



## International Justice and the Prevention of Atrocities

### Case Study: Peace, Justice and Politics in Northern Uganda

by Mark Kersten

ECFR background paper, November 2013<sup>1</sup>

---

When the International Criminal Court (ICC) intervened in northern Uganda, it seemed that the interests of both the ICC and the Government of Uganda (GoU) would be served.<sup>2</sup> The newly established Court was seeking a situation where it could 'cut its teeth'. How better to demonstrate its potential, to establish itself as a player in international relations and to gain legitimacy than by targeting the Lord's Resistance Army (LRA) and its universally condemned leader, Joseph Kony? For the GoU, the ICC was a new and useful political "weapon" in its decades-long war against the LRA.<sup>3</sup> In explicitly referring "the situation concerning the Lord's Resistance Army"<sup>4</sup>, rather than the situation in northern Uganda, to the ICC, it was the Government's belief that the international community would put its weight behind the GoU's military efforts. The subsequent decade, however, has yielded a distinctly different story.

In 2005, the ICC unsealed arrest warrants for five top LRA commanders – Kony and his second-in-command Vincent Otti, as well as Dominic Ongwen, Okot Odhiambo and Raska Lukwiya.<sup>5</sup> But

---

<sup>1</sup> This paper was prepared as part of a project of the European Council on Foreign Relations to compare the experience of different situations where international responses to crises involving mass atrocities have faced the dilemma of seeking accountability while trying to bring the crisis to an end. Please cite fully in the event of reference or quotation.

<sup>2</sup> See Akhavan, Payam, *The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court*, *The American Journal of International Law*, Vol.99, No.2, (April 2005), 403-421

<sup>3</sup> Nouwen, Sarah M.H., and Wouter G. Werner, *Doing Justice to the Political: The International Criminal Court in Uganda and Sudan*, *The European Journal of International Law*, Vol.21, no.4, (2011).

<sup>4</sup> See International Criminal Court, Press Release, *ICC - President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC*, ICC-20040129-44, (29 January 2004).

<sup>5</sup> Otti and Lukwiya have since been killed.

even before the indictments were issued, a debate about the appropriateness and consequences of the ICC's intervention had erupted.<sup>6</sup> The debate, now well known by its “peace versus justice” moniker, reflected concerns regarding the alleged effects of the ICC on conflict and peace processes. On the one hand, it was argued that the ICC would marginalize the LRA by stripping it of support from the Government of Sudan, which had deployed the LRA as a proxy force in its own regional military campaigns since the mid-1990s. This isolation, it was argued, would leave the LRA with no option but to enter peace negotiations.

On the other hand, critics argued that the ICC was an unhelpful and belligerent intrusion that risked undermining ongoing attempts to end the conflict peacefully. The ICC removed incentives for Kony and his high command to sign and follow through with a negotiated peace agreement. Local religious and civil society figures further asserted that criminal prosecutions undermined their efforts to encourage LRA combatants to defect and receive amnesty through Uganda's Amnesty Law (2000) and that retributive justice was insensitive to traditional approaches to achieving justice and reconciliation. If prosecution was necessary, they argued, it should be properly sequenced with ongoing efforts to achieve a mediated political solution to the war: peace first, justice later.

At the same time, the GoU and the ICC had made clear that the Court's role was to target the LRA – and not the Ugandan People's Defense Forces (UPDF). Victims and survivors of violence in northern Uganda, along with long-time observers of the conflict, saw the Court's focus as an inherently biased approach to prosecuting the war. It was well documented that the UPDF had also been responsible for atrocities against civilians.<sup>7</sup> To a large extent, these debates emerged as the framework within which the conflict between the LRA and the GoU was understood. The ICC's effects, however, have been far more mixed than any one perspective or opinion, however persuasive, could capture.

The primary effect of the ICC's intervention in northern Uganda was to reaffirm a particular narrative of the war wherein the GoU was a force for 'good' seeking to bring the belligerent, criminal and 'evil' LRA to account. While this legitimized the aims of the Government, it also appears that it encouraged Kony to participate in the Juba peace process, seeing negotiations as an opportunity to set the record straight. In a rare interview, Kony suggested that he wanted to use the platform of peace talks to dispel the labels and brands that had been applied to him and the LRA:

---

6 Tim Allen's *Trial Justice* remains the most comprehensive treatment of this subject. Allen, Tim *Trial Justice: The International Criminal Court and the Lord's Resistance Army*, (UK: Zed Books, 2006)

7 See, for example, Dolan, Chris, *Social Torture – The Case of Northern Uganda 1986-2006*, (US: Berghahn Books, 2009).

“So with me, I am now here. You have now seen me, I am a human being like you. I have eyes, I have brain [...] I wear clothes also...you cannot hear the word from one side only. You cannot say that Mr Joseph is guilty without hearing anything from [me]...If they want peace to be, they will call all of us together then we talk about it. But [it is not enough to say] that I am guilty or I am wanted with the ICC...it is very difficult to [go to The Hague]. But when we talk this peace talk, when we talk and everything is finished well, we go. We go and talk. We go and judge that case to show that I am not found guilty...My message to Museveni is if Museveni can agree to talk with me, it is only a very good thing which I know will bring peace to the people of Uganda.”<sup>8</sup>

With the backdrop of material support from Khartoum dwindling as well as consistent prodding by trusted local religious and civil society figures, the LRA declared its intention to negotiate with the GoU.

Peace negotiations took place between 2006 and 2008 in Juba, South Sudan and were mediated by South Sudanese Vice President, Riek Machar. As a result of the ICC's intervention, questions of justice and accountability were, in the words of Lyandro Komakech, “the critical stuff” of the peace talks.<sup>9</sup> Kony and his high command, however, refused to partake directly in the negotiations, putting the fate of the talks in the hands of their delegates instead. This was deeply problematic as many of the delegates sought to satisfy their personal material interests and questions swirled about whether or not they truly represented the LRA high command.

Still, the Juba negotiations succeeded in producing numerous positive outcomes, including an Agreement on Accountability and Reconciliation, which declared that accountability for crimes committed during the conflict would be achieved through a mixture of formal and traditional justice mechanisms. It also stipulated the creation of a special unit of the Ugandan High Court, the War Crimes Division (later renamed International Crimes Division) “to try individuals who are alleged to have committed serious crimes during the conflict.”<sup>10</sup> Despite this, the peace talks ultimately collapsed when Kony refused to sign the final comprehensive peace agreement. Many blamed the ICC, suggesting that Kony never felt secure enough to come out of the bush. In the words of Father Carlos Rodriguez, “nobody can convince a rebel leader to come to the

---

8 Schomerus, Mareike, *'A terrorist is not a person like me': an interview with Joseph Kony*, in Tim Allen and Koen Vlassenroot (eds.), *The Lord's Resistance Army – Myth and Reality*, (London, Zed Books, 2010), pg.128-129

9 Interview by author with Lyandro Komakech, Kampala, Uganda (August 18, 2011)

10 *Agreement and Annex on Accountability and Reconciliation falls short of a comprehensive plan to end impunity*, (March 2008), accessed from Amnesty International, <http://www.amnesty.org/en/library/asset/AFR59/001/2008/en/5b9ec2da-f1e8-11dc-adcd-cdafd0ab0dfe/af590012008eng.html>

negotiating table and at the same time tell him that when the war ends he will be brought to trial.”<sup>11</sup>

Consequently, the mainstream narrative of the ICC's role that emerged from Juba suggested that the ICC helped to get the LRA to the negotiating table but prevented Kony from signing the final, comprehensive peace agreement.<sup>12</sup> However, it is important to interrogate whether the negotiations were truly about achieving a peaceful settlement to the conflict. There is strong evidence to suggest that neither the GoU nor the LRA were genuinely interested in achieving a negotiated solution to the war.<sup>13</sup>

From the outset, many senior GoU officials and delegates believed there was no chance of the talks succeeding.<sup>14</sup> The GoU accepted negotiations in order to appease pressure from the international community as well as domestic civil society and religious groups. Importantly, the Juba talks were not the first time that the LRA had entered into negotiations with the government. However, seemingly promising talks in 1994 and 2004/05 were squandered when the government issued rigid ultimatums to the rebels and re-engaged the LRA militarily when they weren't met.

Negotiating with the LRA also served the GoU's political interests. With the LRA labelled as a “terrorist” group, the GoU could present itself as a partner in America's global war on terror. The Government benefitted heavily from this arrangement, with the US providing political and material support to the GoU and UPDF. Government officials, including President Yoweri Museveni, consistently reiterated that they favoured a military solution.<sup>15</sup> In a telling account, Museveni told Jan Egeland that the Juba negotiations “were not to our benefit. Let me be categorical -- there will only be a military solution to this problem.”<sup>16</sup> Unsurprisingly, during the negotiations the GoU continued to plan military operations against the LRA and, when the talks concluded, launched Operation Lightning Thunder.

It is also hard to argue that the LRA was genuinely committed to the negotiations. During the Juba talks, the LRA continued to attack and abduct civilians. In 2007, Kony ordered the

---

11 See Lanz, David, *The ICC's Intervention in Northern Uganda: Beyond the Simplicity of Peace vs. Justice*, The Fletcher School of Law and Diplomacy, (May 2007), pg.1

12 Wegner, Patrick, *Ambiguous Impacts – The Effects of the International Criminal Court Investigations in Northern Uganda*, Refugee Law Project Working Paper No.2, (October 2012), pg.11

13 See also Kersten, Mark, *Peace from Juba: Peace Talks between the LRA and the Government of Uganda (2006-2008)*, in Amanda Taub (ed.), *Beyond Kony2012*, (Leanpub, 2012).

14 This point was made, for example, by UPDF spokesman Felix Kulayigye who claims that the Government knew from the beginning that the peace talks would fail. Interview with Felix Kulayigye, Kampala, Uganda (July 28, 2011)

15 See Dolan, Chris, *Social Torture – The Case of Northern Uganda 1986-2006*, (US: Berghahn Books, 2009), pg. 47-49

16 Egeland, Jan, *A Billion Lives – An Eyewitness Report from The Frontlines of Humanity*, (New York, US: Simon & Schuster, 2008), pg.211

execution of Otti, the senior LRA commander most serious about negotiating a peaceful settlement to the conflict. While some believe that Kony would come out of the bush and sign the comprehensive peace agreement if only the ICC arrest warrants had been dropped, there is scant evidence to suggest that this was the case. John Lacambel, a radio host at Gulu-based Mega FM who was regularly in touch with the LRA high command during the Juba talks, maintains that Kony would never have come out regardless of the ICC warrants because he fears and mistrusts the northern Ugandan community.<sup>17</sup> Michael Otim, a trusted voice on justice and peace issues in northern Uganda who met Kony seven times, adds that there was too much uncertainty facing Kony's fate for him to come 'out of the bush' and sign the peace agreement.<sup>18</sup> Moreover, the LRA rebels, weakened by military strikes and defections, used the relative safety and space afforded to them from the negotiations in order to regroup and re-arm. The ICC, in this context, was the perfect scapegoat to prolong the negotiations.

What can be learned from the ICC's intervention into northern Uganda and the developments it spurred? Five years after the collapse of the Juba peace talks and despite the fact that none of the indicted members of the LRA have been brought to justice, northern Uganda has experienced its longest period of stability in decades. In other words, *without* a successful conclusion to peace negotiations and *without* criminal accountability for the LRA's top commanders, northern Uganda has achieved a negative peace. As the largely muted reactions to the recent trial of LRA commander Thomas Kwoyelo in Uganda's International Crimes Division suggest, fears that criminal prosecution would undermine peace have withered. As for the Amnesty Act, key sections were left to expire for a year. And while it was reinstated in 2013 at the request of local cultural and religious leaders, few could suggest that the offer of amnesty or the North's stability is threatened by international criminal justice.

It is tempting to conclude that the ICC is – at least partially – responsible for the current negative peace that northern Uganda currently enjoys. However, such a causal claim is deeply problematic. After all, the LRA did not sign a comprehensive peace agreement and has not been defeated. Rather, as a result of military overtures on the part of the UPDF, the conflict has been 'exported' to the Democratic Republic of Congo and the Central African Republic, where the rebel group continues to terrorize communities. At best a negative inference can be made: the ICC's intervention did not prevent the most comprehensive peace negotiations between the LRA and the GoU from taking place and has not undermined stability in northern Uganda. Given

---

17 Interview by author with John Lacambel, Gulu, Uganda (August 5, 2011)

18 Interview by author with Michael Otim, Gulu, Uganda (August 4, 2011)

predictions that the ICC would ruin attempts to achieve peace, this finding is, in and of itself, of some importance and has recently been championed by the ICC's Chief Prosecutor.<sup>19</sup>

The experience of the ICC's intervention in northern Uganda also demonstrates how useful the Court can be to actors seeking to stigmatize adversaries and legitimize military solutions. The narrative of a 'good' government seeking to defeat an 'evil' rebel group has been consistently produced and reproduced since the ICC's intervention. This was made clear most recently with Invisible Children's 'Kony2012' video and campaign<sup>20</sup> and the ongoing US military support for the UPDF's hunt for Kony.

Lastly, an oft-neglected but crucial lesson is the need for a healthy dose of scepticism regarding the intentions of parties to a peace process. Peace negotiations have become form part of the strategic thinking of warfare rather than necessarily representing a genuine interest in a peaceful solution to violent political conflict. Scholars and observers weighing in on ICC interventions are often too quick to assume that peace negotiations are about peace. ICC arrest warrants and the “peace versus justice” debate may be manipulated and instrumentalised by warring actors – but not necessarily in the interests of peace or justice.

*Mark Kersten is a PhD student in International Relations at the London School of Economics, focusing on the nexus of international criminal justice and conflict resolution, and creator of the Justice in Conflict website.*

---

19 See Bensouda, Fatou, *International Justice and Diplomacy*, *New York Times*, (19 March 2013), at [http://www.nytimes.com/2013/03/20/opinion/global/the-role-of-the-icc-in-international-justice-and-diplomacy.html?\\_r=0](http://www.nytimes.com/2013/03/20/opinion/global/the-role-of-the-icc-in-international-justice-and-diplomacy.html?_r=0)

20 See Kersten, Mark, *Taking 'Kony 2012' Down A Notch*, *Justice in Conflict*, (7 March 2012), at <http://justiceinconflict.org/2012/03/07/taking-kony-2012-down-a-notch/>