

## The Trial of Thomas Kwoyelo: Opportunity or Spectre – A New Paper by Anna Macdonald and Holly Porter

*In this blog post, Anna Macdonald and Holly Porter examine the political and social dynamics that shape local perspectives on the first war crimes prosecution of a former Lord's Resistance Army fighter, Thomas Kwoyelo. This week they published an **open-access article in Africa**, exploring these issues in depth, based on long-term research on the case since it began in 2009.*

The pre-trial of Thomas Kwoyelo –the first war crimes prosecution of a former Lord's Resistance Army (LRA) fighter, and the only domestic war crimes prosecution in Uganda starts up again next week. Over the past years JSRP researchers have attended proceedings in the run-up to the trial and have been researching local reactions. At the scheduled start of the pre-trial hearing (where we were in attendance) the lead defence lawyer did not **appear**. In the next, new legal representation for the accused was appointed and the prosecution and victims' representation raised their intention to add new charges—specifically for 'sexual and gender crime'—though these were not made explicit nor was the timeframe or procedure clear. In the last hearing, the prosecution arrived late, the judge's authority and qualifications were questioned by the defence, and concerns were raised about the disclosure of evidence and the lack of resources made available for community outreach.

The multiple delays and bumbling progression of the pre-trial hearings reinforce dynamics we describe in an **article published this week in Africa**. The case provides a fascinating exemplar of international and domestic political machinations that shape the Lord's Resistance Army (LRA) accountability debate in Uganda. Thus far, it has been packed with drama, intrigue and politics. We ask what Kwoyelo's trial means for those most affected by the crimes he allegedly committed, and, more broadly, what it means for the 'transitional justice' project in Uganda and further afield.

Analysis of Kwoyelo's trial from the 'bottom up' has been limited to journalistic and NGO accounts that tend to over-simplify the 'victim' perspective as being either 'for' or 'against' the trial without exploring why this might be the **case**. We develop a more detailed analysis, arguing that local perspectives are shaped in large part by how Kwoyelo and his alleged crimes are understood to impact upon immediate socio-economic and cosmological relational dynamics in the context of a fragile peace. This, in turn, is guided by whether Kwoyelo, as an individual, and his alleged crimes are intimately known and directly experienced or whether both are subsumed into broader narratives about war, peace and distrust of the Government of Uganda.

We interrogate and disaggregate the complex and heterogenous group of people ordinarily lumped into the category of 'victim'. This includes local politicians, Kwoyelo's relatives, childhood acquaintances, and forced wives within the LRA. We also make the distinction between those who were *directly* impacted by the violence he is alleged to have committed and those who were not. Interpreting the diverse reactions of this broad group tells us: (1) something central to Acholi perceptions and practices concerning wrongdoing and justice in general; (2) the complexity of people's attitudes towards LRA crimes; and (3) the relationship between many Acholi people and the various state, non-state and hybrid institutions involved in justice endeavours. Reactions, we argue, are oriented by understandings of the wrongdoing itself and the degree to which responses to crime are expected to have an impact on '**social harmony**'.

What we found across research sites, is that attitudes towards the trial shifted depending on whether respondents 'individuated' or 'de-individuated' Kwoyelo. When people 'individuated' Kwoyelo, they singled him out and gave individual or distinctive character to him as *somebody* they knew and/or to his particular crimes as memorable acts that they or somebody *w*th *in* their

immediate community had suffered. The response here tended to be that Kwoyelo should be punished, and while the donor-funded Ugandan International Crimes Division was regarded as a 'distant' institution, people generally supported the trial. By 'de-individuate', we refer to the responses of people who did not know Kwoyelo personally and did not suffer from his crimes directly. Those who 'de-individuated' him and his crimes tended to be less supportive of the trial. They subsumed both Kwoyelo and the trial into broader narratives about amnesty, forgiveness and NRM political manipulation that have shaped the transitional justice debate in Acholiland. A very powerful narrative, espoused by local political, religious and cultural leaders, as well as by supportive NGOs, emphasizes that the vast majority of LRA fighters, even those in senior ranks, were abducted against their will, and so, for the duration of their time in the LRA, their personal autonomy was entirely suspended. They cannot, therefore, be held culpable for their actions. In this historically contingent narrative, victims could easily have been perpetrators and the perpetrators themselves were victims. Thus characters such as Kwoyelo no longer have an individual identity; rather, they take on a broader social and collective identity – that of the innocent child, abducted against his or her will, deprived of personal agency, forced to commit terrible crimes, and whose fate is now subject to the vicissitudes of a hostile central state.

The broader implications of this for transitional justice and post-conflict accountability efforts are significant: the 'victim' category is complex and local conceptions of justice and wrongdoing are profoundly intricate. A misunderstanding (wilful or otherwise) of these dynamics creates a huge disjuncture between an imagined 'local', artificially constructed in service of a broader transitional justice vision, and lived realities in which the 'local' is a complex, often turbulent terrain of social, political and economic ideas and activity.

Assumptions that 'victims' and 'justice' can be categorised neatly are hardly unique to the Acholi context. Generalizations about the post-conflict justice proclivities of entire 'victim' populations, from Sierra Leone to DRC, are not unusual. What we argue for here is a careful interrogation of the category of victim, and better understanding of the composite nature of the meaning of 'justice'. Transitional justice approaches are prescribed with skewed and limited appreciation of existing conceptions of crime, practices of justice in context, and how best to engage them. The case of Kwoyelo shows the importance of looking at war crimes and available options for redress in the political, socio-economic and institutional context in which they occur, rather than considering them as divorced from the rest of lived realities. A more sustained engagement with local populations would most likely reveal something rather inconvenient to transitional justice advocates: that it is irresponsible to promise all victims that they 'will have their voices heard' and that it is 'impossible to do justice to all of the voices of victims affected by past violence' (McEvoy and McConnachie 2013: 497). A more honest and constructive approach would acknowledge that transitional justice is not a technical legal intervention, but rather a field 'defined by struggle and born of experience' (Gready and Robins 2014: 354). At best, it can provide an opportunity for an open-ended political and economic dialogue that accepts difference and engages seriously with local as well as state and global notions of peace and just social order; at worst it represents an externally devised intervention that is inappropriate for those most affected by violence.

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**Note: This article gives the views of the authors, and not the position of the Justice and Security Research Programme, nor of the London School of Economics or of Palladium International Development.**

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