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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. The LRA is notorious for the atrocities they perpetrated against their own people, particularly the Acholi tribe in Northern Uganda. The Ugandan government and the LRA entered into a ceasefire agreement on August 26, 2006, and renewed the extended agreement with a second ceasefire truce on November 1, 2006. Negotiations for a permanent peace agreement have been promising, despite open hostilities at times between the parties. 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!

2. Id.
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.

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

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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.”).


14. Id.

settlements. However, almost half of the post-1990 “peace agreements break down within five years, and more within a ten-year period . . . .” Some of those agreements stay in an ambiguous state that cannot be characterized as either peace or war. 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. Contrast to Uganda’s offer for amnesty and push for peace, disregarding the Western principle for justice.

The question comes down to state sovereignty versus international governance. 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. Naturally, states choose whether to participate in the international legal system through agreements and treaties, like the treaty establishing the International Criminal Court. When a nation chooses to be bound by the rules of international law, those rules start to shape and influence domestic law and politics. International law can help a nation meet its aspirations for economic, social, and cultural development. Nonetheless, handing control over to an international tribunal has little political favor with governments and gives an incentive to act locally.

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. 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.
22. Id.
23. See id. at 328.
24. See id. at 328-29.
25. See id. at 331.
26. See id. at 341.
African belief in the supernatural, 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. But from the vantage of an African polygamous marriage tradition, it is easy to understand. However, what is incomprehensible to the African viewpoint is the kidnapping of children to be “wives” against their will and the flouting of the bridewealth.

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

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. But, given the power and influence of clans in African society, 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. Also in opposition is the interest of the ICC in establishing itself as a legitimate body, and Uganda’s interest in maintaining autonomy as it develops as a democracy and asserts its identity since colonialism. This comment explores

29. Akhavan, supra note 12, at 408.
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).
34. Moy, supra note 7, at 269.
35. See McLaughlin, supra note 33.
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.
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


\(^{42}\) 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

47. Ssenyonjo, supra note 41, at 409-10.
48. Id. at 410.
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.
58. Todwong, supra note 36.
59. Kalinaki, supra note 1.
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with Lieutenant General Vincent Otti, the second in command of the LRA, the host asked, "What is it that you are fighting for exactly?" He replied, "I have told you that we are fighting because of democracy, corruption, nepotism, and whatever." If the second in command of the LRA could not articulate a common purpose, one may easily conclude that they did not have one.

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. 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. An estimated 25,000 children have been abducted by the LRA to be soldiers, sex slaves, porters, and human shields in combat. Children make up over eighty-five percent of the LRA forces. During a radio interview, Vincent Otti admitted to abducting people for recruitment, saying, "That is a way of recruitment of guerillas."

The LRA lacks support from the general population, which compels it to forcibly conscript children to fill its ranks. Most children are between the ages of eleven and fifteen, but children as young as six are also taken. The preferred age has been declining "because younger children are easier to control, and younger girls . . . are less likely to be infected with HIV." 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. Children are initially made to carry heavy loads of goods looted from villages by their captors. 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.
66. Ssenyonjo, supra note 41, at 411-12.
68. Akhavan, supra note 12, at 407.
69. Id.
70. Id.
71. Id.
72. Id. at 407-08.
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. 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. The LRA called it "registration." Children who undergo this process are severely traumatized and believe they can never return back to society.

About twenty percent of the children abducted are girls who become "wives" (sex slaves) for the commanders. Joseph Kony is rumored to have around sixty "wives." Many girls become pregnant, and many are infected with AIDS by their captors. "[T]he LRA released over one hundred ‘child mothers’ with their children [in June 2000] because the children hindered the LRA’s movements." 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. The children sleep on the street, wherever they can find a place.

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 Uganda 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. 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. One observer stated that "more [people] are dying in the camps through disease than the LRA ever managed to kill directly." Aid agencies estimate that 900 people die in the camps each week. 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. In February 2004, two hundred people were massacred in an LRA attack in the Barloonyo camp in Northeastern Uganda.

Map of Uganda, Infoplease.com, http://i.infoplease.com/images/muganda.gif (political map on left); PanAfrican Localisation Project, Map of Uganda, http://www.panafril10n.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.).

84. Moy, supra note 7, at 268-69; see also Kalinaki, supra, note 1; Akhavan, supra note 12, at 409.
85. Among, supra note 38.
86. Coming in from the Jungle, Maybe, supra note 11.
88. Moy, supra note 7, at 268.
89. Ssenyonjo, supra note 41, at 418.
Uganda enacted The Amnesty Act, 2000 in hopes of ending the conflict through forgiveness and reconciliation. 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.

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. When a person is granted amnesty, he or she is immune from prosecution unless he or she commits a new crime.

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. 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. 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. 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.

On December 16, 2003, Uganda’s President Museveni referred the LRA situation to the International Criminal Court (ICC). Uganda’s referral was the ICC’s first invitation for jurisdiction. 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.
98. Redfem, supra note 19.
99. Moy, supra note 7, at 269.
100. Id.
Dominic Ongwen, and Raska Lukwiya.\textsuperscript{101} Ruska Lukwiya has since been killed.\textsuperscript{102} Because the ICC has no police force of its own, it must rely on governments to enforce its warrants.\textsuperscript{103} As signatories to the court, Uganda and Congo have an obligation to execute the ICC’s warrants.\textsuperscript{104} Despite not being a signatory, Sudan has still pledged to do so.\textsuperscript{105}

The war with the LRA and Kony has crippled Uganda economically and socially.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{109}

Kony now finds himself in a difficult position in that his former backers in Sudan’s central government have abandoned him.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{113}

\begin{enumerate}
\item Id. at 267-69.
\item Smyth, supra note 19.
\item Coming in from the Jungle, Maybe, supra note 11.
\item Id.
\item Kalinaki, supra note 1.
\item Id.
\item Id.
\item Id.
\item Coming in from the Jungle, Maybe, supra note 11.
\item Apuuli, supra note 49, at 187.
\item Id.
\item See Ugandan Government, Rebels Sign Truce, MONTEREY COUNTY HERALD, Aug. 27, 2006.
\end{enumerate}
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

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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.
of foreign aid, which provides about half of the Ugandan government’s budget, as other countries are less charitable to a callous leader. 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. A peaceful resolution to the conflict would go far in enhancing his image.

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. Negotiations for peace have previously ended in failure. 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. 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 process and that Uganda will convince the ICC to drop the indictments. However, the LRA has insisted on having the indictments dropped before reaching a final agreement. 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.” He advised that the LRA was in no position to give conditions to the ICC. 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.” However, Luis Moreno Ocampo, Chief Prosecutor for the ICC, has remained steadfast in his commitment to prosecute Kony and the other LRA leaders.

128. See Coming in from the Jungle, Maybe, supra note 11.
129. See id.
130. See id.
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.
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. The rebels asked for social-economic emancipation for Northern Uganda as well as government jobs. 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.

Kony and other leaders of the LRA claim they are innocent of the charges against them. Kony has stated that the elders sent him to the bush, implying that he was simply doing their will. Dominic Ongwen has said, "I did no wrong. I was following and obeying lawful orders from my senior commanders." 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. 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. President Museveni has announced a deadline of December 31, 2006 for all IDP camps to close. Jan Egeland, the UN Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, expressed optimism that Northern Uganda could recover once the fighting

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141. Barbara Among, Peace Talks Enter Crucial Stage This Week, E. AFR., Sept. 26, 2006.
142. Id.
143. Id.
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.
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.").
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

151. Id.
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. Uganda had rich natural resources, a prosperous middle-class of educated Africans, and a thriving economy. Britain voluntarily departed Uganda, leaving an improved infrastructure behind. 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. The 1962 elections created a coalition government of one group with nationalist aspirations and another rooted firmly in tribal tradition. Rifts between the Bantu-speaking people of the south (nationalists), and the Nilotic-speaking people of the north (tribalists) remained, as the south benefited from British investment at the expense of the other regions. The lack of nationalism and the divide between the tribes left Uganda vulnerable to instability after independence.

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. Western democracy did not thrive after post-colonial independence in Africa as a whole and Uganda was no exception. 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.

When Yoweri Museveni claimed the presidency in 1986, Uganda was in great need of reconstruction. 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)

161. Id.
162. Id. at 4.
163. Id.
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.
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. 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. 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. Museveni has also eliminated the use of child soldiers, or kadogos, in the Ugandan army since taking office. 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. The school enrolled about 800 children between the ages of five and eighteen.

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

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.
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.
\(^{196}\) 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. 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. Polygynous marriage allows each mother to have fewer children which improves maternal health and lowers infant fatality. Greater fertility jeopardizes the health of both the mother and the infant. Also, polygynous marriages make for very large extended families, which provide the source of labor for the family, the economic unit in agricultural societies.

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. This group exerts its influence on every aspect of life. The head of the descent group establishes the value system and makes directives for the others, who tend to be unconditionally loyal to him. 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. 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. 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. 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. It also serves the

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199. Id. at 170-71.
200. Id. at 171.
203. Id.
204. Armer, supra note 195, at 281.
205. Id.
206. Id.
207. Id.
208. Id.
210. Id.
political function of bolstering the authority of rulers and allowing leaders to mobilize people for political aims.\textsuperscript{211} Ancestors are believed to support authority by punishing transgressions against elders by killing or striking a descent group leader.\textsuperscript{212} The transgressor can engage a spiritual healer and pay the penalty to avert the disaster.\textsuperscript{213} “Illness is . . . [believed to result from] flouting the authority of an elder.”\textsuperscript{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.\textsuperscript{215} These functions of religion contribute to the stability of society.\textsuperscript{216} Although the African religious beliefs are often referred to as ancestor worship, the Africans do not deify or actually worship their ancestors.\textsuperscript{217} Instead, “dead ancestors are feared, placated through food offerings and rituals, or simply revered . . .  ”\textsuperscript{218}

Uganda has also been susceptible to cult-like religions led by charismatic prophets who pledge relief from suffering and promise a “golden age.”\textsuperscript{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.\textsuperscript{220} The prophet often makes extraordinary demands on its followers.\textsuperscript{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.\textsuperscript{222} Another such cult was the Holy Spirit Movement which was a precursor to the LRA.\textsuperscript{223} Alice Lakwena, an Acholi prophet, claimed that her followers could protect themselves from bullets by rubbing cooking oil on themselves.\textsuperscript{224} She also claimed that “stones or bottles thrown at government troops would turn into hand grenades.”\textsuperscript{225} Many Holy Spirit Movement followers were killed in confrontations with government

\begin{itemize}
\item \textsuperscript{211} \textit{ld.}
\item \textsuperscript{212} \textit{ld.} at 75.
\item \textsuperscript{213} \textit{ld.}
\item \textsuperscript{214} \textit{ld.}
\item \textsuperscript{215} \textit{Fed. Research Div., Library of Congress, supra} note 160, at 75.
\item \textsuperscript{216} \textit{See ld.}
\item \textsuperscript{217} El-Shamy, \textit{supra} note 152, at 213.
\item \textsuperscript{218} \textit{ld.}
\item \textsuperscript{219} \textit{Fed. Research Div., Library of Congress, supra} note 161, at 76.
\item \textsuperscript{220} \textit{ld.}
\item \textsuperscript{221} \textit{ld.}
\item \textsuperscript{222} \textit{ld.} (Yakan water is water collected from springs in the neighboring territory of Lugbara.).
\item \textsuperscript{223} \textit{ld.} at 77.
\item \textsuperscript{224} \textit{ld.}
\item \textsuperscript{225} \textit{Fed. Research Div., Library of Congress, supra} note 160, at 77.
\end{itemize}
troops as a result of such claims.\textsuperscript{226} \textquotedblleft Alice,	extquotedblright as Lakwena was called, claimed to get messages from the spirit world.\textsuperscript{227}

Magic and witchcraft flourish in African society.\textsuperscript{228} They are used as tools of social coercion, since they “those that rule have higher loyalty.”\textsuperscript{229} It is also used as a political weapon to eliminate new opposition.\textsuperscript{230} African presidents even surround themselves with occult counselors.\textsuperscript{231} The introduction of Christianity has also legitimized witchcraft in Africa.\textsuperscript{232} The existence of Satan in the Christian religion has “confirmed the existence of sorcerers and other evil persons.”\textsuperscript{233} Magic practitioners, claiming to be prophets, get rich detecting evil spirits, protecting against disease, protecting one's job, or enhancing one's income.\textsuperscript{234}

In Africa, not just cult leaders claim magical powers.\textsuperscript{235} The African culture predisposes people to believe that those in power have divine authority.\textsuperscript{236} Changes in social standing are taboo, as Africans believe that those born dominant were meant to have power over those born dominated.\textsuperscript{237} A person who is not born dominant “has[es] no right to power except by coups d'\textsuperscript{\textdegree}t\textsuperscript{\textdegree}at.”\textsuperscript{238} For the most part, African society accepts the leadership of the day.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{241}
justice calls for restoring harmony in the community.\textsuperscript{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.\textsuperscript{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."\textsuperscript{244} If a person has a string of bad luck, the community presumes he is covering up a misdeed.\textsuperscript{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.\textsuperscript{246} Compensation may be delayed for generations, but must be paid to cleanse the clan.\textsuperscript{247} "The wealth from [the payment] enables the bereaved family to marry a wife who will bear" a child, replacing the dead family member.\textsuperscript{248} The first child born with the same gender of the dead person is named after that person.\textsuperscript{249}

Africans do not understand the Western logic for finding justice.\textsuperscript{250} They see lawyers as clever people dueling before a judge, trying to outsmart each other, while avoiding exposing the truth about their client.\textsuperscript{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."\textsuperscript{252} The currency, that traditionally was in the form of cows, now takes the form of money.\textsuperscript{253} The amount of the agreement depends on the nature of the killing and the identity of the person killed.\textsuperscript{254} Once an agreement is reached, every member of the perpetrator’s clan contributes to the settlement amount.\textsuperscript{255} "All in the group are seen as responsible for allowing the perpetrator to err. So punishment is distributed."\textsuperscript{256}
The final ritual concludes the traditional justice method. Each group brings a goat to the ceremony, and each goat is cut in half. Each clan exchanges one half, thus "creating two goats that are whole again." 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. Such traditional justice method is still used in Uganda today, even though it is not a quick process. For instance, a murder in 1977 in Northern Uganda was not resolved until 2005.

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. However, governments either were not in a position to hold perpetrators accountable and deter future crimes against humanity, or they merely ignored the problem. International demands for justice brought about investigative commissions and ad hoc tribunals, but atrocities like the Rwandan genocide still occurred. Worse yet, less publicized atrocities went unnoticed and unpunished. 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. In July 17, 1998, the final Statute of the International Criminal Court was completed” at the Rome Conference.

The ICC is a permanent treaty-based institution created to investigate and prosecute perpetrators “genocide... [c]rimes against humanity... [w]ar
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A state party may also refer a situation to the court, allowing the court to investigate and prosecute crimes associated with that situation. A referral encompasses a situation in its entirety, including all parties, not just particular defendants. Thus, when Museveni referred the LRA situation to the ICC, he was also inviting the court’s scrutiny of acts by the Ugandan army. 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. The ICC has defended its decision to focus on the LRA, because the crimes committed by the LRA are more numerous and severe.

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 ....” One intention of the ICC is to “act as a deterrent to... humanitarian law violators.” Of course, the court will have to enforce its first sentence for would-be violators to take notice.


270. Bassiouni, supra note 264, at 180.

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.


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.” The ICC does not have its own enforcement mechanism, and must rely on state parties to enforce its warrants and sentences. 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.

As a signatory to the ICC, Uganda is obligated to enforce the court’s orders. If state parties like Uganda refuse to cooperate with the ICC, the treaty becomes dead letter—unofficially disregarded and not enforced. 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.” However, that also relies on state parties for enforcement.

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. 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. 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. 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.

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

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281. ICC Says Uganda Crimes May Go on Without Arrests, supra note 39.
282. LEONARD, supra note 268, at 61.
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.” 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. 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. Uganda’s referral to the ICC pressured Sudan to stop harboring the LRA which, in turn, weakened the rebel group. Moreover, none of the senior LRA commanders had accepted Uganda’s offer of amnesty before the ICC arrest warrants were issued. Then, “[i]n February 2005 . . . the LRA’s top negotiator [] surrendered to the [Ugandan army].” Uganda’s long term prospects for peace have steadily increased since it referred the LRA situation to the ICC.

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. These events certainly encouraged the ICC to continue pursuit of insurgent leaders, like Joseph Kony, who commit atrocities against humanity. In the LRA’s case, arrest and prosecution of the leadership would have an immediate impact on the rebellion’s operations. 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.

The ICC indictments have been a catalyst for the current peace initiative. 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. 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.

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.
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. Further, Foday Sankoh’s amnesty in Sierra Leone reinforced the idea that sometimes “violence pays.” Using his negotiated position as the head of the Diamond Mining Commission allowed Sankoh to fund further crimes. The ICC has plenty of incentive to follow through with its indictments of Kony and the LRA leadership.

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. 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. 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.” Likewise, Dermot Ahern, the foreign minister for Ireland, expressed support for the ICC and its indictments of Kony and the LRA leaders. Britain has also taken the stand that Kony and his leaders should face trial by the ICC.

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

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

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.” The group warns that rebels given amnesty in the past have continued to perpetrate human rights violations on victims. It also stated that “[i]nternational obligations to ensure justice for crimes under international law should be upheld.”

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. He criticized the government of Uganda for negotiating with terrorists and offering the leaders immunity. 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.”

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

The ICC may impose a sentence of life imprisonment, 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.
324. Id.
325. Id.
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.\footnote{330} Otherwise, the maximum sentence is thirty years, and the court is authorized to release the prisoner under certain circumstances.\footnote{331} During the negotiation of the Rome Statute, capital punishment was widely debated and life imprisonment became the compromise.\footnote{332} The ICC has limited resources to prosecute criminals, so less responsible offenders will never be brought before the court.\footnote{333} Therefore, no one but the most heinous offenders will be brought before the court.\footnote{334} Yet, the court reserves life imprisonment for only cases of extreme gravity.\footnote{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.\footnote{336} If no state party volunteers facilities, the Netherlands will take the prisoner.\footnote{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.\footnote{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.”\footnote{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.\footnote{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.\footnote{341} These conditions, coupled with the opportunity for parole,
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 . . . take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses . . .").
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
The court may also order the state to seize proceeds, assets, and property of the convicted to make reparations to victims. 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. 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. A majority of the Council's fifteen members must agree, including all five veto powers: the United States, Russia, China, Britain, and France. The threat to the peace process must be severe before the Security Council is likely to suspend the LRA indictments.

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.").


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.\textsuperscript{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.\textsuperscript{354} If the ICC chooses to recognize Uganda’s Amnesty program as adequate, the court may face criticism from those who value retributive justice.\textsuperscript{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.”\textsuperscript{356} While others follow a philosophy of moral imperative; criminals should be punished because they deserve it.\textsuperscript{357} Human rights groups tend to see amnesty as “impunity,” and advocate for prosecution.\textsuperscript{358} Forgiving prosecution can give the impression that certain people are above the law.\textsuperscript{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.\textsuperscript{360} The ICC has not yet interpreted the Rome Statute on this point, so no policy has been established.\textsuperscript{361} Early decisions of the ICC may influence policy for years to come.\textsuperscript{362} The difficulty lies in balancing the interests in peace negotiation with the need for justice.\textsuperscript{363}

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

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\textsuperscript{353} Blumenson, supra note 279, at 805.
\textsuperscript{354} Id.
\textsuperscript{355} Id. at 819.
\textsuperscript{356} Id.
\textsuperscript{357} Id.
\textsuperscript{360} Id. at 803-04.
\textsuperscript{361} Newman, supra note 358, at 296-97.
\textsuperscript{362} Id. at 343.
\textsuperscript{363} Blumenson, supra note 279, at 801.
\textsuperscript{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.”).
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Committee of the Red Cross has limited the scope of amnesties to exclude international humanitarian law. Insurgents will not often negotiate surrender without immunity of some sort. Amnesties are regularly part of peace negotiations, used as a bargaining chip or incentive for abusers with power to relinquish that power. 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. Nonetheless, the ICC has held its ground in keeping the indictments in force. Article 53 of the Rome Statute allows the prosecutor to abandon investigation or prosecution if doing so is not in the interests of justice. Of course, the ambiguity lies in determining what constitutes "justice." Justice needs not always be prosecution. Argentina,

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.

[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.\footnote{Ngcobo, supra note 359, at 2; Blumenson, supra note 279, at 814.}

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.\footnote{Ngcobo, supra note 359, at 4.} In gross human rights violations cases, there may be too many violations to prosecute traditionally.\footnote{Id. at 6.} In South Africa, 21,000 apartheid victims came forward to report violations.\footnote{Id. at 7.} Also, victims had often been killed, leaving only the offender to know what happened.\footnote{Id. at 10.} In a retributive justice system, information about the victims would not be forthcoming.\footnote{Ngcobo, supra note 359, at 13.} Additionally, no negotiation settlement would have been possible had the apartheid leaders feared prosecution.\footnote{Id. at 865.}

Amnesty alone seemed unjust, so the South Africans coupled amnesty with accountability.\footnote{Blumenson, supra note 279, at 861.} In order to get amnesty, offenders had to come forward and fully disclose what they had done.\footnote{Id. at 863.} Those who did not come forward and publicly confess were still subject to prosecution.\footnote{Id.} With public confessions, the apartheid government could no longer deny the crimes occurred.\footnote{Richard J. Goldstone, Peace Versus Justice, 6 Nev. L.J. 421, 422 (2005).} Truth commissions are effective in recording a credible history and dispelling false denials in several countries.\footnote{Blumenson, supra note 279, at 865.} Seventy percent of the black victims of apartheid supported amnesty in exchange for truth.\footnote{Blumenson, supra note 279, at 861.} Seven thousand people applied for amnesty in South Africa, and one in seven applications was rejected.\footnote{Id. at 863.} Those allowed to confess faced public hearings where victims and their families could ask the applicant questions.\footnote{Id.} Disgrace became the method of accountability with those responsible suffering condemnation in their communities.\footnote{Id. at 868-69.} The scope of the TRC was much greater than traditional investigations and
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.
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.”).
399. Id.
law enforcement leaders, so their fall from grace amounted to accountability. Nonetheless, some people in Uganda have advocated that Uganda create a truth commission to strengthen the measures agreed upon at the Juba talks. 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. As such, the ICC may need to consider allowing some diversity in state approaches to justice. It may be analogous to the margin of appreciation given by the European Court of Human Rights in dealing with diverse nations. Further, a nation in nascent democracy is likely to view justice differently than an established, stable nation. Imperfect justice may be an acceptable trade-off for peace.

a. In Breach of Obligation or Acting under Sovereignty?

The ICC may be reluctant to recognize Uganda’s amnesty program. Sovereign states sometimes sacrifice the general interests of the international community at large to promote their own immediate short-term interests. 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.

405. Blumenson, supra note 279, at 853.
407. Id. at 29.
409. Id.
dispense justice would outweigh the need to honor state sovereignty. If the ICC does not permit Uganda’s amnesty program, then Uganda is violating its obligation under international law. If the ICC construes amnesty for the rebel leaders as “unwillingness” to prosecute, the ICC may step in and prosecute on its own.

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. 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...” However, if such duty exists, a conditional amnesty may be acceptable in light of that duty, whereas a blanket amnesty would not. 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.

Regardless of the ICC’s view of Uganda and the situation, Ugandan tribal and religious leaders see the situation as a wholly local problem. 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.

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.
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.”

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. Any time Kony and his rebel leaders travel, they may risk being arrested and indicted by a country that has enacted anti-impunity laws. 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. In short, Uganda cannot guarantee protection from prosecuting Kony and his rebel leaders, even if Uganda satisfies the ICC and the indictments are dropped.

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. 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. 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.” 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.

420. Gettleman, supra note 46.
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.”

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. 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.

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. Dr. Levine was advising a seven member delegation from Northern Uganda headed by David Onen-Acan II, the Acholi Paramount Chief. Concerns over victims seeking revenge could drive Kony and the others into exile, even after the “mato oput” ceremony. In 2002, Uganda, Libya, Egypt and Sudan discussed a proposal that Kony be exiled if caught by the Ugandan army in Sudan. Kony has said that he would feel safer in another country than in his home village of Odek in Gulu. He listed the United States, the Central African Republic, Nairobi, Europe, Sudan, or any other Arab country as his preferred places to live.

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. Apologies and forgiveness are meaningless when coerced. Also, only a limited number of victims could be accommodated at the public hearings, leaving the rest disappointed and frustrated with the experience. 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.' However, the truth commissions could not heal victims' harms, especially with forced forgiveness.

‘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.’

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

But many Ugandans are ready to try forgiveness. Susan Ejang was abducted from her school as a child, witnessing her classmates’ deaths. She was forced to fight for the LRA for eight years, after which she escaped and returned home. Despite all that she endured, Ejang is still hopeful about the peace process in Uganda. 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. For eleven-year-old Kenneth Kidega, born and raised in an IDP camp, forgiveness is the best hope for peace. He said that an end to the war would bring a better life than he has ever known.

However, not everyone who has been brutalized by the LRA is ready to forgive. Consolata Auma has not forgotten that the LRA cut off her lips, nose, and ears because she was caught walking on the road. 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)).
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.
For these women and others like them, forgiveness is not justice, and they want to see the rebels pay. 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.

Ugandans seem conflicted about what exactly they want. 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. 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. Thus, the poll results indicate that Ugandan views on achieving peace are conflicted.

Meanwhile, many people within Uganda are ready to forgive to gain peace in the area. 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. He stated, “[w]e need one at a time, and the priority for the community is peace.” 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. 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.
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, who are the ultimate victims of the conflict. Allowing “mato oput” gives recognition to traditional justice as a valid method for conflict resolution and gives Uganda the autonomy it seeks in handling its own affairs since the end of colonialism. However, amnesty also gives the impression that some people are above the law and may promote deal brokering among other perpetrators of horrible crimes.

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

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. 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. 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. 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.
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.
Neither Uganda nor the ICC can afford to disappoint the world that is watching and waiting.