UNIVERSITY OF CENTRAL OKLAHOMA

Edmond, Oklahoma

College of Graduate Studies and Research

THE INTERNATIONAL CRIMINAL COURT ARREST WARRANTS IN NORTHERN UGANDA AND PEACE NEGOTIATIONS

A THESIS

SUBMITTED TO THE GRADUATE FACULTY

In partial fulfillment of the requirements for the degree 0f

MASTER OF ARTS IN POLITICAL SCIENCE – INTERNATIONAL AFFAIRS

By

Lilian Busingye

Edmond, Oklahoma

2011

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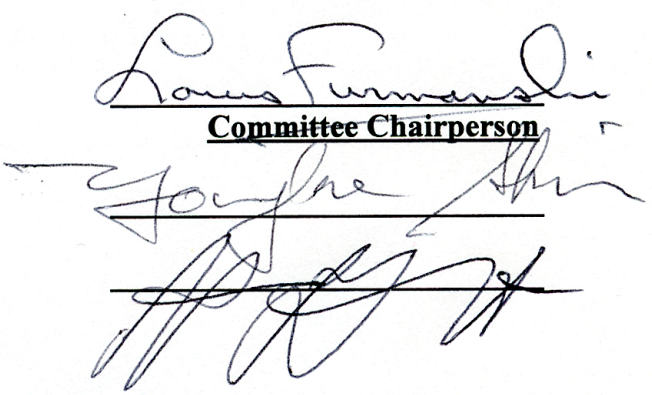
APPROVED FOR THE DEPARTMENT OF INTERNATIONAL AFFAIRS

MAY 3, 2011



Committee Chairperson

AKNOWLEGDEMENTS

I would like to thank my Committee Members; Dr. Louis Furmanski, Dr. Husam Muhamad, and Dr. Youngtae Shin whose commitment motivated me to work hard on this project. I dedicate this thesis to my husband Steve Zacharias whose presence in my life was an invaluable stabilizing factor. Thanks for encouraging me, and for listening to all the heartbreaking stories of the atrocities in northern Uganda. Special thanks to members of my family; Auntie Emily, Barbara, and Stella Kamenyero whose moral and financial support was very crucial for me to realize my dream.

TABLE OF CONTENTS

Abstract

For more than two decades, the Lord's Resistance Army (LRA) has been engaged in armed conflict against the government of Uganda. Under the leadership of Joseph Kony, the LRA is responsible for atrocities that include forced abduction; abuse of children and turning them into child soldiers; gruesome indiscriminate murders; mutilation; torture and rape of civilians; and looting and destruction of property. Over the last several years, the government of Uganda has pursued multiple strategies to end the war. In addition to military efforts, the government tried to engage the LRA in peace talks directed at ending the conflict. This presented the best chance to end the nation's devastating civil war. With the LRA's disregard of peace talks and continuous terrorizing of the population, the Ugandan government used its position of having ratified the Rome Statute to refer the crimes of the LRA to the International Criminal Court (ICC). The ICC prosecutor initiated an investigation and in July 2005 issued arrest warrants for Kony and four of his top commanders, two of whom are alleged to have since died. Recent developments indicate that the government of Uganda would prefer for the ICC to withdraw the arrest warrants if the accused agreed to undergo a tribal justice ritual that requires a public confession, and an apology without threat of incarceration. The Ugandan government would also favor a plan that supplements this traditional justice system with more formal court proceedings for those accused of the most serious crimes. In response, the rebels have said they will not engage in any peace negotiations, and they have singled out the ICC arrest warrants as the main reason and have called for their withdrawal. Situations from Sudan, The

Democratic Republic of Congo, and Central African Republic are briefly analyzed for comparative purposes and to offer the reader a general insight into the ICC intervention in Africa. This study is to investigate the possibility that the ICC arrest warrants have interfered with the peace negotiations to end this civil war.

CHAPTER ONE

BACKGROUND

Uganda lies along the equator, between the great East African Rift Valleys. It is a land locked country, bordered by Sudan in the north, Kenya in the east, Tanzania in the south, Rwanda in the southwest and the Democratic Republic of Congo in the west. With a land mass of 241,139 square kilometers, its population is about 30 million. Its territory includes Lake Victoria, Lake Albert, Lake Edward and Lake Kyoga. These lakes together with several elaborate networks of river drainage, constitute the head waters of the River Nile. The country's economy is primarily agrarian, comprising mostly of small holdings though pastoralism is dominant in Karamoja and Ankole regions.

Lake Kyoga forms both a physical and linguistic marker. South of the Kyoga is the Bantu region, with the centralized pre-colonial states of Buganda, Toro, Ankole and Bunyoro the dominant territories. North and east of Kyoga are the non-Bantu territories of Acholi, Alur, Langi, Iteso and Karamojong. The Acholi inhabit present day northern Uganda and southern Sudan, where in the pre-colonial era, they constructed decentralized states. In the 1970s, the Acholi district of northern Uganda was divided into Gulu and Kitgum districts. In 2001, Kitgum was subdivided to

create a third district of Pader. These three districts constitute an area commonly referred to as Acholiland.

Acholiland has been in the grip of civil war since 1986. At the beginning of that year, the National Resistance Movement /Army (NRM/A) led by Museveni marched into Kampala and captured the capital. The defeated Uganda National Liberation Army (UNLA) that fought under Obote and Tito Okello was predominantly formed by northerners from Acholi and Langi ethnic groups. After Museveni took over, many UNLA soldiers fled towards their home areas in the north. Finding it hard to adjust to rural life, they choose to join rebel forces. Some of them regrouped in southern Sudan and formed the Uganda People's Democratic Movement/Army (UPDM/A), one of the many rebel groups that have over the years carried on military campaigns against the government, the latest one of these being the Lord's Resistance Army (LRA).

After the Uganda government had defeated UPDA, a woman called Alice Lakwena seized the opportunity to inspire many Acholi to join the Holy Spirit Movement with her as a leader. Her name Lakwena means "the messenger" in vernacular and she used this name tag to position herself as a spirit medium who claimed to have knowledge about the art of resistance during war. She believed that the Acholi could take over the government, and capitalized on deserting UPDA fighters using a combination of Christian beliefs and healing rituals. Her followers found in her a vehicle they could use to express their social discontentment.

In November 1986, Lakwena and her group achieved two extraordinary victories against the NRA in southern Kitgum district taking the government by surprise. Her victory motivated many enthusiastic Acholi youth to join her. Eventually, they were defeated in November 1987. This was followed by negotiations between the UPDA and the government for the rebels to surrender and return to their communities. While most of them heeded this call, others were inspired afresh to form rebel groups, one of which was led by Lakwena's alleged Cousin Joseph Kony and called itself the Lord's Resistance Movement (LRA).

THE LORD'S RESISTANCE MOVEMENT HEADED BY JOSEPH KONY

To start with, Kony had much in common with Lakwena. He too claimed to be a spirit medium, able to convey messages from spirits and perform healing and cleansing rituals. However, in 1988, the nature of this movement turned dramatically when it started abducting children who soon formed a significant number of the rebel armed forces. Furthermore, the movement committed a number of atrocities against the Acholi people whose welfare they claimed to protect. These atrocities also include forced abduction, indiscriminate murder, mutilation, torture, and rape of civilians.

In particular, Kony and his forces have been condemned for the suffering they have inflicted on the children of northern Uganda. Children have been used as soldiers, porters, laborers and sex slaves. To be initiated into the rebel movement children have been required to undergo an initiation process that includes committing atrocities like killing and mutilation of people, as well as abducting other children. To avoid abduction, thousands of children had to resort to

walking tens of miles from their villages to stay at centers run by non-government organizations and churches.

Over the last several years, the government of Uganda has pursued multiple strategies of ending the war. One strategy was to militarily engage the rebels, this was translated into a never ending war that devastated northern Uganda to unimaginable proportions. The Ugandan government also sought to end the war by engaging the rebels in peace talks. This did not amount to much as the rebels did not show much commitment. When it looked like a solution was almost at hand the rebels would surprise the nation by committing more murders and abducting more children.

As another strategy, the government passed legislation in 2000 offering blanket amnesty to any LRA member who agreed to surrender and renounce involvement with the rebellion. A seven-member commission is responsible for the administration of the Statute. As of August 2010, 12,481 former LRA rebels had reportedly received amnesty under the Act.

UGANDA RATIFIES THE ROME STATUTE

In June 2002, the Ugandan government ratified the Rome Statute allowing the International Criminal Court (ICC) prosecutor, acting on his own initiative or at the referral of a treaty party, to commence investigations and prosecutions of specified international crimes committed by Ugandan Citizens or on Ugandan soil after the treaty's July 1, 2002 effective date. With atrocities continuing, Uganda formally referred the LRA's crimes to the ICC in January 2004. The

ICC prosecutor duly initiated an investigation and, in July 2005, procured arrest warrants for Joseph Kony and four of his top commanders, two of whom are alleged to have since died.

Since the issuance of the arrest warrants the LRA have defied any efforts to engage in peace negotiations preferring that the ICC withdraws the warrants. In the summer of 2006, a peace agreement seemed within reach as the government of Southern Sudan began brokering talks in Juba, Sudan between the LRA and the Ugandan government. The Juba talks produced a unilateral ceasefire by the LRA followed by a truce agreement between the parties. After a temporary breakdown caused by the LRA's withdrawal, negotiations resumed in 2007, with regional observers from Kenya, Tanzania, Mozambique, DR Congo, and South Africa participating. Every time a peace agreement has been seen within reach, the LRA have opted out prompting reports that the ICC is a major stumbling block as the LRA leadership insists on immunity from ICC prosecution. The issuance of the arrest warrants by the International Criminal Court brought in a new dimension to the conflict in northern Uganda. This subject is analyzed later as a center of focus.

CHAPTER TWO

THE ROME STATUTE

The ICC governed by the Rome Statute is the first permanent treaty based international criminal court established to help end impunity for the perpetrators of the most serious crimes

of concern to the international community. It was set up to prosecute individuals for genocide, crimes against humanity, and war crimes. The court came into being on 1 July 2002 and can only prosecute crimes committed on or after that date. While it has its official seat in The Hague, Netherlands, its proceedings may take place anywhere.

The reason for the creation of the ICC was an effort to fill the gap in the international legal system to enforce rules of individual accountability and ensure that acts of genocide, crimes against humanity and war crimes would not go unpunished. Having a legal personality, it has a legal capacity for the exercise of its functions and the fulfillment of its purposes as provided in the Rome Statute. The ICC is a court of last resort, meaning that the court will complement national judicial systems and will only assume jurisdiction after it determines that a national system is unwilling or unable to do so.

Under the Rome Statute, the ICC will be composed of a Presidency, the Chambers that includes an appeals division, a trial division, and a pretrial division. It will also include the Office of the Prosecutor, and the Registry. On the court will seat eighteen judges elected by the Assembly of States Parties for non-renewable terms of nine years. The prosecutor and one or more deputy prosecutors will be elected in the same manner and under the same terms.

JURISDICTION AND ADMISSIBILITY

The Statute gives the Court jurisdiction over three core crimes – genocide, crimes against humanity, and war crimes. The ICC has jurisdiction over crimes against humanity committed by official or non-state actors in times of peace or armed conflict. Apart from acts recognized

under the Nuremberg and Tokyo charters, and under the statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda, the ICC is authorized to prosecute new crimes against humanity, including forced transfers of populations; severe deprivation of physical liberty, sexual slavery, enforced prostitution; forced pregnancy; persecution on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law.

Any state that becomes a party to the Rome Statute accepts the jurisdiction of the Court with respect to the above mentioned crimes. The court may also exercise its jurisdiction regarding a State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft. Jurisdiction may also be exercised on the State of which the person accused of the crime is a national.

A State Party may refer to the prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes. This referral should specify the relevant circumstances under which the crimes were committed and also be accompanied by supporting documentation.

The prosecutor may then initiate investigations on the basis of information on crimes within the jurisdiction of the Court. The Prosecutor then analyses the information received, and may request for more information as necessary. Sources of this information may include States,

organs of the United Nations, intergovernmental or non-governmental organizations, or any other reliable appropriate sources. He may also receive written or oral testimony at the seat of the Court.

If the Prosecutor is satisfied that there is a reasonable basis to proceed with an investigation, a request for authorization of an investigation may be submitted to the Pre-Trial Chamber. Any supporting documents may also be submitted, and the victims may make representation to the Pre-Trial Chamber in accordance with the Rules of Procedure and Evidence. The Pre-Trial Chamber will authorize the commencement of the investigation only after examining the request and the supporting materials, and if they point to the fact that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court.

Regarding admissibility, a case is inadmissible to the International Criminal Court if it is being prosecuted by a State that has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution. A case will also be inadmissible to the Court if it has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State to genuinely prosecute.

While the Court is supposed to satisfy that it has jurisdiction in a case brought before it, this jurisdiction may be challenged by the accused or a person for whom a warrant of arrest or a summons to appear has been issued on reasonable grounds. A State which has jurisdiction may

also challenge admissibility on the ground that it is investigating or prosecuting the case. These challenges are to take place prior to or at the commencement of the trial. In exceptional circumstances, the court may grant leave for a challenge to be brought more than once or at a time later than the commencement of a trial.

The Court's jurisdiction covers treaties and principles and rules of international law, including the established principles of the international law of armed conflict. General principles of law derived by the Court from national laws of legal systems of the world may be included. The national law of States that would normally exercise jurisdiction over the crime as long as they are consistent with the Rome Statute and with international law and internationally recognized norms and standards may also be included. The Court may also apply principles and rules of law as interpreted in its previous decisions. The application and interpretation of law must be consistent with internationally recognized human rights, and be without any distinction based on gender, age, race, color, language, religion, political opinion, national, ethnic or social origin, wealth, birth or other status.

GENERAL PRINCIPLES OF CRIMINAL LAW

For a person to be criminally responsible, the conduct in question must constitute, at the time it takes place, a crime within the jurisdiction of the court. In case of ambiguity regarding the definition of a crime, the interpretation will be in favor of the person being investigated, prosecuted or convicted. A person will not be criminally responsible under the Rome Statute if he committed a crime before the Statute was enforced. People who are criminally responsible

may include those who have committed the crime individually, jointly with another person or through another person, regardless of whether that other person is criminally responsible. Held responsible also is a person who solicits or induces the commission of a crime that occurs or is tempted.

Regarding exclusion of jurisdiction, only people who were under 18 years of age at the time the alleged crime was committed may not fall under the Court's jurisdiction. Otherwise this Statute is to apply equally to all persons regardless of their official capacity. Official capacity may be defined as a Head of State or Government, a member of a Government of parliament, an elected representative or a government official. A person's official status will not exempt them from criminal responsibility, and it will not be used by the Court to as a ground for reduction of a sentence.

If one is a military commander or a person effectively acting as a military commander, they will criminally be held responsible for crimes committed by the forces under their command within the jurisdiction of the Court. Military commanders are in particular held responsible if they fail to exercise control over the actions of their forces. They should be in position to know if their forces are committing or about to commit crimes and take necessary and reasonable measures within their power to prevent it or submit the matter to the competent authorities for investigation and prosecution.

To decide whether a person is criminally responsible, the crime must have been committed with intent and knowledge. In this case intent means that the person wants and is willing to engage in the conduct, and is aware of the consequences.

There are various reasons as to why a person may be excluded from criminal responsibility. These include a person who suffers from a mental disease or defect that destroys his capacity to appreciate the unlawfulness or nature of his conduct. Excluded also is a person in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness nature of his crime. However, if a person has voluntarily intoxicated himself or herself, they will be held responsible for the crimes they commit under the influence within the jurisdiction of the Court. A mistake of fact is also ground for excluding criminal responsibility.

If a person commits a crime under the order of a Government or of a superior, he will be held criminally responsible unless he was under legal obligation to obey the orders of his Government or his superior, and if he did not know that the order was unlawful. However, any orders to commit genocide or crimes against humanity are manifestly unlawful.

COMPOSITION AND ADMINISTRATION OF THE COURT

The organs of the Court include the Presidency, an Appeal Division, a Trial Division and a Pre-Trial Division. Included also is the Office of the Prosecutor, and The Registry.

Judges are elected as full-time members of the Court and are to be available to serve on that basis from the commencement of their terms of office. Depending on the work load of the

Court, the Presidency in consultation with the members may decide from time to time the extent to which the remaining judges may be required to serve on a full-time basis.

There are to be 18 judges of the Court but the Presidency may propose an increase in a number of judges by indicating the reasons for the increase. Such a proposal would then be considered at a meeting of the assembly of State Parties. The proposal will be adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of State Parties. It will enter into force at such a time as decided by the Assembly of State Parties.

To be chosen as a judge of the Court, one must be a person of high moral character with impartiality and integrity. Such persons must possess qualifications that would enable them to be appointed to the highest judicial positions in their respective States. In addition, every candidate for election to the Court must have established competency in criminal law and procedure, and must have relevant experience whether as a judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. Established competence in relevant areas of international law such as international humanitarian law and the law of human rights would be an added advantage. Every candidate for election is to have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

Judges of the Court are to be elected by secret ballot at the meeting of the Assembly of State Parties. The persons elected to the Court are those who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting. No two judges may be nationals

of the same State. Should a situation arise where a candidate has dual citizenship, the State where he or she exercises civil and political rights will be determined as the national State.

In selecting judges of the Court, some important issues must be put into consideration. These include the representation of the legal system of the world, equitable geographical representation, and a fair representation of female and male judges. State Parties should also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

Judges have a task to elect the President and the First and Second Vice Presidents by absolute majority. They are to serve for a term of three years and are eligible for re-election once. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. Respectively, the Second Vice President shall act in the place of the President in the event that both the president and the First Vice President are unavailable or disqualified. The President, the First and Second Vice Presidents together have functions that includes the proper administration of the Court, with the exception of the Office of the Prosecutor. The President is to coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

After the election of judges, the Court is to be organized into the Appeal Division, the Trial Division, and the Pre-trial Division. The assignment of judges to respective divisions is to be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court. The assignment is to be made in such a way

that each division will contain an appropriate combination of expertise in criminal law and procedure and in international law. Judges are to be independent in performing their tasks. They are not to engage in any activity likely to interfere with their judicial functions or affect confidence in their independence. While serving on a full-time basis at the seat of the Court, judges should not engage in any other occupation of a professional nature.

The rules of procedure and evidence provide that a judge shall not participate in a case in which his or her impartiality is reasonable doubted. The Prosecutor or the person being investigated may request the disqualification of such a judge. Any issues as to the disqualification of the judge are to be decided by an absolute majority of the judges. While the challenged judge may present his or her comments on the matter, he will not take part in the decision.

The Office of the Prosecutor is an important organ of the Court. It is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court. The office also has a responsibility to conduct investigations and prosecutions from before the Court, and members of this office cannot seek or act on instructions from any external sources.

The Office of the Prosecutor is to be headed by the Prosecutor who shall have full authority over the management and administration of the Office, including staff, and facilities. The Prosecutor may have one or more deputies to assist him in his work provided that they are of different nationalities. Both of them should serve on a full-term basis and should be persons of high moral character, be highly competent and have extensive practical experience in the

prosecution or trial of criminal cases. They shall have an excellent knowledge and be affluent in at least one of the working languages of the Court.

The election of the Prosecutor is by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutor shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless decided upon at election time, the Prosecutor and the Deputy Prosecutor shall hold office for a term of nine years and shall not be eligible for re-election.

Both the Prosecutor and the Deputy Prosecutor cannot engage in any activity which is likely to interfere with his or her prosecutorial functions to compromise their independence. They cannot engage in any other occupation of professional nature. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request from acting in a particular case. The Prosecutor and the Deputy Prosecutor are not to participate in any matter in which their impartiality might reasonably be doubted on any ground. The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor on grounds that his or her impartiality is doubted.

INVESTIGATION AND PROSECUTION

Having evaluated the information made available to him the Prosecutor shall initiate an investigation unless he or she determines that there is no reasonable basis to proceed with the investigation. Before initiating an investigation, the prosecutor shall consider whether the

information available to him provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed.

In order to establish the truth, Prosecutor shall extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility, and in doing so, investigate incriminating and exonerating circumstances equally. The Prosecutor shall also take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender, and health, and take into consideration the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.

After collecting and examining evidence, the Prosecutor requests the presence of and question persons being investigated, victims and witnesses. The Prosecutor may also seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and mandate. Duties and powers of the Prosecutor also include entering into arrangements or agreements as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person. The Prosecutor should agree not to disclose, at any stage of the proceedings, documents or information the he or she obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless with the consent of the provider of that information.

During an investigation, persons have a right not to be compelled to incriminate themselves or to confess guilt. They should also not be subjected to any form of coercion, duress or threat, torture or any other form of cruel, inhuman or degrading treatment or punishment. If questioned in a language they he or she does not understand, a person should have access to a competent interpreter free of any cost, and the translation should meet the requirements of fairness. A person being investigated should also not be subjected to arbitrary arrest or detention, and should not be deprived of his or her liberty except on approved grounds and procedures.

Even when there are grounds to believe that a person has committed a crime within the jurisdiction of the Court, before being questioned, he has rights that are due to him or her. He or she should be informed, prior to being questioned that there are grounds to believe that he or she has committed a crime. The accused will also be informed of the specific charges against him or her. A person has a right to remain silent and this silence cannot be used as a consideration in the determination of guilt or innocence. A person also has a right to legal assistance, and to be questioned in the presence of counsel unless the person has voluntarily waived his right to counsel.

THE ICC IS ACCUSED OF BEING BIASED

In Uganda, the impartiality of the ICC has been questioned, the reason being that inquiries have all been directed at the LRA while the possible human rights abuses committed by the Ugandan Army (UDPF) have been ignored. As an explanation for this, Angelo Izama, on October 16, 2005

while reporting for The Monitor Uganda newspaper writes that the ICC prosecutor Moreno Ocampo is of the view that the Court's focus is on the worst crimes and those are believed to have been committed by the LRA. The prosecutor said this in a statement while addressing journalists at The Hague on October 14, 2005. Another explanation is the fact that the discussion about the crimes of the Ugandan army are being ignored on the ground that it may lead to a "political debate".

The legitimacy of the Court no doubt depends on the ability of the prosecutor to maintain an appearance of impartiality, which seems a key issue in respect to the ICC involvement in Uganda. If the prosecutor becomes identified with any political agenda other than seeking justice, the role of the Court in providing an impartial independent forum for individuals accused of the most serious crimes will be severely compromised. The fact that the ICC only targets the LRA rebels is already a problem pointing to the fact that the Court is selective in its investigations and prosecutions rather than wanting to investigate and prosecute crimes across the board regardless of who committed them.

What makes the prosecutor's work difficult in the case of Uganda is that the ruling government is a party to the conflict that referred the crimes of the LRA rebels to the ICC. Northern Uganda being a war zone offers a complex situation. Even humanitarian workers have experienced difficulty gaining access to the local population. Sometimes they have resorted to negotiating with the rebels. The ICC investigators would have had to face similar challenges because their alternatives were limited they had to rely on the government of Uganda to provide them with

the necessary security. Such a situation must play into how the investigators collect evidence and interrogate witnesses. It could also affect the principle of impartiality that the Court intends to uphold.

THE ICC LACKS A MECHANISM TO ARREST SUSPECTS

Questions of whose duty it is to actually arrest the LRA's Kony and his top commanders has never been answered, as it is not the role of the ICC to arrest those it plans to try. The Ugandan Army (UPDF) it is assumed is the one to arrest Kony. Consideration should be put into the fact that even after employing a military strategy the Ugandan Army could not get these rebels. It seems unlikely that they will arrest them now and hand them over to the ICC.

Another alternative for arresting the LRA top commanders would be for the prosecutorial team to rely on the UN peacekeeping forces for the enhanced security in carrying out the arrests. The use of the UN forces presents various problems, not only would doing so compromise the neutrality of the forces if they were perceived as part of the operation that is building a case against a party to the conflict, but also the relative independence of the ICC would be compromised. The intention of the Rome Statute was to strike a balance between allowing of input that may be acceptable from the Security Council and allowing the Court to operate independently.

The fact that the LRA is largely made up of a population believed to have been child soldiers abducted from their families should present a dilemma to the ICC. Take for instance one of the LRA leaders who is wanted by the ICC was formerly a child soldier. Dominic Ongwen was abducted by the LRA when he was ten years of age, like all children abducted by the LRA he must have been brain washed and forced to commit atrocities against his community so that he became alienated from them. For Ongwen to face the same charges as Vincent Otti and Okot Odhiambo both of whom joined the rebellion as adults exposes the ICC as not having thought about certain situations that are unique to the conflict in northern Uganda.

THE ICC AS A COURT EXCLUSIVELY FOR AFRICA

The ICC has been criticized for focusing much of its attention exclusively on Africa. Some African leaders have joined Bashir of Sudan in implying that the court represents nothing more than the neo-imperialist justice of the west that keeps unfairly picking on Africa.

During the last presidential elections in Sudan, Bashir exploited the ICC charges against him to pose as a hero of African nationalism. This shows that the ICC indictments can be counter-productive, and rather than end impunity, they force offending leaders to cling to power. When it is not viewed as neo-colonialist or counter-productive, the court is seen by many Africans as simply ineffective. Since the Darfur crisis blew up, for instance, no one from the government side has been tried for the killings. Joseph Kony, the rebel leader of the Lord's Resistance Army in northern Uganda is still at large.

In its defense, the court does not impose itself on Africa. Of the five African situations being investigated, three were voluntarily referred to the ICC by the governments of Uganda, Congo, and the Central African Republic. The ICC was asked to investigate the situation in Sudan by the UN Security Council. In Kenya's case, the ICC was brought in only with agreement of the country's politicians after they had failed to agree on how to investigate the post-election violence of 2007.

Besides, the ICC received overwhelming support from Africa. Thirty of Africa's fifty three countries have signed up to the ICC. This is the largest continental block among signatory countries. Indeed, African governments sick and tired of genocide and crimes against humanity on the continent were enthusiastic about the set-up of an international criminal court. While the prosecutor of the ICC has encouraged self-referrals, such referrals have only been from African countries. Part of the reason for this could be the weakness of national legal systems of the individual countries since the ICC can only come in as a court of last resort after the national justice system has failed. Another opinion could be that the African continent is showing its commitment to international justice and their desire to end impunity.

LITERATURE REVIEW

THE ICC ARREST WARRANTS ARE A STUMBLING BLOCK TO THE PEACE PROCESS IN NORTHERN UGANDA.

The general attitude of the people of northern Uganda is that by issuing the arrest warrants the ICC interfered with the peace process. In his report called War and Justice in Northern Uganda,

Tim Allen shares the view that the government of Uganda and the people of northern Uganda were committed to the peace process and feel that their efforts have been disregarded. From their point of view, the ICC involvement presents a serious threat (Allen, 2005:4). The LRA have repeatedly demanded the withdrawal of the arrest warrants as a pre-condition to a final agreement. Take for instance, in February 2008, the Ugandan government and the LRA announced a "permanent ceasefire" agreement hailed by some as a major step toward a final peace settlement. However, in April, the LRA leader once again refused to appear for a scheduled signing ceremony until the ICC accepted the withdrawal of the outstanding arrest warrants (Greenawalt, 2007:116).

In his article Accountability for Non-State Actors in Uganda, Manisuli SSenyonjo maintains that the ICC's efforts to attain justice through prosecution while peace still eludes the region risks achieving neither justice nor peace. It is also acknowledged that since almost 80% of the LRA's soldiers are children who have been abducted from their families and forced to commit atrocities, the ICC faces difficulty in categorizing the members of the LRA as victims or perpetrators who should be punished (Ssenyonjo, 2005:422).

Leaders of the victimized Acholi community spoke up against the Court's investigation and lobbied the ICC prosecutor to stop his work for fear it would subvert the ongoing peace process. With progression of negotiations with the LRA, the Ugandan government suggested that the Court should rescind its arrest warrants and promised to protect the LRA if the indictments remained. The ICC is prioritizing prosecution over victim autonomy not being mindful that

although prosecution policies may provide some measure of deterrence, individual victims may remain vulnerable.

THE ICC TAKES SIDES WITH THE GOVERNMENT

Sriram Chandra discusses that the ICC Prosecutor is under pressure for announcing the intention to investigate crimes of the LRA while standing next to the Ugandan President. This gave the impression that the investigation will be selective in favor of the government and the army. Having initiated investigations, the Office of the Prosecutor has since been criticized for interfering in the peace process by announcing indictments against Kony and others as peace talks were revived between the LRA and the government (Sriram, 2007:8).

Chandra argues that the ICC intervention in Uganda has been universally biased and has further jeopardized the safety of already threatened groups. It has also devalued the traditional judicial practices. The ICC is considered to be biased because the Ugandan government which referred the crimes of the LRA is not being investigated. It is well known that government forces also committed crimes against humanity during the conflict.

The ICC Chief Prosecutor gave an impression that the Court was more mindful about the crimes of the LRA while not interested in those committed by government forces. As reported by Tim Allen, this picture was portrayed in the 2004 joint press conference with the Chief Prosecutor. When this move was criticized, Moreno Ocampo the Chief Prosecutor of the ICC attempted in vain to clarify that the government of Uganda will not be void of accountability (Allen, 2005:45).

Angelo Izama, who is also a reporter for The Monitor Uganda is of the view that the ICC did not consider the totality of the situation. In his article, "Rethinking the Political Strategy of the International Criminal Court," he maintains that it is hard for the victims of the conflict in Uganda to trust the ICC because it made a decision to indict the LRA without addressing the history of violence in the region. By doing this, it has failed to bring peace but enabled the silence of victims (Izama, 2009:56).

THE PRESIDENT'S USE OF THE ICC AS A POLITICAL STRATEGY

The referral of the crimes of the LRA by the Ugandan President is viewed as a political strategy. Issaka Souare writes that President Museveni is concerned about maintaining political power. However, the fact that he has held on to power for too long and having dictatorial tendencies has invited concern and criticism. The reason he originally encouraged the ICC intervention in Uganda could have been for the purpose of distancing himself from the conflict and protecting his international image (Souare, 2009:377).

According to Sriram Chandra, the Prosecutor is criticized for accepting a referral that was crafted in a way that excludes the possibility of prosecuting any person other than those who had committed crimes in northern Uganda, specifically members of the LRA. In his defense, the Prosecutor asserted that he is not constrained by the referral and can investigate crimes committed by the Ugandan army as well. However, those investigations have not proceeded, at least not publicly, indicted have only been members of the LRA (Sriram, 2008:10)

International Aid organizations and local organizations voiced their concern about the ICC involvement being an interference in the peace process. Save the Children, for instance, raised questions about the protection of children regarding the timing of the investigations and eventual prosecution. They were concerned about how the possible arrest and prosecution of the LRA leadership will affect the rights of the children still in captivity as well as those still in the local community. The war in northern Uganda primarily involves children, thus any action taken must seriously consider the impact it will have on child protection.

Leaders of the Acholi community raised concern about the intervention of the ICC. Their reasoning was that the arrest warrants would practically close the path to peaceful negotiations as a channel to end the war. Adam Branch in "Uganda's Civil War and the Politics of Intervention" also states that the progress that has already been made in the peace process would also be rendered useless. The peace process would be interfered with because the rebels cannot come to the negotiating table while knowing that they are subject to be prosecution (Branch, 2004:21).

When in 2007 the LRA rebels failed to assemble in the designated places to engage in the peace talks, they cited as the main reason the ICC arrest warrants. They demanded that the arrest warrants be first withdrawn before a comprehensive peace agreement is signed. Vincent Otti who was one of the indicted top LRA commanders said "the rebels will not sign any peace deal until the noose around their necks is loosened by the withdrawal of the arrest warrants (The Daily Monitor, October 2007).

While reporting for the Monitor newspaper, Angelo Izama highlights the fact that when the issue of the arrest warrants was debated in the Uganda parliament, the majority of the members who hail from northern Uganda were of the view that the ICC should step back (Uganda Parliament, 7 September 2006). They argued that the traditional justice initiatives should be supported to deal with the problem.

Soon after he referred the crimes of the LRA to the ICC, the Ugandan President asked the ICC to drop the charges. The government asserted that traditional justice would be an effective tool for dealing with most of the crimes with a special chamber in Uganda's High Court being utilized for the leaders of the LRA. However, under the Rome Statute, there is no way for a government to withdraw a request. Tom Ginsburg talks about the LRA arrest warrants having created what is believed by many Ugandans as a barrier to the conclusion of a peace deal (Ginsburg 2008:9). Even though there is a promise of amnesty in Uganda to the rebels, its credibility is a subject for debate. This is because the operative decisions to prosecute are no longer under the control of the government. With lack of control, the potential of the government to bargain for peace is reduced.

RECENT DEVELOPMENTS AT THE ICC

KENYA

On 15 December 2010, the international criminal court prosecutor announced that he would seek summonses for six people related to the post-election violence in Kenya in 2007. This

violence followed a presidential election that was widely perceived as rigged in favor of the incumbent president Mwai Kibaki.

Classified as one of the worst violent periods of the nation's history, the post-election violence left more than 1,000 people dead, 3,500 injured and up to 600,000 forcibly displaced. During the 60 days of violence, there were hundreds of rapes and massive destruction of property in six of Kenya's eight provinces.

The six suspects are all high profile individuals that were allies of President Mwai Kibaki and his election rival Raila Odinga, the current Prime Minister. They are Uhuru Kenyatta, the Deputy Prime Minister, William Ruto, Higher Education Minister, Francis Muthoura, head of the Civil Service, and former Police Chief Mohammed Hussein Ali.

Locally, there have been efforts to save these high profile politicians from going to The Hague with promises that justice will be pursued domestically. The Kenyan government has been trying to seek for international support for the trials to be deferred. The African Union also endorsed Kenya's request to delay the ICC trial.

The ICC involvement in Kenya raises concerns of how to ensure justice for victims of the electoral violence without upsetting the government's fragile power-sharing agreement. An official investigation into the post-election violence known as the Waki Commission identified potential suspects and recommended the establishment of an independent Kenyan tribunal with international participation. In December 2008, the government accepted the Waki

Commission's findings and agreed that it would refer the situation to the ICC if the Commission's recommendations were not implemented.

Donors including the United States and the European Union expressed support for an independent domestic tribunal, and the Kenyan parliament was expected to pass legislation by March 2009. In July 2009, however, legislation had yet to be passed, prompting chief mediator Koffi Annan, the former UN Secretary-General, to submit to the ICC a list of individuals suspected of orchestrating the violence.

The Kenyan government pledged to cooperate with the ICC, although some observers have expressed concern that senior officials could interfere with the investigations. Some Kenyans are concerned that prosecution could stir up the same ethnic tensions that led to the post-election turmoil, while others fear that a lack of prosecutions could lead to future electoral violence. Other concerns center around the protection of witnesses and victims, who have already reportedly been subjected to intimidation and threats. Overall, the majority of Kenyans support ICC prosecutions in Kenya.

MOST RECENTLY

Top Kenyan politicians accused of instigating violence after the disputed 2007 presidential elections took to the stand at the International Criminal Court on April 7, 2011 in a preliminary appearance. They will return to the court on September 1, 2011 to begin the confirmation of charges hearing. The judge indicated that this could be varied if there were good grounds.

Earlier, on April 18, the court will sit to determine the documents and evidence the prosecutor has presented.

The accused are suspended cabinet ministers William Ruto and Henry Kosgey, broadcaster Joshua Sang, Deputy Prime Minister Uhuru Kenyatta, Civil Service Head Francis Muthura, and Post Master General Hussein Ali. Judge Ekaterina Trendafilora from Belgium, the presiding Judge warned against the emergency of “dangerous speech” as depicted by the media. This could construe a breach of the conditions for the summons and trigger issuing of arrest warrants.

LIBYA

The ICC has opened its official investigation into possible crimes against humanity being committed in Libya. The ICC’s Chief Prosecutor Louis Moreno-Ocampo has warned those in power including Colonel Moammar Gadhafi, his sons and his inner circle that they could face prosecution if they commit crimes or fail to prevent them. On March 06, 2011, The Guardian reported Ocampo having said “we are witnessing a new situation where the world is united” Ocampo said, “no one can attack civilians, no one has authority to attack and massacre civilians”. The specific allegations the prosecutor is investigating are attacks by security forces on peaceful demonstrators that could amount to a crime against humanity.

The investigation marks another step towards holding authoritarian leaders accountable for criminal activities. Like Sudan, the Libya situation was referred to the ICC by the UN Security Council. Libya is also not a signatory to the Rome Statute, meaning the Libyan government does

not recognize the court's authority. By the UN Security Council referring the situation to the ICC is an endorsement of jurisdiction over that situation.

The ICC carried out a preliminary probe to establish if crimes falling within the jurisdiction of the court have been committed in Libya. That assessment includes the seriousness of the allegations and whether Colonel Ghadafi is likely to face justice in Libya. Following a preliminary examination of the available information, the prosecutor reached a conclusion that an investigation is warranted.

The Libyan referral is an important test for the court. Previously, when the UN Security Council referred the Darfur situation to the ICC, the prosecutor took almost two years before laying charges. The people of Libya will expect something more immediate. They will not wait for two years for the wheels of justice to start turning. Even though Ghadafi is adamant and not humbled by the threat of prosecution, those in his inner circle will be. It is time for this court to inspire confidence in its ability to provide meaningful, significant and prompt response to the crisis.

While the world welcomes this move on Libya by the ICC, there have been some conflicting opinions. Some believe that the prosecutor's actions could have precisely the opposite effect of causing more violence and more atrocities. The wise thing would be to convince Ghadafi to step down and enable a safe transition for him into exile. When the ICC begins an investigation particularly before the outcome of a conflict is determined, it send a message that no matter what Ghadafi and his inner circle may choose to do, the world is after them. The likely

consequence of this course of action is that he will hold on to power and fight until the last bullet as he has promised. So, the ICC's move could lead to more atrocities and suffering for the people of Libya.

CHAPTER THREE

THE LRA POLITICS AND IDEOLOGY

The LRA remains the least understood rebel movement in the world regarding its ideology. Apart from the LRA insisting that they intend to overthrow President Museveni's government and replace it with one governed by the Biblical Ten Commandments little else is known of their philosophy. To the Ugandan army, the LRA is simply a criminal enterprise that employs terrorist tactics with no political agenda.

The discussion over why the LRA terrorizes the Acholi peasantry is embedded in a broader controversy over the politics of the LRA. In discussion of the politics of guerrilla groups, two different questions are generally asked. First is whether a guerrilla group has a political agenda that motivates its war and use of violence. Second is whether its violence conforms to a political logic, that is if it can be understood as the means towards certain political ends of eliminating the enemy, establishing control over a population or even building support. The violence used would be transparently directed towards the realization of an explicit coherent political agenda. This does not seem to be the case with the LRA.

While the LRA leadership has asserted that it is fighting for the creation of a government based upon the Ten Commandments, it has concentrated its violence not against the Uganda Peoples' Defense Forces (UPDF) but rather against the Acholi people whose welfare they claim to be fighting for. While violence is a regular feature of relations between guerrilla groups and the civilians among whom they operate, in the case of the LRA few analysts have been willing to locate a political rationale in this anti-civilian violence.

The Ugandan government has continuously portrayed the LRA as insane, the same assertion has been made by the international news media, and many non-governmental organizations. This has rendered the LRA as having no political agenda and as the latest manifestation of incomprehensible African violence. The LRA's ultimate motivation may be located in external support. It has been used in the political wrangles between Uganda and Sudan. Having no political logic and its dedication to meaningless violence, has been a motivation for it to be simply an instrument for others.

The LRA's first operation outside of northern Uganda was into neighboring South Sudan. Beginning in 1994, the government of Sudan based in Khartoum provided military support and a safe haven to the LRA. In exchange, the Sudanese government used the LRA to destabilize South Sudan and fight the Sudan Peoples' Liberation Army (SPLA). In retaliation, the Ugandan government funded the SPLA. The U.S. government concerned about Khartoum's involvement in the rise of Islamic fundamentalism in Sub-Saharan Africa, also channeled weapons to the SPLA through the Ugandan government. The result was a massive flow of arms to the region.

The 1999 Nairobi Agreement between Sudan and Uganda supposedly ended these cozy relationships. The LRA security in South Sudan became more uncertain after the SPLA and Sudanese government signed the comprehensive peace agreement in 2005.

On the other hand, the LRA violence against Acholi civilians has some political logic. Anti-civilian violence can serve as a collective punishment, collective deterrence, or simply to stop the functioning of society and undermine faith in the government. In these cases the random nature of the violence is calculated to realize certain political effects. The LRA violence is sometimes random but more often it targets certain individuals who defect from the group, and suspected government informers. The violence is tailored to prevent communication that would be detrimental to the LRA.

POLITICS OF THE UGANDA GOVERNMENT AND THE UPDF IN FIGHTING THE LRA

The Uganda Peoples' Defense Forces (UPDF) has been criticized for failing to protect the people of northern Uganda and end the war. Part of this is because the UPDF has been ill equipped to meet this challenge. The UPDF has been tainted by lack of capacity and training, poor morale, and involvement in the Congo. The UPDF has also been infiltrated by a number of corrupt officials who have profited from the on-going conflict. This reduces their motivation to see the war ending. The soldiers operate in severely ill equipped circumstances and yet some top UPDF officers have had "ghost soldiers" on the payroll and had the money diverted to their private accounts.

The UPDF leadership for a long time blamed the Sudanese government for providing arms to the LRA and allowing them to establish bases in Southern Sudan. While the Sudan factor doubtlessly made the military campaign more difficult, the massive diversion of military resources and troops to the Congo and the permissive attitude towards corruption on the part the government has contributed to the persistence of the conflict. The government has also failed to undertake the military reforms necessary to more effectively fight the LRA.

Others have gone further and attributed the government's failure to end the war not to apathy but intention, to the fact that the government has been unwilling to end the war. Maintaining a contained war in the north it is argued serves the interests of various factions within the Ugandan government and the military, and consequently both the government and army have endured to prolong the war.

The Ugandan government and UPDF have both political and economic interests in maintaining the conflict. Politically, many have argued that the government maintains the war to prevent political organization among the Acholi, who are perceived as a potential challenge to President Museveni's hold on power. An explanation that holds much currency among Acholi political leaders and the Acholi in the diaspora is that the continuation of the war amounts to a slow genocide to eliminate the Acholi as a people.

On the national level, it has been argued that the government maintains the war against the LRA so as to provide a crisis environment that enables the government to justify measures that would be unacceptable in different circumstances. Additionally, the presence of the LRA allows

the government to silence political dissent in the name of counter-terrorism, thus disqualifying and subjecting political opposition to persecution. For instance, vocal Acholi Members of Parliament are regularly accused of being "friends of terrorists" by President Museveni himself and his associates.

On the international level, the continuation of the war has provided the means through which President Museveni has re-invented himself especially in the wake of 9/11 as America's key ally in the region. Museveni's government has been the recipient of significant American military aid and diplomatic support for his own "war on terror" against the LRA in exchange for serving as a conduit to the SPLA in Southern Sudan. Additionally, Museveni has managed to dodge donor demands to reduce the military budget by citing the presence of the war in the north even when some of that foreign aid was at one point diverted to the Ugandan invasion and militarization of Eastern Congo. The donors for their part, not wanting to damage Uganda's reputation as a "model of democracy and development" have conveniently ignored the conflict.

In a context where beneficial effects of the war for various factions of the Ugandan government and military can be identified but difficult to prove, the war might best be thought of as a system. That is, military incompetence and corruption, the army's economic interests, the government's political interests, and American and European interests have converged to create a situation in which it is no one's benefit to end the war. The continuation of the war either serves their purpose or at least leads to no significant change.

UGANDA AND THE ROME STATUTE

While it was Uganda itself that referred the LRA abuses to the Court, the Rome Statute does not provide guidelines regarding how referrals submitted by State Parties may be withdrawn. The international community has sided with the ICC and discouraged the removal of the arrest warrants on the grounds that the domestic justice system that Uganda prefers will not ensure adequate punishment for the crimes committed by the LRA.

The ICC is also trying to prove a point that it will not be caught up within political wrangles of a State that will hinder its performance. Uganda's President is being viewed as trying to manipulate the ICC. After signing the Rome Statute and referring the LRA crimes to the ICC, it seems controversial that he is now trying to offer amnesty to the rebels.

Article 59 (1) (c) an ICC prosecutor deciding on the exercise of jurisdiction must consider whether "taking onto account the gravity of the crime and interests of the victims there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice". This discretional provision for jurisdiction seems to comply uneasily with existing principles of international law. The 1949 Geneva Convention widely recognized as embodying international common law created a binding obligation to prosecute such serious crimes as genocide and grave breaches of the Geneva Convention, although only in the context of international armed conflict.

The ICC works on a principle of complementarity in that the Court is supposed to complement national efforts. Article 17 of the Rome Statute states that the ICC must always refer to national

proceedings unless a state is “unwilling or unable to genuinely carry out the investigation or prosecution”. An argument can thus be made that the amnesty program in Uganda should be given a chance since its primary purpose is addressing and resolving conflict rather than shielding a perpetrator from criminal responsibility.

Frustrated with many unsuccessful strategies at defeating the LRA, President Museveni resorted to the ICC as another strategy to get the support of the international community and increase his chances of defeating the LRA. This was probably a ploy to use the ICC for political a purpose. The ICC seems to be aware of this strategy. For instance, (Greenawalt 2009, 29) writes that Richard Goldstone, former chief prosecutor for the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, while speaking to an audience at the Centre for the Study of Human Rights London School of Economics objected that the ICC is not “a convenient hot water tap that can be turned on or off” and has condemned Ugandan President Museveni for acting in contravention of international law, meaning that his offers of amnesty to the LRA violates the letter of the law. The concern behind this is the fact that if the President of Uganda gets his way, it will be fatally damaging to the credibility of the international court.

Article 53 provides that the prosecutor is to consider the interests of justice when deciding to begin investigations. There is little indication of what the interests of justice entails or how it interacts with what may be the more immediate concern of bringing an end to the conflict. The phrase “interests of justice” is a subject for debate pointing to whether the Acholi possess a

special form of justice based more on reconciliation and healing, and whether this is being ignored by the ICC in favor of a more punitive model based on western concepts.

Interests of justice invoked in article 53 can become a basis to block the ICC's investigation or prosecution of a case. Basically, it is possible for the ICC to withdraw the arrest warrants for the interests of justice. If the prosecutor was to take into account the gravity of the crime and the interests of the victims, it is reasonable to believe that an investigation would not serve the interests of justice. Even when an investigation has already taken place, the prosecutor, for the interests of justice may not proceed to a prosecution taking into consideration all the circumstances.

THE GOVERNMENT USES THE CONFLICT TO IMPROVE ITS IMAGE ABROAD

The position of Uganda before referring the crimes of the LRA to the ICC needs to be analyzed. It is true that prior to that the Ugandan army had failed to defeat the LRA by military means. The referral was perceived as a new means to defeat them. On the other hand, with the deteriorating humanitarian situation in northern Uganda, with over one million displaced people, the scandals tied to the UPDF, and the classification of northern Uganda by the UN Undersecretary General for Humanitarian Affairs as the "most forgotten and neglected crisis in the world," the government was put on the spotlight as having a tarnished reputation. By referring the crimes of the LRA to the ICC a new face was put on the LRA as the international community was sensitized about the situation in northern Uganda.

This worked for Uganda as both a military strategy and to bolster its international reputation, rather than out of a conviction about law and justice. The referral was to prove to the LRA that they were sought after by the whole international community and not only were they enemies of Uganda. The Ugandan government hoped that perhaps, the ICC with its international reach might do better than the Ugandan military. That was before it became clear to Uganda that enforcement is the weakest link in the ICC's operations.

With the branding of the LRA as evil, the Ugandan government was portrayed as a defender of the people, a legitimate government fighting a criminal movement. Criticism ceased to be put on the UPDF as all attention was directed at the LRA. The referral indeed put a nice face on the government of Uganda as the first State to refer a situation to the ICC, and therefore a champion of international justice. It is little wonder therefore that because of this good example on June 12, 2010, Kampala, Uganda's capital was chosen to host the ICC Review Conference.

Another way the referral played into Uganda's advantage was that the Ugandan government was able to convince the Congolese government to allow the Ugandan army to pursue the LRA on its territory. When this operation took place, the UPDF helped displace hundreds of people while many lost their lives. Again, there was no criticism on the UPDF. The Security Council welcomed the joint efforts made by the States in the region to address the security threat posed by the LRA.

From the beginning, the Office of the Prosecutor handled the conflict in northern Uganda in terms of friend and enemy relations by being on the side of the Ugandan government and the LRA being presented as the enemy. When announcing the referral, the Prosecutor presented the Ugandan government as its partner in combating international crimes. This pointed to the fact that the LRA and not the Ugandan government would be the subject of investigations. Indeed, no investigation has ever taken place targeting the UPDF, and according to newspaper reports in Uganda, the UPDF was cleared by the ICC of any wrong doing. Some Ugandans view with suspicion the absence of ICC proceedings against high ranking UPDF officers for crimes committed.

The Office of the Prosecutor welcomed the referral by the Ugandan government without ever critically assessing the factors relevant to admissibility leaving some Ugandans with an impression that it acted because the Ugandan government wanted it to act. The only strain between the ICC and Uganda relationship came about when the Ugandan government began to consider conducting domestic proceedings as an alternative to the ICC in order to convince the LRA to sign a peace agreement.

THE ICC IS UNDER PERFORMANCE PRESSURE

The institutional interests of the ICC at the time Uganda referred the crimes of the LRA to the Court need to be analyzed. There must have been pressure for the ICC to prove that it is worth its creation and existence. The USA's snob of the Court added to this pressure. The situation in Uganda was a perfect case, and the fact that it was referred by the State itself was an added

advantage. All the States that ratified the Rome Statute were bound to respect State sovereignty and welcome the ICC's investigation of the LRA. The USA had already put the LRA on its international terrorists list, so it was not likely to criticize the ICC's involvement in this conflict.

At the time of the referral, the Office of the Prosecutor could not envision the complexities that were later to arise out of the Ugandan situation. The task did not prove to be as easy as had earlier been anticipated. The relationship between the ICC and the Ugandan government got strained when their interests began to diverge. Uganda suddenly realized the inability of the ICC to arrest the LRA leadership. To make matters worse, the LRA also refused to sign a peace agreement for as long as the ICC was still involved.

When the Ugandan government and the LRA agreed on domestic proceedings which could render ICC proceedings inadmissible in accordance with the Rome Statute's principle of complementarity, the Prosecutor was willing to make sure it does not happen. In "Doing Justice to Political 2005, 56, Houwen writes that the prosecutor declared that his office would "fight any admissibility challenge in court". When the Pre-Trial chamber learnt of Uganda's plans for domestic proceedings as an alternative to the ICC, it decided on a way to initiate proceedings to assess complementarity with a purpose to show that it is the court to determine the admissibility of cases before the ICC and not individual States, in this particular case Uganda.

CASE STUDIES

SUDAN

The Sudan, Democratic Republic of Congo, and Central African Republic will be briefly analyzed for comparison purposes and to give the reader an experience of the ICC's work in Africa besides Uganda. It also gives an insight into how the ICC has handled these situations. These cases show that Africa is over-represented at the International Criminal Court in comparison with other regions. However, most African countries having ratified the Rome statute, and some of them being involved in conflict, are likely to fall under the jurisdiction of the ICC.

Darfur has experienced a civil war since independence in 1956 that has become more complex over the years. Originally, it was a North – South battle over resources and political power, with elements that were religious and ethnic in nature, as the Arab and Muslim governments of the National Islamic Front (NIF) of Omar-al-Bashir fought against the rebel group and political party of the non-Arab and non-Moslem Sudan People's Liberation Army (SPLA) of the South. As the NIF and SPLA decided to enter into a peace deal in January 2005, the two rebel groups from the neglected non – Arab western region of Darfur attacked government sites in 2003 in protest of economic and political marginalization.

The government responded brutally with both its military and Arab nomads called the Janjaweed. Horrific brutalities against the rebel groups and Darfurian civilians ensued and by 2006 an estimated 200,000 had died and 2 million people were forced from their homes. According to the UN News Centre of March 14, 2004, Tom Eric Vraalsen, the United Nations'

special envoy to Sudan, called the crisis “the worst humanitarian crisis in the world”. The UN’s main action by the end of 2004 was to create an International commission of inquiry to investigate whether violations of international humanitarian law or genocide had occurred. The commission’s finding was that the systematic nature of the government’s attacks could be classified as crimes against humanity.

The UN Security Council exercised its ability to refer cases to the international criminal court and referred the situation in Darfur to the court to address violations of international humanitarian and human rights law, unlike the Ugandan situation that had a state referral.

The International Criminal Court issued an arrest warrant for Sudanese President Omar Al-Bashir for orchestrating a bloody campaign against Darfur’s three main ethnic groups. Unlike the Uganda situation, in this case the ICC is accusing a sitting head of state for committing the most horrible international crimes. Bashir is accused of the crime of targeted mass killing, causing of serious bodily or mental harm to members of a target group, and deliberately inflicting conditions of life calculated to bring about the group’s physical destruction.

The indictment of a head of State raises issues of immunity, jurisdiction, and joint criminal responsibility. While Sudan is not a state party to the ICC, it is required to comply by virtue of the UN Security Council Resolution which referred the situation to the ICC’s Office of the Prosecutor. Bashir is being charged as an individual under Article 25 (3) (a) of the Rome Statute which criminalizes “indirect perpetrators or perpetration by means”. According to the prosecutor, the mobilization of the state machinery constitutes evidence of a plan by the

President to destroy entire ethnic groups. The destructive intent is further evidenced by the fact that 2.7 million people who were displaced to camps are almost all members of three groups. The prosecutor also asserts that these displacements constitute genocide according to the Genocide Convention.

As estimated by the Office of the Prosecutor, thirty-five thousand people were killed outright by the government machinery. It is also estimated that at least another hundred thousand died of starvation in displacement camps without any help from the government. Rape is cited as an integral part of the plan of destruction in the camps.

The conflict in Darfur is compared to the one in Uganda in that in both situations it is people of a given ethnicity that are targeted. The LRA have committed crimes again that Acholi whose rights they pretend to be fighting for. Bashir is charged with three accounts of genocide by encouraging actions with intent to bring about the destruction of the Fur, Masalit, and Zaghawa ethnic groups. Both conflicts have seen people sent into displacement camps where conditions are so severe that there has been massive loss of life.

The difference is that while the Acholi in northern Uganda have had crimes committed against them by a rebel group, the people in Darfur have been persecuted by their own government.

There are mixed feelings regarding the indictment of the Sudanese President. Many Darfurians are happy about it because they consider Bashir to be responsible for the destruction of the land and the death of thousands of people. They believe he deserves the condemnation he is receiving. The southerners join the people of Darfur in this delight. Some people however,

consider that this indictment comes at the expense of justice just like in the northern Uganda situation. They assert that the timing is not right and could lead to further suffering of the people of Sudan. The political instability does not favor the involvement of the ICC.

Critics of the ICC's involvement in Uganda have raised concern about the fact that the ICC as an operation lacks the mechanism to have the indicted persons arrested. The same concern is attached to Sudan's Bashir. Obviously, he will not surrender himself to the ICC, and some African governments have shown their unwillingness to cooperate with the ICC to have him arrested. In fact, he has been accorded protection for the purpose of defying arrest. The Intergovernmental Authority on Development (IGAD) summit that was scheduled to take place in Nairobi, Kenya was postponed and later moved to Addis Ababa, Ethiopia. This happened after the Kenyan government received a letter from the ICC calling for the arrest of Sudan's Bashir if he turns up to attend the summit. Ethiopia does not recognize the ICC.

THE DEMOCRATIC REPUBLIC OF CONGO

THOMAS LUBANGA

The Democratic Republic of Congo is analyzed to show that at least the ICC has been successful in arresting some of the offenders. For the five people that the ICC issued arrest warrants for, four have already been arrested and appeared at The Hague.

Thomas Lubanga born is a former rebel leader from the Democratic Republic of Congo. He founded the Union of Congolese Patriots (UPC) and was a key player in the Ituri conflict. Under

his command there were massive human rights violations including ethnic massacres, murder, torture, rape, mutilation, and forcibly conscripting child soldiers.

Under Lubanga's leadership, the largely Hema (UPC) became one of the main actors in the Ituri conflict between the Hema and Lendu ethnic groups. It seized control of Bunia, a gold rich Ituri region and demanded that the Congolese government recognize Ituri as an autonomous province.

Human rights activists have accused the UPC under Lubanga's command of ethnic massacres, murder, torture, rape and mutilation, as well as the recruitment of child soldiers. Between November 2002 and June 2003, the UPC is reported to have destroyed 26 villages in one area killing at least 350 people and forcing 60,000 to flee from their homes. Human rights organizations claim that at one point Lubanga had 3,000 child soldiers between the ages of 8 and 15, he reportedly ordered every family to help the war effort by donating something; money, a cow, or a child to join the militia.

In March 2004, the Congolese government authorized the International Criminal Court to investigate and prosecute crimes within the jurisdiction of the court allegedly committed anywhere in the territory of the DRC since the entry into force of the Rome Statute on 1st July 2002. On 10th February 2006, a Pre-Trial Chamber of the ICC found that there were reasonable grounds to believe that Lubanga bore individual criminal responsibility for the war crime of conscripting and enlisting children under the age of fifteen and using them to participate actively in hostilities, and issued a sealed warrant of his arrest. In March 2006, Lubanga became

the first person to be arrested under an ICC arrest warrant when the Congolese authorities arrested him and transferred him into ICC custody.

GERMAIN KATANGA AND MATHIEU NGUDJOLO

In early 2003, Katanga emerged as the senior commander of the Patriotic Resistance Force in Ituri (FRPI), a militia group which was involved in the Ituri conflict. On 24 February, 2003, Katanga who hails from the Ituri province in the north-East of the Democratic Republic of Congo allegedly led an attack on the village of Bogoro in which rebels under his command went on an indiscriminate killing spree. At least two hundred civilian lost their lives, survivors were imprisoned in a room filled with corpses, and women and girls were used as sex slaves

Alleged also is that in September 2002, Katanga helped lead other crimes that included the massacre of more than 1,200 civilians in an attack at Nyakunde Hospital.

In early March 2005, Katanga was arrested by the Congolese authorities in connection with the killing of nine United Nations peacekeepers in Ituri on 25 February, 2005. In October 2007, he was transferred to the ICC where in July 2007 a Pre-Trial Chamber of the ICC found that there were reasonable grounds to believe that Katanga bore individual criminal responsibility for war crimes and crimes against humanity committed during the Bogoro attack, and issued a sealed warrant for his arrest.

He was charged with six counts of war crimes that include willful killing, inhuman treatment or cruel treatment, using children under the age of fifteen years to participate actively in

hostilities, sexual slavery, intentionally directing attacks against civilians, and pillaging. He was also charged with three counts of crimes against humanity; murder, inhuman acts and sexual slavery.

Katanga will be jointly tried with Mathieu Ngudjolo Chui, another suspect who was surrendered to the ICC to face charges in relation to the Bogoro attack. Mathieu Ngudjolo was a colonel in the Congolese army and a former senior commander of the National Integration Front (FNI), and the Patriotic Resistance Force in Ituri (FRPI).

Ngudjolo was arrested by the Congolese authorities and surrendered to the International Criminal Court and is charged with the same crimes as Germain Katanga. On 24 February, 2003 he allegedly led an attack on the village in Bogoro in which rebels under his command went on an indiscriminate killing spree. The rebels also sexually enslaved women and girls. Ngudjolo allegedly ordered his fighters to wipe out the village.

Katanga and Ngudjolo commanded the FRPI and FNI militia groups respectively. They are alleged to have jointly committed numerous war crimes and crimes against humanity over a series of attacks against civilians. Although two individual arrest warrants were issued against them separately, the court's trial chamber joined the cases on 11th March, 2008 because they were charged with similar accounts of crimes.

Katanga filed a motion in February 2009 challenging the admissibility of his case by invoking the principle of complementarity to argue that he could be tried before Congolese courts. The Trial Chamber rejected his inadmissibility motion on the ground that the Democratic Republic of

Congo courts are unable to investigate the Bogoro massacre. With the ongoing insecurity in Ituri and the time that had lapsed since the 2003 Bogoro massacre, the Congolese justice system was not able to conduct an effective inquiry and there was support for the ICC to continue with its case against Katanga.

The ICC was still mindful of respecting the principle of complementarity that the court will only intervene when national legal systems are unable or unwilling to prosecute serious international crimes as prescribed by the Rome Statute.

The controversy in the charges against Katanga and Ngudjolo is that the ICC's charges against the two men do not reflect the extent of the crimes committed by the FRPI and the FNI, thereby showing the limitation of the court. The coalition rebel forces of the FRPI and FNI committed major mass atrocities against civilians. The ones documented by human rights reports include 5th September 2002 in Nyakunde, 6th March and 11th May 2003 in Bunia, 6th July 2003 in Kasenyi, 31st May 2003 in Tchoma, 4th March 2003 in Mandro, and 19th September 2004 in Lengabo.

THE CENTRAL AFRICAN REPUBLIC

The situation in the Central African Republic (CAR) was the third referral to be submitted to the prosecutor of the ICC by a state party, following referrals from Uganda and the Democratic Republic of Congo. On 7 January, 2005 the prosecutor received a letter from the CAR government referring the situation of crimes within the jurisdiction of the court committed anywhere on the territory of the Central African Republic since 1 July, 2002. In response to this

letter, the prosecutor announced that he was carrying out an analysis in order to determine whether to initiate an investigation.

On 22 May 2007, the ICC prosecutor announced the opening of the investigation into grave crimes allegedly committed in the CAR with the peak of the violence occurring in 2002 and 2003. The prosecutor's announcement pointed to a focus on sexual violence referring to hundreds of victims narrating accounts of rape and other abuses committed with particular cruelty.

JEAN-PIERRE BEMBA

Jean-Pierre Bemba's case is unique because while he is Congolese, he was arrested in connection with crimes he is alleged to have committed in another country, the Central African Republic. His is another case showing some success for the ICC because he has been arrested and appeared before the ICC. The ICC seems to be doing better in The Democratic Republic of Congo and The Central African Republic compared to Uganda.

Jean-Pierre Bemba is the first suspect and first detainee in the CAR situation. He was a politician in the Democratic Republic of Congo, and he was a Vice President in the transitional government of the DRC from 17 July 2003 to December 2006. He was a leader of the Movement of the Liberation of Congo (MLC), a rebel group turned political party. In 2002, President Ange-Felix Patasse of the Central African Republic invited the MLC to come to his country and put down a coup attempt. Human rights activists accused the MLC fighters of committing atrocities against civilians in the course of this conflict.

In March 2003, President of the Central African Republic was ousted, and the government that replaced him pressed for charges against Patesse and Bemba in September 2004. While Bemba was not specifically targeted, his indictment was still a result of the ICC investigation of crimes committed in CAR.

On 23 May 2008, a Pre-Trial chamber of the ICC found that there were reasonable grounds to believe that Bemba bore individual criminal responsibility for war crimes and crimes against humanity committed in the CAR between 25 October and 15 March 2003, and issued a sealed warrant of his arrest. He was charged with five counts of war crimes (murder, rape, torture, pillaging, and outrages upon personal dignity), and three counts of crimes against humanity (murder, rape and torture).

On May 24 2008, Bemba was arrested near Brussels. He was surrendered to the ICC on 3 July, 2008 and transferred to its detention center in The Hague. He was the first person arrested in connection with the ICC's investigation in the Central African Republic.

CHAPTER FOUR

THE UGANDA TRADITIONAL JUSTICE SYSTEM

There has been a lot of focus on Uganda's proposal to confront the crimes of the LRA by employing the traditional informal dispute resolution methods historically relied upon by Uganda's various peoples to ensure justice at the local village level. Already, traditional

measures have provided a method of integrating returning LRA members into their communities. Although traditional justice appears to enjoy some formal role within the Ugandan legal system as a general method of resolving cases referred by local courts, this justice system is however marked by the informality of the procedure employed, and by a focus on monetary compensation and reconciliation rather than more severe criminal sanctions.

The most important aspects of the traditional justice in Acholi culture are the establishment of truth, the voluntary nature of the process particularly on the side of the offender, the payment of compensation to restore what was lost, and lastly, the restoration of social relations and unity of the family and clans.

In Acholi culture, much attention is focused on a ritual known as mato oput which means drinking of the bitter root. The defining feature of this tradition is that it restores social harmony after a homicide through confessions, negotiated compensation, and reconciliation between the offender and the victim's kin.

In addition to the traditional justice system, the Ugandan authorities have repeatedly suggested that a comprehensive peace agreement would permit the specific LRA leaders sought by the ICC to undergo alternative justice procedures of some form or another without need for incarceration. That the LRA leaders would be required to confess to their crimes, apologize and become subject to certain sanctions such as payment of reparations and restrictions on their freedom of movement. Most of the Acholi people were in support of this solution. The

Ugandan government justified its position by claiming that this is the course that the Acholi desire.

AGREEMENT FOR THE LRA ACCOUNTABILITY AND RECONCILIATION

The Ugandan authorities have publicly pledged that they would go to the ICC to seek withdrawal of charges on condition that the LRA leader would first surrender and undergo the mato oput ceremony. By contrast, the LRA continuously demanded the withdrawal of the charges as a pre-condition to a final agreement. Definitely, the Ugandan government cannot afford such condition without the cooperation of the ICC.

This has caused peace negotiations to stall, and when there have been some breakthroughs the LRA have turned around and dismantled them by refusing to emerge and sign a peace agreement. After returning to the negotiating table, the Ugandan government and the LRA signed a June 2007 agreement on Accountability and Reconciliation dealing specifically with the question of accountability for serious crimes.

While the agreement was trying to be in tune with the Rome Statute and in particular with the principle of complementarity, it raises more questions than it answers about the handling of the LRA crimes. The agreement proposes a number of methods to achieve the principles of accountability and reconciliation. It specifies that traditional justice mechanisms that include the mato oput will be shall be promoted with necessary modifications. In *Complementarity in Crisis*, page 108, Greenawalt states that the agreement provides that “formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious

crimes or human rights violations in the course of the conflict" and that those "alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes" are subject to the jurisdiction of formal courts provided for under the Constitution.

The above provisions seem to be abandoning the idea of using mato oput or some other form of traditional justice to try Kony and other suspects targeted by the ICC. This agreement on accountability and reconciliation is not equivalent to the use of formal courts with the imposition of typical criminal penalties. Instead it provides that "legislation shall introduce a regime of alternative penalties and sanctions which shall apply and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict"(Greenawalt, 2009:18).

The agreement offers no detail on what the content of these alternative penalties shall provide except that they shall, as relevant, reflect the gravity of the crimes or violations, promote reconciliation between individuals and within communities, promote the rehabilitation of offenders, take into account an individual's admission or other cooperation with proceedings, and, require perpetrators to make reparations to victims. However, since the agreement, the Ugandan president has continued to endorse the idea of traditional justice or amnesty for the LRA. This raises questions as to whether the agreement is intended as a departure from these measures.

In February 2008, the Ugandan government and the LRA executed a further annex to the June 2007 agreement specifying, among other provisions, that trials of individuals accused of serious crimes shall be handled by a newly created special division of the High Court of Uganda. The annex also reaffirms the commitment to traditional justice including mato oput, and provides for the establishment of a government body charged with truth seeking and preservation of historical memory.

Following this, there was a permanent cease-fire agreement that was viewed by many people as a step in the right direction toward a final peace settlement to the two-decade war. When April came, Kony again refused to appear for a scheduled signing ceremony citing the outstanding ICC arrest warrants. The same trend happened in November. Meanwhile the LRA continued to abduct children and terrorize the civilians.

SUPPORT FOR THE TRADITIONAL JUSTICE SYSTEM

As earlier mentioned, there is massive support for the traditional justice system that would eventually enable the LRA rebels to be integrated back in the community. What is more important this support is echoed by the Acholi who are most affected by this conflict. Traditional justice is supported over the western system which emphasizes retributive approaches where punishment is aimed not at repairing the harm the offenders did to their victims nor at repairing their relationship to the victim and his community. The desire for retributive justice is a desire for vengeance, getting even, putting the world back in balance.

Retributionists simply consider is morally fitting that criminal offenders are punished. This is the kind of justice that the ICC is seeking to implement in Northern Uganda.

Acholi traditional justice system emphasizes restoration and reconciliation. The traditional African sense of justice is not simply about applying retributive aspects of justice in isolation, as it is in the western model. There is need to have a system that is an overarching process that also encompasses rehabilitation, reconciliation, compensation and restoration (Refugee Law Project, 2005).

Restorative justice sees greater value in educating and rehabilitating an offender than in simply incarcerating him and forgetting about him. A cultural leader in Northern Uganda is quoted by the Refugee Law Project Working Paper, 2005, giving his sentiments about Kony:

> Kony being convicted and taking him to The Hague, that is taking him to heaven. His cell will have air-conditioning, with a TV, he will be eating chicken and beef. He will be given a chance to work in jail and earn something. I'd rather he be here and see what he has done. Let him talk to the person he has ordered his lips to be cut off. Let him talk and hear. The Acholi mechanism must be allowed to run their course first, so that peace can be brought about. Only at that stage if there is a complainant who wants to take Kony to court should legal action be taken.

This kind of sentiment is echoed by many people in Northern Uganda. The LRA should be made to see and acknowledge the harm that it has brought to its own people. Only after this

acknowledgement has been done, forgiveness asked, reconciliation sought and compensation paid to its victims, will its elements be re-integrated back into the community.

One major reason some people in Northern Uganda are opposed to the ICC involvement is because it threatened the Juba Peace talks. LRA leaders were reluctant to participate in negotiations while facing the prospect of criminal persecution in the international court. The Ugandan government promised to pursue the revocation of the ICC indictments after reaching a comprehensive peace agreement, but the LRA demands stronger assurance. At this rate, the traditional justice system seems like a viable alternative.

The people of Northern Uganda have suffered for so long during this conflict where both the Ugandan government and the LRA need to share the blame though in different proportions. The Ugandan government is particularly criticized for having failed to protect the Acholi from the rebels that indiscriminately committed atrocities against them. Any peace or justice system that is pursued in Northern Uganda should seek to empower the local people. A strong argument in favor of traditional justice mechanism is that it would provide an opportunity for the people to revive their cultural beliefs that have eroded through the years.

LIMITATIONS OF THE TRADITIONAL JUSTICE SYSTEM

While the Acholi traditional judicial system is more sensitive to the complex situation in Northern Uganda, they do not meet international justice standards that could be acceptable by the international community.

As a limitation of the traditional justice system is that some individuals including women and girls are excluded in many important decision making processes. Important to point out is that the conflict in Northern Uganda has severely affected women as they have been raped and used as sex slaves, so a justice system that does not include them at every level does them a disservice.

The youth which is another group that has been affect by the war has little knowledge of the tradition justice system. One reason for this has been because they have been on the move dealing with armed conflict and have missed out on learning about the traditional elements of their society. Yet, they were targeted and abducted as child soldiers and any justice system needs to put that into perspective.

Then, there is also the cultural conflict of the Christians in Northern Uganda, who think that traditional processes and ceremonies are satanic as they go against the teachings of Christianity.

There has been a loss of confidence in the elders in Northern Uganda who are supposed to be the pillars of the community. The conflict has exposed some of them as corrupt who have profited off the war and even derailed it. Steps must be taken to restore community confidence in the leaders' integrity and ability. Leaders should strive to be as transparent as possible.

Since the war in Northern Uganda has been a violation of International Human Law, it becomes imperative for institutions that deal with International Law such as the ICC to be involved. Crimes committed by the LRA are crimes against the entire international community which the Acholi tradition approach alone is not sufficient to deal with. The international community will

demand accountability. For perpetrators to drink the bitter root and be forgiven and reconciled with their community is not enough. The international community is in favor of a justice system that spells out a proper punishment for the offenders that will discourage other people from committing crimes with impunity.

Ex-combatants face difficulties such as resentment and stigmization. This is after they have gone through a traditional ceremony that guarantees them that they have been forgiven. They are still called killers and looked at with suspicion. This leads to returnees to think that the traditional judicial process of forgiveness and reconciliation is superficial.

CHAPTER FIVE

EVALUATION

There is no doubt that in northern Uganda there are ambiguities about allocation of blame. It is possible that the issuing of arrest warrants increased military activity putting more children in danger. It is not unreasonable to suppose that the LRA might make children perform atrocities precisely because they are immune from persecution under the Rome Statute. It is the case that the long-term safety of witnesses and their families cannot be guaranteed, and the LRA commanders might choose to kill children and adults who they abducted, and who might at some time be asked to testify.

The arrest warrants were issued at a time when the conflict was still going on and this should be seriously examined. It would be helpful if the ICC would confirm that children would not be

used as witnesses during any prosecution. The ICC should also clarify how it will protect children who are current members of the LRA or children who are affected by the conflict generally and what effective mechanism is in place to protect witnesses.

Regarding the plight of children in northern Uganda, the case of Dominic Ongwen is rather troubling. He is an indicted war criminal and a former child soldier, abducted by the LRA when he was 10 years of age. Ongwen's moral development and choices must be contextualized within the rebel group's organizational structure, norms, and beliefs. Ongwen's actions may have been his own but they were certainly conditioned by his past experience as a victim. That said, the ICC may have been incorrect in identifying Ongwen as one of the LRA leaders that needed to be issued with an arrest warrant.

It would be appropriate for child protection agencies and other concerned parties to focus on the repeated emphasis in the Rome Statute on acting in the 'interests of justice' and 'acting in 'the interests of the victims'. These terms constrain the actions of the ICC in important ways and suggest an area dialogue and discussion.

By issuing arrest warrants in on-going or recently settled conflicts, the court risks prolonging violence or endangering fragile peace processes. By removing the possibility of amnesty from the negotiating table, the ICC may remove incentives for settlements while encouraging perpetrators to remain in power in order to shield themselves from prosecution.

Concerns about the principles of justice and peace are particularly prominent in connection with the Lord's Resistance Army, Darfur and more recently Kenya. An argument can be made

that ICC arrest warrants against the LRA commanders acted as an impediment to achieving a final peace agreement to the conflict. The community elders in northern Uganda are of the view that traditional reconciliation mechanisms should be employed instead of international prosecution. On the other hand, an argument can be made that the threat of ICC prosecution could serve as an important ingredient in a political solution. This discussion is valid because senior LRA commanders are no longer in northern Uganda and have sought refuge instead in neighboring countries.

The people of northern Uganda should have a right to self- determination, and this implies the primary prerogative of determining how to end the conflict in northern Uganda. If they decide that the best way to deal with their past is to forgive all those who have committed crimes against civilians, that wish should be respected by others including the ICC. If they decide that those who are responsible for the violation of human rights should be dealt with in accordance with their own traditions that too has to be respected by all who do not share the values of the people affected. To impose on them an approach that negates prospects of ending the conflict and addressing its root causes primarily because we want to punish impunity is a violation of the peoples' right to self-determination.

Struggling with confidence issues on the African continent, the court needs to market itself anew. The ICC should send its judges even to those countries not currently under investigation to explain itself. There should be an effort to work with national courts to make the ICC's work more familiar.

More important, national judicial systems must be strengthened so that African countries can do the ICC's job themselves. After all, the ICC is meant to be a court of last resort. It intervenes in Africa so much mainly because African countries have been unable or unwilling to handle complex and costly trials themselves.

In order for the ICC to develop legitimacy in dealing with international justice issues it must be viewed as a neutral and independent body. In this respect, the court must ensure, to the greatest extent possible, objectivity and transparency in the selection of cases by the prosecutor. For the ICC to establish and retain legitimacy, it must investigate all parties of possible human rights violations, including those committed by the Uganda Peoples' Defense Forces.

A lot has been said about the ICC being biased in favor of governments, that it exacerbates the violence, and that it interferes with the peace process. There are indeed reasons to believe so, but some of the arguments are misplaced. The ICC has had a useful role to play and is currently having positive effects. Most important, the activities of the ICC have not led to the worsening of the situation in northern Uganda that many commentators predicted. The number of abductions and killings has declined since the massacres of May 2004.

The ICC has shaken up things in potentially positive ways. The whole system of population displacement into camps, which has both caused extraordinary suffering and even failed to provide adequate protection, can only be maintained with donor assistance. The situation is partly a product of well-meant aid from sensible humanitarian agencies. The success in

effectively absorbing development finance has, in this part of the country, drawn international organizations into long term, institutionalized arrangements with anti-insurgency strategies.

The ICC intervention has also played a part in directing wider international attention at the crisis. Suddenly, all sorts of new resources have become available for peace negotiations and longer-term development schemes. There are doubtless other reasons for these initiatives too, but the ICC has contributed. It has kept northern Uganda in the news with related statements prompting the UPDF to take the security of the camps seriously.

On the other hand, by intervening in the northern Uganda conflict, the ICC helped perpetuate the conflict. To start war crime investigations for the sake of justice at a time when northern Uganda was at the brink of the most promising signs for a negotiated settlement must have helped to derail the conflict. The prospects of being convicted of war crimes drove the LRA away from the peace talks with the Uganda government. It is ironical that the ICC's intention was to discourage impunity but it took steps that pushed the LRA back to the bush and led to the continuation of atrocities.

The government of Uganda also deserves to share the blame for the suffering of the people in northern Uganda. The government failed to protect the people from the attacks of the LRA and heaped them in camps where the LRA still found them and massacred them. A better job at protecting the people should surely have been done. The President of Uganda did not act on the rampant corruption committed by some officials of the Uganda Peoples' Defense Forces. It is believed that some officials would not like to see the conflict come to an end because they

have and continue to profit from it massively. The President is aware of this, it was widely known that some officials of the UPDF created ghost soldiers and that funds that were meant to train and equip the army ended up in private bank accounts. The President has also kept a deaf ear to the crimes committed by his own forces against the people of northern Uganda. While it is the government that referred the crimes of the LRA to the ICC, the President used the referral to clean up his image to the international community, and sought to discard the ICC by asking for a withdrawal of the arrest warrants issued for the top five leaders of the LRA, and by offering promises of amnesty to the LRA.

The conflict in northern Uganda raises complex issues that were not envisaged by the creators of the International Criminal Court. When they decided to investigate the crimes of the LRA, the greater emphasis should have been placed on the need for a peaceful resolution to the conflict. In order to ensure that criminal prosecutions do not undermine other initiatives to achieve peace, prosecutions should run parallel to steps taken at the community level. Otherwise, the prospects of peace in northern Uganda may be in jeopardy.

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