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Kimberly Hanlon

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PEACE OR JUSTICE: NOW THAT PEACE IS BEING NEGOTIATED IN UGANDA, WILL THE ICC STILL PURSUE JUSTICE?

*Kimberly Hanlon**

I. INTRODUCTION

The Ugandan government has spent the last twenty years in conflict with the Lord's Resistance Army ("LRA"), led by rebel leader Joseph Kony.¹ The LRA is notorious for the atrocities they perpetrated against their own people, particularly the Acholi tribe in Northern Uganda.² The Ugandan government and the LRA entered into a ceasefire agreement on August 26, 2006,³ and renewed the extended agreement with a second ceasefire truce on November 1, 2006.⁴ Negotiations for a permanent peace agreement have been promising, despite open hostilities at times between the parties.⁵ Complicating the situation are the current International Criminal Court ("ICC") indictments for Joseph

* J.D. candidate 2008, University of Tulsa College of Law, Tulsa, Oklahoma. I thank my family for their unwavering belief in me, making it possible for me to go forward in the face of doubt and adversity. I would also like to thank my friends, who have been like volunteer family in creating an atmosphere of love and acceptance, whatever the circumstance. Lastly, I want to express my great appreciation for my colleagues on the *Tulsa Journal of Comparative and International Law* for their support and patience, with particular gratitude to Austin Turner and Greg Watt. Thank you so much!

1. Daniel Kalinaki, *Kony Comes in from the Cold*, E. AFR., Sept. 5, 2006.

2. *Id.*

3. Frank Nyakairu, *LRA, Govt Sign New Ceasefire Agreement*, DAILY MONITOR (Uganda), Nov. 2, 2006.

4. *Id.*

5. *See id.*

Kony and his top rebel leaders.⁶ Uganda recommended the matter to the ICC in December, 2003,⁷ while also promising amnesty for the leaders if they disarm and return home.⁸ The Ugandan government is recommending a “traditional reconciliation ceremony called, ‘*mato oput*’ – *drinking the bitter herb*” in lieu of criminal prosecution.⁹

Meanwhile, the ICC has been steadfast in its commitment to prosecute the LRA, and has much at stake with the LRA being its first referral.¹⁰ Uganda is promising protection to the LRA, but is also bound by the obligations of its membership in the ICC.¹¹ If Uganda refuses to cooperate with the ICC once the conflict is resolved, the ICC may lose the credibility it has gained to date.¹² Although the current peace negotiations are promising, Yoweri Museveni, the President of Uganda, and the ICC are both unwilling to drop the indictments since hostilities could resume, especially likely given that attempts at peace negotiation between the LRA and Uganda have failed in the past.¹³ Nonetheless, Kony and his followers have indicated that they will not surrender while the risk of prosecution remains.¹⁴

Since 1990, approximately “[fifty] percent of civil wars have [ended] in peace agreements.”¹⁵ This is a dramatic shift from pre-1990, where in the past two hundred years only twenty percent of civil wars ended in peace

6. Opiyo Oloya, *Careless Talk Rubs Salt in the Wound*, NEW VISION (Uganda), Oct. 3, 2006, available at <http://www.newvision.co.ug/PA/8/20/524630>.

7. H. Abigail Moy, *The International Criminal Court's Arrest Warrants and Uganda's Lord's Resistance Army: Renewing the Debate Over Amnesty and Complementarity*, 19 HARV. HUM. RTS. J. 267, 269 (2006).

8. Andrew England, *Peace Struggles with Justice as Uganda Tries to End Insurgency*, FIN. TIMES, Aug. 30, 2006, available at <http://www.ft.com/cms/s/39b70cda-37c3-11db-bc01-0000779e2340.html>.

9. Tristan McConnell, *Uganda Sees Local Justice as Key to Peace*, CHRISTIAN SCI. MONITOR, Sept. 8, 2006, available at <http://www.csmonitor.com/2006/0908/p06s01-woaf.html> (explaining that according to the “mato oput” ceremony, “the perpetrator of a crime meets the victim, admits wrongdoing, asks for forgiveness, and pays compensation. The ritual ends with perpetrator and victim sharing a cup of sheep’s blood mixed with a bitter root.”).

10. Rodney Muhumuza & Emmanuel Gyezaho, *No Deal on Arrest Warrants, ICC Tells Kony*, DAILY MONITOR (Uganda), Sept. 7, 2006.

11. *Coming in from the Jungle, Maybe*, ECONOMIST, Sept. 7, 2006, at 50, available at http://www.economist.com/world/africa/displaystory.cfm?story_id=7887792.

12. Payam Akhavan, *The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court*, 99 AM. J. INT'L L. 403, 405 (2005).

13. Henry Mukasa, *Rugunda Explains Government Line on ICC*, NEW VISION (Uganda), Oct. 11, 2006, available at <http://www.newvision.co.ug/PA/8/12/526157>.

14. *Id.*

15. Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 373 (2006).

settlements.¹⁶ However, almost half of the post-1990 “peace agreements break down within five years, and more within a ten-year period”¹⁷ Some of those agreements stay in an ambiguous state that cannot be characterized as either peace or war.¹⁸ Given the tenuous prospect for peace, it is no wonder that many nations stand in support of the ICC and the LRA indictments, which represent justice from the Western viewpoint.¹⁹ Contrast to Uganda’s offer for amnesty and push for peace, disregarding the Western principle for justice.²⁰

The question comes down to state sovereignty versus international governance.²¹ International law was once limited to interstate affairs, but with the growing concerns for human rights law and international criminal law, international law has begun to breach the bounds of domestic law by influencing, if not attempting to regulate, how nations treat their own citizens.²² Naturally, states choose whether to participate in the international legal system through agreements and treaties, like the treaty establishing the International Criminal Court.²³ When a nation chooses to be bound by the rules of international law, those rules start to shape and influence domestic law and politics.²⁴ International law can help a nation meet its aspirations for economic, social, and cultural development.²⁵ Nonetheless, handing control over to an international tribunal has little political favor with governments and gives an incentive to act locally.²⁶

From a Western viewpoint the story of the LRA is almost unbelievable. Especially when one hears that the people victimized by these rebels are advocating forgiveness. However, seen with the African cultural background in mind, it is not outlandish. Tragic, yes. Bizarre, no.

For a Westerner, it seems unlikely that a man claiming mystical powers could command a rebellion based on that claim alone. However, that is exactly what has happened with Joseph Kony in Uganda.²⁷ Given the depth of the

16. *Id.* at 375.

17. *Id.*

18. *Id.*

19. See Jamie Smyth, *Ministers Say Ugandan Suspects Must Be Tried*, IRISH TIMES, Sept. 4, 2006; see also Paul Redfern, *UK Defends its Stand Over ICC’s Arrest Warrant for Kony*, E. AFR., Sept. 5, 2006.

20. McConnell, *supra* note 9.

21. See Anne-Marie Slaughter & William Burke-White, *The Future of International Law is Domestic (or, the European Way of Law)*, 47 HARV. INT’L L.J. 327 (2006).

22. *Id.*

23. See *id.* at 328.

24. See *id.* at 328-29.

25. See *id.* at 331.

26. See *id.* at 341.

27. *Exile an Option for Kony*, NEW VISION (Uganda), Oct. 14, 2006, <http://www.newvision.co.ug/PA/120/557/526665>.

African belief in the supernatural,²⁸ it is easy to understand how Kony has held power for 20 years under a cloak of mysticism.

For a Westerner, it is difficult to accept Joseph Kony's sixty wives.²⁹ But from the vantage of an African polygamous marriage tradition,³⁰ it is easy to understand. However, what is incomprehensible to the African viewpoint is the kidnapping of children to be "wives" against their will³¹ and the flouting of the bridewealth.³²

For a Westerner, forgiveness in lieu of justice sounds like impunity. For an African steeped in traditional justice,³³ what is surprising is that Museveni petitioned the ICC for the LRA situation,³⁴ especially considering the African opinion of Western jurisprudence.³⁵

For a Westerner, it is incomprehensible for the Acholi tribal chiefs to ask victims to forgive their rapists, captors, torturers, and murderers and subsequently welcome them back into civilization.³⁶ But, given the power and influence of clans in African society,³⁷ how can clan members say no to their elders?

The local culture of Uganda, wanting peace above all else, is at odds with the Western world, wanting justice as it is known in Western jurisprudence.³⁸ Also in opposition is the interest of the ICC in establishing itself as a legitimate body,³⁹ and Uganda's interest in maintaining autonomy as it develops as a democracy and asserts its identity since colonialism.⁴⁰ This comment explores

28. See Daniel Etounga-Manguelle, *Does Africa Need a Cultural Adjustment Program?*, in *CULTURE MATTERS: HOW VALUES SHAPE HUMAN PROGRESS* 65, 73 (Lawrence E. Harrison & Samuel P Huntington eds., 2000).

29. Akhavan, *supra* note 12, at 408.

30. James H. Vaughan, *Social and Political Organization in Traditional Societies*, in *AFRICA* 169, 170 (Phyllis M. Martin and Patrick O'Meara eds., 1977).

31. Akhavan, *supra* note 12, at 408.

32. Vaughan, *supra* note 30, at 170. See *infra* notes 191-98 (for an explanation of the concept of bridewealth).

33. Abraham McLaughlin, *Africa After War: Paths to Forgiveness – Ugandans Welcome 'Terrorists' Back*, *CHRISTIAN SCI. MONITOR*, Oct. 23, 2006, available at <http://www.csmonitor.com/2006/1023/p01s03-woaf.html>.

34. Moy, *supra* note 7, at 269.

35. See McLaughlin, *supra* note 33.

36. Richard Todwong, *MP Otto, Do Your Duty to Our People*, *DAILY MONITOR* (Uganda), Oct. 5, 2006.

37. Vaughan, *supra* note 30, at 175-76.

38. Barbara Among, *Justice Can Wait, We Want Peace First*, *E. AFR.*, Sept. 26, 2006; see also Muhumuza, *supra* note 10.

39. *ICC Says Uganda Crimes May Go on Without Arrests*, *REUTERS*, Sept. 26, 2006, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EVOD-6TZHZS>.

40. BASIL DAVIDSON, *THE SEARCH FOR AFRICA: HISTORY, CULTURE, POLITICS* 281 (1994).

these competing notions as they converge in the Ugandan conflict with the LRA. Part II provides an overview of the history of the conflict and a look at the current state of the crisis. Part III explores the background context for African history and culture in which the LRA conflict can be more easily understood. It describes the political and social rifts in Uganda since the end of colonialism, and African cultural norms such as clan and family structure, religion and mysticism, and traditional justice. Part IV examines the International Criminal Court and its stake in the conflict. That section discusses whether the ICC can maintain legitimacy without Uganda's cooperation since the conflict is the first referral to the ICC, there is significant foreign support for ICC prosecution of Joseph Kony, and other perpetrators of egregious crimes may insist on similar treatment if the LRA leadership is not prosecuted. Part V looks at Uganda's obligations to the ICC under the Rome Statute and explores whether Uganda has made a promise of amnesty to the LRA that it cannot keep. That section discusses the membership obligations of ICC members and whether Uganda is in breach of its obligation or is acting under its state sovereignty. Part V also looks at Uganda's obligation to the world community in forwarding the interests of justice. In addition, that section explores whether peace is sustainable under negotiated forgiveness and whether forgiveness is equivalent to justice from the victims' perspective. Part V finishes the comment with the pros and cons to amnesty versus prosecution and concludes that the ICC will continue to seek prosecution of Kony and the LRA leadership.

II. HISTORY OF THE CONFLICT

A. Chronicle of Events Leading Up to the Negotiations

Yoweri Museveni seized power in Uganda in 1986, marking a shift in power from the Northern Acholi to the Southern Bantu people.⁴¹ This event sparked a series of rebel movements in opposition to Museveni's government.⁴² Even before Museveni seized power, there was an economic divide between North and South in Uganda.⁴³ Under British colonial rule, Southern Uganda was designated as revenue-generating cropland, while Northern Uganda was designated as a labor reserve.⁴⁴ Postcolonial Ugandan governments maintained the status quo, furthering the divide between North and South.⁴⁵ Southern tribal

41. Manisuli Ssenyonjo, *Accountability of Non-State Actors in Uganda for War Crimes and Human Rights Violations: Between Amnesty and the International Criminal Court*, 10 J. CONFLICT & SECURITY L. 405, 409 (2005).

42. Moy, *supra* note 7, at 267.

43. Ssenyonjo, *supra* note 41, at 408.

44. *Id.* at 409.

45. *Id.*

members were awarded university and office jobs, while Northern tribal members were relegated to working in the fields.⁴⁶

After Museveni came to power following a five year guerrilla war fought by his National Resistance Army (NRA), he promptly declared Uganda a single-party democracy.⁴⁷ This eliminated opposing political groups.⁴⁸ Several rebel groups sprang up in Northern Uganda, primarily made of members of the former Ugandan army, including the Uganda Peoples Defense Army, the Holy Spirit Movement I and II, and the Uganda Peoples Army.⁴⁹ The Lord's Resistance Army (LRA), led by Joseph Kony, rose out of the broken remains of the other groups.⁵⁰ "Kony proclaimed himself a messianic prophet and [claimed that he intended to rule] Uganda according to the Biblical Ten Commandments."⁵¹ Since the Ugandan government supported the Sudanese Liberation Army, the Sudanese government supported the LRA, providing them with bases and supplies to continue fighting the Ugandan government.⁵²

From the start of the conflict, the Ugandan government portrayed Kony as a "murderous rebel."⁵³ He called himself a liberator of the people, while terrorizing the very people he was liberating.⁵⁴ Kony and the LRA did not express a coherent ideology.⁵⁵ Their attacks were aimed at gaining food and supplies rather than gaining territory or making a political statement.⁵⁶ Kony enshrouded himself with mysticism, claiming supernatural powers and communication with spirits.⁵⁷ LRA fighters believe he is superhuman and under the guidance of the Holy Spirit, so they fear defying him.⁵⁸ Media coverage about Kony and the LRA emphasized Kony's mysticism and religious views rather than any underlying message.⁵⁹ In a radio broadcast of a phone interview

46. Jeffrey Gettleman, *Uganda Peace Hinges on Amnesty for Brutality*, N.Y. TIMES, Sept. 15, 2006, available at <http://www.nytimes.com/2006/09/15/world/africa/15uganda.html?ex=1315972800&en=1a51828c80dade52&ei=5088&partner=r>.

47. Ssenyonjo, *supra* note 41, at 409-10.

48. *Id.* at 410.

49. Kasaijja Phillip Apuuli, *The ICC Arrest Warrants for the Lord's Resistance Army Leaders and Peace Prospects for Northern Uganda*, 4 J. INT'L. CRIM. JUST. 179, 181 (2006).

50. *Id.*

51. *Id.* at 182.

52. *Id.*

53. Kalinaki, *supra* note 1.

54. *Id.*; see Ssenyonjo, *supra* note 41, at 412.

55. Kalinaki, *supra* note 1; Ssenyonjo, *supra* note 41, at 412.

56. Kalinaki, *supra* note 1; Ssenyonjo, *supra* note 41, at 412.

57. Kalinaki, *supra* note 1.

58. Todwong, *supra* note 36.

59. Kalinaki, *supra* note 1.

with Lieutenant General Vincent Otti, the second in command of the LRA, the host asked, "What is it that you are fighting for exactly?"⁶⁰ He replied, "I have told you that we are fighting because of democracy, corruption, nepotism, and whatever."⁶¹ If the second in command of the LRA could not articulate a common purpose, one may easily conclude that they did not have one.⁶²

From the outset of the rebellion, the LRA relied on irregular guerilla war tactics and fear inducing terror tactics aimed at civilian targets, especially women and children.⁶³ The LRA has been charged with numerous human rights violations and war crimes including, but not limited to: murder, torture, rape, enslavement, pillaging, and enlisting children.⁶⁴ An estimated 25,000 children have been abducted by the LRA to be soldiers, sex slaves, porters, and human shields in combat.⁶⁵ Children make up over eighty-five percent of the LRA forces.⁶⁶ During a radio interview, Vincent Otti admitted to abducting people for recruitment, saying, "That is a way of recruitment of guerillas."⁶⁷

The LRA lacks support from the general population, which compels it to forcibly conscript children to fill its ranks.⁶⁸ Most children are between the ages of eleven and fifteen, but children as young as six are also taken.⁶⁹ The preferred age has been declining "because younger children are easier to control, and younger girls . . . are less likely to be infected with HIV."⁷⁰ Abductees are put through horrors designed to destroy their sense of self and transform them into vicious killers loyal to their superiors out of fear.⁷¹ Children are initially made to carry heavy loads of goods looted from villages by their captors.⁷² Children are required to beat and kill those who cannot manage the loads, who

60. Rodney Muhumuza, *I Had a Small Shop in Wandegeya – Otti*, DAILY MONITOR (Uganda), Sept. 8, 2006.

61. *Id.*

62. *See id.*

63. Ssenyonjo, *supra* note 41, at 411.

64. Moy, *supra* note 7, at 268-69.

65. Mike Pflanz, *Ugandans Ready to Forgive 20 Years' Brutality*, DAILY TELEGRAPH, Aug. 21, 2006, available at

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/08/21/wuganda21.xml&DCMP=E> MC-new_21082006; Moy, *supra* note 7, at 268.

66. Ssenyonjo, *supra* note 41, at 411-12.

67. Rodney Muhumuza, *First Free Us from ICC, Says Otti*, DAILY MONITOR (Uganda), Sept. 7, 2006.

68. Akhavan, *supra* note 12, at 407.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 407-08.

disobey, or who attempt escape.⁷³ Christopher Oyet, a formerly conscripted child soldier, was kidnapped by the LRA when he was nine and forced to march into the bush with other boys.⁷⁴ The boys who could not make the trek were beaten to death by the others, and everyone was forced to take part in the killing.⁷⁵ The LRA called it "registration."⁷⁶ Children who undergo this process are severely traumatized and believe they can never return back to society.⁷⁷

About twenty percent of the children abducted are girls who become "wives" (sex slaves) for the commanders.⁷⁸ Joseph Kony is rumored to have around sixty "wives."⁷⁹ Many girls become pregnant, and many are infected with AIDS by their captors.⁸⁰ "[T]he LRA released over one hundred 'child mothers' with their children [in June 2000] because the children hindered the LRA's movements."⁸¹ Children are especially vulnerable to abduction at night, so thousands of village children commute to the towns like Gulu and Lacor each night where they may be protected by the Ugandan army.⁸² The children sleep on the street, wherever they can find a place.⁸³

73. *Id.* at 408.

74. Gettleman, *supra* note 46.

75. *Id.*

76. *Id.*

77. Akhavan, *supra* note 12, at 408.

78. *Id.*

79. *Id.*

80. *Id.*

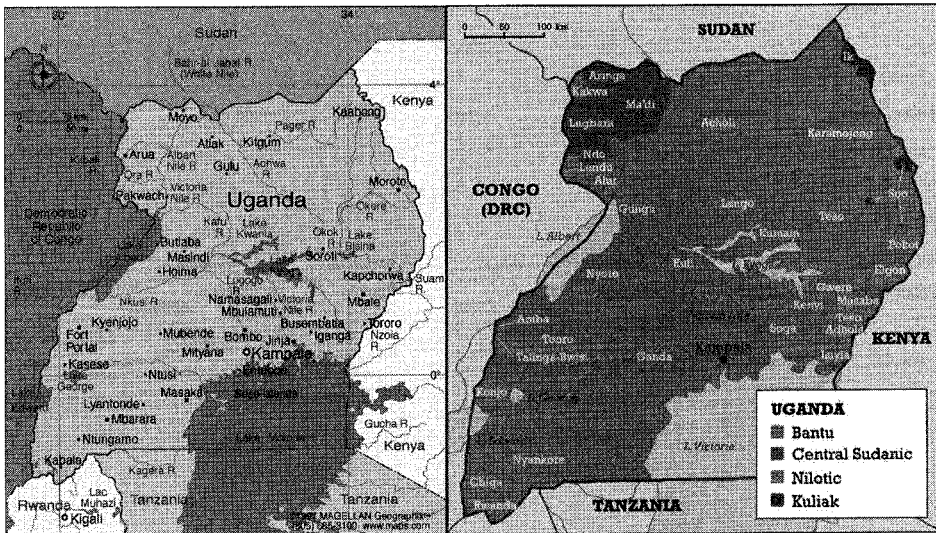
81. *Id.*

82. *Id.* at 409.

83. Akhavan, *supra* note 12, at 409.

Almost two million people in the Acholi regions of Northern Uganda⁸⁴ have fled their homes and have sought shelter in filthy camps for internally displaced persons (“IDPs”), relying on aid from agencies like the UN World Food Programme for survival.⁸⁵ In one typical camp, thousands of people must line up to use the few available pit latrines while a dirty stream provides the drinking water.⁸⁶ One observer stated that “more [people] are dying in the camps through disease than the LRA ever managed to kill directly.”⁸⁷ Aid agencies estimate that 900 people die in the camps each week.⁸⁸ The IDP camps have provided little security for Northern Ugandans, as people have been victimized by the LRA while in these camps and have also suffered depredations at the hands of the Ugandan national military who were supposed to protect them.⁸⁹ In February 2004, two hundred people were massacred in an LRA attack in the Barloonyo camp in Northeastern Uganda.⁹⁰

84.



Map of Uganda, Infoplease.com, <http://i.infoplease.com/images/muganda.gif> (political map on left); PanAfrican Localisation Project, Map of Uganda, http://www.panafri10n.org/wikidoc/maps/565px-Languages_of_Uganda.png (For a map of Uganda’s language and ethnic groups, on the right. The northern Acholi region of Uganda has seen great devastation as a result of the conflict.).

85. Moy, *supra* note 7, at 268-69; see also Kalinaki, *supra*, note 1; Akhavan, *supra* note 12, at 409.

86. Among, *supra* note 38.

87. *Coming in from the Jungle, Maybe*, *supra* note 11.

88. *Peace in Uganda Hinges on Arrests Talks Break Down, Rebels Fear Court*, PITTSBURGH POST-GAZETTE, October 8, 2006.

89. Moy, *supra* note 7, at 268.

90. Ssenyonjo, *supra* note 41, at 418.

Uganda enacted The Amnesty Act, 2000 in hopes of ending the conflict through forgiveness and reconciliation.⁹¹ The Act extends to

any Ugandan who has . . . engaged in . . . war or armed rebellion against the government of the Republic of Uganda by – (a) actual participation in combat; (b) collaborating with the perpetrators of the war or armed rebellion; (c) committing any other crime in the furtherance of the war or armed rebellion; or (d) assisting or aiding the conduct or prosecution of the war or armed rebellion.⁹²

A person may take advantage of the amnesty by reporting to the nearest army or police unit, surrendering his or her weapons, renouncing involvement in the rebellion, and taking a certificate of amnesty.⁹³ When a person is granted amnesty, he or she is immune from prosecution unless he or she commits a new crime.⁹⁴

From the commencement of the Amnesty Commission in January 2000 to June 2005, the Ugandan government granted amnesty to over 15,000 of the LRA's combatants and abductees.⁹⁵ Amnesty is particularly appealing in the case of the LRA, because many of the combatants were abducted as children and forced to fight, thus being both rebels and victims.⁹⁶ Although the granting of amnesty for people forced to fight is widely supported in Uganda, there is debate whether or not Kony and the LRA leaders should be allowed amnesty.⁹⁷ According to a survey by the International Centre for Transitory Justice, more than half the people in Northern Uganda support punishing Kony and his leaders.⁹⁸

On December 16, 2003, Uganda's President Museveni referred the LRA situation to the International Criminal Court (ICC).⁹⁹ Uganda's referral was the ICC's first invitation for jurisdiction.¹⁰⁰ After a year-long investigation, the court issued warrants for Joseph Kony, Vincent Otti, Okot Odhiambo, and

91. *Id.* at 419-20.

92. *Id.* at 420; Amnesty Act, 2000, Part II(1)(a)-(d), Republic of Uganda.

93. Ssenyonjo, *supra* note 41, at 420-21.

94. *Id.* at 420.

95. *Id.* at 421.

96. *Id.*

97. Compare Barbara Among, *Ending the War Not an Easy Task*, E. AFR., Sept. 5, 2006, with *Balancing Forgiveness with Justice*, INTEGRATED REGIONAL INFORMATION NETWORKS, Sept. 6, 2006, available at <http://www.irinnews.org/report.aspx?reportid=60819>.

98. Redfern, *supra* note 19.

99. Moy, *supra* note 7, at 269.

100. *Id.*

Dominic Ongwen, and Raska Lukwiya.¹⁰¹ Raska Lukwiya has since been killed.¹⁰² Because the ICC has no police force of its own, it must rely on governments to enforce its warrants.¹⁰³ As signatories to the court, Uganda and Congo have an obligation to execute the ICC's warrants.¹⁰⁴ Despite not being a signatory, Sudan has still pledged to do so.¹⁰⁵

The war with the LRA and Kony has crippled Uganda economically and socially.¹⁰⁶ In 1995, fifty-five percent of Uganda's households were self sustaining; however, in 2000 that number had dropped to fifteen percent, as estimated by the Ugandan Ministry of Finance.¹⁰⁷ The HIV rate is 1.6 percent higher in the North than the national average, and the abject poverty rate in the North has risen six percent while the national average has dropped six percent.¹⁰⁸ Civil society organizations have "estimated the economic cost of the war to be \$1.3 billion and say it took three per cent off the gross domestic product [each] year."¹⁰⁹

Kony now finds himself in a difficult position in that his former backers in Sudan's central government have abandoned him.¹¹⁰ Since the Islamic government of Sudan signed the Comprehensive Peace Agreement with the Sudan People's Liberation Army in January 2005, Kony and the LRA have been less welcome in Southern Sudan as the new President, Salva Kiir, has vowed to oust them by force.¹¹¹ Congo has also become less hospitable for the LRA since the forces of the United Nations Mission in Congo have settled the areas where the LRA sought to operate.¹¹² Uganda's President Museveni and South Sudanese President Salva Kiir have agreed to join forces to fight Kony and the LRA should the current peace efforts fail, leaving the LRA nowhere to hide.¹¹³

101. *Id.* at 267-69.

102. *Peace Talks – Govt Must Seek LRA Military Wing*, NEW VISION (Uganda), Oct. 24, 2006, available at <http://www.newvision.co.ug/PA/8/459/528358>.

103. Smyth, *supra* note 19.

104. *Coming in from the Jungle, Maybe*, *supra* note 11.

105. *Id.*

106. Kalinaki, *supra* note 1.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Coming in from the Jungle, Maybe*, *supra* note 11.

111. Apuuli, *supra* note 49, at 187.

112. *Id.*

113. *See Ugandan Government, Rebels Sign Truce*, MONTEREY COUNTY HERALD, Aug. 27, 2006.

B. Current State of Affairs

A cease-fire agreement came into effect between the Ugandan government and the LRA on August 29, 2006.¹¹⁴ Under this agreement, the rebels had three weeks to come out of hiding and make their way to designated areas in Southern Sudan where negotiations would continue.¹¹⁵ A delegation from the Ugandan government and rebel leaders have been meeting in Juba, the capital of Southern Sudan.¹¹⁶ Museveni has promised amnesty to the LRA, including Kony and the other leaders, if a comprehensive ceasefire is achieved.¹¹⁷

Museveni is advocating that Kony and the leaders participate in the traditional Ugandan reconciliation ceremony called "mato oput" instead of facing an ICC trial.¹¹⁸ The "mato oput" ceremony requires that the perpetrator of the crime admit wrongdoing to the victim, ask forgiveness, and pay compensation.¹¹⁹ The perpetrator and victim then share "a cup of sheep's blood mixed with a bitter root."¹²⁰ Kony and the other leaders will have to come back to Uganda to participate in the ritual.¹²¹ The ceremony requires that the offending clan go to the offended clan to plead for forgiveness.¹²² Although he is advocating for "mato oput," the ritual would not be between the LRA and Museveni, it would be between the LRA and the victimized local population.¹²³ Clan leaders of the Acholi, Longo, Alur, Madi, Lugbara, Aringa, and Kakwa people will join together to persuade the larger community to forgive the LRA.¹²⁴ Despite Museveni having a reconciliatory tone towards the LRA, he has expressed other sentiments, saying, "That should be a big relief for him, because Kony should be hanged for what he has done."¹²⁵

Although the rebels have been fighting for twenty years, the time has come for Museveni to end the conflict.¹²⁶ Museveni has few supporters in the North, receiving only twenty percent of the vote in that region.¹²⁷ However, his apparent lack of concern for the North impacts Uganda's status as a beneficiary

114. England, *supra* note 8.

115. *Id.*

116. *Id.*

117. *Id.*

118. McConnell, *supra* note 9.

119. *Id.*

120. *Id.*

121. Todwong, *supra* note 36.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Coming in from the Jungle, Maybe*, *supra* note 11 (quoting Vincent Otti, LRA deputy leader).

126. *Id.*

127. England, *supra* note 8.

of foreign aid, which provides about half of the Ugandan government's budget, as other countries are less charitable to a callous leader.¹²⁸ Further, Museveni has changed the Ugandan constitution, allowing him to be elected for a third presidential term, thereby sending an autocratic message to the world.¹²⁹ A peaceful resolution to the conflict would go far in enhancing his image.¹³⁰

Meanwhile, the ICC is reluctant to revoke the indictments for Joseph Kony, Vincent Otti, Okot Odhiambo, and Dominic Ongwen on "speculation" that peace may be reached.¹³¹ Negotiations for peace have previously ended in failure.¹³² The LRA is deeply suspicious that the peace talks may be a trap, while the Ugandan government suspects that the LRA is using the time to re-arm.¹³³ Uganda's leader of the government delegation at the Juba talks, Dr. Ruhakana Rugunda, has repeatedly stated that the ICC will not impede the peace process¹³⁴ and that Uganda will convince the ICC to drop the indictments.¹³⁵ However, the LRA has insisted on having the indictments dropped before reaching a final agreement.¹³⁶ When given this ultimatum, Rugunda stated that "[t]he government of Uganda has no authority to go to the ICC and withdraw the indictments. The indictments are court procedures."¹³⁷ He advised that the LRA was in no position to give conditions to the ICC.¹³⁸ Rugunda described "the position of the government [as] simple and straight forward," and added that "[i]t's only when we are armed with a peace agreement and LRA has gone through the "mato oput" process that the ICC can be asked to review the indictments."¹³⁹ However, Luis Moreno Ocampo, Chief Prosecutor for the ICC, has remained steadfast in his commitment to prosecute Kony and the other LRA leaders.¹⁴⁰

128. See *Coming in from the Jungle, Maybe*, *supra* note 11.

129. See *id.*

130. See *id.*

131. Muhumuza, *supra* note 10.

132. England, *supra* note 8; Barbara Among, *LRA Killings Create Mistrust Between Uganda and Sudan*, E. AFR., Oct. 23, 2006 (stating that "past peace talks between the government of Uganda and the rebels broke down due to mistrust and counter accusation between the government of Uganda and the rebels.").

133. Oloya, *supra* note 6.

134. Rodney Muhumuza, *Talks in Trouble as LRA Makes U-Turn*, DAILY MONITOR (Uganda), Sept. 6, 2006; see Rodney Muhumuza, *ICC Will not Interrupt Peace Deal*, DAILY MONITOR (Uganda), Sept. 4, 2006.

135. Muhumuza, *Talks in Trouble as LRA Makes U-Turn*, *supra* note 134.

136. Mukasa, *supra* note 13.

137. *Id.*

138. *Id.*

139. *Id.*

140. Muhumuza, *supra* note 10.

The LRA have attempted to negotiate a power-sharing deal with the Museveni administration, but the government has replied with a resolute rejection of the proposal.¹⁴¹ The rebels asked for social-economic emancipation for Northern Uganda as well as government jobs.¹⁴² A Ugandan government minister replied that the LRA could register as a political party and participate in the next elections if they want government power.¹⁴³

Kony and other leaders of the LRA claim they are innocent of the charges against them.¹⁴⁴ Kony has stated that the elders sent him to the bush, implying that he was simply doing their will.¹⁴⁵ Dominic Ongwen has said, "I did no wrong. I was following and obeying lawful orders from my senior commanders."¹⁴⁶ When Vincent Otti was asked in a radio interview about the people who were raped and had their lips cut off, he claimed that all those incidents were done by the Ugandan army, not the LRA.¹⁴⁷ It is difficult to imagine how the leaders of the LRA will reconcile with the Ugandan people when they do not think they have done anything wrong.

If peace is reached in the region, 1.7 million displaced Ugandans may return to their homes.¹⁴⁸ President Museveni has announced a deadline of December 31, 2006 for all IDP camps to close.¹⁴⁹ Jan Egeland, the UN Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, expressed optimism that Northern Uganda could recover once the fighting

141. Barbara Among, *Peace Talks Enter Crucial Stage This Week*, E. AFR., Sept. 26, 2006.

142. *Id.*

143. *Id.*

144. Estanislao Oziewicz, *Sustainable Peace Unlikely in Uganda, Rights Group Warns*, GLOBE & MAIL, Aug. 30, 2006, available at <http://theglobe.ca/servlet/story/RTGAM.20060830.wxuganda30/BNStory/International>; Kintu Nyago, *Kony Should Face International Court*, NEW VISION (Uganda), Sept. 9, 2004; *Kony Comes In from the Cold*, *supra* note 1.

145. *Kony Comes In from the Cold*, *supra* note 1 (quoting Dominic Ongwen, Brigade Commander of the Sinia Brigade of the Lord's Resistance Army).

146. Nyago, *supra* note 144.

147. Muhumuza, *supra* note 60.

148. McConnell, *supra* note 9.

149. Chris Ocowun, *IDP Camps Close in December*, NEW VISION (Uganda), Oct. 30, 2006, available at <http://www.newvision.co.ug/PA/8/12/529377> (stating that "[r]elief and disaster preparedness minister Tarsis Kabwegyere said. . . '[n]othing will stop us from achieving this because we have everything in place. The disaster management and security committees are there. We have also recruited 29 resettlement officers to ensure that by December 31 all the camps are empty.'" Museveni also said "[w]e are in full gear to resettle you in your villages. We have mobilised some money to resettle you.").

ends.¹⁵⁰ He stated that “[t]his part of the world can and will feed itself because there are fertile lands that had to be abandoned because of the conflict.”¹⁵¹

III. THE LRA AND ITS BACKGROUND WITHIN UGANDAN SOCIETY

A casual observer from a Western European perspective may find it incomprehensible that Ugandans would be willing to forgive the reprehensible acts perpetrated by the LRA. However, to understand Uganda’s position, one must look into the context in which Ugandan society operates. “No matter how strange or irrational the behavior of a person, an ethnic group, or a nation may seem to the outsider, it makes sense in terms of the world view of that person, ethnic group, or nation.”¹⁵²

A. Historical Background

The oldest political institutions in the world are believed to be the kingdoms that arose out of inner-African antiquity.¹⁵³ The authority of the African kings was supported by the elders, chiefs of clans, and the like, bolstered by religious beliefs.¹⁵⁴ The kingdoms of Africa were in a continuous state of internal development until European Colonization.¹⁵⁵ These pre-colonial communities embodied Africa’s distinctive cultural history founded on the spiritual relationships between living people and their ancestors.¹⁵⁶ These religious beliefs gave the culture its meaning and value, and acted to regulate social and political action.¹⁵⁷ Upon colonization, the African model of community was replaced with a European model of community, but the inward convictions of the African people remained largely untouched outside the colonial centers.¹⁵⁸ The European model rested on the principle of individual advancement while the African model relied on an all-encompassing community.¹⁵⁹

When Uganda gained independence from Britain in 1962, it had great potential since the producers of Ugandan wealth were African and not a

150. Chris Ocowun, *UN Chief Talks with LRA Deputy Otti*, NEW VISION (Uganda), Sept. 10, 2006, available at <http://www.newvision.co.ug/PA/8/12/520322>.

151. *Id.*

152. Hasan El-Shamy, *African World View and Religion*, in AFRICA 208 (Phyllis M. Martin & Patrick O’Meara eds., 1977).

153. DAVIDSON, *supra* note 40, at 19, 21.

154. *Id.* at 21.

155. *Id.* at 38.

156. *Id.* at 256.

157. *Id.*

158. *Id.* at 257.

159. DAVIDSON, *supra* note 40, at 259.

European settler class.¹⁶⁰ Uganda had rich natural resources, a prosperous middle-class of educated Africans, and a thriving economy.¹⁶¹ Britain voluntarily departed Uganda, leaving an improved infrastructure behind.¹⁶² However, since Britain left Uganda before the people had a need to organize a movement to expel the colonists, the country's diverse ethnic groups had no reason to connect as a unified nation.¹⁶³ The 1962 elections created a coalition government of one group with nationalist aspirations and another rooted firmly in tribal tradition.¹⁶⁴ Rifts between the Bantu-speaking people of the south (nationalists), and the Nilotic-speaking people of the north (tribalists) remained,¹⁶⁵ as the south benefited from British investment at the expense of the other regions.¹⁶⁶ The lack of nationalism and the divide between the tribes left Uganda vulnerable to instability after independence.¹⁶⁷

Political instability led to Milton Obote's rule under martial law, then a military coup in 1971, by Idi Amin Dada, followed by Amin's brutal leadership, and the even bloodier second term of Obote during the civil war of 1981-1985.¹⁶⁸ Western democracy did not thrive after post-colonial independence in Africa as a whole and Uganda was no exception.¹⁶⁹ Competitive party politics and popular elections which indicated a system of political competition based on ethnic divisions were sacrificed for one-party regimes that represented the whole without regard to tribal differences.¹⁷⁰

When Yoweri Museveni claimed the presidency in 1986, Uganda was in great need of reconstruction.¹⁷¹ Museveni outlined a ten-point program that called for 1) a real democracy, 2) the elimination of state-inspired violence, 3) the elimination of religious, linguistic, and ethnic divisions in politics, 4) the elimination of international interference in domestic affairs, 5) a self-sustaining national economy, 6) the restoration of basic social services, 7) the elimination of government corruption, 8) reparations to victims of past regimes, 9)

160. FED. RESEARCH DIV., LIBRARY OF CONGRESS, UGANDA: A COUNTRY STUDY 3 (Rita M. Byrnes ed., 2d ed. 1992).

161. *Id.*

162. *Id.* at 4.

163. *Id.*

164. MARTIN MEREDITH, THE FIRST DANCE OF FREEDOM: BLACK AFRICA IN THE POSTWAR ERA 219 (1984).

165. *Id.* at 220.

166. FED. RESEARCH DIV., LIBRARY OF CONGRESS, *supra* note 160, at 4-5.

167. *Id.* at 5.

168. *Id.* at 3; *see also id.* at 20-35; MEREDITH, *supra* note 164, at 219-34.

169. Ruth Berins Collier, *Political Change and Authoritarian Rule*, in AFRICA 295, 296 (Phyllis M. Martin & Patrick O'Meara eds., 1997).

170. *Id.* at 296-98.

171. FED. RESEARCH DIV., LIBRARY OF CONGRESS, *supra* note 160, at 36.

cooperation with other African nations, and 10) a mixed economy with private and public interests.¹⁷² However, the Museveni government came to power before it was prepared to govern, and it has not been able to completely implement the ten-point plan.¹⁷³ Nonetheless, Museveni has implemented both the resistance councils (“RCs”) and an elected local administration for all villages, parishes, sub-counties, and districts in line with the first point of the plan—a democracy at every level of government.¹⁷⁴ Museveni has also eliminated the use of child soldiers, or *kadogos*, in the Ugandan army since taking office.¹⁷⁵ The government opened the Mbarara Kadogo School in February 1988 to both educate former child soldiers and deter them from joining groups like the LRA.¹⁷⁶ The school enrolled about 800 children between the ages of five and eighteen.¹⁷⁷

Africa, including Uganda, is searching for a balance between its lost heritage and its imported ideology.¹⁷⁸ Africa is looking to restore its ability to solve its own problems and make its own choices as it did before colonialism.¹⁷⁹ Historians have noted long periods of productive expansion without corruption in Africa’s past.¹⁸⁰ Lessons from Africa’s ancient communities in preventing the abuse of executive power could be renewed to benefit the twenty-first century.¹⁸¹ The value to the African people would come in a stable society made legitimate by that society’s own traditions.¹⁸² Unfortunately, “today Africa is more dependant than ever on rich countries [and] more vulnerable” to exploitation.¹⁸³ Africa must restore its identity, self-respect, and collective self-confidence to flourish.¹⁸⁴

B. African Cultural Background

The impact of family and social group dynamics, religion and mysticism, and traditional justice must be explored to understand the context surrounding Uganda’s readiness to forgive Joseph Kony.

172. *Id.* at 150-51.

173. *Id.* at 149.

174. *Id.* at 162.

175. *Id.* at 214-16.

176. *Id.* at 216.

177. FED. RESEARCH DIV., LIBRARY OF CONGRESS, *supra* note 161, at 216.

178. DAVIDSON, *supra* note 40, at 281.

179. *Id.*

180. *Id.* at 248.

181. *Id.*

182. *Id.* at 251, 281-90.

183. Etounga-Manguelle, *supra* note 28, at 66.

184. DAVIDSON, *supra* note 40, at 175-76.

1. Clan and Family

The most important social groups in Africa are clans; they are even recognized as land-owning, legal entities.¹⁸⁵ Clan members rely on one another in times of crisis and need, giving both psychological and material support.¹⁸⁶ A person's clan is his or her source of identity, reputation, and pride.¹⁸⁷ Africa's kinship system provides individuals with a group of primary kinsmen with whom they have close cooperation.¹⁸⁸ "Kinsman" is broadly defined and may include people who are not blood relatives, but who have a close relationship with the individual.¹⁸⁹ In African societies, kinship is the central factor for social organization.¹⁹⁰

Families in Africa are organized to facilitate economic productivity, as they are the primary economic unit of the society.¹⁹¹ An African marriage is, in essence, between two groups of people, instead of between two individuals, as each individual represents his or her group.¹⁹² A payment made from the groom's family to the bride's family, called bridewealth, compensates the bride's family for the loss of her labor and gives both families an interest in the continued existence of the marriage.¹⁹³ The marriage is negotiated by the families, and the bride and groom are seldom present when the bride price is negotiated.¹⁹⁴

The payment and acceptance of the bridewealth is not considered a "purchase" of the bride.¹⁹⁵ One family has invested its resources in the marriage, and the other family may have to return the bridewealth should the marriage fail.¹⁹⁶ If the wife is at fault for the failure of the marriage, then the bridewealth is returned; but if the husband is to blame, then the wife's family retains the payment.¹⁹⁷ The payment of bridewealth is the symbol of the legitimacy of the union, analogous to a marriage certificate in other cultures.¹⁹⁸

185. Vaughan, *supra* note 30, at 175-76.

186. *Id.* at 176.

187. *Id.*

188. *Id.* at 176-77.

189. *Id.* at 177.

190. Hasan El-Shamy, *supra* note 152, at 211.

191. Vaughan, *supra* note 30, at 170.

192. *Id.*

193. *Id.*

194. Norbert Mao, *Juba Talks are Like African Marriage Negotiations*, NEW VISION (Uganda), Oct. 30, 2006, available at <http://www.newvision.co.ug/D/8/20/529329>.

195. Michael Armer & Marian Gewirtz, *Sociocultural Change in Contemporary Africa*, in AFRICA 280, 284 (Phyllis M. Martin & Patrick O'Meara eds., 1977).

196. Vaughan, *supra* note 30, at 170.

197. Armer, *supra* note 195, at 284.

198. Vaughan, *supra* note 30, at 170.

Polygyny, the practice of men having more than one wife, is favored in ninety-eight percent of African societies, although most marriages in Africa are not, in fact, polygynous.¹⁹⁹ To make polygyny feasible, men marry at a later age than women, resulting in fewer men of marriageable age than women to offset the relatively male-to-female ratio.²⁰⁰ Polygynous marriage allows each mother to have fewer children which improves maternal health and lowers infant fatality.²⁰¹ Greater fertility jeopardizes the health of both the mother and the infant.²⁰² Also, polygynous marriages make for very large extended families, which provide the source of labor for the family, the economic unit in agricultural societies.²⁰³

The most basic institution of traditional African society is a man's descent group, which includes his parents and grandparents, siblings, aunts and uncles, and cousins.²⁰⁴ This group exerts its influence on every aspect of life.²⁰⁵ The head of the descent group establishes the value system and makes directives for the others, who tend to be unconditionally loyal to him.²⁰⁶ The group provides security, protection, and companionship for its members, but its members can also be held accountable as a group for wrongdoing of individual members.²⁰⁷ However, the notion of collective responsibility is in decline in modern Africa, as jobs are given to individuals and state criminal liability is assessed on individuals, not families.²⁰⁸ Given the nature of the large extended families and the connection between individuals as kinsmen, it is apparent that clans can be quite large and exert a great deal of influence on its members.

2. Religion and Mysticism

In the late 1980s, about nineteen percent of Ugandans believed in local religions.²⁰⁹ Religion serves the social function of reinforcing group solidarity, resolving disputes, remembering ancestors, recognizing individual achievement, and helping people cope with pain, suffering, and defeat.²¹⁰ It also serves the

199. *Id.* at 170-71.

200. *Id.* at 171.

201. *Id.* at 172, cited in Vernon R. Dorjahn, *The Factor of Polygyny in African Demography*, in CONTINUITY AND CHANGE IN AFRICAN CULTURES 109-12 (William R. Bascom & Melville J. Herskovits, eds., 1959).

202. Vaughan *supra* note 31, at 172.

203. *Id.*

204. Armer, *supra* note 195, at 281.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. FED. RESEARCH DIV., LIBRARY OF CONGRESS, *supra* note 160, at 74.

210. *Id.*

political function of bolstering the authority of rulers and allowing leaders to mobilize people for political aims.²¹¹ Ancestors are believed to support authority by punishing transgressions against elders by killing or striking a descent group leader.²¹² The transgressor can engage a spiritual healer and pay the penalty to avert the disaster.²¹³ "Illness is . . . [believed to result from] flouting the authority of an elder."²¹⁴ All manner of misfortunes provide the opportunity for examination of one's own actions and relationships, admit wrongdoing, and give compensation to the harmed.²¹⁵ These functions of religion contribute to the stability of society.²¹⁶ Although the African religious beliefs are often referred to as ancestor worship, the Africans do not deify or actually worship their ancestors.²¹⁷ Instead, "dead ancestors are feared, placated through food offerings and rituals, or simply revered . . ."²¹⁸

Uganda has also been susceptible to cult-like religions led by charismatic prophets who pledge relief from suffering and promise a "golden age."²¹⁹ These cults were formed in response to rapid changes in the culture, and sought to overthrow the political regime that tolerated such changes to happen.²²⁰ The prophet often makes extraordinary demands on its followers.²²¹ The most successful of these cults was the Yakan cult in the late nineteenth century, which promised "restored health, eternal life, and the return of the ancestors and dead cattle" to those who drank the water of Yakan.²²² Another such cult was the Holy Spirit Movement which was a precursor to the LRA.²²³ Alice Lakwena, an Acholi prophet, claimed that her followers could protect themselves from bullets by rubbing cooking oil on themselves.²²⁴ She also claimed that "stones or bottles thrown at government troops would turn into hand grenades."²²⁵ Many Holy Spirit Movement followers were killed in confrontations with government

211. *Id.*

212. *Id.* at 75.

213. *Id.*

214. *Id.*

215. FED. RESEARCH DIV., LIBRARY OF CONGRESS, *supra* note 160, at 75.

216. *See Id.*

217. El-Shamy, *supra* note 152, at 213.

218. *Id.*

219. FED. RESEARCH DIV., LIBRARY OF CONGRESS, *supra* note 161, at 76.

220. *Id.*

221. *Id.*

222. *Id.* (Yakan water is water collected from springs in the neighboring territory of Lugbara.).

223. *Id.* at 77.

224. *Id.*

225. FED. RESEARCH DIV., LIBRARY OF CONGRESS, *supra* note 160, at 77.

troops as a result of such claims.²²⁶ “Alice,” as Lakwena was called, claimed to get messages from the spirit world.²²⁷

Magic and witchcraft flourish in African society.²²⁸ They are used as tools of social coercion, since they “increase the loyalty of individuals toward the clan.”²²⁹ It is also used as a political weapon to eliminate new opposition.²³⁰ African presidents even surround themselves with occult counselors.²³¹ The introduction of Christianity has also unexpectedly legitimized witchcraft in Africa.²³² The existence of Satan in the Christian religion has “confirm[ed] the existence of sorcerers and other evil persons.”²³³ Magic practitioners, claiming to be prophets, get rich detecting evil spirits, protecting against disease, protecting one’s job, or enhancing one’s income.²³⁴

In Africa, not just cult leaders claim magical powers.²³⁵ The African culture predisposes people to believe that those in power have divine authority.²³⁶ Changes in social standing are taboo, as Africans believe that those born dominant were meant to have power over those born dominated.²³⁷ A person who is not born dominant “ha[s] no right to power except by coup d’état.”²³⁸ For the most part, African society accepts the leadership of the day.²³⁹

3. Traditional Justice

Traditional justice in Uganda balances “the need to punish individuals for their crimes . . . against the need to restore wholeness to the community.”²⁴⁰ This view comes from Africa’s unique sense of communalism—a pragmatic part of the culture “enshrined in tribal jurisprudence [which dictates that] [v]illages in small, poor communities need every last person to survive.”²⁴¹ Traditional

226. *Id.*

227. *Id.*

228. Etounga-Manguelle, *supra* note 28, at 73.

229. *Id.*

230. *Id.*

231. *Id.* at 74.

232. *Id.* at 73.

233. *Id.*

234. Etounga-Manguelle, *supra* note 28, at 74.

235. *Id.* at 70.

236. *Id.*

237. *Id.*

238. *Id.*

239. *See id.*

240. McLaughlin, *supra* note 33.

241. *Id.*

justice calls for restoring harmony in the community.²⁴² For example, traditional justice dictates that when a murder is committed, the clans of the perpetrator and victim must avoid one another as a cooling off period to avoid revenge killing.²⁴³ The perpetrator is never obligated to confess his crime; however, there is a common belief that “spirits – or departed ancestors – will punish him until he confesses.”²⁴⁴ If a person has a string of bad luck, the community presumes he is covering up a misdeed.²⁴⁵

The Acholi believe that the spirit of the dead will plague the family of the guilty until compensation is paid, “mato oput” is performed, and the last funeral rites are held.²⁴⁶ Compensation may be delayed for generations, but must be paid to cleanse the clan.²⁴⁷ “The wealth from [the payment] enables the bereaved family to marry a wife who will bear” a child, replacing the dead family member.²⁴⁸ The first child born with the same gender of the dead person is named after that person.²⁴⁹

Africans do not understand the Western logic for finding justice.²⁵⁰ They see lawyers as clever people dueling before a judge, trying to outsmart each other, while avoiding exposing the truth about their client.²⁵¹ In traditional Ugandan justice, once the perpetrator confesses, a mediator goes between the two clans to negotiate “an agreement by which the perpetrator’s clan agrees to pay the victim’s clan a certain amount.”²⁵² The currency, that traditionally was in the form of cows, now takes the form of money.²⁵³ The amount of the agreement depends on the nature of the killing and the identity of the person killed.²⁵⁴ Once an agreement is reached, every member of the perpetrator’s clan contributes to the settlement amount.²⁵⁵ “All in the group are seen as responsible for allowing the perpetrator to err. So punishment is distributed.”²⁵⁶

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *A Better Way to Resolve Conflict*, DAILY MONITOR (Uganda), Oct. 24, 2006.

247. *Id.*

248. *Id.*

249. *Id.*

250. McLaughlin, *supra* note 33.

251. *Id.*

252. *Id.*

253. *Id.*

254. *A Better Way to Resolve Conflict*, *supra* note 246.

255. McLaughlin, *supra* note 33.

256. *Id.*

The final ritual concludes the traditional justice method.²⁵⁷ Each group brings a goat to the ceremony, and each goat is cut in half.²⁵⁸ Each clan exchanges one half, thus “creat[ing] two goats that are whole again.”²⁵⁹ In a society where every person is needed to haul water and do everyday tasks for survival, the community would crumble if people had to be forever separated.²⁶⁰ Such traditional justice method is still used in Uganda today, even though it is not a quick process.²⁶¹ For instance, a murder in 1977 in Northern Uganda was not resolved until 2005.²⁶²

Once viewed through the eyes of African culture, the LRA rebellion and the Ugandan response to the rebellion are more understandable. However, this point of view is at odds with Western ideas of society and justice, and it is the Western concept of justice that prevails with the ICC.

IV. THE ICC’S STAKE IN THE CONFLICT

In the aftermath of World War II, the world community vowed not to allow atrocities against humanity like the Holocaust happen again.²⁶³ However, governments either were not in a position to hold perpetrators accountable and deter future crimes against humanity, or they merely ignored the problem.²⁶⁴ International demands for justice brought about investigative commissions and ad hoc tribunals, but atrocities like the Rwandan genocide still occurred.²⁶⁵ Worse yet, less publicized atrocities went unnoticed and unpunished.²⁶⁶ The need for a permanent international criminal court that could consistently apply justice brought about the drafting of the treaty establishing the International Criminal Court.²⁶⁷ “[O]n July 17, 1998, the final Statute of the International Criminal Court was completed” at the Rome Conference.²⁶⁸

The ICC is a permanent treaty-based institution created to investigate and prosecute perpetrators “genocide . . . [c]rimes against humanity . . . [w]ar

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. McLaughlin, *supra* note 33.

262. *Id.*

263. M. Cherif Bassiouni, *The Permanent International Criminal Court*, in *JUSTICE FOR CRIMES AGAINST HUMANITY* 173 (Mark Lattimer & Philippe Sands QC eds., 2003).

264. *Id.* at 173-74.

265. *Id.* at 174 n.5.

266. *Id.* at 175.

267. *Id.* at 175-76.

268. ERIC K. LEONARD, *THE ONSET OF GLOBAL GOVERNANCE: INTERNATIONAL RELATIONS THEORY AND THE INTERNATIONAL CRIMINAL COURT* 45 (2005).

crimes . . . [and] aggression.”²⁶⁹ The court’s jurisdiction only extends to state parties.²⁷⁰ Its jurisdiction is complementary to the state parties’ national legal systems, meaning that the state’s criminal jurisdiction has primacy over the ICC jurisdiction.²⁷¹ The ICC may exercise jurisdiction when a state is unwilling or unable to investigate or prosecute crimes under the court’s subject matter jurisdiction.²⁷²

A state party may also refer a situation to the court, allowing the court to investigate and prosecute crimes associated with that situation.²⁷³ A referral encompasses a situation in its entirety, including all parties, not just particular defendants.²⁷⁴ Thus, when Museveni referred the LRA situation to the ICC, he was also inviting the court’s scrutiny of acts by the Ugandan army.²⁷⁵ Several organizations, including Human Rights Watch and the International Crisis Group, have criticized the ICC for not investigating allegations of abuse perpetrated by Ugandan forces.²⁷⁶ The ICC has defended its decision to focus on the LRA, because the crimes committed by the LRA are more numerous and severe.²⁷⁷

A. Will the ICC Maintain Legitimacy if Uganda Fails to Cooperate?

The Preamble to the Rome Statute states that “the most serious crimes of concern to the international community as a whole must not go unpunished”²⁷⁸ One intention of the ICC is to “act as a deterrent to . . . humanitarian law violators.”²⁷⁹ Of course, the court will have to enforce its first sentence for would-be violators to take notice.²⁸⁰ Nicholas Grono of the

269. Rome Statute of the International Criminal Court art. 5, July 17, 1998, 37 I.L.M 999 [hereinafter Rome Statute], available at [http://www.un.org/law/icc/statute/english/rome_statute\(e\).pdf](http://www.un.org/law/icc/statute/english/rome_statute(e).pdf) (last visited April 8, 2007); Bassiouni, *supra* note 264, at 180.

270. Bassiouni, *supra* note 263, at 181.

271. *Id.*

272. Rome Statute, *supra* note 269, art. 17.

273. *Id.* arts. 13-14.

274. Akhavan, *supra* note 12, at 411.

275. *Id.*

276. *Id.*

277. Moy, *supra* note 7, at 269.

278. Rome Statute of the International Criminal Court Preamble, July 17, 1998, 37 I.L.M 999.

279. LEONARD, *supra* note 268, at 49; see also Eric Blumenson, *The Challenge of a Global Standard of Justice: Peace, Pluralism, and Punishment at the International Criminal Court*, 44 COLUM. J. TRANSNAT'L L. 801, 825 (2006) (stating that “[m]any people argue that if genocide and crimes against humanity are reliably prosecuted and punished, a deterrent effect should follow—if not for some megalomaniacal leaders, at least for the subordinates who would otherwise carry out their orders.”).

280. LEONARD, *supra* note 268, at 49.

International Crisis Group stated that “[i]t is critically important that the ICC gets convictions under its belt,” and that “[i]f it is continuously trumped by peace processes it will never have a deterrent effect.”²⁸¹ The ICC does not have its own enforcement mechanism, and must rely on state parties to enforce its warrants and sentences.²⁸² Judge Philippe Kirsh, the ICC President, expressed frustration with “the [c]ourt’s inability to execute arrests for war criminals” during his presentation to the UN General Assembly.²⁸³

As a signatory to the ICC, Uganda is obligated to enforce the court’s orders.²⁸⁴ If state parties like Uganda refuse to cooperate with the ICC, the treaty becomes dead letter—unofficially disregarded and not enforced.²⁸⁵ If Uganda does not comply with the ICC’s order to relinquish Kony, the ICC can refer “the matter to the Assembly of State Parties or the United Nations’ Security Council.”²⁸⁶ However, that also relies on state parties for enforcement.²⁸⁷

1. Importance of Uganda Being the First State Referral to the ICC

On December 16, 2003, Uganda referred the LRA rebellion to the ICC, marking the first time the court had been granted jurisdiction under Articles 13(a) and 14 of the Rome Statute.²⁸⁸ The Rome Statute had only been in force since July 1, 2002, and the court was looking for its first case in order to gain legitimacy.²⁸⁹ The ICC wanted the Democratic Republic of Congo to refer the murder of five thousand civilians in Ituri to the court, but Congo declined to do so.²⁹⁰ Luis Moreno Ocampo, the ICC prosecutor, preferred to have a case voluntarily referred rather than risk creating an adversarial relationship with a member state, but he would seek authorization to initiate an investigation if necessary.²⁹¹

When Uganda referred the LRA situation to the ICC, the conflict had received little international attention, and its referral to the ICC was unexpected.²⁹² “UN officials often [have] refer[red] to the conflict as the

281. *ICC Says Uganda Crimes May Go on Without Arrests*, *supra* note 39.

282. LEONARD, *supra* note 268, at 61.

283. Emmanuel Gyezaho & Frank Nyakairu, *Government Still Wants ICC to Arrest Koni and Otti*, DAILY MONITOR (Uganda), Oct.11, 2006.

284. *Coming in from the Jungle, Maybe*, *supra* note 11.

285. LEONARD, *supra* note 268, at 61.

286. *Id.* at 61-62.

287. *Id.* at 62.

288. Akhavan, *supra* note 12, at 403.

289. *Id.* at 405.

290. *Id.*

291. *Id.* at 405-06.

292. *Id.* at 405, 409.

world's worst and most forgotten."²⁹³ The referral altered the political balance in the region, prompting Congo to also refer its conflict, which has killed millions of civilians, to the ICC on April 19, 2004.²⁹⁴ Uganda's LRA referral served as a catalyst for the Darfur Security Council referral and the Central African Republic referral the next year as well.²⁹⁵ Uganda's referral to the ICC pressured Sudan to stop harboring the LRA which, in turn, weakened the rebel group.²⁹⁶ Moreover, none of the senior LRA commanders had accepted Uganda's offer of amnesty before the ICC arrest warrants were issued.²⁹⁷ Then, "[i]n February 2005 . . . the LRA's top negotiator [] surrendered to the [Ugandan army]."²⁹⁸ Uganda's long term prospects for peace have steadily increased since it referred the LRA situation to the ICC.²⁹⁹

The shift in the balance of power in the LRA position gave the ICC its needed legitimacy and reinforced the court's global influence over deterrence of crime generally.³⁰⁰ These events certainly encouraged the ICC to continue pursuit of insurgent leaders, like Joseph Kony, who commit atrocities against humanity.³⁰¹ In the LRA's case, arrest and prosecution of the leadership would have an immediate impact on the rebellion's operations.³⁰² Since most of the rebellion's forces are conscripted children, the rebel forces should quickly disperse without the commanders present to compel allegiance through terror.³⁰³

The ICC indictments have been a catalyst for the current peace initiative.³⁰⁴ They have "created an incentive for the [LRA leaders] to negotiate," cast an international spotlight on the conflict, and pressured Sudan to cease funding the LRA forces.³⁰⁵ Although supporters of the Juba talks have cited the ICC indictments as a barrier to the peace negotiations, the indictments provide leverage that ensures the parties stay committed to negotiating.³⁰⁶

293. Rob Crilly, *War Resumes with Ugandan Rebels*, IRISH TIMES, Oct. 5, 2006.

294. Akhavan, *supra* note 12, at 406; *see also* Press Release, International Criminal Court, The Office of the International Criminal Court Opens its First Investigation (June 23, 2004), *available at* http://www.icc-cpi.int/pressrelease_details&id=26&l=en.html.

295. Akhavan, *supra* note 12, at 406.

296. *Id.* at 416.

297. *Id.* at 418.

298. *Id.* at 417.

299. *Id.* at 418.

300. *Id.* at 419.

301. Akhavan, *supra* note 12, at 419.

302. *Id.* at 420.

303. *Id.*

304. Nick Grono & Adam O'Brian, *Exorcising the Ghost of the ICC*, DAILY MONITOR (Uganda), Oct. 31, 2006.

305. *Id.*

306. *Id.*

ICC officials are concerned that suspending or dropping the indictments against Kony would undermine its investigations in Congo, the Central African Republic, and Darfur by encouraging other warlords to demand the same treatment.³⁰⁷ Further, Foday Sankoh's amnesty in Sierra Leone reinforced the idea that sometimes "violence pays."³⁰⁸ Using his negotiated position as the head of the Diamond Mining Commission allowed Sankoh to fund further crimes.³⁰⁹ The ICC has plenty of incentive to follow through with its indictments of Kony and the LRA leadership.³¹⁰

2. Foreign Reaction to the ICC Prosecution of the Rebel Leaders

The European Union stands behind the ICC in prosecuting Kony and the LRA rebel leaders.³¹¹ Finland, the current EU presidency holder, gave the EU's support at the September 1- 2, 2006 meeting of EU foreign ministers in Lappeenranta, Finland.³¹² Finnish foreign minister Erkki Tuomioja said that "[i]n principle it is clear that anyone who is indicted by the International Criminal Court should stand trial. That is a very important principle."³¹³ Likewise, Dermot Ahern, the foreign minister for Ireland, expressed support for the ICC and its indictments of Kony and the LRA leaders.³¹⁴ Britain has also taken the stand that Kony and his leaders should face trial by the ICC.³¹⁵

Britain is integral to the UN Security Council, which is debating a resolution on the Uganda situation.³¹⁶ The Ugandan government requested that the Security Council delay in passing the resolution,³¹⁷ and the Council has decided to delay the decision until the outcome of the Juba talks is clear.³¹⁸ The resolution calls for the indictment of collaborators and sponsors of the rebellion as well as the rebel leaders.³¹⁹ It also allows for a joint offensive operation with the UN, Ugandan Army, Sudanese Army, and Congolese Army against the LRA

307. Chris Stephen, *Uganda's Peace Talks Called Off as Warlord's Amnesty Ruled Out*, IRISH TIMES, Sept. 16, 2006.

308. Akhavan, *supra* note 12, at 420.

309. Jack Snyder & Leslie Vinjamuri, *A Midwife for Peace*, INT'L HERALD TRIB., Sept. 27, 2006.

310. *See generally id.*; *see also* Stephen, *supra* note 307.

311. Smyth, *supra* note 19.

312. *Id.*

313. *Id.*

314. *Id.*

315. Redfern, *supra* note 19.

316. Emmy Allio, *Uganda Asks UN to Delay Action on LRA Rebels*, NEW VISION (Uganda), Sept. 12, 2006, available at <http://www.newvision.co.ug/D/8/12/520676>.

317. *Id.*

318. *Peace Talks – Govt Must Seek LRA Military Wing*, *supra* note 102.

319. Allio, *supra* note 316.

in Garamba National Park in Congo.³²⁰ Nonetheless, Jan Egeland, the UN Secretary General of Humanitarian Affairs and Emergency Relief Coordinator, stated in a press conference that the ICC's outstanding indictments were a "stumbling block" to the peace negotiation in Northern Uganda.³²¹ However, Egeland later clarified his position stating that Uganda's rebels must face justice, whether through the ICC or traditional justice, saying that "[t]he peace process cannot give impunity for war crimes."³²²

Not surprisingly, the Victims Rights Working Group, an advocacy body for victims' rights at the ICC, has stated that "denying the victims justice would not achieve sustainable peace."³²³ The group warns that rebels given amnesty in the past have continued to perpetrate human rights violations on victims.³²⁴ It also stated that "[i]nternational obligations to ensure justice for crimes under international law should be upheld."³²⁵

Alex Little, a former ICC consultant and assistant to former President Jimmy Carter's conflict resolution effort in Uganda, mentioned that the gravity of the leaders' crimes deserves a clear rebuke.³²⁶ He criticized the government of Uganda for negotiating with terrorists and offering the leaders immunity.³²⁷ He stated that "[i]f Kony's attempt to gain immunity succeeds, the consequences will be grave: [w]arlords will gain confidence that, if armed rebellion fails, they can leverage brutality to dictate the terms of their surrender . . . [a]nd terrorism will grow more common."³²⁸

3. Impact of Enforcing the Warrants for Arrest Versus the Impact of Passivity

The ICC may impose a sentence of life imprisonment,³²⁹ although the Rome Statute reserves this for cases "when justified by the extreme gravity of

320. *Peace Talks – Govt Must Seek LRA Military Wing*, *supra* note 102.

321. Grace Matsiko, Frank Nyakairu, & Paul Harera, *Kony Charges a Stumbling Block, Says UN Chief*, DAILY MONITOR (Uganda), Sept. 13, 2006.

322. Tim Cocks, *Uganda's LRA Rebels Must Not Escape Justice: U.N.*, REUTERS, Sept. 9, 2006.

323. *Advocacy Body Pleads for War Victims' Rights*, NEW VISION (Uganda), Sept. 8, 2006, available at <http://www.newvision.co.ug/PA/8/13/520010>.

324. *Id.*

325. *Id.*

326. Alex Little, *Don't Let Uganda's War Criminals off the Hook*, CHRISTIAN SCI. MONITOR, Oct. 12, 2006, available at <http://www.csmonitor.com/2006/1006/p09s01-coop.html>.

327. *Id.*; see also *Peace Talks – Govt Must Seek LRA Military Wing*, *supra* note 102 (stating "that the Juba talks have helped to transform LRA from the rogue gang of killers who were shunned by people to a group with 'serious political programmes' [sic] and whose spokesmen are accorded equal publicity with other power centres.").

328. Little, *supra* note 326.

329. Rome Statute, *supra* note 269, art. 77.

the crime and the individual circumstances of the convicted person.”³³⁰ Otherwise, the maximum sentence is thirty years, and the court is authorized to release the prisoner under certain circumstances.³³¹ During the negotiation of the Rome Statute, capital punishment was widely debated and life imprisonment became the compromise.³³² The ICC has limited resources to prosecute criminals, so less responsible offenders will never be brought before the court.³³³ Therefore, no one but the most heinous offenders will be brought before the court.³³⁴ Yet, the court reserves life imprisonment for only cases of extreme gravity.³³⁵ It follows that all cases in which the ICC has subject matter jurisdiction are possible life imprisonment cases since the court only prosecutes atrocious crimes against humanity.

The ICC has no prison and relies on state parties to provide incarceration facilities.³³⁶ If no state party volunteers facilities, the Netherlands will take the prisoner.³³⁷ James Otto, the director of the Gulu advocacy group Human Rights Focus, noted that Kony would be living better in prison than he has been in the bush.³³⁸ Otto said that “[i]f Kony goes to the [sic] Hague, he has TV, flushing toilet Here, he would have to publicly apologise for all the crimes under his leadership.”³³⁹ One commentator remarked that if Kony were to be imprisoned by the ICC, he would be living in better conditions, if compared to the conditions lived by his victims, the Acholi, Teso, and Lango people.³⁴⁰ Further, Kony could possibly pursue an education during his sentence, if imprisoned by the ICC, while generations of Northern Ugandans have forgone education in fear for their safety.³⁴¹ These conditions, coupled with the opportunity for parole,

330. WILLIAM SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 162-63 (2d ed. 2004); Rome Statute, *supra* note 269, art. 77.

331. SCHABAS, *supra* note 330, at 166-67; Rome Statute, *supra* note 269, art. 77.

332. SCHABAS, *supra* note 330, at 165.

333. Blumenson, *supra* note 279, at 818.

334. *Id.*

335. *Id.* at 807.

336. SCHABAS, *supra* note 330, at 169.

337. *Id.* at 170.

338. Steve Bloomfield, *Power of Forgiveness Offers Hope for Peace in War-Torn Uganda*, INDEP. (UK), Sept. 25, 2006, available at <http://news.independent.co.uk/world/africa/article1747158.ece>.

339. *Id.*

340. Jude Ogik, *The Truth Is; There Isn't Penalty Enough for LRA*, DAILY MONITOR (Uganda), Oct. 24, 2006.

341. *Id.*

seem rather unfair to some Ugandans.³⁴² Critics note that if Kony were tried in Uganda, the maximum penalty would be death.³⁴³

In determining whether to continue with a case, the ICC prosecutor is required to consider the interests of the victims when weighing whether the interests of justice would be served by proceeding.³⁴⁴ The court may focus on reparations to victims under the principles of "restitution, compensation, and rehabilitation."³⁴⁵ The ICC gives a victim the right to participate in the proceedings, which is innovative in international justice.³⁴⁶ The court may order

342. *Id.*

343. *Id.*

344. SCHABAS, *supra* note 330, at 172-73; Rome Statute, *supra* note 269, art. 54. (stating that "[t]he Prosecutor shall . . . [t]ake 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 . . .").

345. SCHABAS, *supra* note 330, at 174 (quoting Christopher Muttukumaru, *Reparations to Victims*, in *ESSAYS ON THE ROME STATUTE* 303-10 (Flavia Lattanzi & William A. Schabas, eds., 2000)). The Rome Statute addresses reparations to victims in article 75:

[t]he Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.").

Rome Statute, *supra* note 269, art. 75, para. 1.

346. Gerard J. Mekjian & Matthew C. Varughese, *Hearing the Victim's Voice: Analysis of Victims' Advocate Participation in the Trial Proceeding of the International Criminal Court*, 17 *PACE INT'L L. REV.* 1, 15 (2005); Rome Statute, *supra* note 269, art. 15, para. 3 (stating that "[v]ictims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence."); Rome Statute, *supra* note 269, art. 19, para. 3 (noting that "[t]he Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court."). The Rome Statute allows victims to participate in the proceedings:

[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence. . . . The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate

reparations be made by an individual, but not by a state.³⁴⁷ The court may also order the state to seize proceeds, assets, and property of the convicted to make reparations to victims.³⁴⁸

The drafters of the Rome Statute had concerns that indictments could potentially sabotage peace negotiations if leaders refuse to disarm out of fear of prosecution.³⁴⁹ To prevent indictments from becoming barriers to conflict resolution, the Rome Statute allows the United Nations Security Council to adopt a resolution that suspends the ICC investigation for one year.³⁵⁰ A majority of the Council's fifteen members must agree, including all five veto powers: the United States, Russia, China, Britain, and France.³⁵¹ The threat to the peace process must be severe before the Security Council is likely to suspend the LRA indictments.³⁵²

If the ICC chooses to prosecute Kony and the LRA leadership, the court will likely influence domestic criminal law in regards to genocide, war crimes,

protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.

See also Rome Statute, *supra* note 269, art. 68, paras. 3-4; *see also* Rome Statute, *supra* note 269, art. 75, para. 3 (noting that “[b]efore making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.”); *see also* Rome Statute, *supra* note 269, art. 82, para. 4 (stating that “[a] legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.”).

347. SCHABAS, *supra* note 330, at 174; Rome Statute, *supra* note 269, art. 75, para. 2 (stating “[t]he Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.”).

348. SCHABAS, *supra* note 330, at 174; Rome Statute, *supra* note 269, art. 77, para. 2 (noting that “[i]n addition to imprisonment, the Court may order . . . [a] forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.”).

349. James D. Kole, *Lessons of Peace Through Justice*, 152 CHI. DAILY L. BULL. 6, Nov. 1, 2006.

350. *Id.*; Rome Statute, *supra* note 269, art. 16 (noting that “[n]o 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 United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.”).

351. Kole, *supra* note 349; U.N. Charter art. 27, para. 3, *available at* <http://www.un.org/aboutun/charter> (last visited Apr. 8, 2007) (stating that “[d]ecisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”).

352. Kole, *supra* note 349.

and crimes against humanity.³⁵³ This authority may come about as the court determines what it construes as adequate measures in these cases and takes jurisdiction when a state party is unwilling or unable to meet the standard.³⁵⁴ If the ICC chooses to recognize Uganda's Amnesty program as adequate, the court may face criticism from those who value retributive justice.³⁵⁵ Some believe the ICC should bring criminals like Kony to justice because to do otherwise would "excuse the most egregious deeds, betray the victims who endured them, and encourage similar crimes against others."³⁵⁶ While others follow a philosophy of moral imperative; criminals should be punished because they deserve it.³⁵⁷ Human rights groups tend to see amnesty as "impunity," and advocate for prosecution.³⁵⁸ Forgoing prosecution can give the impression that certain people are above the law.³⁵⁹

V. UGANDA'S OBLIGATION TO THE ICC UNDER THE ROME STATUTE

The drafters of the Rome Statute could not agree on any single amnesty policy so they left the authority to the ICC to develop its own jurisprudence on the matter over time.³⁶⁰ The ICC has not yet interpreted the Rome Statute on this point, so no policy has been established.³⁶¹ Early decisions of the ICC may influence policy for years to come.³⁶² The difficulty lies in balancing the interests in peace negotiation with the need for justice.³⁶³

The Additional Protocol II to the Geneva Convention encourages broad granting of amnesty at the end of armed conflicts.³⁶⁴ However, the International

353. Blumenson, *supra* note 279, at 805.

354. *Id.*

355. *Id.* at 819.

356. *Id.*

357. *Id.*

358. Dwight G. Newman, *The Rome Statute, Some Reservations Concerning Amnesties, and a Distributive Problem*, 20 AM. U. INT'L L. REV. 293, 295 (2005).

359. S. Sandile Ngcobo, *Truth, Justice, and Amnesty in South Africa: Sins from the Past and Lessons for the Future*, 8 IUS GENTIUM 1, 5 (2002), available at http://law.ubalt.edu/cicl/ilt/IU8_1_2002.pdf (last visited Apr. 8, 2007).

360. *Id.* at 803-04.

361. Newman, *supra* note 358, at 296-97.

362. *Id.* at 343.

363. Blumenson, *supra* note 279, at 801.

364. Newman, *supra* note 358, at 313; Protocol Additional to the Geneva Conventions of 12 August 1949 art. 6, para.5, June 8, 1977, 1125 U.N.T.S. 609, available at <http://www.ohchr.org/english/law/pdf/protocol2.pdf> (last visited Apr. 8, 2007) (stating that "[a]t the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.").

Committee of the Red Cross has limited the scope of amnesties to exclude international humanitarian law.³⁶⁵ Insurgents will not often negotiate surrender without immunity of some sort.³⁶⁶ Amnesties are regularly part of peace negotiations, used as a bargaining chip or incentive for abusers with power to relinquish that power.³⁶⁷ Indeed, Kony and the other LRA leaders indicted by the ICC have repeatedly insisted that those indictments be dropped before they will come out of the bush.³⁶⁸ Nonetheless, the ICC has held its ground in keeping the indictments in force.³⁶⁹ Article 53 of the Rome Statute allows the prosecutor to abandon investigation or prosecution if doing so is not in the interests of justice.³⁷⁰ Of course, the ambiguity lies in determining what constitutes “justice.”³⁷¹ Justice needs not always be prosecution.³⁷² Argentina,

365. BRUCE BROOMHALL, *INTERNATIONAL JUSTICE AND THE INTERNATIONAL CRIMINAL COURT: BETWEEN SOVEREIGNTY AND THE RULE OF LAW* 96-97 (2003).

366. Blumenson, *supra* note 279, at 803.

367. Newman, *supra* note 358, at 342.

368. Milton Olupot, *Kony Still in Hideout*, NEW VISION (Uganda), Sept. 18, 2006, available at <http://www.newvision.co.ug/PA/8/12/521899>; see also Stephen, *supra* note 307; see also Muhumuza, *supra* note 67; see also Muhumuza, *Talks in Trouble as LRA Makes U-Turn*, *supra* note 134.

369. Chris Ocowun, *Kony Indictment at ICC Stands, Says President*, NEW VISION, Sept. 20, 2006; see also Frank Nyakairu & Grace Matsiko, *Museveni, Juba Team Meet Over Kony Arrest*, DAILY MONITOR (Uganda), Sept. 18, 2006; see also Muhumuza, *supra* note 10.

370. Blumenson, *supra* note 279, at 813; Rome Statute, *supra* note 269, art. 53, para. 3.

371. Blumenson, *supra* note 279, at 813.

372. Newman, *supra* note 358, at 296-306. Newman also notes:

[i]nternational prosecutions may not be able to produce more substantial numbers, and international prosecutions, as national prosecutions, could interfere with a path toward a democratic transition. Thus, the most favourable interpretations of amnesties view amnesties as modalities to avoid future human rights abuses that may enable a potentially new and dynamic path as well as serve a restorative function in the context of complex societal situations.

Id. at 306. Another scholar has observed that criminal punishment is not always the answer.

[t]his obligation to do justice is not identical to, and does not always entail, a simple duty to prosecute and punish. In the aftermath of a crime, the essential duty of a state . . . is to recognize and repudiate the crime, and stand in solidarity with the victim. Criminal punishment is ordinarily an effective means of achieving this, but sometimes other instruments may be as well.

See Blumenson, *supra* note 279, at 834.

Chile, Guatemala, Honduras, El Salvador, and South Africa have created truth commissions that provide non-penal accountability in lieu of prosecution.³⁷³

In South Africa, the Truth and Reconciliation Commission ("TRC") provided the process needed for the country to transition to a democratic government from the apartheid regime.³⁷⁴ In gross human rights violations cases, there may be too many violations to prosecute traditionally.³⁷⁵ In South Africa, 21,000 apartheid victims came forward to report violations.³⁷⁶ Also, victims had often been killed, leaving only the offender to know what happened.³⁷⁷ In a retributive justice system, information about the victims would not be forthcoming.³⁷⁸ Additionally, no negotiation settlement would have been possible had the apartheid leaders feared prosecution.³⁷⁹

Amnesty alone seemed unjust, so the South Africans coupled amnesty with accountability.³⁸⁰ In order to get amnesty, offenders had to come forward and fully disclose what they had done.³⁸¹ Those who did not come forward and publicly confess were still subject to prosecution.³⁸² With public confessions, the apartheid government could no longer deny the crimes occurred.³⁸³ Truth commissions are effective in recording a credible history and dispelling false denials in several countries.³⁸⁴ Seventy percent of the black victims of apartheid supported amnesty in exchange for truth.³⁸⁵ Seven thousand people applied for amnesty in South Africa, and one in seven applications was rejected.³⁸⁶ Those allowed to confess faced public hearings where victims and their families could ask the applicant questions.³⁸⁷ Disgrace became the method of accountability with those responsible suffering condemnation in their communities.³⁸⁸ The scope of the TRC was much greater than traditional investigations and

373. Ngcobo, *supra* note 359, at 2; Blumenson, *supra* note 279, at 814.

374. Ngcobo, *supra* note 359, at 4.

375. *Id.* at 6.

376. *Id.*

377. *Id.* at 7.

378. *Id.*

379. *Id.* at 10.

380. Ngcobo, *supra* note 359, at 13.

381. *Id.*

382. *Id.* at 36.

383. Blumenson, *supra* note 279, at 865.

384. Richard J. Goldstone, *Peace Versus Justice*, 6 NEV. L.J. 421, 422 (2005).

385. Blumenson, *supra* note 279, at 861.

386. *Id.* at 863.

387. *Id.*

388. *Id.* at 868-69.

prosecutions and provided the victims with greater respect and reaffirmation than available with a trial.³⁸⁹

A. Has Uganda Made a Promise It Cannot Keep?

1. Uganda's Obligation as a Member of the ICC

Uganda must undertake some method of justice to satisfy its obligation as a signatory to the ICC.³⁹⁰ Given the success of the TRC in South Africa,³⁹¹ it may be reasonable to assume that the ICC would consider a similar amnesty for truth program as an adequate justice. However, unlike the TRC, Uganda's Amnesty program does not have a restorative justice mechanism,³⁹² in which victims could participate in the process of repairing the harm.³⁹³ Currently, amnesty is granted in exchange for surrender of the applicant.³⁹⁴ Uganda's traditional reconciliation ceremony of "mato oput" is not part of the formal legal system,³⁹⁵ but could be made into law as a compromise to the ICC.³⁹⁶ However, some Ugandans have pointed out that "mato oput" cannot be forced on perpetrators as it requires voluntary confession.³⁹⁷ Nonetheless, the ICC could interpret the Rome Statute and see Uganda's efforts as genuinely carrying out investigation and prosecution.³⁹⁸ However, those efforts will fail if they are seen as "shielding people from criminal responsibility."³⁹⁹

Even if Uganda did adopt a truth commission similar to South Africa's TRC, Uganda's situation is different in that the LRA leaders are not respected members of the community. In South Africa, disgrace was not impunity, because the people confessing were respected figures like doctors, scientists, and

389. *Id.* at 865, 868.

390. Rome Statute, *supra* note 269, art. 17.

391. Blumenson, *supra* note 279, at 822 (stating that "[h]ad there been no South African amnesties, there might be no legitimate legal system in place today, given their centrality in obtaining a peaceful transition from the apartheid system.").

392. *Id.* at 807; Rome Statute, *supra* note 269, art. 77.

393. See RestorativeJustice.org, Introduction, <http://www.restorativejustice.org/intro> (last visited Apr. 8, 2007).

394. Blumenson, *supra* note 279, at 807.

395. *A Better Way to Resolve Conflict*, *supra* note 246 (noting that "[p]arliament must enact a law that would transform the cultural ritual of mato oput to be adapted for reconciliation nationally, to transform the Acholi culture, to be adopted by all Ugandans.").

396. Bloomfield, *supra* note 338.

397. *A Better Way to Resolve Conflict*, *supra* note 246 (stating that "[o]ur methods of reconciliation are now being distorted. The killer will always confess with all his heart without being forced to. You don't force reconciliation. It is a belief.").

398. Declan Roche, *Truth Commission Amnesties and the International Criminal Court*, 45 BRIT. J. CRIMINOLOGY 565, 568 (2005).

399. *Id.*

law enforcement leaders, so their fall from grace amounted to accountability.⁴⁰⁰ Nonetheless, some people in Uganda have advocated that Uganda create a truth commission to strengthen the measures agreed upon at the Juba talks.⁴⁰¹ That may or may not be enough to thwart accusations of impunity by the ICC.

The nations that are state parties to the ICC vary greatly as far as legal and moral cultures are concerned.⁴⁰² As such, the ICC may need to consider allowing some diversity in state approaches to justice.⁴⁰³ It may be analogous to the margin of appreciation⁴⁰⁴ given by the European Court of Human Rights in dealing with diverse nations.⁴⁰⁵ Further, a nation in nascent democracy is likely to view justice differently than an established, stable nation.⁴⁰⁶ Imperfect justice may be an acceptable trade-off for peace.⁴⁰⁷

a. In Breach of Obligation or Acting under Sovereignty?

The ICC may be reluctant to recognize Uganda's amnesty program.⁴⁰⁸ Sovereign states sometimes sacrifice the general interests of the international community at large to promote their own immediate short-term interests.⁴⁰⁹ Since crimes at the international scale affect humanity as a whole, the need to

400. Blumenson, *supra* note 279, at 869.

401. Kintu Nyago, *We Need a Truth Commission*, NEW VISION (Uganda), Sept. 23, 2006; *see also Exile an Option for Kony*, *supra* note 27; *see also Open Letter to LRA: Save the Peace Process*, DAILY MONITOR (Uganda), Oct. 31, 2006.

402. Blumenson, *supra* note 279, at 853.

403. *Id.*

404. *See* Eyal Benvenisti, *Margin of Appreciation, Consensus, and Universal Standards*, 31 N.Y.U. J. INT'L L. & POL. 843, 843 (1999) (explaining that the European Court of Human Rights has developed the margin of appreciation doctrine in its jurisprudence. The doctrine is principled in moral and cultural relativism, such that each society is given some latitude in creating and implementing law. The doctrine is often criticized for being at odds with the concept of universally applicable standards of law. In short, a violation in one country would not be a violation in another, due to the moral and cultural differences of the countries.). The European Commission on Human Rights has stated:

[t]he possible existence of alternative solutions does not in itself render the contested legislation unjustified. Provided that the legislature remains within the bounds of its margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way.

Mellacher & Others v. Austria, App. No. 10522/83, Eur. Comm'n H.R. Dec. & Rep. 1, 28 (1989).

405. Blumenson, *supra* note 279, at 853.

406. Ngcobo, *supra* note 359, at 29.

407. *Id.* at 29.

408. Newman, *supra* note 358, at 344.

409. *Id.*

dispense justice would outweigh the need to honor state sovereignty.⁴¹⁰ Thus, amnesties would only be allowed if they promoted the general public good.⁴¹¹ If the ICC does not permit Uganda's amnesty program, then Uganda is violating its obligation under international law.⁴¹² If the ICC construes amnesty for the rebel leaders as "unwillingness" to prosecute, the ICC may step in and prosecute on its own.⁴¹³

The gravity of the crimes charged against Kony and Uganda's membership in the ICC may be construed as imposing a duty for Uganda to prosecute.⁴¹⁴ The sixth paragraph of the Rome Statute preamble reads, "[r]ecalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes"⁴¹⁵ However, if such duty exists, a conditional amnesty may be acceptable in light of that duty, whereas a blanket amnesty would not.⁴¹⁶ Further, national laws under state sovereignty may be inadequate to effectively handle the scope and magnitude of the crimes, thus making the case admissible to the ICC's jurisdiction.⁴¹⁷

Regardless of the ICC's view of Uganda and the situation, Ugandan tribal and religious leaders see the situation as a wholly local problem.⁴¹⁸ Bishop Benjamin Ojwang in Kitgum stated,

[t]here is this international justice which you people in the West are so keen to see brought to bear on people like Kony. But Kony is not Western, this war is not yours. It is our problem and we must solve it our way, by meeting, talking, reconciling and forgiving.⁴¹⁹

410. *Id.*

411. *Id.* at 348-49 (stating that "[t]he international community has an interest not only in the application of human rights but in the restoration and maintenance of public order and the ways in which aggregate human rights may be enhanced.").

412. BROOMHALL, *supra* note 365, at 96.

413. Newman, *supra* note 358, at 327-28. Article 17 of the Rome Statute allows the ICC to prosecute in some circumstances:

Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where . . . The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution

Rome Statute, *supra* note 269, art.17

414. BROOMHALL, *supra* note 365, at 97-98.

415. Rome Statute, *supra* note 269, at Preamble.

416. BROOMHALL, *supra* note 365, at 98.

417. *Id.* at 84.

418. See Pflanz, *supra* note 65.

419. *Id.*

Collins Opoka, an Acholi chief, added, "In our culture, we don't like to punish people. . . . It doesn't really get you anywhere."⁴²⁰

However, even if the ICC does not pursue its indictments, and Uganda grants amnesty to Kony and the rebel leaders, they may still face prosecution in a foreign jurisdiction that claims a right to prosecute domestically for genocide, war crimes, and crimes against humanity.⁴²¹ Any time Kony and his rebel leaders travel, they may risk being arrested and indicted by a country that has enacted anti-impunity laws.⁴²² Chile's former dictator, General Augusto Pinochet, experienced such fate when he traveled to England, was arrested by the British government, and subsequently indicted by the Spanish government.⁴²³ In short, Uganda cannot guarantee protection from prosecuting Kony and his rebel leaders, even if Uganda satisfies the ICC and the indictments are dropped.⁴²⁴

2. Uganda's Obligation to the World Community

Just like any sovereign nation, Uganda has an implied obligation to the World Community to forward the interests of justice for humanity as a whole.⁴²⁵ With this in mind, the next section explores the long-term sustainability of peace and victims' satisfaction under an amnesty program.

a. Is Peace Sustainable under Negotiated Forgiveness?

Human Rights Watch, the New York based human rights group, has been critical of Uganda's amnesty offer to Kony and the LRA leaders.⁴²⁶ Richard Dicker, the director of the group's International Justice Program, commented on the importance of not seeing "justice and peace as mutually antagonistic opposites."⁴²⁷ He also stated that amnesty for Kony and the LRA leaders would not give a "meaningful and durable peace" in Uganda given the gravity of the LRA's crimes.⁴²⁸

420. Gettleman, *supra* note 46.

421. Vukoni Lupa Lasaga, Editorial, *Folly of Macho Flight Into Juba*, DAILY MONITOR (Uganda), Oct. 24, 2006.

422. *Id.*

423. *Id.*

424. *Id.*

425. Rome Statute, *supra* note 269, Preamble ("Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.").

426. Oziewicz, *supra* note 144.

427. *Id.*

428. *Id.*

However, Jennifer Widner, a professor at Princeton University, conducted a survey of 200 constitutional reforms since 1975 and concluded that “amnesty was strongly associated with the durability of civil peace.”⁴²⁹ Amnesty has been the most widely used instrument for dealing with violence in negotiating peace treaties since 1980, and formal amnesties have brought about the end of two-thirds of the wars since 1989.⁴³⁰ Amnesties must be carefully crafted to create the right incentives to attract the perpetrators, but also the right constraints to leave them fragile yet secure and acquiescent to peaceful political change.⁴³¹

As an alternative to amnesty, Dr. Hillel Levine, the president and founder of the International Institute for Mediation and Historical Conciliation, suggested exile for Joseph Kony and the other LRA leaders.⁴³² Dr. Levine was advising a seven member delegation from Northern Uganda headed by David Onen-Acan II, the Acholi Paramount Chief.⁴³³ Concerns over victims seeking revenge could drive Kony and the others into exile, even after the “mato oput” ceremony.⁴³⁴ In 2002, Uganda, Libya, Egypt and Sudan discussed a proposal that Kony be exiled if caught by the Ugandan army in Sudan.⁴³⁵ Kony has said that he would feel safer in another country than in his home village of Odek in Gulu.⁴³⁶ He listed the United States, the Central African Republic, Nairobi, Europe, Sudan, or any other Arab country as his preferred places to live.⁴³⁷

b. Is Forgiveness Equivalent to Justice from the Victims’ Perspective?

Many victims attending the TRC public hearings in South Africa were appalled to hear serial murders claim their war as just.⁴³⁸ Apologies and forgiveness are meaningless when coerced.⁴³⁹ Also, only a limited number of victims could be accommodated at the public hearings, leaving the rest disappointed and frustrated with the experience.⁴⁴⁰ South Africa’s TRC believed that the general cathartic experience would heal the nation as a whole, posting

429. Snyder, *supra* note 309.

430. *Id.*

431. *Id.*

432. *Exile an Option for Kony, supra* note 27.

433. *Id.*

434. *Id.*

435. *Id.*

436. *Id.*

437. *Id.*

438. Roche, *supra* note 398, at 576.

439. *Id.*

440. *Id.* at 577.

banners that read 'Revealing is Healing.'⁴⁴¹ However, the truth commissions could not heal victims' harms, especially with forced forgiveness.⁴⁴²

'Forgiveness is a power held by the victimized, not a right to be claimed. The ability to dispense, but also to withhold, forgiveness is an ennobling capacity and part of the dignity to be reclaimed by those who survive the wrongdoing. Even an individual survivor who chooses to forgive cannot, properly, forgive in the name of other victims. To expect survivors to forgive is to heap yet another burden on them.'⁴⁴³

Victims of apartheid are still in the process of healing.⁴⁴⁴ Forgiveness on a grand scale has not yet occurred; the wounds are deep.⁴⁴⁵ It is naïve to think reconciliation can happen overnight.⁴⁴⁶

But many Ugandans are ready to try forgiveness. Susan Ejang was abducted from her school as a child, witnessing her classmates' deaths.⁴⁴⁷ She was forced to fight for the LRA for eight years, after which she escaped and returned home.⁴⁴⁸ Despite all that she endured, Ejang is still hopeful about the peace process in Uganda.⁴⁴⁹ She is not alone. Herron Okello, a leader at an IDP camp, has said that the LRA should return home, in spite of their brutality.⁴⁵⁰ For eleven-year-old Kenneth Kidega, born and raised in an IDP camp, forgiveness is the best hope for peace.⁴⁵¹ He said that an end to the war would bring a better life than he has ever known.⁴⁵²

However, not everyone who has been brutalized by the LRA is ready to forgive.⁴⁵³ Consolata Auma has not forgotten that the LRA cut off her lips, nose, and ears because she was caught walking on the road.⁴⁵⁴ Christine Acora was set on fire when she did not have money to give rebels who came to her

441. *Id.* at 578.

442. *Id.*

443. *Id.* at 579 (quoting MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS; FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE 17 (1998)).

444. Ngcobo, *supra* note 359, at 26.

445. *Id.*

446. *Id.*

447. Among, *supra* note 97.

448. *Id.*

449. *Id.*

450. *Balancing Forgiveness with Justice*, *supra* note 97.

451. *Id.*

452. *Id.*

453. *Id.*

454. *Id.*

house.⁴⁵⁵ For these women and others like them, forgiveness is not justice, and they want to see the rebels pay.⁴⁵⁶ However, this view seems to be in the minority in Northern Uganda, where people are weary of violence and see forgiveness as the only road to peace.⁴⁵⁷

Ugandans seem conflicted about what exactly they want.⁴⁵⁸ The International Center for Transnational Justice (“ICTJ”) conducted a poll last year and discovered that seventy-six percent of Ugandans want the LRA to be held accountable, while simultaneously sixty-five percent support amnesty for the LRA.⁴⁵⁹ The result seems incongruent, unless there is some way that amnesty can also hold the rebels accountable. The poll’s results about the fate of top leaders are more logical: sixty-six percent of Ugandans want the top leadership punished, while twenty-two percent want forgiveness.⁴⁶⁰ Thus, the poll results indicate that Ugandan views on achieving peace are conflicted.⁴⁶¹

Meanwhile, many people within Uganda are ready to forgive to gain peace in the area.⁴⁶² James Otto, director of Human Rights Focus in the northern town of Gulu, said that Uganda does not have the capacity to have peace and justice at the same time.⁴⁶³ He stated, “[w]e need one at a time, and the priority for the community is peace.”⁴⁶⁴ Thirty percent of the people stated that “peace could be achieved through dialogue,” twenty-six percent believed amnesty, forgiveness, and reconciliation would bring peace, fourteen percent believed military means were necessary, and five percent thought peace could be brought through justice.⁴⁶⁵ From the Ugandan point of view, peace may be tantamount to justice.

455. *Id.*

456. *Balancing Forgiveness with Justice*, *supra* note 97.

457. *Id.*

458. McLaughlin, *supra* note 33.

459. *Id.*

460. *Id.*

461. *See id.*

462. England, *supra* note 8.

463. *Id.*

464. *Id.*

465. McLaughlin, *supra* note 33.

VI. CONCLUSION

Amnesty seems like a good solution, given that it honors the wishes of the Ugandan people,⁴⁶⁶ who are the ultimate victims of the conflict. Allowing “mato oput” gives recognition to traditional justice as a valid method for conflict resolution⁴⁶⁷ and gives Uganda the autonomy it seeks in handling its own affairs since the end of colonialism.⁴⁶⁸ However, amnesty also gives the impression that some people are above the law⁴⁶⁹ and may promote deal brokering among other perpetrators of horrible crimes.⁴⁷⁰

ICC prosecution also seems favorable because the general world contention is that justice is served through criminal trial and punishment.⁴⁷¹ The successful prosecution of the LRA leadership would establish important precedent for handling similar cases in the future⁴⁷² and would create legitimacy for the ICC.⁴⁷³ However, the ICC is dependant on member states to enforce its rules and must work with those states to meet its goals.⁴⁷⁴ The court cannot afford to have its members refuse to cooperate.⁴⁷⁵

The question then becomes, which viewpoint wins at the end of the day? The Western world supports prosecution and holds money, power, and influence—remember that half of Uganda’s budget comes from foreign aid.⁴⁷⁶ As much as Uganda may want to handle its own affairs, it invited Western interference. Uganda has in fact greatly benefited from that invitation since, for the first time in a quarter century, it stands close to peace. However, the stakes are not high for Uganda alone. The ICC stands to lose the credibility it has gained thus far in the international community.⁴⁷⁷ The Court simply can neither afford to drop the indictments against Kony and the LRA leadership, nor can it afford to have Uganda, its first patron, refuse to cooperate.⁴⁷⁸ Although the ICC is powerless to force compliance, it must stand its ground to maintain legitimacy

466. *Id.*

467. *See A Better Way to Resolve Conflict*, *supra* note 246; McConnell, *supra* note 9.

468. DAVIDSON, *supra* note 40, at 176.

469. Ngcobo, *supra* note 359, at 5.

470. *See* Stephen, *supra* note 307.

471. *See Smyth*, *supra* note 19; *see generally* Redfern, *supra* note 19; Allio, *supra* note 316.

472. Blumenson, *supra* note 279, at 805.

473. *See generally* Akhavan, *supra* note 12, at 419.

474. LEONARD, *supra* note 268, at 61; SCHABAS, *supra* note 330, at 169.

475. LEONARD, *supra* note 268, at 61.

476. *See Coming in from the Jungle, Maybe*, *supra* note 11.

477. Akhavan, *supra* note 12, at 405.

478. *Id.* at 419.

in the eyes of the Western world.⁴⁷⁹ Neither Uganda nor the ICC can afford to disappoint the world that is watching and waiting.

479. See generally Akhavan, *supra* note 12, at 419.

