The ICC's Pursuit of the Lord's Resistance Army and the Limits of Criminal Proceedings

John Siebert

Introduction

The International Criminal Court (ICC) was created "to investigate, prosecute and punish those who commit war crimes, genocide and crimes against humanity"– many of whom would otherwise escape punishment in their home countries. Through the process of prosecuting these individuals, the ICC wants to deter others from committing such acts, end impunity for perpetrators on the international stage, and deliver justice to the survivors.[1] It is a tall order. The problems encountered by the ICC in pursuing indictments of five leaders of the Lord's Resistance Army (LRA) in Uganda illustrate the gap between the ICC's aspirations and its ability to deliver justice understood in a broad sense.

Without its own means of arresting those indicted, the ICC announced the indictments in the midst of a continuing insurgency war between the LRA and the Government of Uganda, with hundreds of thousands of civilians in northern Uganda being the primary victims of these two fighting forces. Formal peace negotiations to end the LRA insurgency took place between 2006 and 2008, but the ICC indictments solely of the five LRA leaders clouded, and ultimately may have undermined, those negotiations. As a result, the ICC was harshly criticized by civilian victims of the insurgency and by others for failing to deliver justice and for sabotaging a potential peace deal.

The ICC's evident failure on both counts prompted a public debate on the relationship between pursuing peace and criminal justice, and cast light on the inherent limitations of criminal proceedings to deliver a broader form of justice for affected civilians in Uganda. Taking a cue from options available within domestic criminal law procedures, the ICC's toolbox could be expanded to create greater flexibility in applying international criminal law. This may also present an opportunity for advocates of restorative justice within the historic peace churches to contribute insights for the evolution of

international criminal law from their experience in proposing alternatives in domestic criminal procedures.

ICC Indictments and the Juba Peace Talks

Although the LRA insurgency began in northern Uganda in 1986, the period under consideration here is between 2003 and 2008. The Government of Uganda formally requested the ICC to investigate the LRA in 2003. The ICC prosecutor opened an investigation on the LRA in July 2004. On 8 July and 27 September 2005 arrest warrants were issued for LRA leaders Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya on 33 separate counts of war crimes and crimes against humanity, including murder, rape, enlisting of children, and sexual enslavement. The warrants were sealed until redacted versions were publicly released on 13 October 2005.[2] Subsequently, Lukwiya was reportedly killed in a clash with the Ugandan military on 12 August 2006. Otti was reportedly killed in October 2007 by the LRA itself for disloyalty; although he has not been heard from since, his death has not been independently verified.

The Juba Peace Talks between the Government of Uganda and the LRA began on 14 July 2006, hosted by the Vice-President of the Government of Southern Sudan, Riek Machar.[3] The talks continued in fits and starts until 10 April 2008, when the first of three announced ceremonies to sign a Final Peace Agreement (FPA) was frustrated by Kony's non-appearance. The last of these no-shows was on 14 November 2008. Any remaining hope for signing the FPA was effectively quashed with the advent on 14 December 2008 of Operation Lightning Thunder, a large-scale military operation headed by the Uganda People's Defense Force (UPDF) to kill or capture the LRA members who had taken residence in the Democratic Republic of Congo (DRC). The LRA leadership, foot soldiers, and camp followers were dispersed to continue committing atrocities against civilians in the DRC, Southern Sudan, and the Central Africa Republic (CAR).

Justified Pursuit of the LRA

The LRA's guilt for the crimes enumerated by the ICC is universally acknowledged, with the possible exceptions of some LRA members themselves and their supporters in the diaspora. LRA atrocities have

been widely documented by international human rights and development organizations and in the media. The LRA leadership and foot soldiers are *prima facie* guilty of appalling and systematic abuses against civilian non-combatants, often children, in their own country and in several neighboring countries. The scope and gravity of LRA abductions, maiming, rapes, torture, and murders meet the common understanding of war crimes and crimes against humanity. The numbers from Uganda, all estimates, tell only part of the story: 100,000 people killed in LRA-related violence, and between 38,000 and 66,000 children abducted and enrolled as fighters or sexual slaves.[4] There are no readily available estimates for the wounded and maimed, malnourished, raped, forgotten, and disappeared.

At least one leading LRA member essentially conceded that the LRA had committed atrocities, but with the caveat that the LRA was not alone. Not long before his apparent demise at the hand of his comrades, the ICC-indicted second-in-command, Vincent Otti, was quoted on the issue of surrender and immunity from prosecution. "If the UPDF are included on the list of indicted commanders, I will definitely go to The Hague. Short of that, I will never go. It's not only the LRA alone who committed atrocities in northern Uganda. It's both the LRA and the UPDF."[5]

Justified Pursuit of the Government of Uganda and the UPDF

The problem identified in the complaint by Otti is reiterated by Ronald Atkinson: "These conflicts have involved hundreds or even thousands of others who have also committed human rights violations, also often gross and horrendous – from presidents and generals to foot soldiers in myriad militias and government forces."[6] One assumes President Yoweri Museveni and UPDF generals are those whom Atkinson has in mind.

ICC critic Adam Branch asserts that the ICC as a formal, international criminal justice prosecution service was ill-equipped in its fledgling state to navigate the complexity of Uganda's social and political strife, of which the LRA insurgency was only a part.[7] He believes that the ICC failed to do a proper political analysis of the situation in northern Uganda and the potentially negative impact of prosecuting only the LRA while ignoring human rights abuses committed by the UPDF.[8]

That the ICC indicted only LRA leaders might give the impression that

the ICC disagreed that the Government of Uganda, and more particularly its military, the UPDF, also committed ICC-indictable offenses. Branch notes that the ICC has responded to a range of criticisms on its handling of the LRA indictments, but is not impressed by ICC prosecutor Luis Moreno-Campo's response on the issue of indicting leaders only from one side: "Crimes committed by the LRA were much more numerous and of much higher gravity than the alleged crimes committed by the UPDF. We therefore started with an investigation of the LRA."[9] Moreno-Campo's comments seem to imply that the investigative book on the Government of Uganda and the UPDF has not been closed.

In addition to the systematic violation of civil rights by the UPDF, the potential ICC investigation of President Museveni and the UPDF hinges partly on an analysis making two closely-related arguments: (1) that the forced displacement of the Acholi people into IDP camps was politically motivated and not for the protection of civilians, and (2) that the military pursuit of the LRA was (and continues post-2008) purposely ineffectual.

The start of the LRA insurgency is usually dated to 1986, although unrest and civil war in Uganda has been a constant since independence in 1962. Current President Museveni emerged victorious from the bush in 1986, leading his National Resistance Army to power in Kampala. His power base is in the south. Museveni toppled a government primarily led by the Acholi from the north. Various rebel factions remained behind in the economically and politically marginalized north to carry on their struggles. The LRA was only one of these groups, but its unique form of religious motivation articulated by the charismatic Joseph Kony, and its fighting skill, evasiveness, and infamy surpassed all the others.

Commentators point to the political challenge Museveni would face from a stable, prospering north that would predominantly vote against him. Intended or not, and never publicly acknowledged, a dysfunctional north aids Museveni's continuation in power.[10] He has repeatedly manipulated term-limit provisions of the Uganda constitution to continue running in national elections to remain as president. He has also received considerable international support despite serious questions about his government's human rights record, apparently because he represents an improvement over his predecessors such as Idi Amin.

In the early 1990s, the LRA began to attack civilians in Acholi villages for reasons that are not clear. Was there less-than-expected popular local support for the LRA? Were local Acholi self-defense units perceived by the LRA as a sign of disloyalty? In any event, the Ugandan Government responded to LRA attacks on Acholi villages by placing almost the entire northern population of approximately two million, predominantly Acholi, into internally displaced camps (IDP camps) for their protection. The Government then went about systematically *not* protecting the camp residents from ongoing savage attacks by the LRA. Not only was protection missing, but the camp dwellers were almost completely dependent on international food aid and lacked adequate water and other infrastructure. Predictably, mortality rates rose dramatically in the camps, as did domestic violence and other forms of strife.[11]

The UPDF's consistently tardy, ineffective responses to LRA attacks on IDP camps has been attributed to rampant corruption among senior officers, resulting in a lack of adequate equipment and personnel, nonexistent soldiers on payroll lists for the illegal collection of pay by commanders, illegal selling off of army petrol and parts from army trucks, and selling of government rations and uniforms.[12] Branch argues that "the Ugandan government cynically referred the ongoing conflict to the ICC, expecting to restrict the ICC's prosecution to the rebels in order to obtain international support for its militarization and to entrench, not resolve, the war."[13]

In support of Branch's criticism, we should note that negotiations to end the insurgency have over the years been preceded or followed by massive shows of UPDF force with the stated goal of wiping out the LRA. This happened in 1991 with Operation North, in 2002 with Operation Iron Fist, and in December 2008 with the failure of the Juba Peace Talks being followed by Operation Lightning Thunder. In each case the UPDF failed to kill or capture LRA leaders, and in response the LRA stepped up vicious attacks on civilians in unprotected villages. These attacks in turn justified expanded military activities by the UPDF in Uganda and into neighboring countries where the LRA has taken residence.

The displacement of the Acholi in IDP camps without adequate protection would, *de facto*, amount to a gross and systematic abuse of human rights to an identifiable ethnic group by the Government of Uganda. Elevated

death rates in the camps and destruction of Acholi livelihood and cultural practices clearly constitute grounds for ICC investigation and indictments, which so far have not materialized.

Impact of the ICC on the Juba Peace Talks

It can be speculated, but not proved, that the 2005 ICC indictments of the five LRA leaders played a role in motivating the LRA to participate in the Juba Peace Talks at first, and later in undermining the successful conclusion of these talks with a signature by LRA leader Kony. In her analysis of the LRA, Mareike Schomerus attempts to separate fact from fiction, because "[b]reathtaking brutality, political manoeuvring, and propaganda have marked the conflict on all sides."[14] Moses Okello joins her in taking a hard-edged view about both the LRA and the Government of Uganda. The Government's call on the ICC and the LRA's nudge to the negotiating table by the ICC indictments invite skepticism: "While it *may* be the case that the carrot-and-stick threat of the indictments led the LRA to the negotiating table, this is merely speculation informed by opportunism. This is, after all, not the first time in the history of the conflict that the LRA and the government have attempted to talk peace. There were peace talks in 1994 and again in 2004." Okello lays blame for the unsuccessful completion of the Juba Peace Talks at the feet of Museveni, not the LRA: "These talks were frustrated by the same government which referred the situation in northern Uganda to the ICC."[15]

The Juba talks were mediated by Riek Machar and assisted by UN special envoy to LRA-affected areas, Joachim Chissano, a former president of Mozambique. Various forms of subsistence food and other aid were provided to the LRA by non-government organizations, particularly CARITAS, and the UN Office for the Coordination of Humanitarian Assistance (OCHA). Behind the scenes, countries such as Canada[16] provided financial aid to the negotiation process and provided third-party validation to emerging elements of the peace agreement. Over the course of almost two years the talks frequently stalled, and new incentives or processes were added, with the support of the international community, to restart the talks or build momentum.

As the Juba Peace Talks progressed, they became much wider in

scope and participation. The LRA negotiators, composed of Acholi diaspora LRA members, were joined by representatives of northern Uganda from traditional, faith-based, and civil society organizations. With the expanded participation, the talks achieved unexpectedly positive outcomes, including agreement from the Government of Uganda on political concessions addressing some of the conditions of political and economic marginalization at the root of northern Ugandans' disaffection.

There was an immediate peace dividend as well. During the talks the LRA effectively observed a ceasefire. Attacks on civilians for the most part stopped in Uganda and have remained stopped. There was also a relative hiatus of LRA attacks in Sudan and the DRC, at least until the summer of 2007 when attacks began to be reported in localities in an arc from Garamba National Forest in the DRC and north and east to CAR, including sites in West Equatoria State in Southern Sudan.

Because Kony did not directly participate in the Juba Peace Talks, understanding his position on the ICC indictments must be heavily qualified. He was often quoted second-hand by LRA negotiators or journalists. An IKV Pax Christi report offers an example of the type of reporting that characterizes speculation about Kony's position on the indictments or alternative criminal proceedings: "Kony failed to show up during these [Final Peace Agreement signing ceremonies], citing different logistical and physical problems but also signaling he wanted to understand more of the legal proceedings in light of the ICC warrants issued against him and the top leadership."[17]

In an interview, Obonyo Olweny, described as a former LRA spokesperson, talked by telephone with Kony, who complained that "The part of the Final Peace Agreement (FPA) calling for prosecution of LRA leaders by a special division of the High Court . . . [was] unacceptable; since he was prepared to make peace, the government should not prosecute him and his commanders."[18] Ronald Atkinson draws on unnamed sources to convey Kony's apparent position: "Then, on May 25th [2008] it was reported that Kony had rejected signing any peace agreement with the [Government of Uganda] saying that he would rather die in the bush than turn himself in to [the Government] or ICC and 'be hanged.'"[19]

If it hadn't been the ICC indictments, it could have been under some other pretext that Kony refused to sign the FPA. Further, if we accept the

critique of President Museveni and the UPDF that permanent war on the LRA was good for politics and for corrupt military business interests, then Kony's wariness to sign and surrender may be understandable. Not to be discounted is the studied ambiguity and deliberate deception that are hallmarks of Kony and the LRA's well-honed survival skills.

Peace Versus Justice

We know the ICC indictments and alternative criminal justice processes were extensively discussed in the Juba Peace Talks, but we cannot know if the ICC actions were decisive in either initiating or scuttling these talks. To the extent that its indictments were a factor, the ICC has been harshly criticized for its inflexibility. The talks were the stage on which the "peace versus justice" debate occurred, juxtaposing the necessity of peace and the demands of justice.[20] This debate largely devolved into affirmations by advocates on both sides that each is necessary but the sequencing must be chosen. Moses Okello, Head of Research and Advocacy with the Refugee Law Project in Kampala, made a presentation in Nuremberg, Germany, on what he called the false polarization of peace and justice in northern Uganda.[21] Okello argued that if justice was to come "peace should always come first, and justice later."

On the other side, the ICC and its defenders insisted that peace cannot be truly secured unless the leading LRA perpetrators of atrocities are formally brought to justice in parallel processes. Prosecution of those primarily responsible for atrocities cannot be sacrificed to secure a peace agreement. Peace must be achieved with justice or else a dangerous precedent will be set.

Human Rights Watch has taken the view that any outcome must include both peace and justice and that justice must involve fair and credible prosecutions of perpetrators of the most serious crimes, including prosecution before the ICC of the four surviving LRA leaders against whom arrest warrants have been issued. Fair and credible prosecutions for the most serious crimes are crucial to promote not only accountability, but also a durable peace.[22]

Atkinson differentiates the narrow conception of justice in criminally prosecuting individuals from the broader sense of justice for victims of the

LRA and presumably of the UPDF. He concedes that in an ideal world "formal prosecution makes sense," but questions the merits of pursuing criminal justice when not pursing the indictments might result in a peace agreement for the people of northern Uganda. "How, on the scales of justice, does insisting on the prosecution of these three, however guilty, weigh against the chance to end a conflict that has denied for more than twenty years the most fundamental justice of peace and security to millions of people?"[23] Here the broader notion of justice encompassing peace and security for a wider community is contrasted to the narrow focus of retributive justice through the courts.

The ICC presented a tough stance on prosecution not being sacrificed in the peace talks. "We're not dealing with shoplifting," said Philippe Kirsch, President and Judge of the ICC from 2002 to 2009. "The court is dealing with genocide, crimes against humanity and war crimes, all of extreme gravity. Once a crime of that nature comes to the court, we can't simply decide we are going to ignore it and it is inconvenient."[24]

In fact, the ICC indictments could be lifted, but only on two narrow grounds provided by the Rome Statute[25]: (1) if complementary domestic or regional procedures would effectively replace the ICC proceedings; and (2) suspension of the indictments for one year (renewable) by resolution of the UN Security Council. Both options were discussed during the Juba Peace Talks and in the public debate on working around the indictments to secure a peace agreement with the LRA.

Ultimately, the peace versus justice debate came to a halt without resolution with Kony's final no-show for signing the Final Peace Agreement and the December 2008 start of Operation Lightning Thunder that dispersed the LRA further into the DRC, CAR, and Southern Sudan.

Procedural and Other Critiques of the ICC

The ICC has been attacked by numerous states and individuals[26] who object to its intrusion into state sovereignty or who may have grounds to fear they may be in the ICC's investigative cross-hairs. But it must be disheartening to face criticisms from civilian victims of the LRA insurgency that cast aspersions on the ICC's operations and motivations. Okello accused the ICC of complicity in shifting attention from the atrocities committed in the

insurgency to the far more limited task of pursuing a handful of individuals on one side of the conflict, "and in the process ensuring the institutional interests of a fledgling global governance mechanism, the ICC."[27] This is a direct attack on the ICC's integrity and legitimacy from those it purports to be defending. This type of fundamental organizational criticism must be addressed at the political level by the international community.

There were also numerous difficulties with the indictments that are procedural and within the ICC's power to address through changes in policy and operations. Adam Branch identifies problems with the indictments particular to circumstances in Uganda that were not anticipated or corrected when identified.[28] The ICC warrants eviscerated the Ugandan Amnesty Act of 2000, which granted a general amnesty to LRA members; this removed the protection of amnesty from the very people who most needed to be enticed out of the bush. As well, the ICC's temporal jurisdiction goes back only to 2002 but the most severe LRA violence took place before that. If the ICC operates under the principle of "complementarity," then it should accept only cases in which national courts are 'unable' or 'unwilling' to undertake investigation and prosecution. Branch believes the Ugandan judiciary was always able to do the job, and thus the ICC should have rejected the referral from the Government of Uganda.

Questions have also arisen about applying criminal culpability to two of the remaining indicted LRA leaders, as outlined in an illuminating 2008 *Globe and Mail* article by Stephanie Nolen and Erin Baines.[29] Abducted by the LRA as a 10-year-old in 1990, Dominic Ongwen was brutalized and trained as a child fighter. He subsequently rose to the third- or fourth-highest rank in the LRA, which explains the ICC's choice to indict him. According to international humanitarian law he was a child soldier until he turned 18, and therefore subject to rehabilitation rather than prosecution[30]; but he was more than 18 when the ICC began to investigate and prosecute people in 2002. "As the law stands, if they carry out the same crimes after their 18th birthdays that they did the day before, they are no longer victims, but criminals." Nolen and Baines speculate that Ongwen ultimately rejected the option of voluntarily leaving the LRA and turning himself in. Except for the ICC indictments, he might have decided differently because the national amnesty law was in place that he could have taken advantage of – if the ICC

had not intervened.

Then there is the case of Kony himself. Speculation about his sanity has cast doubts on his criminal culpability. As Lucy Hovil and Joanna Quinn write, "Worse, still, is the possibility that Kony might be released, for instance, on a plea of insanity, as has been suggested." If Kony were to give himself up or be captured, he might be diagnosed as a paranoid schizophrenic or as having some other condition. How and where would he be held if deemed mentally unfit?[31]

Uganda and other LRA-affected areas would be fortunate if Kony was in custody by capture or voluntary surrender – or dead. The LRA has incredible resilience. As Ronald Atkinson concludes, "The prospect of Kony and the remaining top LRA commanders [. . .] submitting to either the ICC or a Ugandan national judicial prosecution 'satisfying international standards' [. . .] seems almost impossible to imagine."[32] John Prendergast, writing for ENOUGH – the project to end genocide and crimes against humanity – offers a potential solution: "It remains highly doubtful that Kony will trust Museveni enough to submit to a trial in Uganda, and third country asylum in a country that is not a signatory to the Rome Statute [establishing the ICC] may be the most realistic option."[33] Again, we cannot know if presenting an offer of third-party asylum to Kony and other LRA leaders would have resulted in voluntary acceptance and surrender.

Addressing the Limits of ICC Criminal Justice

What the ICC should consider is whether it has the flexibility and tools that are sufficient to address the types of problems encountered with the LRA indictments.

In its role in Uganda, the ICC was caught between its restricted means – criminal prosecution of individuals – and its broad aspiration to deliver justice to victims suffering from a decades-long insurgency. The inadequacy of strictly prosecuting accused criminals is recognized within the narrower confines of domestic legal processes in democratic countries. As a result, mechanisms exist in their criminal legal systems to negotiate plea bargains or alternative sentencing deals that, while often accompanied by anguish, can result in the lesser of evils or advance the broader demands of justice more effectively than simple findings of individual culpability.

Complementing the criminal justice victim compensation programs and rehabilitation strategies for offenders are civil procedures and judicially sanctioned out-of-court settlements that address the damages of criminal activity to individuals and classes of individuals and that provide relief to those harmed, including apologies and memorials.

The ICC has already introduced adaptations to allow for greater flexibility and responsiveness to specific circumstances in order to meet some of its broader goals. The Victims Trust Fund, for instance, implements complex Court-ordered reparation awards and provides assistance to victims.[34] In 2007-08, this Fund received 42 proposals for consideration. Thirty-four proposals, 16 projects in DRC and 18 in northern Uganda, were granted approval in April 2008.[35]

Outreach programs were started to legitimize ICC processes among affected populations in Uganda and elsewhere. Outreach is defined as "a process of establishing sustainable, two-way communication between the Court and communities affected by the situations that are subject to investigations or proceedings, and to promote understanding and support of the judicial process at various stages as well as the different roles of the organs of the ICC. Outreach aims to clarify misperceptions and misunderstandings and to enable affected communities to follow trials."[36] These programs may build legitimacy for the ICC over time in affected communities.

The Way Forward for the ICC

The lawyers' truism that "bad facts make bad law" applies here, although it may be better stated, if less eloquently, that "bad facts make bad emerging international criminal jurisprudence." The ICC bumped up against the limits of its too narrowly defined individual criminal proceedings, and that may have compromised its ability to achieve the broader goals of justice it purports to serve. As noted earlier, the ICC might well consider that domestic criminal justice systems have options for flexible responses not currently available to the ICC, and options extending beyond criminal proceedings to encompass civil proceedings. These options include the right to sue governments and out-of-court settlements supervised by judges that allow for participation by those harmed in creating a wider range of potentially more satisfying

compensatory activities.

Restorative justice advocates within the historic peace churches may have an opportunity to contribute further creative ideas to this international criminal law discussion. Restorative justice, in contrast to retributive justice as embodied in western criminal law systems, does not focus on punishment of the offender as much as on seeking to address the needs of both the victim and the offender, with the goal of restoring relationships and the broader well-being of the individuals and communities involved.

Translating this experience into international criminal law dealing with mass atrocities, as the ICC is constituted to do, will not be simple. While restorative justice is traditionally used in response to lower-impact crimes such as property damage or fraud, it has also been successfully used in response to higher-order offenses such as sexual assault or murder, under certain strict conditions; for example, where the victim or their family and the offender agree to participate and where traditional retributive forms of punishment, such as imprisonment, backstop the process in the event of bad faith on the offender's part.

The potential utility of restorative justice in a situation such as the LRA atrocities has a pre-set opening, since it has been a lively topic of public debate and negotiation in and around the Juba Peace Talks. The July 2007 agreement between the Ugandan Government and the LRA on Accountability and Reconciliation states that "Traditional justice mechanisms . . . as practiced in the communities affected by the conflict shall be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation."[37] Although the Final Peace Agreement was not signed, various forms of traditional restorative justice in northern Uganda have been used extensively with lower-level LRA members who have returned to their communities.

This development has met with sharp disagreements. Problems with traditional forms of justice go beyond whether they are a substitute for, an addition to, or an evasion of the retributive justice embodied in ICC indictments. Advocates and critics identify many practical questions that are not easily answered:

- How should abducted children who committed atrocities be treated when they are both victims and perpetrators?

- Can traditional justice work both for formerly abducted children who became LRA fighters under duress and for LRA commanders and those who enlisted voluntarily as adults?

- How are former LRA soldiers to be reintegrated into communities when sufficient infrastructure and social supports do not exist, particularly in communities heavily disrupted by displacements to IDP camps?

- How can ceremonies traditionally practiced for individual cases at a relatively small community level be adapted for mass atrocities committed by the LRA and the UPDF?

- How are women and girls to be dealt with, when they are excluded from some traditional ceremonies but are also victims and in some cases perpetrators?

- Traditional ceremonies are private, but the northern Ugandan violence has been widespread and public. How can the need for public processes of acknowledgement and punishment be met?

Tim Allen casts doubt on the legitimacy of traditional or restorative justice approaches: "The current consensus about customary Acholi conceptions of justice has largely emerged from the aid-funded collaboration between Acholi traditional male elders and the Catholic and Anglican churches."[38] Countering Allen's criticism is polling research that puts traditional forms of justice that are locally rooted and adapted for the purpose of reconciliation, truth-telling, and advancing a more just social and political order at the forefront of northern Ugandans' hopes. In a survey of 1,143 internally displaced persons in northern Uganda, 97.5 per cent responded "yes" to the question, "Should the truth about what happened during the conflict be known?"[39] In several studies using different methodologies, the vast majority of people in northern Uganda indicated support for an approach of forgiveness and a truth and reconciliation process to deal with the fallout of the violence.

Lucy Hovil and Joanna Quinn capture the core ambiguities. Simply adopting the ICC or even the Ugandan application of western jurisprudence

will not necessarily result in justice: "While it is vital not to over-romanticise traditional mechanisms, it is also important to bear in mind the fact that the Western retributive model is far from perfect. . . . It is a mistake to assume that simply prosecuting and, hopefully, convicting Kony and a few of his senior commanders will satisfy the needs of justice in this context."[40] A multi-layered, locally nuanced set of approaches to finding justice and peace in northern Uganda is likely needed, but time, goodwill, and various supports will be required both within Uganda and within the international community supporting the ICC.

Conclusion

The ICC pursued its narrow criminal justice mandate under the Rome Statute to investigate and prosecute those primarily responsible in leadership for LRA atrocities, although not those in leadership in the Government of Uganda and the UPDF. Currently there is neither justice nor peace in LRA-affected areas. LRA leader Joseph Kony is believed to be in isolation in the Central Africa Republic. LRA foot soldiers, operating in groups as small as five, continue to abduct, kill, and maim in the unpatrolled remote border communities between the DRC, Southern Sudan, and the Central African Republic. Calls are again being heard for negotiations with the LRA to finally end its bloody insurgency.[41]

Notes

[1] The Rome Statute (1998) that founded the ICC came into force in 2002. The Statute and the ICC were normative and structural responses to the problem of impunity: what to do when strife-torn countries were unable or unwilling to prosecute those responsible for massive human rights violations. The international community created the ICC to stand ready and resourced to prosecute these people in a systematic way which stand-alone or ad hoc courts, starting with the post-WW II Nuremburg Trials and extending through more recent special courts for the former Yugoslavia, Liberia, and Rwanda, were unable to do.

[2] International Crisis Group, *Northern Uganda Peace Process: The Need to Maintain Momentum,* Africa Briefing No. 46, 14 September 2007; www.crisisgroup.org/home/index.cfm?id=5078&l=1.

[3] In September 2006 I visited Juba, Southern Sudan, for a conference. At lunch we ate at the Juba Raha – the name means "pleasure" – the hotel where the Government of Uganda and the LRA were beginning their negotiations to end the insurgency. The next morning,

the Africa Expeditions site where we were sleeping was abuzz with reports of killings. In five separate incidents just outside of Juba, 35 civilians were killed for no apparent reason. Rumors of who perpetrated these killings were circulating. The most plausible explanation was that LRA fighters wanted to make the point that they were a force to be feared in order to bolster the LRA presence at the negotiating table. In a subsequent courtesy call by a small delegation on the President of Southern Sudan, Salva Kiir, we passed through an ante-room filled with Sudan People's Liberation Army Generals waiting to meet the President to decide on a response to these killings.

[4] Survey of War-Affected Youth [SWAY]: "The State of Female Youth in Northern Uganda: Findings from the Survey of War-Affected Youth. Phase II, 2008." https://wikis.uit.tufts.edu/confluence/download/attachments/14553675/SWAY+II+report+highres.pdf?version=1

[5] Institute for War and Peace Reporting (IWPR): "Funding Problems Stall Juba Negotiations / LRA Hires Lawyers for Peace Talks / Otti Mocks Court's Indictment Record / Bozize Probes LRA Incursion Reports," 28 August 2007.

[6] Ronald R. Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army." New York: International Peace Institute, December 2009; www.ipacademy.org/media/pdf/publications/e_pub_uganda_to_congo.pdf

[7] Adam Branch, "Uganda's civil war and the politics of ICC intervention," *Ethics and International Affairs* 21.2 (2007): 179-98.

[8] "Ugandan security and military forces continue to use 'safe houses,' unauthorized secret detention centers, and, increasingly, civilian police facilities to detain and torture suspected rebels and dissidents." Human Rights Watch, "Uganda: Events in 2006." www.hrw.org/englishwr2k7/docs/2007/01/11/uganda14719.htm.

[9] Branch, "Uganda's civil war and the politics of ICC intervention," 188.

[10] Joanna R. Quinn, "Comparing formal and informal mechanisms of acknowledgement in Uganda." Unpublished Working Paper, March 2006. Dr. Quinn is an associate professor of Political Science at the University of Western Ontario. Quoted with permission of the author.

[11] In September 2008 my colleague Ken Epps and I conducted field research on the relationship between peacebuilding and development programs in East Africa. (See our report, "Addressing Armed Violence in East Africa." http://www.ploughshares.ca/libraries/Build/WorldVisionPloughsharesEastAfrica.pdf). During interviews with people in northern and eastern Uganda we documented IDP experience of abuses in the camps.

[12] Zachary Ochieng, "Bigombe: A peacemaker's lonely battle," *The EastAfrican Magazine,* 10-16 September 2007, I-III.

[13] Branch, "Uganda's civil war and the politics of ICC intervention," 179-80.

[14] Mareike Schomerus, "Small Arms Survey. The Lord's Resistance Army in Sudan: A History and Overview" (Geneva: Graduate Institute of International Studies, 2007).

[15] Moses Chrispus Okello, "The false polarisation of peace and justice in Uganda." Expert paper "Workshop 2—Justice in Situations of Ongoing Conflict." Conference organized by International Center for Transitional Justice. Nuremberg, Germany, June 2007. www.peace-justice-conference.info/download/WS-2-Expert%20Paper-Okello.pdf.

[16] The ICC is considered one of the jewels in Canada's human security crown, part of the

activist policy of Foreign Affairs Minister Lloyd Axworthy in the late 1990s. See "Support international court, Axworthy urges," *Toronto Star,* 26 June 2008. A Canadian diplomat, Phillippe Kirsch, chaired the pivotal negotiating session in 1998 leading to the formulation and eventual coming into force of the Rome Statute founding the ICC.

Kirsch went on to become an elected judge of the ICC and its first President (2002 - 2009). Canada also played a prominent role in support of the Juba Peace Talks. For instance: (1) In December 2006 Canada's $1.5 million contribution was the largest international contribution to the Juba Initiative Project to support the Cessation of Hostilities Monitoring Team through the UN; (2) In February 2007 Canada announced $2.5 million for stabilization and peacebuilding projects in northern Uganda. (3) By March 2008 Canada had invested approximately $8 million in northern Uganda, $3.5 million to support the Juba Peace Talks. For more information about Canada's role in Uganda and the Juba peace process, visit the Foreign Affairs and International Trade Canada website at www.dfait-maeci.gc.ca/africa/uganda-canada-en.asp.

[17] Joost van Puijenbroek and Nico Plooijer, "How Enlightening is the Thunder?" Utrecht: IKV PAX Christi, February 2009 Report. IVK Pax Christi is a Dutch NGO specializing in conflict resolution.

[18] International Crisis Group, *Northern Uganda: The road to peace, with or without Kony*. Africa Report No. 146, 10 December 2008.

[19] Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army," 12.

[20] For an in-depth review of the opposing legal views see Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention. An Independent Report.* February 2007, and Adam Branch, "Uganda's civil war and the politics of ICC intervention," *Ethics and International Affairs* 21.2 (2007): 179-98.

[21] Okello, "The false polarisation of peace and justice in Uganda," 2.

[22] Human Rights Watch, "Courting History: The Landmark International Criminal Court's First Year," 2006.

[23] Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army," 19.

[24] See Kathryn May, "War-crimes court won't bend to political pressure: Canadian head," *Canwest News Service*, 11 August 2008.

[25] Rome Statute, Preamble: "[E]mphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions." Rome Statute, Article 16: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the UN, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

[26] See Mary Kimani, "ICC and Africa: Pursuit of justice or Western plot? International indictments stir angry debate in Africa," *Africa Renewal* 23.3, October 2009, and Max du Plessis, *The International Criminal Court and its work in Africa: Confronting Myths*. ISS Paper 173, November 2008.

[27] Okello,"The false polarisation of peace and justice in Uganda."

[28] Branch, "Uganda's civil war and the politics of ICC intervention," 183-87.
[29] Stephanie Nolen and Erin Baines, "The making of a monster," *The Globe and Mail*, 25 October 2008, F4-5.
[30] From the "Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict." Entry into force 12 February 2002. Preamble: "Noting the adoption of the Rome Statute of the ICC, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflict." Article 6, Section 3 "… States parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration."
[31] Lucy Hovil and Joanna Quinn, "Peace First, Justice Later: Traditional Justice in Northern Uganda." Refugee Law Project Working Paper No. 17. (Kampala: Refugee Law Project, 2005), 37; www.refugeelawproject.org/working_papers.php.
[32] Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army," 19.
[33] John Prendergast, "Let's Make a Deal: Leverage needed in Northern Uganda Peace Talks." ENOUGH Strategy Paper #6, August 2007. http://www.americanprogress.org/issues/2007/08/enough6.html.
[34] Frederic Megret, "Justifying Compensation by the International Criminal Court's Victims Trust Fund: Lessons from Domestic Compensation Schemes," McGill University – Faculty of Law, 5 November 2009, Working Paper Series; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1501295
[35] ICC Trust Fund for Victims; www.trustfundforvictims.org/projects
[36] ICC Outreach; www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/
[37] Traditional justice methods practiced in northern Uganda include: "Ailuc" performed by the Iteso, "Culo Kwor" performed by the Acholi and Lango,"Kayo Cuk" by the Langi, "Mato Oput" by the Acholi, and "Tonu ci Koka" by the Madi. The most frequently cited method is Mato Oput. This ceremony of clan and family-centered reconciliation incorporates the acknowledgement of wrongdoing and the offering of compensation by the offender, and culminates in the sharing of symbolic drink.
[38] Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention. An Independent Report.* February 2005; www.crisisstates.com/download/others/AllenICCReport.pdf.
[39] Justice and Reconciliation Project, *The Cooling of Hearts: Community Truth-Telling in Acholi-land*. Gulu District NGO Forum, Liu Institute for Global Issues, Special Report July 2007. www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/5FF145A361DE791CC1257313003386B2/$file/The+Cooling+of+Hearts+-JRP-July+07.pdf.
[40] Hovil and Quinn, "Peace First, Justice Later: Traditional Justice in Northern Uganda," 37.
[41] See "Religious Leaders Recommend Peaceful Settlement to LRA Insurgence," *Sudan Tribune*, 14 September 2010.

Additional Sources

Erin Baines and Adrian Bradbury. "Peace in northern Uganda, but whose justice?" *Sudan Tribune*, 2 August 2007. www.sudantribune.com/spip.php?article23087

Anna Borzello. "The challenge of DDR in Northern Uganda: The Lord's Resistance Army." *Conflict, Security & Development* 7:3 (October 2007): 387-415.

Foreign Affairs and International Trade Canada. Canada–Uganda relations. 8 December 2006. www.dfait-maeci.gc.ca/africa/uganda-canada-en.asp.

———. Canada and the International Criminal Court. 2007. www.dfait-maeci.gc.ca/foreign_policy/icc/menu-en.asp.

"Fuelling fear: The Lord's Resistance Army and small arms." *Small Arms Survey 2006: Unfinished Business*. Oxford: Oxford Univ. Press, 2006, 273-93.

Government of Uganda and LRA. *Government, LRA Agreement on Accountability and Reconciliation.* Kampala, 2 July 2007. http://allafrica.com.

IRIN. Uganda: Juba talks paying off as IDPs return home. 16 July 2007. www.irinnews.org/Report.aspx?ReportId=73248.

Benon Herbert Oluka. "Make peace quickly or we'll be coming after you, US tells Kony." *The EastAfrican*. 10-16 September 2007, 1.

———. "Marines will hunt down LRA rebels if talks fail." *The EastAfrican,* 10-16 September 2007, 3.

Oxfam International. "From Emergency to Recovery: Rescuing northern Uganda's transition." Briefing Paper 118. www.oxfam.org/files/bp118-uganda-from-emergency-to-recovery.pdf.

John Siebert. "Uganda–Lord's Resistance Army peace negotiations: Addressing dead ends in a maze." *The Ploughshares Monitor*, Winter 2007, 3-8. www.ploughshares.ca/libraries/monitor/mond07a.pdf.

John Siebert is the Executive Director of Project Ploughshares, the ecumenical peace center of the Canadian Council of Churches, located in Waterloo, Ontario. Founded in 1976, Project Ploughshares is affiliated with the Institute of Peace and Conflict Studies at Conrad Grebel University College.