violence. Recognition of victims, therefore, is crucial in transitional societies, but the aim should be to restore victims’ dignity and self-worth in such a way that allows them to be full participants in social, economic, and political life.

However in Verdeja assertion, this does not mean that all recognition claims are illegitimate. Rather, it means that these allegations should be honored to the extent that they promote reciprocal recognition and status equality, a goal that is unachievable if victims continue to find themselves marginalized, devalued, and forgotten. The aim, then, should be to recognize their experiences as a step toward overturning systemic patterns of discrimination and violence (Verdeja, *A Normative theory of reparation in Transitional Democracies*, 2006).

The study is having a special focus on reparation and victims of human rights violations, therefore, gains a lot from the insight given by the theory in explaining the yard stick and goals of reparation.

Chapter 4: Findings and Analysis.

In this chapter, the second and third question mentioned in the problem formulation will be answered that is: *Has the TFV successfully fulfilled its mandate in Northern Uganda? What challenges to its mandate does the TFV face?*

Having discussed the terms of the TFV above and to answer the above questions adequately, the qualitative data gathered from the field will be used properly to evaluate the outcome of the said program and give meanings to the research questions.

4.1 Interview Findings

At the time of conducting the data collection, one of the components of the TFV assistance mandate had been faced out, and that was the material component. The researcher was, therefore, able only to identify respondents who were and are still beneficiaries of the physical rehabilitation, and psychological recovery component and this two will form the basis of the research findings and analysis.

4.2.1 Knowledge about the ICC Trust Fund for Victims Assistance Mandate

When the respondents mainly the beneficiaries were asked about their knowledge of the TFV assistance mandate, 9 out of the 11 recipients had no clear awareness of the source of funding. To their belief, the help they were receiving was a donor funded project. Only two of the respondents who started receiving physical rehabilitation from one of the implementing partners before the coming into force of the Rome Statute were aware of the activities of the TFV. The information came to their knowledge when they had gone back to the orthopedic workshop to service their prosthetics.

The answer given by the respondents' rhymes with the one offered by a senior member of the ICC coordinating the activities of the trust fund for victims in Uganda. The reason given by the respondent is that 'so many communities that TFV do work with may not always at the individual recipient level appreciate that the money is coming from the Trust Fund. Many of the beneficiaries may think it is coming from AVSI, they may believe it is coming from GWED-G, TPO or NECKFA or a variety of some our other partner and we have done surveys on that, but none of them had thought that our services were coming from the government'. It was observed that many at times it is the implementing partners who do the survey and sensitization of the programs to be rolled out to the victims. In that regards, therefore, the beneficiaries look at the NGO implementing the project as the source of the fund. Many of the victims also expressed ignorance about any government support directed towards the victims of war in northern Uganda hence not giving an exceptional attention even to think of the projects as government activities.

In addition to the above, one of the implementing partners in Lira district stated that when the TFV program started implementing its mandate in Lango sub-region, many of the victim beneficiaries never had expectations of the program. The recipients looked at the agenda as a typical NGO work, because at the beginning, it was not well publicized for various reasons. It is observed that even at early stages, the organizations which were implementing the TFV, for security reasons or some

other reason; their names were not brought out to the public. The respondent noted further that, it is of recent; that there is an agreement that names of organizations can now be mentioned even on radio and the other media outlets sensitizing the community about the TFV programs.

In the same vein, the manager of UVT stated that to the direct beneficiaries individually; they were the ones who realize that this is a particular project which has an attachment to the court. Because of the issue of the court; partly people were not comfortable with ICC, most of the people wanted peace to talk to continue. Because of the views of the citizens at the local level, the trust fund was highly reserved. In fact, in the beginning, they used to go together; outreach and the trust fund staff, they used to go together but it reached a point, they wanted to go separately. They wanted to avoid that kind of mistrust which people had about ICC and does not turn into a trust fund for victims. So people had mixed reactions.

4.2.2 Identification of the victim beneficiaries of the TFV.

The Respondents were asked about how they became recipients of the TFV. According to the Respondents, many of them were identified by community mobilisers of the implementing partners and the nature of the harm suffered which should fall within the period July 2002 threshold when the Rome Statute came into force. The respondents stated further that they would then tell their story to the community mobilisers who will, in turn, register their names and particulars to be forwarded to the implementing organizations.

The implementing partners on the other hand stated that, they would perform community sensitizations and through that process the persons who think and believe they fall within the bracket of the harm suffered and in the area covered by the Rome Statute investigation would then be scrutinized and grouped according to the gravity of the harm and the kind of assistance that the injury attracts. To the implementers, this is achieved through being guided by the principles laid down in the implementation of the trust fund for victims. One of the implementing partners, when asked about victim identification, had this to say “Our organization has community mobilisers in all the sub-counties where we implement this project. Together with the local leaders at grass root level and through sensitization of the community, we can identify the actual victims who are to benefit from the funding. Our criteria involve identifying victims who fall within the ambits of the Rome statute that is from July 2002 onwards and we also identify victims based on the severity of the injury sustained and graded them according to priorities in the working module of the organization.”

When the same question was posed to a senior member of the ICC who coordinates the TFV fund

basket in Uganda, DRC, Kenya, Sudan and the Central African Republic, he stated that, in a situation country for example in Uganda here; the trust fund was on the ground in 2007 and that they performed a process called the needs assessment or injuries assessments. Through this process, the TFV office examined the situation in the context of northern Uganda and the nature of the conflict. The respondent went further to state that consultations were equally carried out with numerous stakeholders, NGOs, civil society, UN agencies, Government agencies, community leaders and cultural leaders to understand the situation that is going on. In addition to that, the Respondent stated the trust fund always conduct an injury assessment to identify what the particular needs and injuries associated with the conflict and what gaps exist in the services delivery to provide some relief or assistance to those victims.

The respondent added that through the outreach programme of the ICC, the TFV could identify categories, crimes, and injuries that the projects can address and then work with local implementing partners; non-governmental organizations International, local NGO's faith-based organizations and other non-government organizations and service providers to provide those services, to provide the counseling, to provide the livelihood support.

By contrast, the Programme Manager of UVF pointed out that, the challenge for the trust fund for their organization and partners is to identify specifically victims that conform to the jurisdiction of the requirements of the ICC. The ICC only has jurisdiction of crimes and events from July 2002 onwards. The reason was that if one considers the fact that violence ceased in Northern Uganda from 2006/2007 that meant the trust fund and the ICC only have the jurisdiction and ability to address the harms and the crimes that occurred within a four-year window of time.

4.2.3 Nature of assistance received from the TFV

One aspect that came out openly from the victim survivors is that the implementing partners are performing dual implementation of the mandate of the TFV under the assistance program. According to the two primary implementing partners and the victim survivors interviewed, Physical rehabilitation goes hand in hand with Psychological rehabilitation; this aspect was confirmed by almost 80% of the victim survivors interviewed.

According to the Respondents from Gulu, Amuru, and Nwoya, all of them have benefitted from the Physical and Psychological Rehabilitation program. The respondents pointed out that, before one can take advantage of the physical rehabilitation process, the victims are taken through the process of counseling so that they can accept the conditions they are in and the conditions they will adopt to. The administration of counseling before implementing the physical rehabilitation component of

the support according to the victims fastens the process of healing. One of the respondents who is a former LRA combatant undergoing Physical rehabilitation from one of the implementing partners expressed fear of going to the NGO, who were offering the assistance because he thought this was a follow-up of former LRA soldiers. The Respondent, therefore, had to receive counseling from the community facilitator before going for the physical rehabilitation which involves removing a bomb splinter stuck in the thigh.

Similarly, two managers of NGOs implementing the Trust Fund project confirmed what the Respondents stated. Gwed-G is an organization operating in 12 sub-counties in the Districts of Gulu, Amuru, and Nwoya currently implementing the Physical and Psychological assistance to the victims of war; the program manager stated that before the Material assistance component of the fund was phased out, it used to be implemented together with other elements of the assistance. At the moment, many of the victims receiving physical rehabilitation are receiving medical help as regards injuries sustained as a result of war and therefore also need counseling. This respondent went further to state that some of the victims come to the organization in moods closure to insanity and lost hope due to the trauma of being a victim of war, and their confidence can only be brought back through counseling as a priority before the organization can recommend and implement the physical rehabilitation component.

Much as the physical and Psychological assistance is being implemented; respondents expressed their fear of the limitations involved in the implementation process. One of the program managers noted that 'From the experience of performing the activities of the funding, children born in captivity need to be catered for in the community, but in most cases, they are disassociated by the community. There is no component in the trust fund to provide for them'. The respondent noted further that one other aspect encountered by implementing partners during outreach workshops is that of families inquiring about what TFV is doing with regards to the issue of missing persons. That are people who were abducted but never returned. The TFV especially the assistance mandate does not have a component to cater for those family members or trace the missing persons.

The Respondent noted that as an organization, they also experience the problem of limited budget and the short life span of this projects. It is observed that the team is currently battling with about 14 chronic cases where the cost of operation was so high beyond the budgetary fund available. The respondent stressed that special funds need to be put aside to cater for such cases like hip surgery, brain surgery, and complicated operations and this calls for an increase in the funding allocated to the organization from the Fund basket.

Many of the victims expressed their fear about the issue of the fund having limits regarding its implementation; this fear was equally echoed by a senior field program officer TFFV program. The officer stated that currently, the TFFV under the ICC are in discussions with the government to forge a way of working together to address the harm caused as a result of the war. Also, the trust fund is not going to be active in Northern Uganda for 30 or 40 years, and some of these injuries and services need to be sustained for a lifetime. The respondent noted further that in many cases, TFFV provides prosthetic artificial limbs to the amputees in the north and at the moment, the TFFV is the only donor that is providing financial support to Gulu orthopedics workshop at the Gulu Regional Referral Hospital.

4.2.4 Nature of the Impact on their lives

When the Respondents were asked how this assistance has impacted on their lives, the Respondents who benefitted from the Physical Rehabilitation program noted many changes in their social life. One respondent applauded the result of the artificial limb. The Respondent pointed out that life changed for him in a bigger picture, since, he can now ride a bicycle, do farming and graze goats. Also, the Respondent admits that the assistance has also given his wife confidence that he has some strength that is capable of taking care of her. The respondent went further to say that the physical rehabilitation has not only aided the ability to move freely and carry on with other business but also earned respect in the community as well as improved on his livelihood.

All the Respondents who received psychological support were all in praise as to how this support has helped them cope with the trauma of being a war victim. One of the respondents who lives in Nwoya stated that he had suicidal tendencies when he lost all his business as a result of their vehicle being hit by a planted land mine. He further indicated that he had to return to his ancestral home after failing to sustain life in the central town. In his response, the counseling helped him to accept who he is and through this he was also accepted in the community.

In Gulu District, for instance, one Respondent who had been a beneficiary of material support under the HOPE project from 2008-2013 and currently still benefitting from the Physical and Psychological support stated that the goats and seeds that were issued to him are what has kept him financially stable. However, the respondent is not fully healed since there are still numerous bomb splinters on his body that needs removal.

Beyond the numbers of direct and indirect beneficiaries, the research revealed that the program activities relating to physical rehabilitation were very efficient in supporting survivors to resume

their productive roles in the societies they live. As reported by the program officer of one of the implementing partners, 80% of the victim survivors used their prosthetics and orthotics from GROW fully on a 12 hours basis daily. According to the program officers, the support has led to the victim survivors to have the ability to live a healthy life gain, to make plans for the future, resume school and also gain the confidence to participate in community gatherings again. One of the respondents stated that *“it was initially difficult to accept the disability, but the counseling helped me and with this artificial limb, I am like any other person. I can cook, fetch water, and dig”*. This view was shared by all victim beneficiaries of physical rehabilitation, even those who had experienced delays or complications relating to their treatments.

4.2.5 What can be done to improve the implementation of the trust fund for victim assistance mandate?

When the respondents were presented with a question on how best the TFV can be of more supports on top of what they are currently benefitting from, many of the victim/ beneficiaries who received physical Rehabilitation regarding prosthetics argue for continuity of the program. Many of them believe that the program being implemented through partners within a particular time frame is detrimental to them. One program director who heads GROW stated that in any event, TFV stops its assistance to the orthopedics workshop in Gulu, then the victims who were fitted with prosthetics will all go back to their psychological trauma again. This is because this prosthetic needs to be serviced time and again and some of the victims are young and still growing up. They, therefore, need this service for the all of their lives. The respondent further stated that GROW is a national referral Center that caters for victims from Sudan and DRC as well, and though it is located within a government facility, the operations are purely run by the funding from TFV and the government of Uganda is yet to earmark funding to run the unit.

According to the TFV coordinator, there is a need for integration to ensure the sustainability of the GROW. This argument is in line with the fact that a victim who is a 20 something-year-old person who has had an amputation, and he/she is to receive a prosthetic leg, the victim will need maintenance, support and perhaps replacement of that limb over his/her lifetime. Further that most of these victims having the limbs are peasants living in the villages and are farmers and that their farming activities are one of the many ways of wear and tear on some of these limbs. This limbs, therefore, needs replacement every year, 18 to 24 months.

In addition to the above, A retired Bishop and a member of a local NGO in northern Uganda stated that short-term period of implementing the projects does not tally well with the victim's needs.

Further that the war in the north of Uganda raged on for more than 20 years, and a three-year project cannot in any way rehabilitate a person mentally, emotionally and Psychologically.

One other aspect that was pointed out by the respondents is that there is a need for reintroduction of the livelihood program or economic assistance. The respondents claim it is because one cannot get physical rehabilitation and continue to live in a state of poverty. They also argue that the war has crippled them for a long time, and economic assistance or livelihood can be one way of putting them fast enough to at least a reasonable self-sustaining level. As noted by one program manager of an implementing NGO, each time they go to do field work sensitization, the first questions they are faced with is “when are we getting compensation?” It is, therefore, evident from the findings that majority of the victims and implementers want the economic/livelihood aspect reintroduced for TFV to be considered a full success.

However contrary to the demands of the victims on the ground, the TFV officers at the ICC noted that, they made a determination under their mandate that it was not possible to continue material support beyond 2013 because it became too difficult to determine and establish the causal relationship between a crime that may have occurred against somebody; may be perpetrated against someone back in 2004/2005 or so. Moreover, to establish that causal link, to draw the line between the crime that says it occurred in 2004 with their material support, injury and situation in 2013 forward. It became too tenuous to establish that kind of casual connection and not to recognize any other intervening factor that occurred in the meantime.

The findings suggest that much as the victims, implementing partners, and the ICC itself feel they are offering assistance to persons who have suffered as a result of the war, 90% of the victims want the government to be directly involved in assisting them. The majority of them believe that it was the government’s responsibility under the law to protect and guard their property as well as lives and since that was not done and they suffered as a consequence, the government should come in and ably support the victims alongside what the TFV is implementing.

4.3 Analysis

Interviews conducted during the data collection stage with the primary respondents from partner and non-partner organizations of the Trust Fund for Victims aligned with the conclusions of the ICRW external report. The three areas of programming that are; material support physical rehabilitation, and psychological rehabilitation has made significant contributions to the rehabilitation of individuals affected by the conflict. First program managers of two important

implementing partners in Northern Uganda said that TFV had been very instrument in changing lives of the victim survivors in the areas where they have been implementing the projects.

One of the program managers directly implementing the physical rehabilitation program had this to say “*TFV has met its desired goals in respect of our organization, the lives of beneficiaries have changed a lot because they are now integrated.*” Scholars like Verdeja have argued that a reparative remedy in its nature should focus on social parity and bring the citizen back to his or her status (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006). In the Northern Uganda context, by the TFV implementing this mandate of physical rehabilitation, it seeks to fulfill the concept of the theory advanced. The victim survivor having been offered the physical rehabilitation for example prosthetics can move again and do other activities that he/she could not do after sustaining the injuries as a result of the war.

Secondly, it was observed by the program managers of implementing organizations that *assistance is offered to individuals who fall into any of the categories of victims specified by the TFV, regardless of whether the LRA, the Ugandan army, or another party committed the atrocity.* These efforts appeal to both normative goals of transitional justice. By responding to harms of past abuses, the TFV helps redress human rights violations. Through capacity-building and reconciliation efforts, the TFV helps prepare the society for a more just future. Therefore, in an attempt to provide the assistance, TFV was blending both the Physical and Psychological support to the victims of war, this does not only repair the harms suffered by victims of war but also tend to deal with the best ways to prevent new cycles of violence.

As explain by Luke Moffet in his writing “Transitional Justice and Reparation: Remediating the past”, with women and girls, a gender perspective has been advocated to be included in reparation mechanisms to reflect the wider social inequalities that compound their suffering, such as being subjected to sexual and domestic violence, forced to abandon their education or career to care for their family after parents or a spouse is killed or seriously injured, suffer a loss of income, left to search for the remains of loved ones and to demand justice (Moffett, 2015). He went further to argue that as such to prevent the replication of the class, political, ethnic and gender hierarchies and the causes of victimization, reparations should be developed not only as forward-looking but include backward-looking measures to deliver fair non-discriminatory redress that respond to victims’ experience, as far as possible (Moffett, 2015). This has been achieved in the DRC where special programs for SGBV has been incorporated into the assistance mandate of the TFV (The Trust Fund for Victims, 2015). In the northern Uganda situation, at the beginning general support was being implemented to benefit the victim survivors. However, SGBV has become a cross-cutting theme in

the implementation of the assistance mandate of the TFV. Through this process, the girl child and women are given a special status in regards to the harm suffered (The Trust Fund for Victims, 2014).

As Verdeja suggested, one of the normative goals of reparation is to “restore the victim's sense of dignity and status among the society” (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006). TFV, therefore, aims to fulfill this concept by way of its reparative assistance mandate given to this victims in light of the gross violation suffered which ruined their lives and made them become second class persons in the society. In Northern Uganda, the victim survivors who were interviewed expressed gratitude for the assistance that was offered to them. Although of the 11(eleven) beneficiaries interviewed, only two were aware of the source and purpose of the funding, the rest of the recipients did not have any basic knowledge about the TFV but had the understanding that this was donor funding. For instance, one of the victim survivors who benefited by getting a prosthetics had this to say: *“I got my injury when a land mine hit me and the assistance I have got helped me a lot, I used to have much trauma, I used to fall a lot too, but now with the aid of the artificial leg, I can now walk normally, and I have opened up my Salon business”*. This victim survivor now operates a salon (hairdressing) business, through her hairdressing business, the victim survivor can now meet the necessities of life.

A scholar like Laplante embraces the idea that the perception of victim-survivors will vary on what they believe they need to feel repaired, something she describes as the ‘felt justice needs’ of victims. In this regards, therefore, by the TFV conducting the needs assessment program before implementing the projects on the ground through their various partners, the victims’ level of injuries and urgent needs were central to the objectives of the trust fund (Laplante, 2014). This perspective understands that the causes of violent conflict (which, in turn, cause civil and political human rights violations that need to be remedied) most often arise out of deep-rooted social and economic inequalities. One important factor in life is that one must be able to sustain the normal daily life by themselves at least to a reasonable extent. The occurrence of such violent conflict takes away those opportunities. Sometimes it takes it in the most violent manner, taking away the lives of breadwinners at home leaving behind helpless children and women (Laplante, 2014). The northern Uganda conflict was a protracted conflict of disgruntle fighters who felt marginalized in the affairs of their country, and the total effect was felt by the civilian population who went through a lot of economic hardships and trauma. The TFV initiative is one attempt to revamp the lives of the victims of war. Through the assistance mandate of material, physical and psychological programming, the TFV changed lives of the victims of war.

As stated by Alex Honneth in support of the theory advanced by Verdeja, reparatory justice system is aimed at restoring self-confidence, self-respect, and self-esteem (Honneth, “Introduction.”, 2003). These components are all developed through the dialogical interactions with other equal subjects. In developing the self-confidence, victim survivors of human rights violations greatly avoids the risk of degenerating into a pathology of self-hate (Honneth, “Introduction.”, 2003). The research in the field indicates that there have been many efforts geared towards this objectives. This achievement spearheaded by the implementing partners of the TFV through counseling and physical rehabilitation. Two of the victim survivors both beneficiaries of physical and Psychological assistance interviewed expressed the view that they can now talk at an equal level with the other members of the society. One of the victim survivors who had lost the right eye as a result of a bomb blast expressed gratitude to the TFV initiative because he was able to be assisted by a pair of corrective glasses and minor surgery conducted. The victim stated further that he can now have a balance while walking and his dignity and standing in the society has considerably improved since the community no longer calls him the “one-eyed man.”

Verdeja articulates what has become the dominant expression of justice. He expressed it through the theory of recognition which advances the notion of “what must be restored and how this restoration is to be fulfilled (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006). The TFV program is one way of achieving the notion. Since human rights violations by definition rob victims of their dignity and their power, reparation process ideally would address issues of the powerless through ongoing engagements. This view is shared by the cultural and traditional leaders at grass root level where the crimes have been committed. Two respondents chosen for this research were known, and prominent chiefs (Rwots/Traditional Cultural Leaders) of their areas and they have been great advocates for reconciliation process and truth telling to heal the wounds of past crimes and hatred among the victim survivors. The cultural leaders were a concern with the slow trend of recovery among the victim survivors and reported that ‘TFV program has significantly helped in fast tracking recovery since there was no such program being driven by the government to support this victim.’ This shows the support the TFV generates among the local leaders within the community in which the funding is being implemented.

Verdeja persuasively argues that reparation can be achieved through recognition of the uniqueness of particular groups of victims who have suffered human rights violations in some traditional manner (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006). The TFV has been alive to this process. In northern Uganda, the fund was designed to benefit the extremely vulnerable group of victim survivors, and this included elements of sexual crimes. The

implementing partners of TFV created well-articulated modes of operation in identifying and implementing the project. One implementing partner reported that 'while implementing the projects under TFV, their organization looked at TFV as "*okweyo*" (a Luo word meaning to "cool it down") and the team targeted children of the victims of war in the context of rebel returnees and women.' Through this process, therefore, the fund was able to meet its justice mandate by way of recognizing and assisting children born in captivity who would have otherwise been segregated against by the society in which they live.

As argued by Laplante, Reparation schemes should be alive to the principle of sensitivity to victims of crimes as individuals. She asserts further that by respecting the status of victims, it acts as a major step to reaffirming their status as citizens (Laplante, 2014). This is because it reflects respect for fellow humans which is a necessary element of any political order based on the democratic principles of equality (Laplante, 2014). This seems to be the driving force of the TFV implementing its second mandate which is the assistance mandate in Northern Uganda. Should be noted that under the first mandate of the TFV which is executing the orders of court through reparation, the compensations will only be awarded to the victims who were wronged and before the tribunal. For the TFV to recognize other individuals abused especially those outside the court bracket was a direct application of transitional justice continuum principle of reaffirming the status of victims as citizens having equal rights as advanced by Verdeja which calls for the return of victims to the state of full citizenship as subjects of right and remove all stigma associated with the violent inhuman act suffered by them (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006).

Many scholars explain that reparation should be understood as a result of a collective effort of the implementing partners, victims, and the government. Central to this argument is also the fact that, the aim of status parity should be to provide resources to victimized groups with the goal of creating the material basis and security necessary for them to become full participants in social, political and economic life (Verdeja, A Normative theory of reparation in Transitional Democracies, 2006) In trying to offer the assistance to the victims of war through TFV, this approach tends to adopt a modality aimed at making a victim whole and restoring the "status quo ante". This is done with the understanding that it is almost impossible to rectify indeed the immeasurable harm caused by the torture, extra-judicial killings and other forms of human rights violations.

Luke Moffett in promoting the recognition concept argue that reparations in transitional societies can also serve a political function in rebuilding the victim's 'civic trust' with other citizens and in the state, and reaffirming their dignity by prioritizing their suffering as deserving redress (Moffett, 2015). He went on to explain that this sits in stark contrast to the past where the victims were

vilified, dehumanized and targeted. Social solidarity and inclusion are extended to victims as citizens entitled to a remedy as a way of building a new political community (Moffett, 2015). While of course there are not enough resources to wholly or entirely cure victims' harm, scholars like Hamber suggests the notion of 'good enough,' whereby sufficient effort and recognition is made to victims' leaves them psychological satisfied, in turn rebuilding community and societal bond (Hamber, 2000). This applies where the responsibility to correct the imbalances and sufferings lies on the government. However, TFV initiative through article 79 of the Rome Statute through their assistance mandate aim to achieve that objective of victim redress (ICC, 2011). This is done by not looking at a particular class of victims. In the northern Uganda context efforts have been made to achieve this objective through the physical and psychological assistance provided to the victims of war. The victim's sense of belonging to the society improved through their various involvements in the VSLA programs, counseling programs, and workshops. Through its VSLA programs, TFV aims to redevelop the economic and social ability of communities affected by repression, such as income-generating cooperatives and human rights and gender mainstreaming.

As theorist argue, the aim of Reparations, to an extent, is to try to remedy the individual and collective harm. Individual awards of compensation can allow victims to have agency and choice by supplying 'the means for whatever part of the former life and projects remain possible and may allow for new ones' (Moffett, 2015) As Verdeja asserts 'individual symbolic recognition emphasizes the importance of remembering that victims are not merely a statistic but actual people who often suffered intolerable cruelties.' In Argentina, \$224,000 was awarded to families of those disappeared based on the highest earning of public employees, rather than the industrial accidents scheme, so as to distinguish their individual harm as intentional, wrongful acts (Moffett, 2015). In northern Uganda under its second mandate, the TFV is also implementing personal assistance which is not tied to the guilt of the accused person before the criminal court of the ICC. This assistance programming constitutes three elements of material support, Physical rehabilitation, and Psychological recovery.

Victim definitions can be sensitive to victims' psychological needs, such as in Argentina the creation of the legal category of 'missing as a result of enforced disappearance'. Also, consulting victims and allowing them to participating in the decision-making process can affirm their status as citizens in the new political order, in that their voices and interests have value (Moffett, 2015). Hamber suggests that this fosters 'social belonging...[and] helps counter...the consequences of 'extreme' political trauma'. There is also need to provide 'ongoing spaces' for victims to 'express their feelings of sadness and rage as they struggle to come to terms with the psychological and

emotional impact of their loss.’ Such spaces should be private (such as counseling and group story-telling) and public (e.g. media, theater, etc.), as well as official and facilitated through civil society (Hamber, 2000). These spaces can be achieved through formal state processes, and informal community gatherings or within victim groups. Participation in the design and process of reparation mechanisms can also offer recognition to victims as ‘valuable agents of political and social transformation’, in particular for those groups previously marginalized, such as women and minorities (Hamber, 2000).

Despite these significant contributions from the TFV, interviews revealed certain areas of shortcoming that raise questions about the Trust Fund’s ability to achieve justice for victims. First, nearly every interview participant raised concerns about TFV communication efforts. Individuals involved directly in the administration of TFV-sponsored programs said that beneficiaries of TFV assistance rarely had heard of the Trust Fund and did not understand the TFV’s relationship with the ICC. Only two respondents who were direct beneficiaries knew what constitutes TFV and only a program manager at an international NGO said the TFV was actively explained to program beneficiaries. This creates confusion among community members, who do not understand the distinction between TFV-funded projects, ongoing ICC prosecution efforts and emergency response programming. Individuals at the Trust Fund acknowledged the weaknesses of their communication efforts, citing limited resources and administrative capacity as the culprits.

The TFV lacks a distinct department or personnel devoted to communication and relies on the ICC’s Communication and Outreach Unit. These findings recall conclusions of population-based surveys that estimate very low levels of awareness and understanding of the ICC. It is, therefore, important for TFV to work toward greater clarity on this point, to avoid misunderstanding and disappointment on behalf of the victim beneficiary’s communities where they support programming. Given the fact that resources are limited, TFV can achieve this through exploring existing formal and informal communication channels at the grassroots levels that can be collaboratively employed to convey these important messages.

A second concern that emerged in interviews regarded the issue of individual assistance being offered through the programs of physical, psychological and material support. Many of the respondents interviewed stated that apart from the difficulty of assigning blames given the fact that 20 years or more of the war has passed from the time of the violation, the TFV should look at the proposal for large-scale distributive transfers. This is because it reduces the socio-economic inequalities and non-monetary reparative measures like health care and education as well as collective assistances can summon the spirits of economic justice. The TFV has areas of its operation

with the implementing partners, and this project does not cover all the areas of northern Uganda. As noted by one senior program officer of an enforcement partner, it is usually absurd to explain to a beneficiary who happens to come from an area not within the focus of the project that he/she cannot get the assistance under TFV yet that person would have been a victim of war. A view expressed by the traditional cultural leaders are that trauma takes long to heal, and a Centre for trauma would have been the best gift to the community since it will benefit more people than the limited numbers under ten various projects.

TFV officials also looked at the challenges faced within the framework of the operationalization of the Fund; the respondent expressed difficulty in finding a nexus between the written laid down procedures and the actual field work implementation of the project. Other respondents also shared the limitations expressed above. At the district level, the interviewee stated that there was a need for a holistic approach on how the program is implemented and the ideal model advocated for one that puts the victims at the heart of designing the program to suit the immediate needs. Through that, the victims needs will not be determined by someone else, and it should be applied according to each region. This view was shared by one of the cultural chiefs of the area where the TFV is being implemented. To him, the TFV program was not designed properly, and it looks alien to the beneficiaries and other people who are interested in the ICC program.

Chapter 5. Conclusion

This chapter provides a concluding analysis by way of examination of the literature and empirical data collected from the field. It should therefore not be read as a summary of this work, but, rather, as a road map for the overall argument of this project. As noted by many scholars, at the heart of most debates in the field of transitional justice is the basic, though impossible question: *after mass atrocity, what does justice look like?* This issue was at the center of the early debates between advocates of retributive justice and advocates of restorative justice (Di Giovanni, 2006). Practitioners in the of transitional justice, for the most part, came to an agreement that justice does not have to be the result of criminal prosecutions and can, in fact, take many forms. This consensus led to the legitimization of alternative justice mechanisms including truth commissions (Di Giovanni, 2006). The debate over justice continues today with increasing attention paid to traditional or customary mechanisms of justice.

This thesis has sought to move the discussions on the ICC and transitional justice in a new direction, one that aims to understand the implications of reparative assistance provided through a framework of the international justice system.

Staff members of those organizations who have worked with the victims of the conflict, particularly those based in northern Uganda have made clear that the main worry of the survivors of the long term atrocities of the LRA war is to receive aid and compensation to rebuild their lives and secure their livelihoods (McClearly-Sills & Mukasa, November 2013). Many victims have survived torture or mutilation at the hand of the rebels or government soldiers and are as a result unable to till their land. Others have lost their land or their property. In both cases, victims fail to provide for themselves and their families. Many formerly abducted youths who were forced to fight with the LRA have lost their relatives in the conflict and missed out on education opportunities (McClearly-Sills & Mukasa, November 2013). After returning, they find themselves alone and without any real perspectives on the job market. Surveys with victims also

show that they regularly put these immediate livelihood needs before the need to see the perpetrators of crimes brought to justice (ICTJ and HRC 2005, p. 25, Murithi and Ngari 2011, p. 5).

Against this background, it is a rather far-fetched supposition to believe that the ICC can meet victim needs and thereby further reconciliation in the conflict areas. The ICC does not have the resources to pay compensation for vast areas of the affected population, and this is amplified by the ICC focal person in Uganda as one of the main reasons for phasing out the material support component of the assistance mandate of the TFV. Even though the ICC Trust Fund for Victims (TFV) does fund organizations that work with victims and provides for example plastic surgery for those mutilated by the LRA, the support only reaches a small percentage of the victims. Compensation payments could only be ordered by the ICC if one of the LRA indictees is convicted and sentenced, and even then only his direct victims would profit from such court-ordered reparations, beyond victims' assistance.

As noted in the mode of operation of the Trust Fund, it is a primarily restorative model, aimed at redressing past abuses through various forms of assistance designed to help victims return to their previous standards of living and gain back some semblances of human dignity. It, therefore, safe to say that by focusing on physical rehabilitation, psychosocial support, and material support, the Trust Fund responds to victims' immediate needs, which victims care more about than criminal accountability. A careful analysis of the TFV activities in northern Uganda implies that the

implementation of this assistance mandate, as well as the outreach efforts of the Court to sensitize the community on the role of the TFV, should be tailored to meet the local needs of the victims of human rights violations. In its effort to achieve this objective, the ICC TFV should consider the local conflict context to further benefits of trials on conflict resolution efforts and minimize possible adverse effects.

Besides, the Trust Fund helps promote an improved future through capacity-building at the local level. Capacity-building begins to respond to the structural injustices that led to the crimes in the first place, but additional attention should be focused on transitioning responsibilities to the government, which victims perceive as the party most responsible for redress. While these mechanisms cannot address accusations that the Court is biased against Africa, they do resolve claims that the Rome Statute system epitomizes a “Western” form of justice.

A closer look at the claims brought forward in the Ugandan context from an on-the-ground perspective delivered decidedly mixed results in most cases. Taking into consideration that the literature on transitional justice in general remains divided between supporters and critics of prosecutions, these findings are a call for a more thoughtful analysis of the possible impacts of implementation of the TFV that goes beyond a black and white approach. It seems that the implications of the implementation process are much more dynamic and contradictory than the current research would suggest. In the case of northern Uganda, the involvement of the ICC through TFV has led to the paradoxical situation that some victims who fall outside the operational area of the organizations implementing the mandate felt neglected, worthless and insulted for suffering the violation in a wrong area where the funding is not being applied.

Equally, when seen from the victims' point of view, few reparations programs are entirely satisfactory (Waterhouse, 2009, p. 258) and may even have ‘unintended consequences that frustrate or even exacerbate the struggles of communities emerging from mass violence or a period of repression’ (Fletcher L. E., 2009, p. 52). This critique does not automatically justify that reparations be rejected, but rather highlights that they must be carried out with caution.

Given that transitional justice experiences are not per se victim friendly or even victim-centric, it is important to institutionalize careful reflection on how to better accommodate the interests and expectations of victims. This policy requires planning to assure their participation in the planning, operation and implementation of justice measures. One first step in managing the expectations and thus the experience of victim-survivors is to identify the guiding justice theory for the design and implementation of reparations (Laplante, 2014). Doing so will allow cultivating the habit of

continuous monitoring for quality control. It is, therefore, imperative to have a well thought out plan on the reparation target they aim to meet. When there is a well thought out plan in place, it will guard against victim's frustration and rejection of the project to be implemented for their benefit.

Future research on transitional justice should continue to examine the role of "reparative assistance." Unlike reparations, reparative compensation does not rely on criminal prosecutions or a direct link between a harm suffered by a victim and a crime committed by a perpetrator. This acknowledges the often-ambiguous lines between victims and perpetrators in many conflicts and can expand reparative assistance to a broader scope of individuals affected by the conflict. Whether victims perceive this support as justice, in Trust Fund situations and elsewhere, warrants further study. Also, future research should seek to understand what types of assistance are most meaningful to victims in transitional societies.

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