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**WAR AND JUSTICE IN  
NORTHERN UGANDA:**

**AN ASSESSMENT OF THE  
INTERNATIONAL CRIMINAL  
COURT'S INTERVENTION**

An Independent Report

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## **War and Justice in Northern Uganda: Executive Summary**

In December 2003 the President of Uganda, H.E Yoweri Museveni, asked the Chief Prosecutor of the International Criminal Court (ICC) to investigate ‘the situation concerning the Lord’s Resistance Army’ (LRA). The LRA have been waging a war against the Ugandan government in the north of the country for many years. Most of those affected are Acholi people from the Gulu, Kitgum and Pader Districts, but large numbers have also been affected in neighbouring areas. Massacres of civilians have been perpetrated, and hundreds of thousands of people are living in displacement camps. Abductions by the LRA have been common, including abductions of children, some of whom have been forced to commit atrocities. The scale of suffering is immense, and there is no doubt that crimes falling within the jurisdiction of the ICC have occurred. The ICC is a new institution. It became operational in mid 2002 when the sixtieth state ratified the Rome Statute of 1998. The legal process in northern Uganda is the ICC’s first big case.

It had been hoped to create an international criminal court for over half a century, and human rights groups have been very enthusiastic about its potential to end impunity. There is a possibility of making international justice more of a reality. However, serious concerns have been raised about the legal process in northern Uganda, particularly with respect to the effects on children and other vulnerable groups. Save the Children in Uganda (SCiU) highlighted some of these in a formal statement as early as February 2004. Several other organizations and analysts have subsequently raised similar and additional concerns, and the ICC has generally had a frosty or even hostile response from local representatives of civil society on the ground.

This independent report examines the current ICC investigations and possible prosecutions, and assess the risks to children - including the children still in captivity (i.e. those living and perhaps fighting with the Lord’s Resistance Army), and the formerly abducted children that are now living at one of the reception centres or have returned to their families. The report is also aimed at providing an understanding of how the actions of the ICC are likely to affect national, regional and local reconciliation and the entire peace building process. Inevitably, some of the findings have had to be speculative, because there are so many unknowns (at the time of writing in February 2005, no warrants have yet been issued). In addition, the report describes and reflects on aspects of the war itself and on the experiences of people in the displacement camps. This has been done in order to provide information that may be of use in thinking about wider issues of vulnerability. One of the things that emerged from the fieldwork was that the attitudes of people in the displacement camps were by no means as homogeneous as their representatives and advocates have tended to suggest. Many informants were much more willing to support a process of punishing the LRA’s senior commanders than has been supposed.

### **Part One: the background to the ICC intervention**

Nowadays Uganda is viewed as an African success story, but this was not always the case. The present war in the north is a legacy of the upheavals affecting the country in the years after independence, leading up to the overthrow of Tito Okello’s government in 1986. It is also has deeper historical roots: a point often overlooked in discussion of this region of Africa is that war and mass forced displacements are even older than they at first appear to be. The pattern of abductions associated in recent times with the LRA has followed, even perhaps deliberately replicated, the depredations of the Nineteenth Century raiders and their local allies.

The involvement of spirit mediums in the war in northern Uganda needs to be understood in relation to local understandings of misfortune. An aspect of life for all the groups that have

been studied by anthropologists in the Upper Nile (and indeed in much of Africa and elsewhere) is that understanding of affliction, including illness symptoms, is often interpreted in terms of interpersonal causes or relations with the spirit world. This does not mean that understanding of empirical causality is absent, but that explanations for misfortunes tend to be pluralistic. In the turmoil that affected northern Uganda in the mid 1980s, a group of Christian-influenced spirit-mediums began to combine healing with military action, interpreting the violence as a form of therapy. Alice Lakwena and her father Sevarino Lukoya were initially the most important. Both these two were defeated by the Ugandan army in military campaigns. A secular guerrilla movement, the UPDA (Uganda People's Democratic Army), also operated in northern Uganda after the fall of Okello's government, but most of the UPDA accepted a peace deal in 1988. However insecurity continued, because another spirit-medium, Joseph Kony, proved more difficult to deal with than Alice and her father. In the late 1980s he established a group, which came to be known as the LRA. The LRA has used terror tactics to great effect.

From the time of the peace agreement with the UPDA in 1988, the Ugandan government, and President Museveni in particular, has persistently tried to downplay what has been happening. It seems to have been hard to accept that a spirit cult without a clearly articulated political agenda – or at least a very strange one - could sustain resistance against the well-organised and well-trained NRA (National Resistance Army). Working with a fairly small group, Kony's forces maintained a guerrilla campaign against the government and increasingly, against anyone who collaborated with it. Civilians, including children have been targeted. Several massacres have occurred and thousands of people have been abducted, with many forced to perpetrate atrocities. The Ugandan Government has responded with aggressive anti-insurgency measures. These have involved the forced displacement of most of the population into IDP (Internally Displaced People) camps. Aid agencies have helped supply these camps with food and other items, and the situation has become institutionalised. To avoid abduction, thousands of children migrate every night to the larger towns for protection.

Various efforts have been made to resolve the situation by peaceful means. Until recently the most important of these was the peace negotiations of 1994, when Betty Bigombe, then a government minister, managed to broker a temporary ceasefire. However the war has dragged on, with the Ugandan army continuing to pursue the military option. In 2002, agreements with the Sudan Government and the SPLA (Sudan People's Liberation Army) allowed the Ugandan army to operate north of the border against LRA bases in Sudan. Initially this 'Iron Fist' offensive was a failure. The LRA outflanked the Ugandan government forces, moved into Uganda and killed or abducted large numbers of people.

The scale of abduction is a matter of speculation, because there has been no systematic monitoring by UNICEF since 2001. At that time the total number of known abductions had reached almost 29,000. About a third of these were under the age of 18. If they were not killed, most abducted people were released or escaped within a year. It was estimated that there were 5,555 children still unaccounted for at the end of 2001. There have been thousands of abductions since 2001, but also large numbers of people who have returned or have died. So the current total number of people, including children, with the LRA is unknown (it is almost certainly less than 2,000 and may be less than 1,000). It is important to note that the scale of child abduction is not as high as is often asserted. Most of those abducted have been adults. Child abduction has been selective. For example, relatively few girls have been taken, but they have been chosen for their intelligence, youth and attractiveness. Most have been used as sexual slaves or 'wives'. The strategic aim of child abduction, like mutilation of victims and massacres, has been to sustain levels of fear. The report presents many details about the experiences of abduction and displacement. In particular, attention is directed to the very high morbidity and mortality rates in the IDP camps.

After 18 years, it seems that things may be about to change – although it would be foolish to be overly optimistic. Three overlapping processes are occurring that have challenged the status quo response of institutionalised population controls and counter-insurgency measures. First, after a great deal of activism from civil society groups, NGOs and concerned politicians, an amnesty has been offered to the rebels. Second, there have been various recent efforts to secure a ceasefire, the latest of which involves the indefatigable Betty Bigombe. Third, Uganda is the first member state of the International Criminal Court to have referred a case to the Chief Prosecutor of the ICC. All three of these developments are promising, but they are potentially contradictory. Why is there need for a ceasefire and peace talks if the Amnesty is serious? More importantly, how can the ICC intervention not undermine the Amnesty Act, and on what basis can there be negotiations if prosecutions are going to occur anyway?

## **Part Two: Concerns about the International Criminal Court's intervention**

The current ceasefire has been the fruit of persistent efforts over a protracted period. Understandably, those who have risked their lives to reach this point are concerned to keep the process going. From their point of view, as indeed from the point of view of those promoting Amnesty and forgiveness, the involvement of the ICC represents a serious threat. The report examines these issues in some detail, describing the capacities of the ICC, and drawing attention to similarities and differences with the International Criminal Tribunal for Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL). Amongst other things, it notes that the US is hostile to the ICC and that Sudan is not a States Party (i.e. it has not ratified the Rome Statute of the ICC); that the intervention in Uganda has occurred while the war is still going on; that the ICC will not prosecute children; that the ICC is bound by its Statute to act 'in the interests of justice' and also 'in the interests of victims'; that the trials will probably take place at the seat of the ICC in The Hague (in the Netherlands); that the accused will be given ample funding and time to prepare a defence; that a successful prosecution will require that a clear pattern of crimes and a clear line of command be established; and that only those alleged to be most responsible for the most serious crimes will be indicted (probably less than 10 individuals). It is also explained why the ICC is institutionally antagonistic to amnesties and negotiations about impunity, but in practice will not interfere in such areas except with respect to those individuals who are indicted. In addition it is noted that the ICC has the jurisdiction to prosecute Ugandan military officers or even the Ugandan President, but that this is unlikely.

The report then proceeds to discuss the main criticisms that have been made of the ICC intervention in northern Uganda. Essentially these are the following: it is biased; it will exacerbate the violence; it will endanger vulnerable groups - notably witnesses and children; it is spoiling the peace process by undermining the Amnesty and the ceasefire; and it ignores and disempowers local justice procedures. The concerns obviously overlap one another. However, for clarity the first three are discussed under separate sub-headings. In each case the grounds for the concern is discussed and assessed. While recognizing the problems and risks, all are shown to be based partly on misconceptions, and also that (so far) predictions about the killing escalating as a result of the ICC intervention have been unfounded. The ICC, it would appear, has concentrated minds in positive ways. The fourth concern - about local justice processes - raises wider issues about social healing. It is discussed in Part Three

## **Part Three: Local conceptions of justice**

The report examines the supposition that the Acholi people have their own approach to justice, one that will be violated by the ICC process. Certain civil society groups and eloquent activists have propounded this view as an established truth, with some of those based in Gulu town being especially vociferous about it. They have also been influential in acting as advocates for the Acholi people to journalists and other outsiders. As a result, it has become a

kind of 'received wisdom' that the Acholi people have a special capacity to forgive, and that local understandings of justice are based upon reintegration of offending people into society. The report accepts that it is entirely appropriate that priests should encourage Christians to forgive. 'Turning the other cheek' is an important aspect of the faith. It is also remarkable how some Acholi Christians seem to be able to act in this way. Similarly it is understandable that Christian leaders and traditional leaders influenced by their teaching should promote indigenous versions of Christian teachings. Even for non-believers, assertions about Acholi understandings of moral justice or Acholi notions of forgiveness are very seductive. Nevertheless, they must be treated with caution. Most of those we spoke to in the displacement camps mixed concern about the security implications of issuing warrants for the arrest of Kony and his senior commanders, with a willingness to see them prosecuted and punished. Certainly there was no general rejection of international justice. Instead there was concern about how such legal measures are going to be applied, and why it has taken so long for their plight to be noticed.

## **Conclusion**

Many of the points raised a year ago in the SCiU Statement of February 2004 remain issues of concern. These are all appropriate concerns for a child protection agency like SCiU. No one could deny that there are risks with the ICC intervention in northern Uganda, and the Court has not adequately addressed questions about them in public. On the contrary, it has given the impression of being secretive and evasive, and this has exacerbated rumours. There are, however, reasons why the ICC has taken a low profile approach, and at least some of the anger directed at the ICC is misplaced. The ICC may well have a useful role to play, and may currently be having positive effects – some of them unforeseen. Most importantly, the activities of the ICC have not led to the worsening of the situation that many commentators predicted.

In other ways too the ICC interventions has shaken things up in potentially positive ways. The whole system of population displacement into camps, which has both caused extraordinary suffering and has failed to provide adequate protection, can only be maintained with donor assistance. The issue of ending impunity, with its inherent rejection of compromises made with the perpetrators of violence, cuts to the core of this issue. Perhaps some of the hostility to the ICC is to do with disquiet about changing the established dispensations. There is no doubt that they need challenging. The intervention has also played a part in directing wider international attention at the crisis. Suddenly all sorts of new resources have become available for peace negotiations and longer-term development schemes. There are doubtless other reasons for these initiatives too, but the ICC has contributed. It has helped keep northern Uganda in the news. The report ends with a series of specific issues that need attention. Amongst these is the need to plan seriously for the post war situation and also proper consideration of how the ICC might be assisted without compromising legitimate concerns, notably with respect to child protection.

# **War and Justice in Northern Uganda**

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## List of Acronyms

ACCORD	A publication series of Conciliation Resources reviewing peace initiatives
ACORD	Agency for Cooperation and Research in Development
ARLPI	Acholi Religious Leaders' Peace Initiative
AVSI	Associazione Volontari per il Servizio Internazionale
CSOPNU	Civil Society Organization for Peace in Northern Uganda
DFID	Department For International Development (the UK's Aid ministry)
FRONASA	Front For National Salvation (a military force lead by President Museveni, which collaborated with the UNLA in the overthrow of Amin)
EDF	Equatoria Defence Force (a militia group in Sudan)
HSMF	Holy Spirit Mobile Forces
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
IMF	International Monetary Fund
LC	Local Council (These are councils introduced by President Museveni's government. They used to be called Resistance Councils. There are councils at each level of administration, from the village – LC1 to the district –LC5)
LRA	Lord's Resistance Army
MSF	Medecins Sans Frontiers
NRA	National Resistance Army (the former name of the Ugandan army after President Museveni seized power)
OTP	Office of the Chief Prosecutor of the ICC (also appears as ICC-OTP)
SCiU	Save the Children in Uganda
SCSL	Special Court for Sierra Leone
SPLA	Sudan People's Liberation Army
UPA	Uganda People's Army
UPDF	Uganda People's Defence Force (the new name of the Ugandan army)
UPDA	Uganda People's Democratic Army (a rebel force, largely made up of former UNLA soldiers)
UNICEF	United Nations Children's Fund
UNLA	Uganda National Liberation Army (the name of the Ugandan army after the overthrow of Idi Amin)
WFP	World Food Programme

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# **WAR AND JUSTICE IN NORTHERN UGANDA: AN ASSESSMENT OF THE INTERNATIONAL CRIMINAL COURT'S INTERVENTION**

## **Introduction**

In December 2003 President Yoweri Museveni of Uganda asked the Prosecutor of the International Criminal Court (ICC) to investigate 'the situation concerning the Lord's Resistance Army'. The LRA have been waging a war against the Ugandan government in the north of the country for many years. Most of those affected are Acholi people from the Gulu, Kitgum and Pader Districts, but large numbers have also been affected in neighbouring areas. Massacres of civilians have been perpetrated, and hundreds of thousands of people are living in displacement camps. Abductions by the LRA have been common, including abductions of children, some of whom have been forced to commit atrocities. The scale of suffering is immense, and there is no doubt that crimes falling within the jurisdiction of the ICC have occurred.

The ICC is a new institution. It became operational in mid 2002 when the sixtieth state ratified the Rome Statute of 1998. The legal process in northern Uganda is the ICC's first big case. Consequently, it is important for the Court to demonstrate its competence and capacities, particularly given the US Government's hostility. The US is one of the few countries that refused to sign the Rome Statute. Another is Uganda's northern neighbour, Sudan, where the LRA has its bases.

It had been hoped to create an international criminal court for over half a century, and human rights groups have been very enthusiastic about its potential to end impunity. There is a possibility of making international justice more of a reality. However, serious concerns have been raised about the legal process in northern Uganda, particularly with respect to the effects on children and other vulnerable groups. Save the Children in Uganda (SCiU) highlighted some of these in a formal statement as early as February 2004.<sup>1</sup>

The SCiU Statement of February 2004 supported the general mandate of the ICC, and expressed hope that the involvement of the Court will enhance the international focus on 'this almost forgotten conflict'. But the statement went on to draw attention to the timing of the investigation and eventual prosecution, pointing out that they are likely to take place during an armed conflict in which children are particularly vulnerable.

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<sup>1</sup> UNOCHA coverage of the SCiU Statement can be found at:  
<http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/c1290f89727275fac1256e3c005956eb>



The Statement quoted Jan Egeland, the UN Under-Secretary-General for Humanitarian Affairs, as saying that: “This is not a normal guerrilla war between rebels and a government. This is a war on, and with, and against children.”<sup>2</sup> With this in mind, the Statement then proceeded to raise a series of child protection issues, based on the Convention on the Rights of the Child (ratified by the Ugandan Government in 1990). The following were the key points raised:

The Statute of the ICC is very explicit on the exclusion of jurisdiction over persons under 18 years, but what will be the status of youth who were abducted as children but today are above 18, and how will the ICC consider members of the leadership who themselves have been forcibly conscripted?

The mere fact that children are exempted from the ICC prosecution might actually increase their attractiveness as targets for the LRA. They could be forced to carry out even more atrocities, since they do not risk punishment.

It is a well-known fact that within LRA itself members commit, often by force, severe atrocities against each other. Children are by far the main witnesses (and victims) of these actions. Save the Children is concerned that the LRA leadership might apply even more strict discipline to prevent witnesses from escaping. They could also easily convince the children that they will be subject to prosecution by the ICC if they do so. In other words, their hold and control over the child hostages can be increased, as well as the risks to children associated with escaping from the LRA. This is likely to prevent more children from escaping including newly abducted ones.

It can be assumed that the lives of those children who have managed to return from abduction will be endangered, especially if they give evidence to the ICC. This may also have implications for the present practices of rehabilitation and reintegration, where organizations working in this field actively encourage children to return to their communities following assessment and assistance in the rehabilitation centres. Who will be held accountable for the safety and protection of these children?

Attempts to arrest the LRA leadership in the absence of any peace agreement or process, may translate into, even justify, an increased military offensive by the Government of Uganda, which the LRA are likely to respond to with more violence against citizens. The people of northern Uganda have already suffered the impact of Operation Iron Fist, launched in March 2002, which has led to a massive increase in the number of abducted children and internally displaced persons and a huge increase in atrocities committed against civilians.

In general we find that it is extremely challenging to impart clear information to war-torn communities in ways that will be properly understood by the majority and not converted into damaging rumours, leading to even more suspicion and distrust. We anticipate that this will represent a huge challenge to any investigation mounted by the ICC, considering the ambiguities

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<sup>2</sup> The statement is taken from an IRIN interview in November 2003.

embedded in the fact that the communities in northern Uganda are made up of victims and perpetrators, often in one and the same person.

The SCiU Statement also strongly recommended a comprehensive risk assessment focusing on child protection to be carried out prior to the ICC investigation. But this did not happen. Following initial inquiries by the ICC's Office of the Prosecutor (OTC), an investigation was formally announced in June/July 2004.<sup>3</sup> SCiU and other international and local organisations were troubled that this development appeared to ignore their advice. Some were vociferous in their response, pointing out that the ICC's actions could represent a major threat to efforts being made to reach a peaceful solution to the war.

To give a sense of the strength of local feeling against the intervention, here is a statement released by the well-respected Refugee Law Project (based in Kampala at Makerere University) on the 5<sup>th</sup> August 2004.<sup>4</sup>

While the announcement in January 2004 that the Chief Prosecutor of the ICC would undertake preliminary investigations of the LRA was enthusiastically welcomed by many international human rights organisations and other activists for international justice outside Uganda, it was coldly received by most local and international NGOs working in northern Uganda and groups advocating a negotiated settlement to the conflict. The Government's own Amnesty Commission expressed fears that the announcement by the ICC could make a peaceful resolution of the 18-year conflict impossible. Regardless, on 28 July 2004 it was publicly reported that the ICC would commence a formal investigation into alleged crimes against humanity committed by the LRA.

The Refugee Law Project (RLP), based on its study of the war in northern Uganda, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, believes that, although the ICC investigation is in principle a positive initiative, the initiation of an investigation while the conflict is ongoing, is ill conceived. This position is based on two major reasons: first, the announcement of the investigation will increase the incentive for the LRA to fight, exacerbating the existing cycle of violence and violation of human rights; and second, it will most likely obliterate any opportunities for a peaceful end to the war. In addition, we believe the announcement raises a number of practical and legal issues, which the drafters and supporters of the Rome Statute never envisaged and which undermine the legitimacy of the ICC at the grassroots level.

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<sup>3</sup> The intention to proceed with a formal investigation was indicated in a letter from Chief Prosecutor Luis Moreno-Ocampo on 17 June 2004. States Parties were notified on the 21<sup>st</sup> June. The decision was not announced in Uganda until 28th July 2004.

<sup>4</sup> Makerere University's Refugee Law Project Statement on the ICC intervention in N.Uganda: <http://www.hrea.org/lists/refugee-rights/markup/msg00503.html>. The complete position paper, from which the Statement is taken, is available at [www.refugeelawproject.org](http://www.refugeelawproject.org). The working paper mentioned in the Statement can be found at: <http://www.refugeelawproject.org/working%20papers/RLP%20WP11%20Northern%20Uganda.pdf>.

Similar points were raised in other statements and publications, and attitudes hardening later in the year, when a ceasefire with the LRA appeared to be at hand, and there seemed a prospect that many more rebels would be persuaded to accept the terms of the Amnesty Act of 2000<sup>5</sup>. Following a telephone conversation with the ICC Chief Prosecutor, the Acholi Paramount Chief Elect and the Chairman of the Acholi Religious Leaders Peace Initiative (ARLPI), made the following proposals in a statement issued in November 2004.<sup>6</sup>

The recent public announcement concerning issuing of the Arrest Warrant of Joseph Kony, the leader of the LRA by the ICC is already having an adverse effect on the on-going peace process.<sup>7</sup> This announcement is greatly undermining and jeopardizing the confidence building measures for dialogue. The leaders would therefore propose that the ICC issue a strong **PUBLIC STATEMENT** recognizing and supporting the on-going peace process. We highly recommend that this statement be put on local, national and international media.

We also strongly suggest to you to consider temporal withdrawal of your presence from the conflict area as you watch on what is going on in the peace process.

The ICC should write to both the LRA and government of Uganda stating clearly its intention to halt any further investigation and prosecution and express its commitments to support the on-going peace process. This will be a concrete step in building confidence and trust on both sides.

While we recognize your need to investigate into the crimes committed by the LRA against humanity, we would strongly suggest that the investigation encompasses the whole situation of the war in northern Uganda in order for true justice to be done.

From our experience of the 18 years in the conflict, we have learnt that the military option has not produced sustainable peace in the region. We reiterate that the **Amnesty Law** and **Dialogue** options are the most relevant solution that befits our current situation. Therefore, the ICC intervention at this particular moment sends conflicting signals to the on-going peace process and could easily jeopardize its success.

Such antipathy to its activities in Uganda has placed the ICC in a difficult position. As a matter of policy, the ICC-OTC makes no comments on specific on-going investigative activities, partly for reasons of witness security. The OTC has made some attempts to cooperate and interact with a range of partners, including community leaders and relevant international organisations. However, these activities have been low key and/or confidential, and those parts of the ICC, notably the Registry, which will at some point play an active role in promoting public awareness

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<sup>5</sup> A brief background to the Amnesty Act can be found at: <http://www.c-r.org/accord/uganda/accord11/reconciliation.shtml>.

<sup>6</sup> 'Suggestions by the Acholi Religious and Cultural Leaders in Response to the Request by the International Criminal Court', Statement, Gulu 12/11/2004.

<sup>7</sup> This refers to media reports, not an actual issue of a warrant by the ICC.

of the legal proceedings have been largely inactive.<sup>8</sup> One explanation of this is surely the negative local response to the ICC intervention from some influential advocates of the Acholi people. Another reason is that, as the Acholi Paramount Chief Elect and the ARLPI pointed out, there has also been a peace process. Staff at the ICC are aware that they have to tread carefully. It would not help the new institution if the violence in the region escalated and the ICC were held to be responsible. Moreover the Rome Statute requires the ICC to act in the interests of justice and the interest of victims – although exactly what this means in practice is not clear.

A consequence of the ICC approach is that knowledge about its role in northern Uganda is very limited. What is known about it often comes from occasional statements in the media, some of which are misleading, and the kinds of ‘damaging rumours’ highlighted in the SCiU statement are prevalent. The impression has been given that the ICC is secretive. This leads to speculation about what it might or might not do. There are in addition accusations that it is much too closely associated with the Ugandan Government to act as an independent body. The ICC was, after all, asked to become involved by President Museveni himself. Subsequently the President and Chief Prosecutor Luis Moreno-Ocampo publicly announced the ICC intervention in a joint press briefing. Given that the Ugandan army is involved in the war, ICC independence seems to some observers to have been fundamentally compromised.

The present independent report examines the current ICC investigations and possible prosecutions, and assess the risks to children - including the children still in captivity (i.e. those living and perhaps fighting with the Lord’s Resistance Army), and the formerly abducted children that are now living at one of the reception centres or have returned to their families. The report is also aimed at providing an understanding of how the actions of the ICC are likely to affect national, regional and local reconciliation and the entire peace building process. Inevitably, some of the findings have had to be speculative, because there are so many unknowns (at the time of writing in February 2005, no warrants have yet been issued). In addition, the report ranges beyond the initial terms of reference, describing and reflecting on aspects of the war itself and on the experiences of people in the displacement camps. This has been done in order to provide information that may be of use in thinking about wider issues of vulnerability. One of the things that emerged clearly from the field research was that the attitudes and concerns of people in the displacement camps were by no means as homogeneous as some of their representatives and advocates have tended to suggest. Many informants are much more willing to support a process of punishing the LRA’s senior commanders than has generally been supposed.

Research in northern Uganda was carried out for three weeks during November 2004 in Gulu, Kitgum, Pader, Lira and Adjumani Districts. The places visited included Gulu town, Lacor, Awee, Opit, Awere, Lalogi, Anaka, Kitgum town, Labuje, Pader town, Pagimo, Lira town, Corner Ogur, Abia, Adjumani town, Laropi, Zaipi, Atiak, and Pabbo. Numerous group meetings were held with local council officers, NGO staff, soldiers etc. But an effort was also made to spend time with individuals and solicit their views in private. Interviews and discussions were held in English, in Lwo (the language of the Acholi and Langi people), and in Madi-ti (the language widely spoken by the Madi of Adjumani District). When visiting the camps for the internally

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<sup>8</sup> The ICC plans to become more actively engaged in outreach work from February 2005.

displaced, the research team occasionally spent the night there rather than returning to Gulu or Kitgum. This has not been something that research teams have usually done, which may help explain the differences in local views presented here. The research was carried out with the help of Jackie Atigo and Tonny Odiya Labol.<sup>9</sup> The report also draws extensively on my earlier long-term field research in northern Uganda and across the border in Sudan from the early 1980s until 1991, and on the numerous reports, articles, books and dissertations dealing with the area. Part of the purpose in writing up the report is to show what insights are already available, and to give an indication of where to find them.

The report is in three parts. The first provides background information on the war, describes the experiences of people in northern Uganda and discusses the Amnesty and current ceasefire. The second part addresses directly concerns about the ICC intervention. The third takes up one of these concerns, relating to local understandings of justice, and considers them in more detail, raising wider issues about reconciliation. Readers familiar with the situation in northern Uganda may want to skip directly to Part Two, perhaps dipping into sections of Part One. It has been judged useful to include the material in Part One, because I found that a surprising number of people living and working in northern Uganda know very little about how the crisis has emerged, and it will not be possible to plan properly for longer term social reconstruction without taking the past into account.

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<sup>9</sup> I made almost all the interviews together with either Jackie Atigo or Tonny Odiya Labol. Both of them were far more than 'research assistants'. It was a privilege to work with them. Unless otherwise noted, those interviews quoted in the report took place in the Luo (Lwo) language. I use the first person in the report when referring to my own opinions etc. Elsewhere I have used the third person, indicating the involvement of Jackie Atigo or Tonny Odiya Labol in discussions and interviews. The Crisis States Research Centre at the Development Studies Institute of the London School of Economics has been paying my salary and supported writing up. The Crisis States Programme receives financial support from the UK's Department for International Development. Many people have commented on drafts of the report, including staff at SCiU, AVSI, UNICEF and at the ICC in The Hague, and colleagues at the London School of Economics. I would particularly like to thank all those in northern Uganda who spent time talking to us, and to the following for their ideas, help and suggestions: Barney Afako, Betty Bigombe, Adam Branch, Matthew Brubacher, Graham Carrington, Christin Chinkin, Filippo Ciantia, Chis Dolan, Sverker Finnstrom, Tania Kaiser, Susanne Kirk, Mariana Goetz, Matt Hobson, Susanne Kirk, Jenny Kuper, Zachary Lomo, Birgit Lundbak, Andy Mawson, Gabriel Oling Olang, Melissa Parker, Lene Steffen, and David Wright. I would also like to thank participants at the Crisis States Programme Annual Workshop 2004 (held at University of Delhi, India, in December 2004) where a first draft of the report was discussed, participants at the Save the Children meeting to discuss the report's findings held in Oslo in January 2005, and staff at the ICC in The Hague for taking so much time to clarify certain issues. However it must be stressed that the analysis and errors in the report are mine. In particular, the interpretation does not represent the views of the ICC, DFID, SCiU or any other organisation.

# Part One: the background to the ICC intervention

## 1.1 Historical Background

A point often overlooked in discussion of this region of Africa is that war and mass forced displacements are even older than they at first appear to be. The lands of what has become the Uganda-Sudan border zone were devastated from the 1850s by armed traders and adventurers who reached this part of the Upper Nile from Khartoum. Their incursions were financed by the insatiable demand in industrialising counties for ivory – with which to make piano keys. The raiders were also interested in slaves, partly to carry the ivory north, and for the sexual gratification of themselves and their private armies. By the 1870s, the devastation was on a huge scale in local terms and the situation was then complicated further by the arrival of hundreds of ‘Nubi’ soldiers sent to the region to claim it for the Khedive of Egypt. Anyone who could, would seek the protection of war leaders who were able to act as local agents for the invaders, and many of the families that nowadays claim to be descended from pre-colonial traditional chiefs, are in fact the descendents of such mercenaries. It is also worth noting that the pattern of abductions associated in recent times with the LRA has followed, even perhaps deliberately replicated, the depredations of the Nineteenth Century raiders and their local allies.

Towards the end of the century the region was also affected by newly introduced bovine and human diseases, leading to further migrations and changes in livelihood patterns. After the Uganda Protectorate was set up in 1900, local wars continued until some degree of stability could be (violently) imposed in the years before and during the First World War. It was only at this time that most of the so-called ‘tribes’ were forged out of local clan groups, some of which recognised the former allies of the ivory traders as chiefs. In both the Anglo-Egyptian Condominium of the Sudan and the Protectorate of Uganda, the British administrations engaged such chiefs as agents. Where they did not exist, they were created. The British also used sleeping sickness control programmes to move populations and concentrate them for administrative convenience. It was in this way that the Acholi, the group that will concern us most here, was effectively constructed as a separate population group. The name was probably derived from the word for ‘black’ in the Lwo language (a language also spoken by other Ugandan groups which came to be classified as belonging to different ‘tribes’, such the Langi and Alur).<sup>10</sup>

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<sup>10</sup> Early accounts of the area that has come to be known as Acholiland use a variety of tribal labels for the groups that lived there. The terms Shuli (or Shooli) and Gangi were the most common. The former may have been derived from Shilluk, a people living in Sudan who also speak Lwo. The latter seems to have been connected with the Lwo word for ‘home’. An early usage of Acholi comes from the end of the Nineteenth Century. One British officer claimed that the people were called Choli or Acholi in the plural. This suggests a link with the Lwo word for ‘black’. Another possibility is that the term Acholi may have been derived from the Lwo for a person (*laco*). In any case, the term Acholi did not enter into general usage until the second decade of the Twentieth Century

The formation and classification of tribes to some extent predated the process of finally deciding where the border between Sudan and Uganda should be located. But this did not stop the boundary being constructed in such a way as to divide closely related populations. Some Lwo-speaking groups were in fact deliberately included in Sudan, because the British officer from the Sudan administration who helped demarcate the boundary line thought their chiefs were quite 'progressive' and wanted to have some in 'his' territory, whereas the Ugandan official just wanted to go on leave, so didn't care one way or the another.

Under British rule, there was fifty years of relative peace on both sides of the border, but systems of indirect rule using gazetted local languages tended to institutionalise divisions, and give them an ethnic/tribal character. In Sudan this was compounded by the Southern Policy, introduced in the 1920s, which meant that the southern Sudan had a separate administration from that of the largely Muslim north. When independence was rushed through, war broke out in southern Sudan in 1955 (just before formal independence in 1956). It dragged on until the Addis Ababa Agreement of 1972 brought a decade of uneasy peace in most of the country. However war in the south broke out again in 1983, and wars have also been waged in other regions, most notably in Darfur – as we all know from the recent media coverage of what has been called 'the first genocide of the 21<sup>st</sup> century'.<sup>11</sup>

In the south, the Sudan People's Liberation Army (SPLA) and the government have recently been pressurised into peace negotiations and an agreement – at least partly because of US interest in the oil reserves of the war zones. This may well lead to the country dividing into two – although that is not what the SPLA says it wants. If it happens, war may continue in the south, as bitterly opposed factions compete for power. Meanwhile, in the north war continues in Darfur in spite of the media spotlight. Deployment of a largely African peace keeping force is imminent, and aid agencies are already falling over each other to gain access to the relief funds that have become available. It would appear that most of the lessons that might have been learned from the relief operations in the south (or indeed from past interventions in Darfur itself) are to be ignored. Perhaps it is not surprising that Sudan has become established as a paradigm for explaining why institutions of governance in Africa fail, and how international assistance merely compounds the problems. Influential books like Barbara Harrell-Bond's *Imposing Aid*, David Keen's *The Benefits of Famine*, and Alex de Waal's *Famine Crimes* use material from the country to present powerful arguments against what nevertheless remains a remarkably robust body of conventional wisdom about what should be done.<sup>12</sup>

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<sup>11</sup> 'Panorama asks if the first genocide of the 21st century is occurring in Darfur', BBC News, 14 November 2004 ([news.bbc.co.uk/2/hi/programmes/panorama/4006837.stm](http://news.bbc.co.uk/2/hi/programmes/panorama/4006837.stm)). A recent report produced in response to a UN Security Council Resolution on Darfur (SCR 1564) has concluded that genocide has not been perpetrated, but that serious crimes against humanity and war crimes have occurred. It strongly recommends that the Security Council immediately refer the situation of Darfur to the ICC 'Report of the International Commission on Darfur to the UN Secretary-General' 25 January 2005 ([http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)). The US, however, is opposed to this move, and continues to claim that genocide has occurred. 'US convinced of Darfur 'genocide'', BBC News, <http://news.bbc.co.uk/1/hi/world/africa/4227835.stm>

<sup>12</sup> Barbara Harrell-Bond, *Imposing Aid*, Oxford: Oxford University Press, 1986; David Keen, *The Benefits of Famine*, Princeton: Princeton University Press, 1994; Alex de Waal, *Famine Crimes*, Oxford: James Currey, 1997.

### 1.1.1 Political upheavals in Uganda up to 1986

No one would doubt that Sudan is a state in crisis. Uganda, by contrast, has come to be regarded as a success story. This was not always so of course. The excesses of Idi Amin's regime in the 1970s and the killing fields of Luwero in the early 1980s are well known. But since Yoweri Museveni seized power in 1986 Uganda has, according to the official data, enjoyed economic growth and some degree of overall poverty decline. President Museveni has become the darling of the international finance institutions and the aid industry. Controversial issues have generally been brushed under the carpet. Even normally critical analysts of African states like Bayart, Ellis and Hibou can talk about Uganda as a place 'where the logic of violence has been replaced by political processes of negotiation and rebuilding'.<sup>13</sup>

Yet, having worked on both sides of the Sudan Uganda border for many years, there is much that seems very similar. If government officials and aid agencies are so inept in southern Sudan, why are they judged to have become so successful in Uganda when by and large they do the same sort of thing on the ground? The answer, of course is the political context. The apparent invigoration of the Ugandan state under President Museveni is viewed as so important as to render any local inadequacies relatively unimportant. This hides a great deal. Northern Uganda is the location of one of the world's worst humanitarian disasters and has been for an obscenely long time. Chronic warfare, unspeakable atrocities and institutionalised anti-insurgency measures have occurred on a scale that rivals almost anywhere, including Darfur. Only recently has this begun to be appreciated. It has at least been discussed in the Security Council. Nevertheless, after 18 years of continuous upheaval, there is yet to be a Resolution passed on what has been happening. How has this come about? The rest of this section briefly outlines events up until the mid 1980s, when the current warfare in the Acholi region of the north began.

Twenty years ago, most analyses of Ugandan politics explained how state construction in the country was inevitably chaotic and violent. In this context, the fighting was not something particularly unusual. Indeed it was predictable. It is only in retrospect that it has become something of an aberration. Uganda is a much smaller country than Sudan, but it has a population of roughly equivalent size that is as linguistically and ethnically diverse as its northern neighbour. In particular there is a politicised divide between the groups of the northwest, the north, the southwest and the south, as well as between the old kingdoms, notably that of Buganda, and the rest of the country. These kinds of divisions were exacerbated by the indirect system of administration of the British Protectorate, and became linked to divisions between Protestants, Catholics and Muslims and to the multi-party political system introduced at the eve of independence.

Milton Obote, a Lwo-speaking Langi from the north, became the first Ugandan head of state, much to the chagrin of many in the south. He drew heavily on support from the armed forces, which had become dominated by northerners (partly because there were relatively few other employment opportunities in that part of the country and

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<sup>13</sup> J.F.Bayart, S.Ellis and B.Hibou, *The Criminalization of the African State*, Bloomington: Indiana University Press, 1999:5.



partly because the British had been eager to exclude the politically and economically powerful southerners). After a violent confrontation with the Kingdom of Buganda in 1966, Obote became increasingly dictatorial, and increasingly dependent on his alliance with the army. It proved his undoing. In 1971, Idi Amin ousted him in a military coup.

The horrors of Amin's regime are well known, and I won't go into them here. What is important to note is that his own power base was in the northwest, and he quickly set about courting popular support in the south (at least initially) and in removing any potential counter-coup from soldiers close to Obote. In particular, this meant removing Lwo-speakers from the armed forces. Soldiers from Lwo-speaking 'tribes', mostly Langi and Acholi, were told to report to barracks, where they were massacred. Thousands of Acholi and Langi fled the country, many becoming involved in campaigning against the Amin regime. Some formed the Uganda National Liberation Army (UNLA) and, after Amin's invasion of Tanzania, they were provided with the opportunity for a serious military response. In 1979 the Tanzanian army, together with the UNLA and other dissident forces, notably FRONASA lead by Yoweri Museveni, invaded Uganda and overthrew Amin. Incidentally, the Tanzanian government justified the invasion with reference to the 1948 UN Convention on Genocide – an argument that was rejected by the UN Security Council.

With Amin out of the way, and the remnants of his army defeated or across the border in Sudan or Zaire, elections were organised. These took place in 1980, but are widely asserted to have been rigged. Milton Obote's Uganda People's Congress (UPC) was declared the winner and what is referred to as the Obote II regime began. Many anti-Amin activists, particularly from the southwest and south, refused to accept the results. In 1981, Museveni famously went to the bush with a small group of followers and founded the National Resistance Army (NRA). Obote's government was faced with guerrilla warfare inside the country, notably in Amin's home area in the northwest, and in the region to the north of the capital Kampala, known as the Luwero Triangle. He became completely dependent on the UNLA to keep him in power. The UNLA was nominally the national army, but again northerners made up a large part of it, predominantly (although by no means exclusively) from the Langi and Acholi 'tribes'.<sup>14</sup>

In the northwest, activities of the UNLA forced most of the population to flee into Sudan as refugees. In Luwero such an option was not available to most rural people. Here the NRA was able to secure considerable local support. The UNLA response was to treat most civilians as collaborators. They were herded into camps, and were frequently abused and killed. How many died is still a matter of debate, but it was certainly thousands. The killing went on in Luwero until Museveni seized power in January 1986, but Obote's regime did not last that long. In 1985, simmering tensions among Acholi in the army had burst into the open. The Acholi soldiers had various grievances, including the belief that they were the ones bearing the brunt of most of

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<sup>14</sup> The number of Acholi in the UNLA is a sensitive issue. It has become common to use Acholi as a shorthand for all those alleged to have killed civilians in Luwero. However, when I visited Uganda in the early 1980s I found that many of the soldiers I met were not from the north at all, and those that were did not necessarily speak Lwo. It is impossible to make an accurate assessment, but it is likely that the number of northerners in the UNLA was initially less than 40%. However, it may have risen in the mid decade. Acholi certainly became the dominant group following Okello's coup in 1985.

the fighting. Acholi soldiers had seized power, and Tito Okello had become president. He had immediately started negotiations with Museveni and a peace agreement was signed in Nairobi. But the NRA proceeded to ignore it, and marched on Kampala - a source of deep-seated grievance among some Acholi, who claim that it shows President Museveni cannot be trusted.

After their defeat in the south, the Acholi soldiers retreated to their home area in the north. Some hid their weapons and tried to blend into the local population, but they found this difficult. It was well known that they had killed people in Luwero and elders were reluctant to perform the necessary healing rituals to allow them to be reintegrated into rural life. They also correctly foresaw that the victorious NRA and its allies would be eager to avenge UNLA oppressions. Many of the Acholi soldiers chose to move into Sudan to regroup. They were able to do this partly because there was an Acholi population in Sudan and their arrival was not altogether unwelcome. Many Sudanese Acholi were opposed to the Sudan People's Liberation Army (SPLA), perceiving it to be dominated by Dinka and other groups living to the north of their home area, so they joined or supported the Equatoria Defence Force (EDF), a militia resourced by the Sudan Government. Acholi veterans from Uganda were a useful source of reinforcement.

Meanwhile, the National Resistance Movement's forces (the NRA and other integrated former-rebel groups) asserted control over the Acholi areas of Sudan, but just as in Luwero, experiences of persecution by the new government's soldiers helped create a fertile base for guerrilla activity. Many of the former UNLA soldiers formed anti-government groups, the most important of which was the Uganda People's Democratic Army (UPDA). This was all fairly predictable. Certainly Museveni could not have expected the Acholi population to welcome him with enthusiasm. But then something really strange and unanticipated happened.

## 1.2 Spirit cults and guerrilla war

An aspect of life for all the groups that have been studied by anthropologists in the Upper Nile (and indeed in much of Africa and elsewhere) is that understanding of affliction, including illness symptoms, is often interpreted in terms of interpersonal causes or relations with the spirit world.<sup>15</sup> This does not mean that understanding of empirical causality is absent, but that explanations for misfortunes tend to be pluralistic. A woman might say that she knows her child died of malaria, but she may still want to know why her child died and not her neighbour's. She may decide it was due to witchcraft or perhaps the involvement of the spirit world in the lives of the living. Therapy also reflects these ideas and a range of healers and specialists may be consulted as an alternative, or in addition to a bio-medically trained practitioner.

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<sup>15</sup> The literature on this issue is substantial. It dates back to the great study by E.E. Evans-Pritchard, *Witchcraft, Oracles, and Magic among the Azande*, Oxford: Clarendon Press, 1937. For recent reviews and discussion of insights from such work and how it relates to northern Uganda, see Tim Allen, 'Upheaval, affliction and health: a Ugandan case study', in Henry Bernstein, Ben Crow and Hazel Johnson (eds.) *Rural Livelihoods: Crises and Responses*, Oxford: Oxford University Press, 1992; and 'Understanding health: Biomedicine and local knowledge in northern Uganda', in Ricca Edmondson and Cecily Kelleher (eds.), *Health Promotion: New discipline of multi-discipline?*, Dublin: Irish Academic Press, 2000.

Under British rule enormous changes had occurred in Acholi society. Christianity and biomedicine was introduced, chieftainship was promoted, labour migration and cash cropping became norms. A response was a proliferation of different kinds of therapists who could explain and mediate these changes. All patrilineages had their own shrines, where elders would invoke the spirits (*tibu* or *jogi*) of ancestors to interpret problems, but many changes seemed to be of a different order to anything that ancestors might understand. People turned to schoolteachers or Christian preachers for different sorts of advice, and also to individuals who seemed to have knowledge of strange and amoral forces (often associated with the 'outside', the 'forest', or the 'bush'). Amongst other things, responses were required to deal with wild spirits, which sometimes seized people and made them speak in strange voices or would cause particular affliction (like Polio).<sup>16</sup>

Many of the specialists who emerged to deal with these phenomena were women or men who were in some way considered to be like a woman (perhaps because they were not married or were not living at their father's home). Female healers were appropriate partly because women are generally viewed as from the outside (a woman ideally leaves her father's home at marriage and travels to her husband's, then she will gradually change her lineage status to that of her spouse through the production of children and transfer of bridewealth). These new healers were called *ajwaki* (singular: *ajwaka*), the Lwo term for diviner, spirit medium or 'witchdoctor'. Many of them were permanently possessed by spirits, but had learned to control their spirits and could call them at will to interpret various kinds of events. Some of them also asserted a strong Christian aspect to their healing, partly because their own experiences of the spirit world seemed to coincide with their interpretations of Christianity, but also to show that they were 'good' and that their spirits were pure (*tipu maleng*). These Christian diviners might call themselves *nebi*, the term used in the Acholi Bible for prophets, to emphasise these qualities, and sometimes called their spirits *malaika* (angels). The Christian association was reinforced from the later Protectorate period by the spread of Pentecostalism to the area, linked to the spread of the Balokole Protestant revivalist movement from other parts of East Africa (a prominent follower was Janani Luwum, an Acholi pastor who became an Anglican bishop and was murdered by Amin), and also by the attacks on 'witches' that occurred after independence in the mid 1960s.<sup>17</sup> In the 1970s, Islam and African/traditional healing was actively promoted by Amin's government, and this too had an influence, not least because the power of the established Christian clergy was weakened. There was further proliferation of forms of possession, and it became difficult to distinguish clearly between 'pagan' *ajwaki*, and those that asserted the Christian or Moslem faiths, and might call themselves *nebi* or one of a number of other terms, such as *lapfwony* or *mwalimu* (teacher in Lwo and Swahili). At the same time, however, concerns about witchcraft and sorcery were intense, as the population tried to come to

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<sup>16</sup> A fascinating and very readable account of these developments is Okot p'Bitek, *Religion of the Central Luo*, Nairobi: East Africa Literature Bureau, 1971.

<sup>17</sup> For discussion of witchhunts in Uganda during the 1960s, see R. Abrahams, 'A modern witch-hunt among the Lango of Uganda', *Cambridge Anthropology* 10, 1985, and Suzette Heald, *Controlling Anger: The Sociology of Gisu Violence*, Manchester: Manchester University Press, 1989. For a discussion of more recent attacks on 'witches' in northern Uganda - in this case encouraged by the local Catholic Church, see Tim Allen, 'The Quest for Therapy in Moyo District', in M. Twaddle and H.B. Hansen (eds.), *Changing Uganda: dilemmas of structural adjustment and revolutionary change*, London: James Currey, 1991, pages 149-161.

terms with the radical changes, upheavals and afflictions of the post colonial era. So it became very important for possessed people to distinguish between bad/evil/Satanic/demonic/polluting spirits (*jogi marac, tipu marac, Satani, cen* etc.) which needed to be exorcised, and good/clean/holy spirits (*tipu maleng, jogi maber, malaika* etc.), which might have important messages and might intermittently possess their medium on an indefinite basis.

### 1.2.1 Alice Lakwena and Sevarino Lukoya

By the early 1980s, Christian (and sometimes Moslem) diviners or healers were common as indeed were the possessions and other problems they were thought to be able to interpret and mediate. From the mid decade some of these healers were drawn into the political processes that were going on around them. In 1985, for example, just before the Okello coup, Acholi soldiers in the UNLA consulted and were blessed by a powerful *nebi* working near the Catholic mission hospital at Kalongo in Kitgum District called Angel Lamwaka. However, she condemned them when they returned from the south with looted items, and predicted that they would lose power. Meanwhile, in Gulu town another *nebi* called Alice Auma had established a remarkable healing cult with a large following. It seems that she too had been approached by one of Okello's commanders in 1985. Interviewed in 1999, she claims that it was in fact her powers that enabled the coup to succeed, and that it was overthrown because her instructions had then not been followed.<sup>18</sup>

Alice had become possessed by various spirits. These included Wrong Element (apparently from the US) and a Moslem called Kassim. But the most potent was known as Lawkena, the Lwo term for messenger or apostle.<sup>19</sup> Her cult involved the use of water from the Kabarega falls on the Nile, located in the Kabarega National Park near Paraa, many miles away from Gulu town. This had in fact been the site of a pre-colonial cult, associated with a powerful spirit (*jok* or *jogi* in the plural) and a group of spirit-mediums (*ajwaki*). An old shrine near the river had been a kind of tourist site in the 1960s, but had been destroyed by Amin's forces in the 1970s. So Alice was linking her healing to a place with well-known, magical properties. Some sense of her local prestige can be gleaned by the fact that in 1985 two cars were at one point sent from the National Park to collect various items and afflicted people from Gulu town and drive them to the falls. There they were taken into the waters and healed by Alice, assisted by her father, Severino Lukoya (who himself had at some

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<sup>18</sup> According to Alice, an UNLA commander called Bajilo Lara had approached her and asked for spiritual assistance, because Obote planned to "get rid of all Acholi big men". Alice's spirit then told the envoy: "This is a holy war: when you stop killing and looting civilians, I will help you. However, if you will not obey the Holy Spirit order after the take-over you will be removed after six months and a lot of people will die for the sake of your evil." She also claimed that Okello would still be in power if he had correctly fulfilled the mission. From an interview with Robert Schlenker, 27.08.99, quoted in R.Schlenker, *Witchcraft and the Legitimation of the State in Uganda*, MA Dissertation, School of Oriental and African Studies, University of London, October 1999: 15-16.

<sup>19</sup> Alice herself is sometimes called the Lakwena. Interestingly, at the 1994 peace talks Joseph Kony was referred to as *laoor* by the Ugandan Minister of State, Betty Bigombe. This is another Lwo term for messenger, but perhaps with less explicit Biblical associations. Showing Kony respect in this way helps explain the LRA's willingness to speak with her both in 1994 and again ten years later.

point become possessed by God the Father – and still was when I met him in November 2004 in Gulu).<sup>20</sup>

In the upheavals that followed the victory for Museveni's forces in 1986, many other *ajwaki* and *nebi* emerged. However Alice's cult rapidly grew in significance. She performed healing rituals for UNLA soldiers after their retreat from the south, and through her, her spirits offered an interpretation of the UNLA defeat by the NRA that to many seemed compelling. She was able to cast out *cen* the dangerous and polluting spirits of those who had been killed by the soldiers, and she loaded them with *malaika*, the Lwo term for angels. She also explained that war is a form of healing through which people would be purified. The healing is on both sides, as those that die are like the rotten flesh cut out by a surgeon. The pure, on the other hand, could not be killed.

According to Alice herself, her direct involvement in war started on 20th August 1986. She claims that the NRA soldiers kidnapped many young people of her age in the neighbourhood and imprisoned them at the barracks in Gulu town.<sup>21</sup> Their relatives begged her for help, and the Lakwena told her to recruit 150 soldiers. With the support of 150 former UNLA soldiers and 40 guns, she says that she liberated the prisoners and that no one was killed or wounded in the attack. This was the start of a violent campaign against President Museveni's government, witches, other *nebi* and *ajwaki* and 'bad people', such as impure soldiers or individuals who did not obey certain rules or adhere to complex range of rituals. Her movement came to be known as the The Holy Spirit Movement or the Holy Spirit Mobile Forces (HSMF), but to what extent this was originally her own term is unclear. In the Acholi Bible, the term used for the Third Person of the Trinity is *Tipu Maleng*, but in other contexts this term can mean 'clean spirit' or 'clean spirits'. It could be that it was journalists reporting on the movement that introduced the explicit association with Christianity. Alice herself does not seem to have asserted that the Lakwena or any of her other spirits were The Holy Ghost. She nevertheless embraced the idea, perhaps because she and her commanders were eager listeners of the BBC World Service, which during periods of 1986 and 1987 was reporting daily on the HSMF's activities. In any case, ambiguities in manifestations of The Holy Ghost or Spirit in Acholiland had been common for some time due to the activities of Balokole and other Pentecostals.

Alice's movement proved to be extraordinarily effective. At the end of 1986 she claims to have had 18,000 'soldiers'. She prayed with her followers at special clearings sites called 'yards', and anointed them in oil, promising that if they were pure, bullets would not penetrate them. Amongst many other things, 'purity' included abstaining from sexual intercourse and alcohol. Soldiers in the NRA were confronted by scores of partly naked, glistening men and women marching towards them, some holding Bibles, others throwing magical objects, and a few wielding guns. In several encounters they seem to have been terrified or just did not know what to do. Initially most ran away. Such early successes brought more and more recruits, with many former UNLA and UPDA soldiers joining her. In October 1987, she left Acholiland

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<sup>20</sup> The main studies of Alice Lakwena and the Holy Spirit Movement are Tim Allen, 'Understanding Alice: Uganda's Holy Spirit Movement in Context', *Africa*, 61(3) pages 370-399, 1991; and Heike Behrend, *Alice Lakwena and the Holy Spirits*, Oxford: James Currey, 1999.

<sup>21</sup> R.Schlenker, *Witchcraft and the Legitimation of the State in Uganda*, MA Dissertation, School of Oriental and African Studies, University of London, October 1999: 16.

with perhaps 10,000 followers, and led them south in a marauding crusade, overwhelming opposition on the way. They were finally defeated in the swamps to the east of Jinja, some 80 miles from Kampala. Alice herself escaped on a bicycle, and has subsequently been living in a refugee camp in Kenya. She claims that she abandoned her followers when they revealed impure tendencies during the march south. A large number died in the final assault, but some of those who survived managed to return to the north.

Back in the Acholi homeland, the UPDA continued its campaign from bases across the border in Sudan until it was drawn into negotiations. Most surrendered to the Ugandan Government in 1988, but not all were prepared to accept the terms on offer. They joined a number of other groups, all of which were associated with men who were inspired by Alice Auma Lakwena's example.<sup>22</sup> The two most significant of these groups were movements connected with Sevarino Lukoya and Joseph Kony.

The first of these is Alice's father, a Balokole and former catechist of the Church of Uganda. He had had visions for some time and, as mentioned above, had participated in his daughter's cult of healing. However, Alice is said to have converted to Catholicism shortly before or after the Lakwena possessed her, and she is reported to have rejected Sevarino's offer of assistance when she was leading the HSMF.<sup>23</sup> Only after her defeat did he begin his own military activities. Like Alice, he established ritual places called 'yards', where he would become possessed by Christian and Muslim spirits (he currently uses the Koran as well as the Bible in his services at his church/yard in Gulu). He claimed that some of his spirits came to him from Alice, including the Lakwena and Wrong Element (an unpredictable spirit which sometimes fought on the opposing side), and thus attracted some of her former followers. He established scores of yards in Kitgum area and at one point had a following of about 2,000. Like Alice, he performed healing rituals and campaigned violently against other healers, killing several *ajwaki* who he thought were pagan and impure. However, unlike Alice he encouraged his followers to become possessed too, so long as it was by what he regarded to be *tipu maleng* (clean/pure spirits). Possession was seen as a person being chosen to fight. He called his movement the Lord's Army. It was eventually defeated in 1989, and Sevarino spent some years in prison. He is currently living in Gulu but has been building a house in Adjumani, the district to the west. It turns out that he had originally been a Madi but had migrated to Gulu and assumed an Acholi identity. Apparently the house in Adjumani will be for him and also for Alice, who the Ugandan Government has been trying to persuade to return home as part of the peace process (even paying her a large sum of money to do so).<sup>24</sup>

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<sup>22</sup> Outside of Acholiland, some former UPDA soldiers and also some of the remnants of the HSMF joined the Uganda People's Democratic Army. This was a movement fighting the government in Teso area.

<sup>23</sup> According to Alice's own account, it was the Lakwena spirit that instructed her to become Catholic. However, she claims not to have actually changed her religion, and has not yet seen a Catholic church from the inside. From an interview with Robert Schlenker, 27.08.99, quoted in R.Schlenker, *Witchcraft and the Legitimation of the State in Uganda*, MA Dissertation, School of Oriental and African Studies, University of London, October 1999: 26.

<sup>24</sup> Apparently she is demanding more money before returning. She has also written to one of those in contact with her stating that the Acholi are 'very stupid people', and that she will not return to live in Acholi area (personal communication with an informant in Gulu Town, November 2004).

## 1.2.2 Joseph Kony and the LRA

Joseph Kony too has asserted a connection with Alice. It is often claimed that he is her 'cousin', or that they are from the same clan (*kaka*). However, Alice's father was a Madi migrant, so the patrilineal kinship connection cannot be as close as has sometimes been suggested. According to one source, Alice and Kony share a grandfather on their mothers's side.<sup>25</sup> They both seem to have spent their early life in the vicinity of Gulu town and Opit, and their most sacred shrines are not far from one another. Kony's family background is perhaps a bit vague because he comes from a family of male *ajwaki*. Although in the past male *ajwaki* were not uncommon, particularly where their cults were linked with patrilineal ancestor veneration, by the 1980s it had become unusual, and potentially very dangerous. As noted above, when it happens now, the men are often thought to be like women in some way, usually because they, or their father, came to live in a place as outsiders (i.e. that they do not live on the land of their patrilineal lands). So it is quite possible that Kony's father, like Alice's, was a migrant (or the son of a migrant).

Born in the early 1960s (possibly 1961), Kony is two or three years younger than Alice Auma Lakwena. He dropped out of school after six years of primary education, and trained as an *ajwaka*, following the example of his older brother (and possibly also his father). When his older brother died, he inherited his powers (one informant, herself an *ajwaka*, told us that he actually killed his brother). At the time that the HSMF was active, Kony was possessed by a variety of spirits. In some accounts he claimed to have also been seized by the Lakwena as well as the spirit of Juma Oris, a former minister in Idi Amin's regime (who Kony subsequently met in Sudan). Alice was mainly operating near Kitgum so Kony began recruiting soldiers and other followers near Gulu. He is said to have tried to form an alliance with Alice, but she rejected him, or rather she said that the Lakwena refused to accept him. Kony was apparently humiliated and his followers attacked and killed some of hers.<sup>26</sup> Kony also sought alliances with some of the other spirit cult movements operating to the west, but was again rebuffed. For example, his group ended up fighting with a movement led by a man called Philip Ojwok near Anaka (Ojwok's forces were intercepted by the NRA in 1988 and wiped out. However, Ojwok himself survived. Much to everyone's amazement he came out of the bush and surrendered in November 2004, having been living as a kind of hermit for the past 16 years).

Kony's early campaign was not a particularly significant affair, although with a small mobile group he maintained a degree of insecurity close to his home area. However, this changed in 1988. In May, when President Museveni's government signed a peace agreement with the UPDA, many of those who were unwilling to surrender turned to Kony, including one of the UPDA's most ruthless and effective commanders, Odong Latek. From this point, Kony largely specialised in healing and divining, while Latek organised the forces. For a while, the group called itself the Uganda Peoples Democratic Liberation Army. Latek's influence on the movement was considerable,

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<sup>25</sup> According to information sent to me by Filipino Ciantia, the maternal grandfather of Alice and Kony was a man named Okello Kallisa. His two daughters were Aya, the mother of Alice, and Nora Oling, the mother of Kony.

<sup>26</sup> Sverker Finnstom has informed me that one of his informants told him about meetings between Alice and Kony in Sudan. Apparently in recent years they have developed a good relationship and discussed tactics (personal communication 07.02.05). I have no confirmation of this.

and Kony seems to have learned a great deal from the veteran commander about guerrilla tactics. His ally was killed in an engagement, but by 1990, Kony's force was the only significant armed unit still fighting in the Acholi homelands. Soon after Latek's death, Kony changed the name of the movement again, calling it the Lord's Resistance Army.

After his snub from Alice, Kony does not seem to have become possessed with any of her spirits again (although there are different views about this – one of our most knowledgeable informants is convinced that his power comes from having been seized involuntarily by Alice's most powerful spirit). Most informants say that Juma Oris became his chief spirit (something which must have caused some confusion when Kony was introduced to the living person). Other spirits are said to include a woman, Silindy Makay (sometimes called Silly Sindy), and Who Are You? (he apparently commands battle tactics by giving instructions through Kony). Like Sevarino Lukoya, Kony established 'yards' for cleansing and divining ceremonies. He has also followed Sevarino's example in drawing on ideas from Islam as well as Christianity (an aspect of his cult that became more prominent when he moved his bases north of the border in the second half of the 1990s<sup>27</sup>), and by being tolerant of other spirit mediums if they are vetted and found to be 'pure'. Those judged to be pagan *ajwaki* have been executed for Satanism and witchcraft. However, Kony seems to have been keen to keep more personal direction of the activities and behaviour of his followers than Sevarino, so from the HSMF he took the idea of 'controllers'. These were a select group who had access to Kony when he was possessed and passed on instructions to followers, as well as checking compliance to various rules.

Continuing to work with a fairly small group, Kony's forces maintained a guerrilla campaign against the government and, increasingly, against anyone who collaborated with it.<sup>28</sup> The size of the LRA is a matter of speculation. One estimate from 1997 suggests as many as 3,000 to 4,000 combatants.<sup>29</sup> Others are much lower. The confusion arises partly because the size of the LRA has fluctuated and also because its main bases have been located in Sudan. The number of guerrillas actually operating in northern Uganda at any one time has rarely been more than a few hundred. Large

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<sup>27</sup> It is has sometimes been reported that he nominally converted to Islam in Sudan, but none of our informants confirmed this.

<sup>28</sup> The most important work on the LRA and the effects of continuous war in Acholiland is Sverker Finnstrom, *Living with Bad Surroundings: War and Existential Uncertainty in Acholiland, Northern Uganda*, Uppsala Studies in Cultural Anthropology no 35, Uppsala, Sweden, 2003. This is an outstanding ethnographic account. Another fascinating study is currently being prepared by Chris Dolan, and will be available as a London School of Economics PhD thesis in 2005. A shorter recent overview of the war is Frank Van Acket, 'Uganda and the Lord's Resistance Army: The New Order No One Ordered', *African Affairs*, 103/412, 2004: 335-357. Other useful articles and reports include: R.Doom and K.Vlassenroot, 'Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda', *African Affairs*, 98, 1999: 5-36; Robert Gersony, *The Anguish of Northern Uganda*, report submitted to the US Embassy, Kampala and USAID mission, Kampala, August 1997, [http://www.usaid.gov/regions/afr/conflictweb/reports/gersiny/gersony\\_uganda.pdf](http://www.usaid.gov/regions/afr/conflictweb/reports/gersiny/gersony_uganda.pdf); Zachary Lomo and Lucy Hovil, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, Refugee Law Project Working Paper No.11, February 2004, Kampala, <http://www.refugeelawproject.org/working%20papers/RLP%20WP11%20Northern%20Uganda.pdf>; Okello Lucima (ed.), *Protracted Conflict, Elusive Peace: Initiatives to End the Violence in Northern Uganda*, ACCORD, Conciliation Resources, London <http://www.c-r.org/accord/uganda/accord11/index.shtml>.

<sup>29</sup> Robert Gersony, *The Anguish of Northern Uganda*, report submitted to the US Embassy, Kampala and USAID mission, Kampala, August 1997, page 35.



numbers have not been necessary, because they have rarely engaged in pitched battles with government forces, but have use terror tactics to maximum effect. Like Alice, Kony claimed that Acholi society had to be purified by violence, but he has been much more prone to specifically target non-combatants.

His followers have also had a more ambivalent attitude to the Christian churches. Some Catholic priests have had a degree of access to him, but a priest has been killed and Kony at one point ordered attacks on missions. One of those priests who have been in touch with Kony is Father Carlos Rodriguez. He told us that:

Talking and listening to Kony (on the radio) is a horrible experience. He talks normally for a while and says he is your friend, and then starts screaming in a high voice.... In May 2003 he said to kill all catholic priests. Priests were attacked. Twelve missions were attacked in six weeks. I changed my place of residence every two days. When commanders told him of killings (of civilians) in Lira (District) he was laughing. He told them to kill more. His is mad....

At the Catholic mission in Opit, the two Verona Fathers contrasted the behaviour of the HSMF and the LRA. One of them explained that:

The Lakwena soldiers would come and ask us respectfully for flowers for their rituals. In July 1987 they were close by. Alice had her shrine five kilometres away. Then one day the NRA came through the bush. They said they were going to attack. Next day the Lakwena soldiers were singing and fighting. We went to see the bodies. There were heaps of them, some with stones in their hands and oil on their bodies. Some were naked. After a week the (NRA) soldiers came and closed the mission. We went to Gulu, but came back in 1994. In 1997, the LRA came. They shot at the door of our house (the Father then took us to see the sixty bullet holes in their security door)... In 1999 they came again. I hid myself in a store just three metres from the house and left the door open. They were looking for money. The stayed for one and half hours then went.... Another time they came at night. The church was full of people. They took 14 girls and 9 boys. I went with them and met Odiambo (one of the LRA commanders), who contacted Kony on the radio. I spoke to Kony. He talked about how Museveni was selling Uganda to Gadaffi. He told us to go back home. I asked if the girls could go back too. I brought them all back... The parents were so happy....

Other children have not been so lucky. A key strategy of the LRA has been to abduct young people, including children, and to educate them to be part of a new society, using forms of abuse that are hard to believe. Many recruits become sexual slaves or are deployed as combatants. Some are required to perform atrocities against civilians in order to punish them for accepting President Museveni's rule, demonstrate their loyalty and make it difficult for them to return home because of the fear of reprisals. At peace talks in 1994 (discussed below), Kony justified LRA actions to those present as follows:

If you picked up an arrow against us and we ended up cutting off the hand you used, who is to blame? You report us with your mouth, and we cut off your

lips. Who is to blame? It is you! The Bible says that if your hand, eye or mouth is at fault, it should be cut off.

We asked one young woman, who was herself briefly abducted by the LRA from her secondary school dormitory, why she thought very young people have been captured and trained to do these appalling things (she spoke in English):

Why the war has involved children? To me, I look at that child which is young. Their minds can be eroded with a lot of things; it can get caught up into the world that they see. They forget so much, not like the adults....The rebels ... target the children, because they are brainwashed very fast ... and when they do something they don't really reason: "What I am doing is bad"....

Although there have been claims that Kony is no longer possessed, the spiritual dimension of the movement has remained important, continuing to instil both fear and respect for his powers. Several of those who have escaped from the LRA told us that they were terrified Kony could read their minds and would kill them for thinking about running away. However, Kony's links with UPDA veterans is reflected in an easing of restrictions on behaviour. Sexual intercourse, for example, is used as a reward for loyal male followers, who are given abducted girls as 'wives'.

A secular element is also clear in the various LRA statements of demands. Generally they call for: (a) an all-party 'National Conference' followed by general elections; (b) creation of a Religious Affairs Ministry to 'see an end to the use of witchcraft and sorcery by promotion of the Ten Commandments'; (c) rehabilitation of the economy and rehabilitation of the country's infrastructure; (d) national unity (through inter-tribal marriages and language instruction); (e) education for all; (f) policies encouraging foreign investment; (g) the independence of the judiciary; (h) the formation of an ethnically balanced national army; (i) improved diplomatic relations with neighbouring states; and (j) relocation of Uganda's administrative capital to Kigumba in Masindi District.<sup>30</sup>

Manifestos and pamphlets listing these demands have appeared from time to time on the Internet and have been circulated in northern Uganda as printed leaflets. The LRA have also made efforts to make their points through broadcast media. In early 1999 an LRA radio station was set up, reportedly called 'Radio Free Uganda', which broadcast daily (presumably from Sudan) for a few weeks until the signal was blocked.<sup>31</sup> It accused President Museveni of overstaying in power and misusing funds, and demonstrated a familiarity with Ugandan and international politics, including such things as the activities of the International Monetary Fund. It also broadcast denials of LRA involvement in the slave trade and that hunger had made the rebels resort to cannibalism. Later, when Radio Mega was established in Gulu with a grant from the

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<sup>30</sup> Quoted in Balam Nyeko and Okello Lucima, 'Profiles of the parties to the conflict', in Okello Lucima (ed.), *Protracted Conflict, Elusive Peace*, ACCORD, Conciliation Resources, London, 2002 (<http://www.c-r.org/accord/uganda/accord11>). For an excellent discussion of the LRA manifestos, see Sverker Finnstrom, *Living with Bad Surroundings: War and existential uncertainty in Acholiland, Northern Uganda*, Uppsala Studies in Cultural Anthropology no 35, Uppsala, Sweden, 2003, Chapter 4.

<sup>31</sup> I am grateful to Chris Dolan for drawing this development to my attention. Details given here about Radio Free Uganda and Radio Mega are taken from Chris Dolan's forthcoming LSE PhD thesis.

UK's Department for International Development towards the end of 2002, both Joseph Kony and Vincent Otti rang up during live broadcasts. The station immediately came under pressure from the government to stop it happening again. These initiatives by the LRA leadership indicate a more coherent political agenda than most accounts suggest, and also a desire to make a case to the Acholi population as a whole. It contradicts assertions that the rebels are all deranged, or that in some way they are not accountable for their actions. There is a spiritual aspect to the LRA, but rational decisions have been made about policies, and terror has been a strategy of choice.

### **1.3 Counter-insurgency and Institutionalised Violence**

From the time of the peace agreement with the UPDA in 1988, the Ugandan government, and President Museveni in particular, has persistently tried to downplay what has been happening. It seems to have been hard to accept that a spirit cult without a clearly articulated political agenda – or at least a very strange one - could sustain resistance against the well organised and well trained NRA. From the late 1980s, the war should have been over, and indeed the government frequently claimed that it was.<sup>32</sup> President Museveni's confidence that the northern problem was basically solved is reflected in the appointment in 1988 of a young Acholi woman as Minister of State for Pacification of Northern Uganda, resident in Gulu. It is hard to avoid the conclusion that appointment of a woman with such a title was motivated by a desire to show the President's power over Acholi masculinity, and was deliberately provocative. But things do not turn out as expected in this borderland. Kony has succeeded in humiliating President Museveni and his armed forces, while Betty Bigombe has proved more resolute and courageous than anyone could have imagined.

In 1991, irritated by the continuing insurgency, an intensive and brutal four-month military operation was mounted called Operation North, the main effect of which seems to have been to antagonise and alienate the population. Betty Bigombe attempted to walk a middle ground, trying to limit the NRA's depredations while being willing to accept some ruthless measures, arming community defence groups called 'arrow brigades', and keeping the door open for negotiations. But the LRA's response was ever more violent. Hundreds of people thought to be government collaborators were maimed or killed. The NRA seemed reluctant to provide protection, and Bigombe's lightly armed 'arrow brigades' were especially vulnerable. The punishment of victims included the amputation of limbs and the cutting of lips, noses and ears. The effect was to terrorise the population, and thousands of people sought refuge in the towns.

Nevertheless, in 1994 Bigombe's strategy of keeping a certain distance from all interest groups but being willing to talk to anyone seemed to pay off, and she managed to engage the LRA into peace talks. These seemed very promising. Twice she went out into the bush without any protection for negotiations. Most of those who went with her on the first occasion were so terrified by the experience that they refused to go the second time. She arranged an uneasy ceasefire, and LRA soldiers

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<sup>32</sup> A Northern Uganda Reconstruction Programme was set underway with World Bank Assistance. However, only a small percent of the budget was actually spent.

were even able to visit and stay at some of the trading centres. It looked like there was a real prospect for a peace agreement. However, President Museveni's attitude to the talks was not very enthusiastic, and at a political rally in February 1994 he humiliated Bigombe by issuing an ultimatum to the rebels. The LRA was given seven days to put down their weapons and turn themselves over to government forces. Within three days of the announcement the killing resumed.

President Museveni has claimed that he had received military intelligence showing that the LRA were only involved in peace negotiations in order to build up their military capacity, and that they had secured assistance from the Government of Sudan. Maybe this is true, but there were additional factors. Although expensive, the war in the north had certain political advantages for his government. The violence was contained in a part of the country in which he had no power base. Also the horrific violence and weird spirituality of the LRA allowed his government to present the north as a kind of barbaric periphery. He used this to present himself to people in the south as the guarantee that the oppressions of Amin, Obote and Okello would not return. President Museveni himself is from the southwest, and some people in Buganda were eager to replace him with someone else. But who else would protect them from the Acholi and other wild northerners? So it was not necessarily in President Museveni's interest to resolve the war by negotiation, and the much-publicised barbarism of the LRA had its political uses.<sup>33</sup> Moreover, by this time, President Museveni had a personal grudge against Kony. The idea of offering a compromise to such a 'bandit' was hard to tolerate. Also the war in the north kept the army occupied, and benefited many soldiers economically. Certain senior officers are well known to have become relatively wealthy from the situation.<sup>34</sup> It is, for example, an open secret that the army was involved in cattle rustling. In the past, Acholi families tended to keep their wealth in the form of cattle. By the mid 1990s, almost all of them had been stolen (the official explanation was that they were taken in raids by the Karamojong). It was probably for a combination of all these reasons that President Museveni suddenly withdrew support for Bigombe's efforts.

By this time there was little enthusiasm for the LRA among the Ugandan Acholi population. However, the LRA had never depended on mass support, and from the time of the failed peace negotiations, a generous line of assistance was indeed offered from Sudan. The Sudan government had decided to assist the LRA in retaliation for the Uganda government's barely disguised support for the Sudan Peoples Liberation Army (SPLA). In effect, the LRA became one of the many Sudan government militia through which it waged war in the south by proxy, and since the mid 1990s, the LRA has been directly engaged in fighting the SPLA on behalf of President Omar Bashir's regime in Khartoum, as well as launching attacks into Uganda against the NRA and unsupportive civilians. For this, a much larger armed force has been necessary, and this is one of the reasons why the LRA expanded its policy of abduction. These

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<sup>33</sup> This is one reason why the Government of Uganda has persistently claimed that the LRA has no coherent political agenda.

<sup>34</sup> Government officials and army officers often make a similar claim about the LRA. At a meeting at the Acholi Inn in Gulu in November 2004, a group of senior UPDF officers argued to me that the war was mainly about Kony and his commanders benefiting economically from the situation. It is the case that Kony and his commanders enjoyed many benefits from the association with the Sudan Government, including sophisticated military equipment, cars, radios and various other items. It should be added that the Acholi Inn is the best hotel in Gulu and is currently being renovated and expanded. It is also owned by one of the UPDF officers who were present at the meeting.

abductions have striking parallels with the abductions of the slave and ivory raiders in the late nineteenth century, a point that is not lost on local people. With Sudanese support, the LRA was able to launch some of its most ferocious attacks. One of the worst single incidents occurred in May 1995, when the LRA burned scores of homes and killed almost 300 people in Atiak, a trading centre just south of a large army barracks. On this occasion, as on so many others, the Uganda government soldiers failed to respond until the rebels had already withdrawn.

A year after that massacre, the LRA announced a brief ceasefire during the Ugandan presidential elections and even offered to stop fighting completely if President Museveni lost. In the event he won with a huge majority, although he received few votes in the north. Betty Bigombe had continued to maintain contact with the LRA after the collapse in the peace negotiations in 1994, and there were attempts made by a group of Acholi elders from Gulu to negotiate at the time of the elections, but these failed hopelessly (two elders were murdered by the LRA). Always a controversial figure, she was dropped from President Museveni's cabinet in June 1996 and promptly withdrew from a bruising bye-election campaign with a young firebrand called Norbert Mao. She left Gulu and was replaced as Minister by Owiny Dollo. Meanwhile Mao was elected to parliament and together with a group of other Acholi opposition, MPs campaigned for the Ugandan parliament to formally investigate the situation in the north. However, after prolonged discussion, the inquiry ended up rubber-stamping the President's view that the military option should continue to be pursued. Further campaigns were launched, culminating with the first Iron Fist Offensive of 2002. Iron Fist has involved the Ugandan army, now called the Uganda Peoples Defence Force (UPDF), operating across the border in an open alliance with the SPLA.

International pressure had increased on President Bashir's government in Sudan during the late 1990s. The Clinton administration declared Sudan to be a terrorist state because of the government's alleged role in an assassination attempt on President Mubarak of Egypt, and for providing a base to Osama bin Laden – who was held to be responsible for the bombings of US embassies in Kenya and Tanzania in 1998. By the end of the decade, President Bashir was trying to build bridges with his neighbours, and was doubtless alarmed by the US missile attack on what was asserted to be a chemical weapons factory in a suburb of Khartoum in (August 1998). In 1999 his government decided to ask former US President Carter to become involved in the hope of normalising external relations.

At this time there had been considerable media coverage of abductions in northern Uganda by the LRA, notably of the so called Aboke girls – a group of school girls abducted by the LRA from their dormitory at St. Mary's College in Lira District in October 1996 (they have been the subject of a television documentary and a book<sup>35</sup>). The Carter Center set about trying to persuade the Sudanese government to stop supporting the LRA, and managed to broker a deal between Presidents Bashir and Museveni whereby they agreed to stop supporting cross-border rebel groups (although in practice they continued to do so). International pressure on Sudan was nevertheless intensified following the attacks in the US on September 11<sup>th</sup>. The LRA was added to

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<sup>35</sup> Els de Temmerman, *Aboke Girls: Children Abducted in Northern Uganda*, Fountain Publishers, Kampala, 2001.

the US's list of terrorist organisations. Also there have been more concerted efforts by the US to broker a peace agreement with the SPLA, perhaps partly motivated by growing interest in Sudan's oil reserves. As a consequence the Sudan Government was forced to give permission for the Iron Fist incursions for Uganda since 2002, although it continues to have an interest in protecting and even supporting the LRA as part of the complex manoeuvrings around the Sudan peace process.

President Museveni himself has directed some of the Iron Fist campaign from a base in the north. Reportedly with US logistical support, and using helicopter gunships, an estimated 10,000 Ugandan troops have been involved. LRA bases in Sudan have been destroyed and hundreds of people killed. Understandably the Ugandan government has called these rebels, but it is clear that many have been abducted people, including children. However, Kony and almost all of his senior commanders evaded capture. Some retreated deeper into Sudan while others divided into small units and moved south of the border. As fast as abducted people died or were captured/freed, more were taken. If Operation Iron Fist of 2002 really was aimed at resolving the situation once and for all, it has to be judged a failure.

The LRA was allowed to outflank the UPDF/SPLA forces and had almost a free reign in northern Uganda, moving into new territories and perpetrating new massacres, notably in Lira District, but also in Soroti, Apac and Katakwi. In October 2002, LRA groups back in Sudan were still potent enough to help the Sudan Government forces recapture the town of Torit from the SPLA. Given the apparent investment in Iron Fist, it is hard to avoid the suspicion that the Ugandan Government had other agendas. Doubtless the LRA capacities were underestimated, but also many of the troops used had recently returned from Uganda's controversial intervention in the Congo. They were allegedly diseased and ill disciplined. Some analysts have argued that President Museveni just wanted them out of the country.<sup>36</sup> The Sudan Government agreed to a second Iron Fist offensive from March 2004. This has proved to be rather more effective, and is one reason for the increase in LRA fighters accepting Amnesty (see below). However, in November 2004 the LRA was still operating in Sudan, almost certainly with continued Sudan government assistance, and was still capable of attacking camps in Uganda as well as isolated groups of Ugandan Government forces.

The effect of all this on livelihoods in central northern Uganda has been catastrophic. Most of rural Acholiland (Gulu, Pader and Kitgum Districts) has been abandoned. This is also the case in affected parts of neighbouring districts, notably Adjumani and Lira. The shifting of the population to towns and close to garrisons has become a permanent arrangement, and from late 1996 became an integral component of the Ugandan government's anti-insurgency policy. In some places, anyone who refused to move from their rural homes was forcibly displaced (a policy that seems to have been modelled on the internment centres that had been created by the UNLA in Luwero in the early 1980s). In early 1997 World Food Programme food relief was delivered to 110,000 people in 'protected' IDP (Internally Displaced Person) camps. Two years later this had risen to over 400,000, and by mid 2002 to 522,000.<sup>37</sup> The numbers then

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<sup>36</sup> For example, Adam Branch, International Justice, 'Local Injustice: The International Criminal Court in Northern Uganda', *Dissent Magazine*, Summer 2004, <http://www.dissentmagazine.org/minutes/articles/su04/branch.htm>

<sup>37</sup> These figures are from WFP and UNOCHA sources and are quote by Chris Dolan in his forthcoming LSE PhD thesis.

escalated dramatically as a consequence of the LRA incursions during the first Iron Fist offensive, and new IDP camps were established in neighbouring districts. Something like 80% of the population of the three Acholi districts (Gulu, Kitgum and Pader) now live in camps. The rest live in the main towns. The total number of people living in IDP camps is about 1.5 million. Overcrowded, spatially constrained, lacking adequate water, and heavily dependent on relief food, conditions are almost universally grim and in some instances appalling.

Until recently, the security of people living in the camps was very low. Each camp was supposed to have an army detachment, but the soldiers have notoriously failed to respond or have run away when there has been an attack. A small amount of cultivation is possible in the immediate vicinity, but even this is very risky. Anyone who wanders too far is in danger of abduction or being accused of collaboration with the rebels (or losing a leg from a landmine). Usually the LRA attacks at night, sometimes operating right in the heart of the camp. To avoid abduction, thousands of young people commute to the bigger towns at night, sleeping in schools and hospitals, on verandas of shops or at the Catholic missions. Various aid agencies have also established night commuter centres. Watching this process is something astonishing. Vast numbers of children carry their blankets along the roads in the early evening, in some cases for very long distances. They do this almost every night, returning to their IDP camp in the early morning, ideally in time for school. On the 1st of April 2004, a survey of 11 night commuter sites in Gulu town found almost 20,000 children.<sup>38</sup> The numbers vary depending on how recent the last attack has been. Figures from one site, Lacor Hospital, show a peak of night commuters in March 2004 of over 6,000, following a drop to below 3,000 in December 2003.

In general the worst health situation tends to be in the newer camps, which often have extremely poor sanitation. However, outbreaks of cholera are not confined to these. Atiak one of oldest camps, continues to have cholera outbreaks. A recent baseline health survey of new camps in Pader and Lira has been carried out by MSF-Holland.<sup>39</sup> It found a severe acute malnutrition rate of 4.4%, and a global acute malnutrition rate of 8.28% amongst children aged 5-59 months.<sup>40</sup> These figures are comparable to other areas of northern Uganda. But the survey also collected mortality and morbidity data. The overall Crude Mortality Rate (CMR) was 2.79/10,000/day (a 'normal' rate is up to 0.5%) and the under-five mortality rate was found to be an astonishing 5.4% (in one camp, Agweng, it was found to be 10.46). The main causes of reported morbidity were malaria/fever (47%), respiratory diseases (28%) and diarrhoeal diseases (21%). All closely associated with the living environment. 'Malaria' was the main reported cause of death, followed by 'diarrhoea'. When I first saw these data I found the CMRs hard to believe. Rates are clearly not so high in all the camps, but having visited some of the particular camps surveyed I was shocked. People are living in some of the most

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<sup>38</sup> L.Falk, J.Lenz and P.Okuma, *Sleepless in Gulu: A study of the Dynamics behind the Child Night Commuting Phenomena in Gulu, Uganda*, May 2004, SCiU, Kampala.

<sup>39</sup> *Internally Displaced Camps in Lira and Pader, Northern Uganda: A Baseline Survey, Preliminary Report*, MSF-Holland, Uganda, November 2004.

<sup>40</sup> These data are based on anthropometric assessments. The findings from such surveys are useful, but can be very misleading if they are not linked to mortality assessments. Malnutrition figures of the levels found in camps in Pader and Lira might indicate an 'acceptable' situation, in that similar levels are found in other places. However, this may disguise the number of children who are dying. A high mortality rate for small children will mean that more food is available for those who survive. From the mortality data collected by MSF-Holland, that would appear to be the case in this instance.

appalling conditions I have seen in many years of working in war and famine affected regions. Another MSF-Holland survey on mental health in Pader town found that 79% of people had witnessed torture, 40% had witnessed killing, and 5% had been forced to physically harm someone. 62% of women interviewed think about committing suicide.<sup>41</sup>

Particularly in the older camps, where people have been living in cramped conditions for a very long time and have been in close proximity to government soldiers, the rates of HIV are also a cause of serious concern. As one young woman put it to us in November 2004 (speaking in English):

I think the result of this war, what the community will experience will be ... HIV (because of) the rape. If you compare the Uganda statistic, it's only 6%, but when we look at Northern Uganda and other places it's already doubling the Uganda statistic, it's 12 %... Even among the children, there are very many affected... though it has not yet come out physically... the result it is only going to be something (seen) with the time. The war that we will see will be the war with HIV; we will really have to fight that after (this one ends).

Antenatal surveillance data from Lacor Hospital near Gulu town gives a prevalence of close to 12%, the highest from any sentinel site in the country (this indicates a decline from rates recorded in the early 1990s – which reached 27% in 1993 - but a small rise since 2001).<sup>42</sup> Elsewhere in the region, antenatal rates have been recorded by one of the international NGOs, AVSI, at hospitals in Kitgum and at Kalongo in Pader District. Prevalence rates vary from 4.6% to 9.9%, with the lower rates being recorded at Kalongo, which provides services to more rural areas.<sup>43</sup> These rates are still higher than elsewhere in Uganda. However they are not so alarming as the figures sometimes asserted, and they show that the Lacor data may be location specific. A World Vision report has suggested that the use of sexual bondage as a weapon of choice by the LRA increases prevalence rates.<sup>44</sup> This too does not seem to be supported by the available evidence. Insofar as data are available, it seems that returned abductees are no more prone to be HIV positive than the rest of the population.<sup>45</sup> The main risk factors

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<sup>41</sup> *Pader: A Community in Crisis: A Preliminary Analysis of MSF-Holland's Baseline Mental Health Assessment in Pader, Uganda*, MSF-Holland, October 2004.

<sup>42</sup> Ugandan HIV prevalence rates based on antenatal surveillance are available in *STD/HIV/AIDS Surveillance Report*, June 2003, STD/AIDS Control Programme, Ministry of Health, Kampala <http://www.health.go.ug/docs/hiv0603.pdf>. For a critical commentary on the various claims that have been made about the Ugandan data, see Tim Allen and Suzette Heald, 'HIV/AIDS Policy in Africa: What has worked in Uganda and what has failed in Botswana?', *Journal of International Development*, 16, 1141-1154 (2004).

<sup>43</sup> F.Ciantia, 'HIV seroprevalence in Northern Uganda: The complex relationship between AIDS and conflict', *Journal of Medicine and The Person*, 2004:2(4): 172-175

<sup>44</sup> World Vision, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda*, Washington 2004: 28.

<sup>45</sup> This may be linked to controls on sexual activities within the LRA. Women selected as 'wives' are mostly very young and often attending school at the time of their abduction. One informant explained to us that older women are sometimes used as servants rather than for sexual purposes. She told us that she was not given to any of the LRA soldiers as a 'wife' because the senior commanders said that she might be infected with HIV/AIDS (after her escape, she found that she had a venereal disease).



appear to be proximity to urban centres and (arguably) proximity to the main army barracks.<sup>46</sup>

## 1.4 Experiences of Abduction and Displacement

Accurate data for the scale of abduction is unavailable. This is because registration of abducted people was only started in 1997 and has been haphazard since 2001. Even for this period, there were probably many unrecorded cases, and there are also complicating issues to consider, such as how long someone must be absent before they are classified as abducted. The best available information is a survey carried out by UNICEF in 2001 of all reported abductions (including short abductions of just one day). It found that a total of 28,903 people had been abducted from the three districts of Acholiland (Gulu, Kitgum and Pader) and the neighbouring districts of Apac and Lira (which are mainly populated by Langi) between 1990 and 2001.<sup>47</sup> The most intense period of abduction during this decade was soon after the failed peace negotiations, with over 6,000 reported abductions in 1996 (including the famous Aboke girls). Fewer than 10,000 of the reported abductions (less than a third of the total) were of children (i.e. people less than 18). The largest number of abductions was of people aged 18-35 years (about 45%). The overall majority of those abducted were male (about 70%). By the end of 2001, about 16,000 abducted people had returned (i.e. they had escaped, had been freed by the LRA, or they had surrendered or been captured by the Ugandan army). Just under 13,000 were still missing (i.e. still with the LRA or dead), of which 5,555 were thought to be children. The vast majority of those who had returned had done so within a year of their abduction (almost 80%). These data are of course a few years out of date. The security situation declined drastically in 2002, making it impossible for UNICEF to sustain monitoring. Numerous further abductions have occurred, and the current cumulative total for all those who have been abducted at some point (i.e. adults as well as children) is well in excess of 30,000 and possibly as high as 45,000.<sup>48</sup>

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<sup>46</sup> A report which stresses a link between the Ugandan army and spread of HIV/AIDS is Chris Dolan and Emmanuel Bagenda, *Militarisation and its Impacts*, February 2004, available from [Chris.Dolan@dial.pipex.com](mailto:Chris.Dolan@dial.pipex.com). It needs to be stressed that I have reported here the available antenatal data. No population surveys have been attempted in northern Uganda, so there are no assessments of HIV incidence rates (i.e. rates of new infection). Antenatal surveillance data are relatively easy to collect, but may be misleading. Two reasons why they may be misleading are: first, most women in Uganda do not attend antenatal clinics and those that do may be a self-selecting sample of urban or peri-urban residents; second, an effect of HIV is to reduce fertility, so women who are HIV positive are less likely to become pregnant.

<sup>47</sup> *Abductions in Northern Uganda and South-western Uganda: 1986-2001*, November 2001, UNICEF, Uganda.

<sup>48</sup> World Vision claims that 10,000 children were abducted in 2002 alone, World Vision, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda*, Washington 2004: 37. However, it is not clear where the data for this figure come from, nor is it known how many of those abducted since 2002 are still with the LRA. GUSCO figures from 2003 suggest that the relatively large number returning that year had been abducted recently (personal communication from Lene Steffen and Birgit Lundbak). Using similar statistics from the GUSCO and World Vision reception centres in Gulu up to early 2002, Chris Dolan has argued that the rate of reintegration of children abducted by the LRA is at least 88%. He concludes that, as of early 2002, the number of children remaining with the LRA was 'at the very most around 900' - i.e. a much lower figure even than that suggested by UNICEF. See Chris Dolan, 'Which Children Count? The Politics of Children's Rights in Northern Uganda', in Okello Lucima (ed.), *Protracted Conflict, Elusive Peace*, ACCORD, Conciliation Resources, London 2002 <http://www.c-r.org/accord/uganda/accord11/acknow.shtml>. Recently, UNICEF has reported that during

While recognising the weaknesses in the data on abductions, there are some important points to stress. The scale of child abduction has been terrible, and so have the experiences of some of those who have been abducted. But it has not been the main form of recruitment to the LRA. There does not appear to be any evidence that over 85% of the LRA is made up of abducted children, a figure that has appeared in many reports and articles and is even repeated in the ICC press release on the situation in Uganda of January 2004.<sup>49</sup> During a visit to northern Uganda, Jan Egeland the UN Under-Secretary-General for Humanitarian Affairs is reported to have said that, “This is not a normal guerrilla war between rebels and a government. This is a war on, and with, and against children.”<sup>50</sup> A problem with this sort of interpretation is that it implies that in some way the LRA combatants are not accountable for their actions (because they are traumatised children). In fact, the LRA have been using approaches adopted in many other wars, especially since the early 1990s.<sup>51</sup> The percentage of children amongst those abducted in northern Uganda is actually less than in the southwest, where another Ugandan rebel army called the Allied Democratic Front has operated since the mid 1990s.<sup>52</sup> It is also worth noting that the LRA has abducted relatively few women. The impression has sometimes been given that girls are more vulnerable than boys, partly because of the publicity and concern that has focussed on those abducted from St. Mary’s College Aboke in 1996.

None of this is to suggest that the suffering of many abducted children has been terrible. The point is that abduction of children has been a deliberate strategy - a weapon of choice. It has been used systematically and selectively to terrorise the population. Releasing children and adults soon after their capture is part of this process. Their stories are meant to instil fear. Moreover, there is no doubt that the LRA does target children during attacks. Scores of babies have had their skulls crushed with clubs and toddlers have been thrown into fires. Again the purpose has been to terrorise. It has been very effective – as evidenced by the scale and persistence of night commuting.

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2003 and 2004, a total of 15,000 persons, most of them children, were recorded abducted <http://www.reliefweb.int/library/documents/2004/unicef-uga-22dec.pdf>. However, it is again not clear how accurate these data are, because UNICEF abandoned systematic monitoring at the end of 2001. In a personal communication, the head of child protection for UNICEF Kampala has suggested a figure of 12,000 abductions for 2004 and 2003, but accepts that this is a guess. It is not known how many have been children, or how many remain with the LRA. However, it is likely that the number of children still missing and not dead is less than 2,000 and is possibly less than 1,000 (personal communications with Andrew Mawson, 03.02.05 and 05.02.05).

<sup>49</sup> *Background information on the situation in Uganda*, ICC Press Release 29.01.04

[http://www.icc-cpi.int/library/press/pressreleases/Uganda\\_200401\\_EN.doc](http://www.icc-cpi.int/library/press/pressreleases/Uganda_200401_EN.doc).

<sup>50</sup> IRIN interview with UN Asst. Secretary general OCHA, Mr. Jan Egeland, 12 November, 2003, quoted in the *SCiU Statement on ICC Prosecution of LRA* February 2004.

<sup>51</sup> The literature on the use of terror in wars since the early 1990s is substantial. Two key books are Mary Kaldor, *New Wars and Old Wars: Organised Violence in a Global Era*, Polity Press, Cambridge 1999, and Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security*, London: Zed Books, 2001. For a general overview, see Tim Allen ‘Perceiving Contemporary Wars’ in Tim Allen and Jean Seaton (eds.), *The Media of Conflict*, Zed Press, London 1999.

<sup>52</sup> According to UNICEF data, the ADF abducted 1,292 people between 1996 and 2001, of whom 612 were children - *Abductions in Northern Uganda and South-western Uganda: 1986-2001*, November 2001, UNICEF, Uganda.

Thus experiences of abduction vary widely. Sometimes people, usually women, are abducted in order to carry food that the LRA has looted from fields or from displacement centres after a food distribution (by the World Food Programme). These people may have to carry their burden for long distances and they are likely to be beaten or worse. However, once the food has been taken to a secure place, many are then released. Other captives are taken for training as LRA combatants, or used as sexual slaves. The latter appear to be chosen for their youth, attractiveness, and intelligence. They are often given as 'wives' to much older men as a reward, mostly commanders or individuals who have proved themselves in action.<sup>53</sup> Joseph Kony himself has 'married' more than 40 abducted girls. Those people who are not quickly released by the LRA are forced to undergo brutal initiations. These include anointing with oil, very severe beatings, and usually participation in killings. Even those girls taken as sexual slaves or 'wives' are normally made to help kill at least one person. During the three weeks we spent interviewing people in the war zone, we found that people would often recount their stories in remarkable detail from beginning to end as a kind of monologue. Some of these lasted (literally) hours.

In the remainder of this section I give an impression of this material with some extracts. Obviously these have been selected to make various points, and they are not the result of a systematic study based upon a sampling procedure. They are simply taken from some of the most interesting interviews we carried out in November 2004. The quotes are nevertheless valuable in giving a voice to some of those who have been caught up in this upheaval. A weakness in much of the literature on the experience of war in northern Uganda is that information comes from advocates and interest groups. The following is what people told us in their own words. All the interviews took place in Lwo.

From an interview in Kitgum with a woman in her 20s:

..... When I was abducted I was in our home in Purongo. I walked up to Sudan before returning to my village again. I tried to escape but unfortunately I was caught and brought back among other abductees. At first they wanted to kill me but I pleaded with them telling them I was the only survivor of my late parents, so I was only caned. After that we went back to Sudan, I was about twelve years old at the time.... On reaching there I was given to a man as a wife I tried to resist but I was threatened with death so I had no option other than to accept. Nonetheless my stubbornness bought me 200 strokes of the cane before I was handed over to my new husband. Later I was trained for a year and returned to Uganda as a fighter despite the fact I was pregnant by then. Unfortunately I got injured ... I also had a miscarriage as a result. Later I was given the rank of second lieutenant, I guess this was a form of motivation and perhaps because I had taken long in the bush, and maybe as a reward for good work since I used to clean the wounds of the injured, and also help to train the newly abducted children on how to take care of themselves while in the bush. I had to stay for twelve years in the bush....

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<sup>53</sup> Some of the men who have been given 'wives' have had no choice other than to accept them. Some former LRA combatants reported that their sex life was monitored, and that they would receive 'medical' treatment if they failed to impregnate their 'wife'. There are also reports that women who did not conceive were punished.

*Why did the LRA mutilate people?*

Peoples' lips were cut off because it was with the lips that they made alarms when being under attack and they (the LRA) also claim it was the same lips that people use for reporting them to the UPDF who pursue and attack them. So this was done to discourage others from making an alarm when being pursued. And the rest of the other body parts were cut on the same argument that they aided the civilian to contact the UPDF.....

*What did you think of Kony?*

Kony has got some spirit in him that reveals to him what others cannot see. For instance, he can foretell what would happen next. You could imagine Kony is not educated at all but bright and educated people follow him not in fear but rather in obedience to his orders..... Kony is a normal man when not under the influence of the spirit but when possessed his eyes turns red and his voice also changes.....

From an interview in Gulu town with a woman of 20 years. She was living in hiding after her escape from the LRA. The brothers of her mother had attacked her at her father's home, because she had killed their sister:

*Why did you kill your mother?*

..... I was abducted from Pabbo in 1990 April over the weekend as I was going to the garden to help my mother. It was around 7:30 a.m. in the morning when I was abducted together with my mother. We only moved a short distance away and I was then asked to kill my mother. I first refused but I was told my mother will be asked to kill me. They kept insisting. They tried to force my mother to kill me, but she would not. They said they would kill both of us, but my mother told me that I must kill her to survive. I did it, but I loved my mother. I wanted both of us to die. After that I moved with them.... Around August 1991 we entered into Sudan. I was trained as a soldier. We used to go and raid food and clothes from the Dinkas (i.e. SPLA) in Sudan.... In 1993 we came to Uganda, and stayed around Kitgum..... From 1993 to 2000 my work was to carry tins of bullets.... I escaped in September 2000..... After all those years that I stayed in the bush I came back without a child. I stayed in the bush for 9 years. My 'husband' used to beat me saying that I was only refusing to have a child...

*What do you think of Kony and his special powers?*

I met Kony face to face when they passed us out as newly recruited soldiers. He told us to be strong hearted and fight for the freedom of Acholi people. It's our duty to free the Acholi whose land will be taken away by Museveni. Later a stone was burnt into ashes with oil "moo yaa" and smeared onto our bodies. Also water was sprinkled on us. Then Kony said from that time we are his soldiers..... They smeared us in this way for protection and to make us strong. It was also to stop us escaping, We were told that if we escaped, the holy spirit (*tipu maleng*) would bring us back..... I believed it. When I was still there, this made me so scared that whenever my heart told me to escape I would say to myself that the spirit is looking at me. Then I just gave up.....

The following is from an interview with a former LRA soldier who had been abducted at the age of ten and stayed in the bush for eight years. The Ugandan army had recently captured him after he was wounded in an engagement. The interview took place at the World Vision reception centre in Gulu.

*Did the commanders ever explain why they were attacking the camps?*

Yes, the commanders said the Acholi people were stubborn and did not want to support their movement since they encourage their children to escape when they are abducted. So they had to kill them to make them learn.

*Why were the rebels cutting off people's legs, lips and other body parts?*

That happened when I was still in Sudan but I learnt from some friends that it was some spirits that ordered Kony to do that; for instance cutting the legs of those caught riding bicycles and cutting the lips of those who tried to make alarms.

The next extract is from an interview with a boy of about 17, interviewed at Atiak displacement camp. He too was asked about killing and gave a very frank and gruesome answer.

After I was abducted I stayed with the rebels for six months. It feels good to be back with my mother, but I still have pain in my body from the beatings.... I was tied and beaten many times.... For most of the time I was not fighting, because I was small. They sent me up high trees. I had to stay there to watch for the soldiers.... I moved with the rebels from place to place.... but they never stopped beating me. Even if they see you eating without permission you are beaten.... They also forced me to kill many times.... So many times that I cannot remember how many.... If you refused to do the killing (with a club or panga) they would cut off the head and make you carry it. They said that the *cen* (polluting spirit) of the dead person would possess us and that it would mean that we could never go home... None of us wanted to carry the head, so we all had to kill... When the killing is done, each of us had to swallow some of the blood.... This was as a kind of cleansing... The head was passed around and we all had to taste the blood... Some of the people we killed were people who had tried to escape... Not all the commanders make their soldiers do this... It depends on the person... We had someone with us who was an expert at killing.... He was a man called Odong who had lost one of his eyes.... He is an old man and still alive out there in the bush... The commanders were the lucky ones.... they have (magical) protection and the guns cannot affect them.... Even if you stand next to them, the bullet will hit you but not them... My sister was also abducted with me, but she was taken away and I have not seen her since then...

The above informant went on to explain how he managed to escape, but the interview was interrupted when we heard gunfire. The local army detachment had ambushed a group of LRA who were approaching the displacement camp to steal food, killing one of them. The mother of the boy was also present. She and one of his younger brothers had been wounded in an attack, leaving the woman crippled. In a neighbouring home we had just interviewed another mother, surrounded by the graves of her children. They had all been hacked to death in much the same way as described above (possibly

by the boy we interviewed). The details about the cutting off of heads relates to old customs among some Acholi groups linked to the allocation of social status to a person who had killed, and to rituals necessary to contain the effects of the polluting spirit (*cen*) of the deceased. In his ethnography of the Acholi, Girling describes how a warrior would cut off the head of someone he had killed and take it to his ancestral shrine to show what he had done, and then to be blessed and treated. A complicated ritual was performed and a girl was symbolically given to him as a wife. After several days of ritual ablutions to ensure that *cen* had been purified, the man would be given a special praise name and cuts would be made on his right shoulder to indicate what he had done.<sup>54</sup>

Lastly, here is another extract from the same informant who spoke above about the future war against HIV/AIDS. After her abduction by the LRA she managed to continue her education, and is now living in Gulu town (she spoke in English).

*How has the war affected you?*

Actually war has affected us in many ways. We can't move to the villages really to share the joy that we used to have with the village people. The moral path has really been degraded so much that you find children moving from their places (i.e. not staying with their parents). They don't really get ... what people used to get in their communities, sitting together around the fireplace and trying to discuss and get the moral education from their parents.

*Have you been surprised by the way people have behaved?*

I have really been so surprised because when I look at women, always they say that women have forgiveness and a peaceful heart. But in this war I look at it as the contrary of this, the other side of the coin. Because ...the atrocities, the fighting and the heartless things being done are inflicted by women and children... They are killing and ... being rude to people in captivity. One of the girls, Jane, told me when she was just abducted, the first welcome she had was by a woman, and she was given 250 strokes with the cane. She thought that this girl would really have sympathy for her being abducted; instead she was jealous that she had come to take away the husband that had been given to her. So I am really so surprised because to me I think of women as having a heart full of forgiveness....

## **1.5 Amnesty and Ceasefire**

After 18 years, it seems that things may be about to change – although it would be foolish to be overly optimistic. Three overlapping processes are occurring that have challenged the status quo response of institutionalised population controls and counter-insurgency measures. First, after a great deal of activism from civil society groups, NGOs and concerned politicians, an amnesty has been offered to the rebels. Second, there have been various recent efforts to secure a ceasefire, the latest of which involves the indefatigable Betty Bigombe. Third, Uganda is the first member state of the International Criminal Court to have referred a case to the Chief

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<sup>54</sup> The person killed could be a woman as well as a man. See F. Girling, *The Acholi of Uganda*, HMSO, London, 1960: 103

Prosecutor. All three of these developments are promising, but they are potentially contradictory. Why is there need for a ceasefire and peace talks if the Amnesty is serious? More importantly, how can the ICC intervention not undermine the Amnesty, and on what basis can there be negotiations if prosecutions are going to occur anyway?

The three developments need to be placed in political context. President Museveni's government and the UPDF had invested a great deal in Operation Iron Fist but (at least initially) it failed. Far from ending the war by the end of 2002 as promised, the fighting spread into new areas and the scale of displacement in northern Uganda was massively increased. The military option seemed not to be working. The Ugandan government tended to explain this by arguing that the LRA has continued to receive support from the Sudan government, in spite of the agreement brokered by the Carter Center, as well as from Acholi in the Diaspora (i.e. Acholis living in rich countries). However, President Museveni's international prestige has been adversely affected. There has been growing international criticism of his administration and increased support for local and national efforts aimed at negotiated resolution.

By late 2003, explicit statements were being made by some of Uganda's main aid donors. The EU referred to 'reservations about the military option' and the UK's Deputy High Commissioner is reported to have said the 'war effort has failed'. Most vociferous of all, was Jan Egeland, the UN Under-Secretary for Humanitarian Affairs, who visited northern Uganda in November 2003. He remarked that: 'The situation is intolerable and we must all agree as an international community, the UN and donors, that this is totally unacceptable. Northern Uganda is the most forgotten crisis in the world' (this quote, and the preceding ones, are all from *The Monitor*, they are also cited in Makerere University's Refugee Law Project position statement on the ICC, 28 July 2004). President Museveni did not disguise his irritation, but he recognised that he had lost the political initiative. A prosecution was immediately announced relating to army corruption in the north, implicating the President's own brother, and President Museveni threatened Kony with an international warrant of arrest unless he was willing to make peace. More emphasis was also placed on the Amnesty process.

Following persistent lobbying from various activists - and overcoming outright opposition from President Museveni himself - the Amnesty Act passed into Uganda law in November 1999 and was enacted in January 2000. It provides amnesty procedures for all rebels, not only the LRA, and initially it was groups that had been resisting the government in other parts of the country that benefited most. Kony himself is said to have condemned the Amnesty and threatened abductees and followers with violent reprisals if they tried to accept it. He also recalled that some of the UPDA who surrendered in 1988 were subsequently killed, allegedly by the Uganda Government. In any case, Operation Iron Fist made clear that President Museveni and the UPDF were not really interested in reconciliation.

From 2003, greater efforts were made to encourage people in the LRA to accept the Amnesty. In the aftermath of the 2002 Iron Fist offensive, it proved understandably difficult to communicate with the mass of the LRA about it, or convince the LRA commanders that it is genuine. Nevertheless, the numbers of former LRA soldiers and abductees accepting the amnesty has increased, with quite large numbers giving themselves up since 2003. By mid 2004, over 5,000 adult former LRA fighters had

surrendered and applied for it. An important factor has been the use of Mega Radio. This is an FM station broadcast from Gulu, which can be heard very clearly in much of central northern Uganda as well as parts of southern Sudan. Individuals who had been given amnesty are taken to the radio station and interviewed about what has happened to them. They call on their friends still with the LRA to try to escape too. The LRA commanders have responded by stopping their soldiers/abductees from listening to radios, but it only takes one person to hear and the word is passed around.

Although few of the senior commanders have shown willingness to accept it, the growing numbers of fighters accepting the Amnesty has been seen as a threat within the LRA. When a handful of key commanders did surrender together with their units in May 2004, the response was dreadful. Mega Radio interviewed one of them and also broadcast a programme from Pagak, the commander's home where there was a party to celebrate. A week later one of the Italian brothers at the mission hospital at Lacor was contacted by mobile phone during the night. He was told to come, people were being killed at Pagak. He drove to the IDP camp and found the camp looted. Hundreds of homes were burning. The LRA had also taken a group of women and children to a nearby bushy area. The Brother followed the path they had taken and found almost 50 seriously injured or dead people. He took digital photographs of the 29 who were dead before he helped to bury them. He showed me these on his computer. They were mostly mothers and babies. Each had been clubbed to death - the babies still tied to their mothers' backs. Their heads were bashed in. The UPDF soldiers who were supposed to protect them had just run away. A few days later a further revenge attack occurred at another IDP camp, Lukodi. On that occasion 28 people were killed. The attacks on Pagak and Lukodi are the reason for the surge in the numbers of night commuters to Lacor in May/June 2004 mentioned above.

These events have highlighted limitations in the Amnesty process. Some LRA combatants clearly know about it and do not want to accept it. Security in the camps has to be enhanced to make it a viable option for those that do (and their relatives). Also the numbers accepting amnesty in early-mid 2004 arose in part because of the ferocity of the renewed Iron Fist offensive in Sudan. Individuals and groups became separated from their commanders and could escape, while others were unable to access food supplies and were starved into surrender. Nevertheless, there is passionate support for the Amnesty amongst political activists, churches, NGOs and an influential group of 'traditional' leaders. The Local Councils have also become involved, implementing by-laws which make it an offence to insult or harass returned combatants and abductees. There is a tendency amongst these groups to associate the Amnesty with the more general notion of forgiveness. In fact in the Lwo language, 'amnesty' and 'forgiveness' are not distinct, the same word is used for both (*timokica*). The Christian organisations and the 'traditional' leaders are especially prone to confuse the two ideas even arguing that there is an Acholi system of justice based on forgiveness which is superior to mere conventional law making and enforcement. Rather naively, many NGOs seem to have taken this at face value. More is said about this in the sections that follow.

The President and UPDF's attitude to the Amnesty is more equivocal. President Museveni was always rather reluctant to accept it for the LRA, and he has stated that he wants the Act to be amended so that it excludes Kony and his senior commanders



(this will effectively happen anyway if the ICC issues warrants for their arrest).<sup>55</sup> He, like his military officers, continues to assert the need for a military solution. Iron Fist operations have continued in Sudan. Nevertheless, the UPDF has generally been willing to protect those who surrender. The more senior amongst those who return or who have been captured live at one of the many army barracks in the north, while many of the younger men are actively recruited, and a special battalion, the 105<sup>th</sup>, has been established specifically for this purpose. By the end of November 2004, almost 800 had been integrated in this way (to the considerable unease of some concerned parties, both because many of these soldiers have participated in atrocities and also because some of them would seem to be underage). It appears to be the army's intention to deploy the 105<sup>th</sup> Battalion against their former colleagues in the LRA if the current ceasefire is terminated.

President Museveni declared the current ceasefire in mid November 2004. There have been some attempts at negotiation since Betty Bigombe's efforts in 1994, but none of them have come to much. A group called the Acholi Religious Leaders Peace Initiative (ARLPI) was established in 1998, and in addition to lobbying for the Amnesty Act, managed to keep a window of communication open with the LRA. These links have on occasion indicated the possibility of negotiations, but neither the LRA nor the Uganda Government have really been committed to making them work. In April 2003 the LRA broke a ceasefire that it had declared unilaterally when it killed a representative of a Presidential Peace Team. After this, there has seemed little prospect of talks. Kony and his commanders have occasionally used mobile phones to ring certain peace activists (notably some Catholic priests), but the Uganda Government has sometimes viewed this with hostility, making accusations of collaboration with the rebels.

Nevertheless, the ARLP and other activists kept trying to push for more talks and in May 2004 Betty Bigombe, amongst others, was asked to act as a peace envoy. She travelled to Sudan with aid donor funding, and tried to make contact with Kony from Juba. However, the Sudan Government ensured that meetings did not take place. Here is an exchange with a young LRA soldier who had originally been abducted from a primary school. He had escaped and accepted the Amnesty just before the interview, which took place in the World Vision reception centre in Gulu in November 2002. He comments on Bigombe's attempts to contact Kony:

*Does Kony want to be peaceful sometimes?*

Yes I think he has the will to behave peacefully but the evil spirits in him would make him appear violent most of the time.

*Do you think if Kony was offered a good deal he would come out and make peace?*

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<sup>55</sup> An ambiguity in the Government's intentions with respect to the Amnesty Act was also apparent in the passing of the Anti-Terrorism Act of 2002. This Act implicitly sets limits on the Amnesty Act. The Amnesty Act applies to 'war and armed rebellion', while the Terrorism Act refers to violence used 'indiscriminately without due regard to the safety of others or property.' It seems that the crucial issue is that of the intention of the accused. For a useful discussion of this point, see Zachary Lomo and Lucy Hovil, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, Refugee Law Project Working paper No.11, February 2004, Makerere University, Kampala, pages 45-46.

Kony fears to come by himself so he would rather send his representative because he says that he knows what the Government intentions are..... To him the only peace talks that could have succeeded were that of 1994, but the rest did not hold water. He cited for us an example of the 2002 peace deal which turned futile. He claims he was given restricted areas of Pajok, Oinykibul, and Palutaka from where he could meet the mediators and talk peace. He added that all these places are in the Sudan and yet the peace was being talked for Uganda. According to him, this didn't make sense. Even after endeavouring to assemble in the said areas, the Government troops breached the agreement and attacked his troops. And its true we were attacked but we defeated the Government troops.

*Do you think Kony would be willing to meet Betty Bigombe again?*  
Yes because he says Bigombe is a true child of Acholi...

*Bigombe was in Juba but failed to meet Kony, what do you say about that?*  
But we were not informed about her presence in Sudan.

*Do you think it was the government of Sudan prevented it?*  
Yes, I think so because we were in Sudan around April and May if that was the time that Bigombe was there.

When I spoke to her on the phone in October 2004, Bigombe was pessimistic that anything could be achieved north of the border. However, it appears that some LRA commanders had wanted to link up with her in Sudan, and there seemed a chance that contact might be possible from northern Uganda. Several aid donors were interested in this possibility, including the UK and the US - which has recently started funding something called the Northern Uganda Peace Initiative (NUPI). Bigombe went to Gulu in November and with President Museveni's permission entered into the current negotiations, leading to a new ceasefire. It has been an uneasy affair, and there have continued to be violent incidents outside of a gazetted area set aside for peace talks. Kony himself has not moved into the ceasefire zone, and has (according to UPDF intelligence) ordered his commanders to leave Uganda and re-join him in Sudan. At least one effort has been made to target him in ongoing UPDF attacks on LRA positions north of the border. Nevertheless, Betty Bigombe has managed to build up a degree of trust with one LRA commander, Sam Kolo, and has had some meetings. International observers, including a British army officer, have accompanied her. She herself thinks there is a possibility that at least some of the LRA will agree to terms, and has used her influence with President Museveni to allow her some time.

On the face of it, a ceasefire zone and peace talks should be unnecessary, because the Amnesty appears to guarantee immunity. However, the arrangements have important purposes. First, they have been a means of persuading the LRA that they will not be punished if they surrender. Second, they offer an alternative way for the LRA to agree to stop the killing even if they do not want to accept the terms of the Amnesty. It seems clear that there are many commanders in the LRA who do not want 'forgiveness', which implies an admission of guilt, but want a negotiated settlement. Basically, they want to be taken seriously and not dismissed as lunatics or misguided children. There is also a third reason why the talks may have been valuable for the LRA, one that UPDF officers are prone to point out. The ceasefire gives the LRA a

dry-season breathing space after the renewed Iron Fist operations in Sudan. It could be that they are just biding their time, and have no real intention to make peace. President Museveni himself remains very sceptical about negotiations.

Nevertheless, he has agreed to extensions of the ceasefire, initially on a week-by-week basis. In early December the size of the ceasefire zone was reduced and operations against the LRA were resumed elsewhere. But the ceasefire was extended to Sudan for a few days in mid December, apparently to allow Kony to meet his deputy Vincent Otti.<sup>56</sup> Outside of the gazetted area, the LRA have launched small-scale attacks and several rebels have been killed in exchanges with the UPDF, but in early February 2005 a limited ceasefire still holds. At present, there is an expectation that a portion of the LRA will accept peace terms, but that Kony, Otti and others will continue to fight.

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<sup>56</sup> 'Ceasefire extended into Sudan', *The New Vision*, Wednesday, 15<sup>th</sup> December 2004. There has not been much comment on this extension of the ceasefire to Sudan, but it is a remarkable incident. It has involved one sovereign state openly offering a ceasefire to a non-governmental military group within the territory of another state and without any reference to the government of that state.

# Part Two: Concerns about the International Criminal Court's intervention

## 2.1 The ICC in northern Uganda

The current ceasefire has been the fruit of persistent efforts over a protracted period. Understandably, Betty Bigombe and others who have risked their lives to reach this point are concerned to keep the process going. From their point of view, as indeed from the point of view of those promoting Amnesty and forgiveness, the involvement of the International Criminal Court (ICC) represents a serious threat. It is difficult not to view President Museveni's referral of the LRA to the ICC as a political manoeuvre. The Refugee Law Project of Makerere University observed that it: 'did not reflect an honest desire to meet international obligations under the Statute, but was a trump card to re-assert democratic credentials at the international level...'<sup>57</sup> It was also a way of putting international pressure on Sudan.

The implications of the ICC Rome Statute coming into force from July 2002 are far reaching, and may well alter international responses to both ongoing war and peace enforcement. Uganda has become something of a test case. When President Museveni referred 'the situation regarding the Lord's Resistance Army' to the Prosecutor in December 2003, it became the ICC's first big case. A great deal is riding on it, and not just for people in northern Uganda or across the border in Sudan.<sup>58</sup> The ICC has much to prove. The US has refused to become a member and has been trying to undermine the Court right from the start, by negotiating arrangements with those states that have ratified the Rome Treaty, including Uganda, to exclude US citizens from its jurisdiction. The Chief Prosecutor perhaps thought that the LRA would be a relatively simple case to start with, one that would help to establish the Court's credentials. If so, he was mistaken.

As noted in the Introduction, the ICC is an institution that human rights groups and international lawyers have long hoped to establish. One of the problems with international law is that there is no Global court of appeal. In practice, it is often only applied when it is seen as being in the national interests of powerful states. Amongst other things, this has meant that individuals who are known to have perpetrated atrocities escape prosecution. But in the 1990s, the precedents set by the establishing of international criminal tribunals to deal with crimes committed in Rwanda and former Yugoslavia created room for something more permanent. In July 1998 the Rome Statute of the ICC was signed by 120 countries, with only 7 countries in opposition, including the US and Sudan. It then took four years for sixty countries to ratify the Statute, bringing it into force.

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<sup>57</sup> The Refugee Law Project, Faculty of Law, Makerere University *Position Paper*, 28 July 2004, p.5.

<sup>58</sup> The most obvious thing riding on the ICC intervention is the process of ending impunity for serious crimes. But there are other issues too. The LRA is not a governmental force. So the ICC intervention addresses a central issue of international law: how to hold non-governmental actors to account (given, for example, that they are not party to many international agreements and conventions).

Four kinds of crime are mentioned in the Statute as within the jurisdiction of the Court: genocide, crimes against humanity, war crimes and the (yet to be defined) crime of aggression. Only the most serious crimes are to be investigated. In the Ugandan case it is likely that prosecutions will relate to crimes against humanity and possibly war crimes. No one disputes that very serious crimes of these kinds have been perpetrated. The ICC shares many characteristics with the tribunals that preceded it but also differs in important respects. Some of these differences these are worth highlighting.

The International Criminal Tribunal for former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and, more recently, the Special Court for Sierra Leone (SCSL) can only investigate alleged crimes that occurred within specific time frames and in those specific territories.<sup>59</sup> The ICC, in contrast, may investigate alleged crimes that have taken place in any member state since its formal inception in July 2002. This is a reason why the US is so hostile to the ICC, while it has been one of the main funders of the other institutions: the jurisdiction of the ICTY, ICTR and the SCSL do not compromise US sovereignty. As mentioned above, the US has tried to negotiate agreements with governments that have ratified the Rome Statute so that US citizens will not be prosecuted for alleged crimes in their countries. Many international lawyers take the view that this is unlawful, but it is nonetheless undermining the Courts credibility.

The US opposition to the ICC also has other implications. In effect, the UN is under pressure to avoid it. In a recent request by the government of Burundi to the ICC (relating to the massacre of 150 Congolese refugees in Gatumbua on the 13 August 2004), the US refused to support a Security Council Resolution renewing the mandate of the UN mission in Burundi until wording endorsing Burundi's request to the ICC was removed. The Resolution was adopted on 2 December 2004 without reference to the ICC.<sup>60</sup> This kind of pressure leaves the ICC dependent on member governments for logistical support, which could undermine the independence of the Court – an accusation that has already been made in the Ugandan case.

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<sup>59</sup> I am particularly grateful to Mariana Goetz and Christine Chinkin of the London School of Economics for providing me with details of comparison between the ICC and the SCSL, ICTY and ICTR.

<sup>60</sup> The US has not taken such an extreme line on all discussions in the Security Council and (according to staff at the ICC) in practice some US government officials have been more supportive of the ICC than public discourse suggests. The main concern of the current US administration is that US troops involved in peacekeeping missions are not liable to prosecution. For a review of US policy on the ICC, see the web site of the American Non-Governmental Organizations Coalition For the International Criminal Court. An excellent discussion about the tensions over US peacekeeping forces can found at [http://www.amicc.org/usinfo/administration\\_policy\\_pkeeping.html](http://www.amicc.org/usinfo/administration_policy_pkeeping.html). A recent compromise in the Security Council relates to Resolution 1565 of 01.10.04, which extends the United Nations Mission in the Democratic Republic of Congo until March 2005. Article 5(g) states that the mission will have a mandate 'to assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigate human rights violations to put an end to impunity, and continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice, while working closely with the relevant agencies of the United Nations.' The United States supported Resolution 1565 with the understanding that it did not direct the UN Mission to cooperate with the ICC, and that any expenses resulting from the provision of any cooperation or support to the ICC would need to be on a reimbursable basis. Thus, although the ICC is not mentioned in the Resolution, the possibility of cooperation in the Congo is not precluded. I am grateful to Matthew Brubacher of the ICC for bringing this point to my attention.

Another important difference between the ICC and the Rwandan and Yugoslavian tribunals is that it is not the creation of the UN Security Council. Like the SCSL, the ICC is based on the consent of states formalised in an agreement. An implication of this is that the ICC and the SCSL do not have international enforcement powers for their arrest warrants or evidence collection. In other words, the ICC does not have its own army but has to rely on ICC member states to cooperate. There is considerable misunderstanding about this in Uganda, even among senior army officers. In Sierra Leone, the problem was partially dealt with by a Special Court Act, making the SCSL's decisions directly executable on Sierra Leone territory (but not in neighbouring Liberia). The presence of British troops on the ground also helped facilitate a situation in which the SCSL was accorded authority and respect. The current position of the ICC in Uganda is more precarious. There are no peacekeeping forces, and the Court's Statute has not yet been implemented into Ugandan law, potentially making its work on the ground difficult. The ICC is not bound by amnesty or immunity arrangements (including presidential immunity). However, in Ugandan law, the ICC's authority appears to be in tension with, amongst other things, the Amnesty Act - although this may change if the Amnesty Act lapses or is amended. More generally, until the ICC Statute becomes part of Ugandan law, it is not clear that the Ugandan police (or army) would be able to execute an ICC arrest warrant.<sup>61</sup>

All of these factors have meant that the ICC has inevitably had a close association with the Ugandan Government. This has been reinforced by the way which the Ugandan investigation was launched. The ICC can become involved in investigating alleged crimes in three ways: the Chief Prosecutor may decide to start an investigation himself; or he may be asked to start an investigation by the Security Council; or he may be asked to investigate a situation by the government of an ICC member state. The last alternative is what has occurred in Uganda. In effect it means that the ICC has been asked by President Museveni to deal with crimes that are outside of the capacities of the Uganda judicial system. Thus the ICC is in sense acting on behalf of the Ugandan state, even though the Ugandan government is itself involved in the conflict. The ICC had apparently been quietly analysing the situation in northern Uganda before the referral,<sup>62</sup> and may have launched an investigation even if the referral had not occurred. The fact that it did occur provides the Court with more powers (because of the way it operates with the assistance of States Parties<sup>63</sup>). But in this instance, it has certainly created an awkward impression.

Some other points are also of relevance in the Ugandan case:

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<sup>61</sup> As far as the ICC is concerned, domestic amnesties are strictly a matter for national authorities, and do not prevent the exercise of the ICC's jurisdiction. Nevertheless, in practice the ICC depends on States Parties for cooperation. So this problem cannot simply be ignored.

<sup>62</sup> The suggestion that the ICC might investigate the situation in northern Uganda had been proposed by various groups, including UNICEF, in the late 1990s (i.e. before ratification of the Rome Treaty). Staff at the ICC have confirmed that there was an interest in the case before the referral. There was also considerable lobbying of the Government of Uganda by some concerned organisations to ensure that a referral occurred.

<sup>63</sup> States Parties are those states that have ratified the Rome Statute of the ICC. As explained elsewhere in the report, the ICC is a treaty-based court and does not have its own mechanisms of enforcement. It has to rely on the cooperation of States Parties.

(1) Individuals who are likely to be indicted are currently in Sudan, and it is not clear what the status of ICC warrants will be on Sudanese territory. Sudan has signed, but not ratified the ICC Rome Statute. Under the Vienna Convention on the Law of Treaties (1969<sup>64</sup>), Sudan is bound to refrain from 'acts which would defeat the objective and purpose' of the Statute, and the Statute provides that any warrants issued by the Court will be transmitted to those states in which the suspect is believed to be present. Thus, the Government of Sudan may be compelled to cooperate by international pressure, and it is possible that the ICC will be able to negotiate a bilateral agreement with the government of Sudan. There are signs that this has already occurred. The Government of Sudan has indicated publicly that it will cooperate in arresting and surrendering suspects sought by the ICC, and the OTP and the Government of Sudan are apparently making necessary legal arrangements to ensure cooperation in the interests of making warrants effective. However, the US might have an interest in warrants not being executed because it is committed to undermining the Court. This may be one reason why the US has been funding the current peace negotiations, as well as providing assistance to the Iron Fist offensives.<sup>65</sup> A further complication with respect to commission of warrants in Sudan has arisen with the possibility that the situation in Darfur will be referred to the ICC, as recommended by a recent report to the UN Secretary-General.<sup>66</sup> If warrants are issued for LRA commanders, but are not quickly served, then everyone concerned with promoting peace in northern Uganda will have an interest in subverting them. This would weaken the ICC's already fragile status.

(2) The ICC has launched an investigation in Uganda while fighting is continuing. It may be that there was an expectation that the war was more or less over in late 2003. That was, after all, what the Government was claiming. Also it was probably anticipated that the peace process in Sudan would incapacitate the LRA by closing off its line of support. However, the war has not stopped, and it has been argued that this sets the ICC intervention apart from that of the ICTR, the ICTY and the SCSL. As the title of one recent report on the ICC's role in Uganda (and the Congo) puts it, the Court is moving 'in uncharted waters', because it is 'seeking justice before the atrocities have stopped'.<sup>67</sup> Actually this is not completely accurate. The ICTY was launched in the thick of hostilities, and its mandate was ongoing throughout the fighting in Kosovo. Nevertheless, there were serious prospects of an international intervention to impose order. That was not an imminent prospect in Uganda during 2004, and at the time of writing in early 2005, a comprehensive peace settlement is far

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<sup>64</sup> Ratified by Sudan in 1990.

<sup>65</sup> There does, however, appear to be some differences in opinion and approach among US officials with respect to the ICC. Some seem willing to more supportive than the official line would lead one to expect. Also US and ICC officials I have spoken to have been sceptical about the Bush administration having a clear policy agenda with respect to the ICC intervention in Uganda.

<sup>66</sup> 'Report of the International Commission on Darfur to the UN Secretary-General' 25 January 2005 ([http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)). Referral of the situation in Darfur to the ICC is, of course, opposed by the US.

<sup>67</sup> Citizens for Global Solutions, In Uncharted Waters: seeking justice before the atrocities have stopped – The International Criminal Court in Uganda and the Democratic Republic of the Congo, [www.globalsolutions.org](http://www.globalsolutions.org), June 2004. It is possible that the Ugandan government told the ICC that the war was over and that the problem was a matter of border violations by criminals. Also, at the time of the referral, much of the Ecuatoria Defence Force had been incorporated into the SPLA as part of the Sudan peace arrangements. It might have been anticipated that this would end effective support for the LRA in Sudan and isolate the LRA leadership. This may now have happened, but has taken longer than expected.

from certain. The underlying implication of intervening during ongoing war seems to be that justice will bring peace. Historical evidence, however, suggests that the process tends to be the other way around in that political order has to be imposed first. Also the threat of prosecution may be an additional incentive for individuals to keep fighting.

(3) In Sierra Leone the Special Court had a regime for the conduct of proceedings against 15-18 year olds – an issue of much concern for Child Protection Agencies (although no children have actually been prosecuted). The ICC, however, is much more favourable towards children. Article 26 explicitly states that the Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime. This does not directly answer the concerns raised in the SCiU Statement of February 2004 about the status of youth who were abducted as children but were above 18 at the time when alleged crimes were committed. However, it is likely that Court will want to avoid controversy over this issue.

(4) The ICC will not prosecute everyone who is alleged to have committed crimes, but only individuals who are thought to be most responsible for committing the most serious crimes falling within the jurisdiction of the Court. Following the models of the ICTY, ICTR and SCSL, in Uganda the ICC Prosecutor is likely to issue warrants for less than 10 individuals. It should be noted that those who the OTP indicts may or not be senior LRA commanders who have refused to accept amnesty or peace terms. The OTP could, for example, choose to prosecute Kenneth Banya, a former LRA commander who has accepted amnesty. It may be that the OTP will avoid doing this, but it does not have to do so.

(5) Successful prosecution will require that a clear pattern of crimes and a clear line of command be established. It will not be enough to demonstrate that crimes against humanity or war crimes have occurred. This may mean that some of the worst crimes will not be cited. The OTP is likely to concentrate on those serious crimes for which it is likely that conviction of an individual can be secured.

(6) Even when it is apparent that genocide, crimes against humanity or war crimes have occurred, under Article 53 of the Rome Statute the OTP can decide that to proceed with a prosecution is: ‘not in the interests of justice taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime’. The Chief Prosecutor would then have to present a case to the ICC’s Pre-Trial Chamber. If his argument is accepted, the case will be dropped. In the Ugandan case, such a procedure currently seems very unlikely.<sup>68</sup>

(7) Once arrests have been made, a criminal trial will take place at the seat of the Court, unless it is ‘otherwise decided’. Thus it is possible that trials could take place in Uganda. A case could be made to do this, drawing on the model of the SCSL.

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<sup>68</sup> There are two other possible ways in which the ICC intervention in northern Uganda might theoretically be stopped. One involves the intervention of the UN Security Council under Article 12 of the Rome Statute, another is that the Ugandan Government decides to try the LRA commanders itself. Neither are likely to happen. For a useful discussion of these issues, see CSOPNU, *The International Criminal Court investigation in northern Uganda*, briefing paper, 1 February 2005, [csopnu@yahoo.com](mailto:csopnu@yahoo.com)



Otherwise the trials will be in The Hague – and this seems more likely, given the security and cost implications of a Ugandan location. It is important to note that trial *in absentia* is not possible according the Rome Statute. The accused must be present during the trial, unless he or she is removed for disrupting proceedings.

(8) The accused will be given ample time and resources to prepare a defence. The defence will not be constrained by the July 2002 date (i.e. the defence will be able to refer to events that occurred before this date). This may not prove to be significant because the defence should be a direct response to the accusations that have been made. Moreover, the ICC will be eager to avoid the kind of open-ended proceedings that have occurred at the ICTY and ICTR, so counsel will be directed to keep to the point. However, if the LRA commanders decide to present their own defence, they will have to be given latitude by the judge. This could prove to be politically embarrassing for the Ugandan Government.

It seems unlikely that President Museveni himself knew all this when he invited Chief Prosecutor Luis Moreno-Ocampo to become involved. There are some indications that he may have thought he was referring the case to the International Court of Justice (ICJ), which might have dealt with border problems between Uganda and Sudan. At least one of the senior UPDF commanders we interviewed (the Chief Intelligence Officer in the north) thought that the ICC and the ICJ are the same. Now that some of the implications of a referral to the ICC are apparent, President Museveni himself seems to have had second thoughts. He has said that if Bigombe's negotiations are successful, he will ask the ICC to stop its investigation.<sup>69</sup> He is not actually in a position to stop proceedings (he can try to persuade the OTP to make a case to the Pre-Trial Chamber that to proceed would not be in the interests of justice and/or victims). However, he could certainly make things very difficult for the Court if he withdrew his government's active cooperation (although this is unlikely).

President Museveni doubtless has his own reasons for not wanting Uganda's dirty laundry washed in The Hague. However, most local organisations and political activists are also concerned that this does not happen. After the ICC investigation was announced by President Museveni and Chief Prosecutor Moreno-Ocampo together at a press briefing in London in January 2004, various organisations and activists expressed enthusiasm, hailing it as something of break-through. Amnesty International welcomed the announcement, hailing it as 'first steps', which should be 'part a comprehensive plan to end impunity'.<sup>70</sup> The suggestion that the ICC should prosecute the LRA had in fact been suggested by UNICEF in New York back in 1998, four years before the ratification of the Rome Treaty. So UNICEF staff were very excited, and travelled to Uganda to start diffusing the good news. However, they encountered a frosty reaction from colleagues in the field.

International aid agencies on the ground in northern Uganda, including local UNICEF staff, were diplomatic in voicing their concerns and misgivings. Save the Children, for example, raised questions about protection of children in its public statement issued in February 2004. Amongst other points it notes that:

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<sup>69</sup> According to media reports, this has been stated on a number of occasions by President Museveni, army officers and members of the government. A recent example was reported in the New Vision on the 5th January 2005: 'Govt can withdraw ICC case, says army'.

<sup>70</sup> Amnesty International, *Public Statement*, AFR 59/001/2004, 30 January 2004.

.... we have some serious concerns about the timing of the investigation and eventual prosecution, in that it is likely to be taking place during ongoing armed conflict. This is when communities are in a particularly vulnerable situation and during which trust between people is minimal.

Linked to this, we are concerned about how the possible arrest and prosecution of the LRA leadership will affect the rights of the children still in captivity as well as the rights of all children in northern and eastern Uganda. We have to realize that this war primarily involves children, thus any action taken must seriously consider the impact on child protection.

Ugandan organisations tended to be rather more assertive, even openly hostile. Those promoting the Amnesty and negotiating a ceasefire made it plain that they viewed the ICC as a liability, and argued that prosecution could well make circumstances even worse. Members of the ARLP were incandescent. The vice president of the organisation, retired Anglican Bishop McLeod Ochola is reported to have told a UN reporter, “This kind of approach is going to destroy all efforts for peace. People want this war to stop. If we follow the ICC in branding the LRA criminals, it won’t stop.” Perhaps the most prominent and widely respected ARLP activist, Father Carlos Rodriguez made the following public statement:

The issuing of ... international arrest warrants would practically close once and for all the path to peaceful negotiation as a means to end this long war, crushing whatever little progress has been made during these years... Obviously, nobody can convince the leaders of a rebel movement to come to the negotiating table and at the same time tell them that they will appear in courts to be prosecuted. this has been recommended by a recent report to the UN Secretary-General<sup>71</sup>

With respect to the President’s proposed amendments to the Amnesty Act to exclude Kony and his senior commanders, the Government of Uganda’s own Amnesty Commission spokesperson stated that it “is going to make it very difficult for the LRA to stop doing what they are doing.” Several activists and political leaders asserted that what is needed in northern Uganda is a peace and reconciliation commission, like the one in South Africa or the one in Sierra Leone (or even the one that was set up in Uganda to deal with the Luwero killings of the early 1980s). Those calling for forgiveness in the broad sense went so far as to assert that the ICC reflected flawed and compromised systems of justice, and that it could not comprehend the meaning of the real justice known to the Acholi, grounded in what are asserted to be traditional or Christian values. I discussed this latter view with retired Bishop Ochola in November 2004. He suspected that I must have some connection with the ICC and could barely contain his anger. He lectured me for over an hour about what he saw as local understandings and accused the ICC of trying to make a name for itself out of the suffering of his people – and, indeed, his own suffering: his wife had been killed by an LRA landmine.

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<sup>71</sup> Father Carlos Rodriguez, Public Statement, quoted in Adam Branch, ‘International Justice, Local Injustice: The International Criminal Court in Northern Uganda’, *Dissent Magazine*, Summer 2004. The previous quote by Bishop McLeod Ochola is also cited in the above article.

Faced with a barrage of antipathy, the ICC responded with silence. The OTC has been investigating in such a way as to preserve the confidentiality of informants, and the Court as a whole has tried to keep a low profile. As has been indicated, there are reasons why such an approach is appropriate, but it is hard to avoid the conclusion that it has partly been a tactical withdrawal for a strategic re-think. It has been in marked contrast to what seemed to be a rather open attitude soon after the referral was made – reflected in the January 2004 press conference in London. On the ground in northern Uganda, the ICC has become secretive. Apart from informed activists, almost everyone we interviewed in November knew very little or nothing about it. Rumours, however, were rife. While we were researching in the region, ICC-OTP investigators visited Gulu seemingly under Government of Uganda auspices and used their access to the relevant government minister to help obtain interviews with certain informants. The OTP has a policy of preserving the confidentiality of witnesses and of ensuring that their agreement to answer questions is voluntary. Informants are given the choice of ending the interview at any time and a careful risk assessment is made in each instance. Nevertheless, we were told whom the OTP had spoken to and interviewed a group of them soon after they had been questioned. One in particular was clearly very upset by the experience. This person was young, and Save the Children and UNICEF staff have been concerned that such a person was not properly protected from such inquiries. I raised this point in a letter to the ICC. Understandably the OTP does not comment on specific investigative activities, and staff have not confirmed that any of the interviews took place. Nevertheless, it would be fair to say that the issue has raised concerns about breaches of confidentiality.

The following section addresses directly key concerns that have been raised about the ICC intervention. These have been expressed very clearly in a range of reports, articles and public statements, notably the SCiU Statement, The Refugee Law Project position paper, the report by the Citizens for Global Solutions, the transcript of the ICC Discussion Meeting held in Gulu in August 2004, and in the excellent articles by Barney Afako and Adam Branch.<sup>72</sup> Due to the paucity of information about the ICC in northern Uganda, concerns have mostly been expressed by activists and analysts rather than local people themselves. Nevertheless, the same issues are often raised in interviews and discussions when the activities, powers and limitations of the Court are explained. There are in addition certain perspectives and worries that do not appear in the wider public discourse. These relate to experiences and interpretations of the violence grounded in local understandings, including understandings of Kony's power and influence.

Essentially the main concerns about the ICC in Uganda are the following: it is biased; it will exacerbate the violence; it will endanger vulnerable groups - notably witnesses and children; it is spoiling the peace process by undermining the Amnesty and the ceasefire; and it ignores and disempowers local justice procedures. The concerns

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<sup>72</sup> Barney Afako, *International and National Challenges to the Amnesty Process in Uganda*, mimeo, February 2004; Refugee Law Project, Faculty of Law, Makerere University, *Position Paper on the ICC*, at [www.refugeelawproject.org](http://www.refugeelawproject.org); Citizens for Global Solutions, *In Uncharted Waters: seeking justice before the atrocities have stopped – The International Criminal Court in Uganda and the Democratic Republic of the Congo*, [www.globalsolutions.org](http://www.globalsolutions.org), June 2004; Record of ICC Discussion Meeting, Acholi Inn, Gulu, Friday 13<sup>th</sup> August 2004, mimeo, SCiU, Gulu; SCiU Statement on ICC Prosecution of LRA, Kampala, February 2004; Adam Branch, International Justice, 'Local Injustice: The International Criminal Court in Northern Uganda', *Dissent Magazine*, Summer 2004 <http://www.dissentmagazine.org/menu/test/articles/su04/branch.htm>

obviously overlap one another. However, for clarity it will be appropriate to discuss them under separate sub-headings. The last mentioned concern about local justice processes takes us beyond the current controversies about the ICC to an engagement with the wider possibilities of social healing. In November 2004, I allocated considerable time to this issue, partly because such remarkable things have been claimed about Acholi forgiveness. I present our findings in Part Three.

## 2.2 Is the ICC biased?

The impression that the ICC intervention in Uganda is biased was given right at the start by the fact that Chief Prosecutor Moreno-Ocampo and President Museveni held a joint press briefing in January 2004, announcing that the ICC would begin preliminary investigations into ‘the situation concerning the Lord’s Resistance Army’. Even human rights organisations that had lobbied strongly for the setting up of the Court expressed concern. Amnesty International, while welcoming the announcement, chose to make the point that: “Any Court investigation of war crimes and crimes against humanity in northern Uganda must be part of a comprehensive plan to end impunity for all such crimes, regardless of which side committed them and the level of the perpetrator.”<sup>73</sup> Amnesty International has published numerous reports and briefings on atrocities in the region, many of which are alleged to have been perpetrated by the Ugandan security forces. So the implication was clear: the Court should also consider prosecution of people associated with the Uganda Government, something that it is empowered to do by the Rome Statute. In response to this and other statements from human rights and development agencies, the Chief Prosecutor clarified his Office’s position in February, and reiterated it in a formal letter to the President of the Court on 17<sup>th</sup> June 2004:

My Office has informed the Ugandan authorities that we must interpret the scope of the referral consistently with the principles of the Rome Statute, and hence we are analysing crimes within the situation of northern Uganda by whomever committed.<sup>74</sup>

However, this clarification has done little to challenge the view that the Office of the Prosecutor is acting on behalf of President Museveni, and will not attempt to punish the UPDF as well as the LRA. There are several reasons for this. As Adam Branch points out, alleged UPDF abuses have been public knowledge for years, with no adverse effect for the Ugandan Government. On the contrary, ‘essential US support for the Ugandan military has increased to include, since September 11, 2001, funds earmarked to eliminate LRA “Terrorists.”’<sup>75</sup> It also seems unlikely that President Museveni would have initiated the prosecution if he thought he could not control it. As noted above, he has recently suggested that he can ask the ICC to stop proceedings if they are no longer deemed necessary. Technically he may be wrong, but it reveals his frame of mind. Even if the ICC decides that an investigation into alleged UPDF

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<sup>73</sup> Amnesty International, *Public Statement*, AFR 59/001/2004.

<sup>74</sup> Letter to President Kirsch, dated 17 June 2004, Office of the Prosecutor, International Criminal Court, ICC-02/04-1 06-07-2004 4/4 UN.

<sup>75</sup> Adam Branch, International Justice, ‘Local Injustice: The International Criminal Court in Northern Uganda’, *Dissent Magazine*, Summer 2004, <http://www.dissentmagazine.org/menutest/articles/su04/branch.htm>

crimes is appropriate, the opposition of the Ugandan Government to such a process would make things very difficult and, given the hostility of the US to the Court, it seems improbable that there will be concerted international pressures brought to bare to make it feasible. Some legal analysts have additionally noted that serious complications could arise from an attempt to prosecute both sides, in that arguments presented by the prosecution in one case might form part of the defence in another (and vice versa).<sup>76</sup>

For some commentators, the biased nature of the ICC's intervention also seems to be confirmed by rumours that the investigators' use Ugandan Government vehicles and officials to facilitate their inquiries on the ground,<sup>77</sup> and by the apparent secrecy that has surrounded the ICC since mid 2004, when the formal investigation by the OTP began. The latter has given the impression that the ICC has things to hide. In addition, the paucity of information from the ICC since the initial press releases about the referral has meant that the wording of those documents has been given great weight – perhaps more than was intended. They are still the first things that come up about Uganda on the ICC website, and the Chief Prosecutor's subsequent clarification is often ignored (or dismissed).

There have been no significant efforts by the ICC Registry to counter these perceptions or promote awareness and understanding of what the Court is supposed to be doing in Uganda. As a result, most of those who have tried to follow events closely are sceptical about Chief Prosecutor Moreno-Ocampo's claims to objectivity, and anticipate that warrants will only be issued for Kony and a handful of his top commanders. While there is widespread acceptance that these people are responsible for appalling acts, several commentators take the view that to focus on them alone cannot lead to a just outcome.

Here are a few quotes illustrating this concern about objectivity. The first is from Barney Afako of Justice Resources. He is one of the leading legal analysts of the ICC investigation. His comments are taken from the transcript of the ICC Discussion Meeting held in Gulu in 13 August 2004.

The Prosecutor has to prioritise.... His prioritisation is to go after a few people, but only those who are most responsible.... Also I suspect that he will... go for the most serious crimes. I would be surprised if he sought to prosecute more than about five people.... The UPDF is unlikely to be prosecuted ... because of the difficulty of making the charges stick...

The second quote is from an interview with the outspoken retired Bishop Mcleod Ochola, vice president of ARLPI, interviewed in English in November 2004.

The ICC will not be a solution. We want the whole story to be told.... If they just investigate the LRA, it will be an injustice to society.... The ICC cannot

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<sup>76</sup> Conversation with Barney Afako, 13.11.04. Other legal experts have taken the view that it would be possible, provided that the cases are discrete.

<sup>77</sup> We were unable to confirm that ICC investigators use government vehicles. It is the policy of the OTP to avoid using government vehicles, but it may have happened, and this policy does not apply to other parts of the ICC. Rumours about the ICC-OTP using government officials to lever access were confirmed by informants in one case.

impose itself on people. The government is inviting it, so it has already lost its impartiality. It is an injustice.... We have not invited it. They are already biased. It is an abuse.... The ICC is just full of corruption.... The government has killed. They have all killed. The LRA has done bad things, so has the government. We need to investigate everything.... The ICC is an enticement for individuals to oppose individuals....

A next quote comes from Onan Acana, the Paramount Chief Elect (he was crowned on January 17<sup>th</sup> 2005). It is taken from an interview in English also in November 2004.

How can the ICC be impartial if it is only working on one side of the conflict? There should be justice, administered impartially.... We have had soldiers raping men. We have had people thrown in pits.... Where government soldiers have committed crimes, should we just ignore it? The ICC says that if the government atrocities are as bad as LRA atrocities they will investigate. I will wait and see....

Longer extracts from the interviews with Onan Acana and Mcleod Ochola are discussed below. They have been amongst the most important advocates of forgiveness instead of punishment, so they have a particular reason for questioning the integrity of the Court. Most of those we interviewed in the displacement camps did not know enough about the ICC to comment on the issue. However, several noted that the Uganda Government forces should also be investigated. For example, one Local Council officer told us that, “There are also notorious commanders on the government side. They also committed inhumane acts....”; and a former LRA combatant remarked that, “The current Government was also abducting people to fight for them during the previous war. Why can’t the ICC allow the community to give testimonies, because some people were abducted by the Government to become soldiers?”

### **2.2.1 Comment**

Given the unwillingness of the ICC to explain what it is doing is hard to refute the claim that it will be biased. However, it is quite possible that the OTP has been operating secretly and the Registry has been largely inactive in order to give time for the Amnesty and current peace negotiations to run their course.<sup>78</sup> Also the Rome Statute has not yet been incorporated into Ugandan law, and the proposed changes in the Amnesty Act have not yet been implemented. So it may have been decided to move more slowly and carefully than originally anticipated.

It is possible too that a prosecution of the UPDF is being considered. The ICC’s Press Release of January 2004, giving background information on the situation in Uganda, mentions both conscription of children and forced displacement of civilians as possible ‘crimes against humanity’.<sup>79</sup> Few would dispute that the Ugandan Government has done both. Also some legal analysts take the view that prosecutions

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<sup>78</sup> This was confirmed by ICC staff at the meeting in The Hague in January 2005.

<sup>79</sup> Background information on the situation in Uganda, ICC Press Release 29.01.04  
[http://www.icc-cpi.int/library/press/pressreleases/Uganda\\_200401\\_EN.doc](http://www.icc-cpi.int/library/press/pressreleases/Uganda_200401_EN.doc)

against individuals in both the LRA and UPDF at the same time is feasible, provided cases are discrete, and when asked about this, staff at the ICC were surprised that it had been raised as an issue. It is however unlikely.

It will be easier to establish a pattern of serious crimes allegedly committed at the behest of LRA commanders than it would be for the UPDF. Also the OTP would only consider a prosecution of an UPDF officer or Ugandan Government official if the alleged crime was manifestly of greater gravity than others perpetrated elsewhere. It would not be easy to make such a case, partly because the defence would be able to demonstrate that massacres of civilians by the LRA have occurred and could therefore argue that the Government of Uganda and the UPDF had a duty to remove people from danger. For these reasons, the OTP is likely to only issue warrants for individuals in the LRA. This is unfortunate, because the decision by the Chief Prosecutor to announce the referral to the Court in a joint press briefing with President Museveni, and also the wording of the briefing was unhelpful. It has created an impression that will be difficult to counter unless, to everyone's surprise, warrants are issued for UPDF officers.

Nonetheless, the argument that the ICC is biased may be overstated. In theory the Office of the Prosecutor should be independent, but once an investigation has begun, a case has to be made for an indictment and an argument presented in court with the intention of securing a conviction. In this sense, any prosecutor is supposed to be biased. It is how the system works. The accused and his or her counsel will also have time to prepare a defence. In the case of the ICC this will be fully funded and presented in open court. This may lead to a kind of creeping truth commission emerging through the proceedings. It is also possible that a formal truth commission could be set up independently of the Court, excluding from impunity only those who are to be prosecuted. Sierra Leone offers a model of such a procedure – although one which is far from ideal.<sup>80</sup>

There is one further point that needs to be made here, one that has not been highlighted in the various discussions about the ICC investigation and was only raised implicitly by a couple of our informants. The LRA is closely associated with the Acholi and most of those who have suffered the consequences of the war are Acholi. However, the LRA has also perpetrated atrocities among the neighbouring Madi, Langi and Teso, and these events have been concentrated in the period since the Rome Treaty was ratified (i.e. after mid 2002). We did not visit Teso areas in November 2004, but among Madi informants in Adjumani and to a lesser extent among Langi informants in Lira District, we found an interest in punishment and compensation with an ethnic/tribal aspect. It is likely that the ICC would find people among these populations who would willingly agree to testify in court, partly because they will have less fear of informants and reprisals, and also because they will not be

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<sup>80</sup> A suggestion that has been made by some local activists in northern Uganda is that there should be a truth commission first, and then those most responsible for atrocities might be tried later. But it is hard to see how this could work. Truth commissions tend to provide impunity for those who testify. If those found to have perpetrated the worst crimes were put forward for prosecution, there would be no incentive for alleged perpetrators of atrocities to participate (or tell the truth). With the setting up of the ICC, those alleged to be most responsible will probably have to be indicted before a truth commission is set up. The remainder might then be given some form of impunity (although the ICC would still have jurisdiction to ignore it). As the Court becomes more active, this may be a far-reaching implication of the ratification of the Rome Treaty, at least for States Parties.

required to accuse their own people. If this happens, there is a danger that the court proceedings could end up being effectively biased against the Acholi as a group, and play into long-standing ethnic/tribal divisions. The chair of the local council in Atiak, located near the border with Adjumani District, seemed to have this in mind when he described to us the ways in which people speaking Lwo are now sometimes persecuted or even killed by groups of Madi (one man was stoned to death).<sup>81</sup> There is pressure on the ICC to secure a quick conviction, so there may be a temptation to use non-Acholi witnesses. But if the process exacerbates ethnic tension, it could be very counterproductive in political terms, whatever its merits as a legal process.

## **2.3 Will the ICC exacerbate the violence and endanger vulnerable groups?**

Various arguments have been put forward to suggest that the ICC intervention will have the effect of exacerbating the violence. They are premised on the view that the situation in northern Uganda is an on-going war rather than the result of limited criminality - as has persistently been claimed by the Ugandan Government. The SCiU Statement of February 2004 makes the point that:

Attempts to arrest the LRA leadership in the absence of any peace agreement or process, may translate into, even justify, an increased military offensive by the Government of Uganda, which the LRA are likely to respond to with more violence against citizens.

Some commentators have gone so far as to suggest that the invitation to the Court to begin an investigation was aimed at justifying a concerted military response and securing international support. They argue that, because the ICC has no means of enforcing its warrants other than through the cooperation of States Parties to the Rome Statute, the UPDF would in effect be given a free hand to pursue its military objectives through the pursuance of executing the warrants. According to Adam Branch:

The execution of the arrest warrants would require a dramatic intensification of the government's counterinsurgency in order to capture the LRA leaders. The powerful minority within the government that opposes dialogue with the rebels would find their case for a "military solution" greatly strengthened by support from the international community.<sup>82</sup>

There is concern that such support will extend to the Ugandan military operations in southern Sudan, which have reportedly been ferocious - killing many abducted people including children, and which have barely been monitored by international agencies. This worry seems to lie behind Barney Afako's observation that:

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<sup>81</sup> Similar events have been reported in Lira District. It is perhaps worth noting that during the 1990s guerrilla groups operating in northwest Uganda, notably the West Nile Bank Front, were linked with the LRA through the Sudan Government. A few people from the northwest became LRA commanders. However, I have not heard of any of them being Madi.

<sup>82</sup> Adam Branch, International Justice, 'Local Injustice: The International Criminal Court in Northern Uganda', *Dissent Magazine*, Summer 2004.



There will remain suspicion that the government which has always strained to increase its defence spending wished to strengthen its arguments by citing the ICC investigation and possible indictment. In a clear coup for the President, the prosecutor has publicly invited others to assist the government of Uganda in this regard.<sup>83</sup>

SCiU, the Refugee Law Project and others have also raised the issue of protection for the IDP camps. In the past the UPDF has not been able or willing to prevent raids on soft targets. Even with the recent attacks on LRA bases in Sudan and the spate of rebels accepting the Amnesty, abductions and attacks have continued. Indeed most of the senior LRA commanders remain at large, some of them operating more or less independently. It is well known that the LRA have perpetrated massacres in revenge for defections or for what is viewed as collaboration with the Ugandan Government, for example at Pagak. If warrants are issued for the arrest of Kony and some of his officers, it is anticipated that they will never be willing to make peace and will assert their capacities in the most brutal ways imaginable.

These worries were reiterated and elaborated in the interviews we made in November 2004. Below is a selection of extracts. The first is from a conversation with an ex-LRA soldier who had been abducted from school in the early 1990s, and had been blinded in an attack. Despite not being able to see, he had escaped in August 2004, and was being cared for at the World Vision reception centre.

*Have you ever heard about ICC?*

Yes... When I was already at reception centre.

*What do you think about it?*

ICC is going to give fear to many commanders who are willing to come back...

*If the community is to testify against the rebels do you think the rebels will take revenge?*

Yes they will take revenge not only to those who will testify but on anybody, whether you testify or not, they will just take action.

*Is that what they always did?*

Yes. I have seen that the war is a sort of revenge, because the rebels are fighting civilians not soldiers. So when they hear about the Court it will be bad.

The next exchange is taken from a group interview at Awere IDP camp. The replies are from a man whose responses echoed those of others at the meeting.

*Have you ever heard about ICC?*

No but I can give my view. The ICC is going to make the war continue because those commanders who will be willing to come back will be

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<sup>83</sup> Barney Afako, *International and National Challenges to the Amnesty Process in Uganda*, mimeo, page 7, February 2004.

discouraged and continue fighting. The ICC should first wait for the war to end and later they can come in and take the person who started it. He should be prosecuted...

*If you are asked to be a witness by the ICC, would you accept?*

No... Kony will come and kill everybody in this camp just because I testified against him.

(Here a woman added) The ICC should first wait. If they do not, it will cause fear in those who are still in the bush. They will not come back and war will just continue.

A woman who had been abducted in 1992 when she was fifteen made the following statement. She had been given as a 'wife' to one of the LRA commanders and had eventually managed to escape with her two children. She is not living in Gulu town. She knows what Kony is like from first hand experience.

*Have you ever heard about ICC?*

Yes over the radio but I was not really happy about it, because when I was in the bush Kony could just make abrupt decisions. Sometimes they called ten people and slaughtered them just for nothing. So if he hears about the court before implementation (i.e. he is arrested) he can decide to kill everybody that is with him and he himself. That would be great loss because there are many children there.

Here are some responses from other young women, interviewed at the GUSCO reception centre in Gulu

*Do you have any Knowledge about the ICC?*

No. I have no access to the radio.

*What is your feeling about the ICC?*

I feel the ICC is not good because it may discourage other children not to come back. So the war will continue.

*Did you hear about the ICC while at the GUSCO centre?*

Yes, someone at the centre told us that Kony was being taken to court because he wanted to overthrow the government.

*Do you think the commanders will be angered by the work of the ICC?*

I think so, because they will feel deceived about the amnesty. But I think Kony won't understand the magnitude of the atrocities he has committed.

A local council officer at Lalogi IDP camp made this comment in the course of a group discussion.

The ICC should come after the war ends if not then there will be trouble for people in the community. Let's assume the rebels are still in the bush and arrest warrants are issued. No, this cannot happen; it will then mean that the

rebels still in the bush will continue to fight until they are killed. Innocent civilians will also suffer the consequences.

*Will the rebels seek revenge?*

Such cases are common. Once you say anything against them they will follow you. They move unnoticed amongst the people. So they may kill you and all your family.

Here are some responses from people interviewed at Awere IDP camp.

(A man speaking) The issue of the ICC is not good; it will cause persecution upon the innocent civilians by the rebels and Kony himself. In Acholi, it is difficult to separate a father from his children since it breeds more conflict... Children will assume their head/leader has been taken to court, so they will just decide to continue with the war. Therefore amnesty should be extended.....

(A woman speaking) Our greatest fear is that when he is arrested and prosecuted, his former fighters like Brigadier Kenneth Banya and others might feel they are next. This might lead to another rebellion and more suffering in our land... Maybe if they can arrest and detain him in a restricted area like Alice Lakwena, but not kill him. Otherwise his other associates, who might not have been arrested by that time, may seek revenge on the local community.

(A man speaking) What we need at the moment is this war to end that is why we opt for Amnesty. And if Kony is arrested, he should be detained in a restricted area where he is able to talk to people freely. Just like the Alice Lakwena's father was arrested. Another thing is that when Kony is arrested and brought before the commission, he might include the names of those who do not deserve to be punished. This might jeopardize the peace process in the region.

(A woman speaking) Kony himself might claim he does not know what took him to the bush, he may even give false information about his collaborators... Such an act may result to social conflicts and a tendency of revenge. Therefore he should be taken and detained in a restricted area, but allowed to meet his relatives and friends.

(An Acholi UPDF soldier speaking) According to me, there should first be agreed peace talks between the governments and LRA. When it fails, then I think the ICC can come into prosecute them. Kony should be arrested first and taken to court. But if they issue an arrest warrant before Kony is captured then it is useless to have the Court. We will just have to fight until we kill Kony.

IDP camps were also visited in Lira District – i.e. outside of Acholi area. Serious attacks here had occurred relatively recently and, as noted above, the living conditions were very poor. Few people had heard anything about the ICC, so questions had to be prefaced with explanations. These are some of the things people said.

(To a local council officer) *Have you ever heard about ICC?*

No, only the ceasefire. I feel this ceasefire should be there at to make the children in the bush not be killed. And about the ICC, the rebels should not be taken to court. If they are taken to court it should be after the war. If they issue arrest warrants while they are still in the bush, the rebels will be discouraged to come back. They will take revenge and kill us in the camp here... The soldiers are trying to protect us, but if you move a distance away you get them (the LRA). It makes it difficult to get food.

(From an interview with an UPDF soldier)

What I see is that the ICC should first wait for us the soldiers to do our work, and capture Kony. Later he can be taken to court for the atrocities.... When the arrest warrant is issued, there should be tight security and protection of civilians, if not the rebels will kill all of them... The rebels might slaughter the children who are in the bush, because the top commanders already know they will be taken to court. So I say the arrest warrant should first wait. .... we the soldiers have not captured Kony because he stays in neighboring country. But Sudan has now given us the chance. We are going to get him.

(One of the bloc leaders at Ogur IDP Camp speaking)

The top commanders should be taken to court because there are many atrocities they have committed on our people.

*But if the ICC arrest warrant to Kony while still in the bush what would be the implication for people in the camp?*

Oh! I thought Kony would first be captured and taken to court. If it is like this (i.e. the warrants are issued while he is still free), then rebels will take revenge on us by killing us.

Lastly, here are some remarks from male former combatants at the World Vision reception centre in Gulu town. All three are young men who were abducted in the 1990s, when they were children.

(1) *Did you hear anything about the ICC while in the bush and what do you think about it?*

No, I have just heard about the ICC over the radio recently. And in my own opinion, I think the issues about the ICC might just worsen the situation at the moment because in fear of persecution, the returnees might begin fleeing away and possibly back to the rebels.

(2) *While in the bush did you hear about the ICC?*

Yes I heard about it in the bush and often tried to discuss about it. Some of my friends would argue that if the ICC was in place then the Amnesty was useless and would say all of us will be prosecuted. They argued that it was useless to come back home and be killed painfully.... So I was scared when I heard about the ICC. But I started thinking it over and said, "After all I am not even a commander so I may not be affected"... When I came here I found some of my friends and they have now been discharged back to their homes. This has helped to build confidence in me. I feel a little nervous walking on the street alone thinking I could be kidnapped, but we only move in the company of (World Vision) staff.

(3) *Do you think those in the bush know about the ICC?*

Yes, I think so especially the commanders who have access to the radios.

*What do you think about the ICC?*

I think the idea about prosecution is not good... Amnesty should be extended to all to avoid further blood shed. Otherwise it will be difficult for the war to come to an end, because Kony will continue fighting in fear of prosecution. He will not opt for peace talks. This implies more suffering for the Acholis.

An important additional aspect of the concern that the ICC will exacerbate the violence is that it will endanger certain vulnerable groups, notably children and witnesses. Both of these groups are explicitly mentioned in the SCiU Statement of February 2004. The danger of children being targeted and killed if the war escalates has already been noted and it is well justified. However, as pointed out at the start of Section 1.4, the role of children in the war has in some important respects been exaggerated. This is not a conflict that is being predominantly waged by children. The ICC itself overestimates the involvement of children in its 'Background information on the situation in Uganda'.<sup>84</sup>

The LRA base of combatants is drawn largely from abducted villagers, particularly children, mostly aged between 11 and 15, though children younger have been taken. According to reports over 85% of the LRA's forces are made up of children, used as soldiers, porters. Labourers and sexual slaves in the case of girls.... The total number of abducted children is reported to be over 20,000...

There is no doubt that children have been abducted and have been abused, but these figures cannot be correct. UNICEF monitoring suggests that two thirds of those abducted between 1990 and 2001 were over eighteen, and vast majority of those abducted were released within a year. At the end of 2001, it was estimated that there were less than 6,000 children who might still be with the LRA.<sup>85</sup> Using data from reception centres, Chris Dolan, who had been working with ACORD in Gulu for several years, came up with an even lower figure. In a report published in 2002 Dolan pointed out that, if the figures produced by GUSCO and World Vision for the number of children who had returned and been reintegrated were correct, then there were less than 900 children still missing.<sup>86</sup> The data may be inaccurate - there are rumours, for example, that children have gone through the reception centres more than once, so there may be some double counting. Also, there has been much abduction of children since the start of 2002 (as well as many more children returning).<sup>87</sup> Nevertheless,

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<sup>84</sup> *Background information on the situation in Uganda*, ICC Press Release 29.01.04, [http://www.icc-cpi.int/library/press/pressreleases/Uganda\\_200401\\_EN.doc](http://www.icc-cpi.int/library/press/pressreleases/Uganda_200401_EN.doc). The ICC is not alone. Similar information is presented in many other statements and reports, for example, World Vision, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda*, Washington 2004.

<sup>85</sup> *Abductions in Northern Uganda and South-western Uganda: 1986-2001*, November 2001, UNICEF, Uganda.

<sup>86</sup> Chris Dolan 'Which children count? The politics of children's rights in northern Uganda' in Zachary Lomo and Lucy Hovil (eds.), *Protracted Conflict, Elusive Peace*, ACCORD, Conciliation Resources, London 2002 <http://www.c-r.org/accord/uganda/accord11/acknow.shtml>.

<sup>87</sup> On 22<sup>nd</sup> December 2004, UNICEF reported that during 2003 and 2004, a total of 15,000 persons, most of them children, were recorded abducted <http://www.reliefweb.int/library/documents/2004/unicef-uga-22dec.pdf>. However, in November 2004,

Dolan is surely correct when he observes that most of the children who are suffering are those that have not been abducted and who are living in appalling circumstances in displacement camps. These are acutely vulnerable, particularly to diseases, and their circumstances can only deteriorate if the fighting intensifies. The LRA can be expected to continue using tactics aimed at terrorising them, and it would be relatively easy for them to do so, even if the recent Iron Fist Offensive has depleted their ranks. Such tactics do not require large numbers of combatants - just a few who are willing to perpetrate acts that are shocking enough. The emphasis on the LRA's child soldiers can therefore at times seem disproportionate.

It is a point that was not lost on some of our informants in November 2004. Here are some observations from one of them (she spoke in English):

I felt a victim of the war while I was at college, I was among the people who were abducted but it was quite lucky for me that I managed to escape. Our first-born was abducted too. She stayed with the LRA for two months... To the women and children the war has offered them opportunities.... One of the girls (who had been abducted) told me that in the community other people said: "I wish my daughter was also abducted. I wish my son was also abducted. He or she would be getting help from the money and would bring money for me also at home." So people look into it as maybe the war makes other people rich, or gives them an opportunity that they did not really expect they would have. Others coming back from the captivity, they were taken for studies, they offered funding for studies until they reach university. So to other families, they look at it as an opportunity.

Emphasis on child soldiers also has other effects. It allows for the demonising of the LRA, and deflects attention from the undeniable fact that President Museveni's government has recruited child soldiers too, and not only in northern Uganda.<sup>88</sup> At the same time, it allocates juvenile status to the LRA. It suggests that the rebels should not be thought of as normal adults. They are either children or they are young adults who have not matured properly, because they were traumatised and abused when they were children. There may be a degree of truth in this, but it means that when people with the LRA are killed, they are called rebels in government reports, but when they surrender or are captured they are often treated like innocent children, even if they

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the UNICEF staff in Uganda explained to me that they had not been able to sustain their monitoring system since the end of 2001. Andrew Mawson, the head of child protection for the UNICEF office in Uganda, himself directed me to the November 2001 report as the only robust data available. So it is not clear where this new figure has come from. Given the lack of systematic monitoring, it must be an estimate. As noted in a previous footnote, Andrew Mawson's own guess is that about 12,000 abductions have occurred in 2003 and 2004. It is not known how many have been children, or how many remain with the LRA. However, a reasonable estimate is that over 8,000 have returned during 2003 and 2004 and perhaps 2,000 have been killed. The number of people still with the LRA, including children, may be under a thousand. (personal communications with Andrew Mawson, 03.02.05 and 05.02.05). However, it should be stressed that these are just guesses. UNICEF will attempt systematic monitoring in 2005.

<sup>88</sup> The ICC background information document of January 2004 does implicitly suggest that the Government of Uganda as well as the LRA might be held to account for 'conscription' of children less than 15 years. The scale of recruitment of children into the Ugandan armed forces is unknown. It is also important to note that recruitment into the formal armed forces of children aged 15-17 occurs in several countries, including the UK, and is not a crime under the ICC Statute.

were abducted as adults, have been military commanders or have given birth to several children themselves.

Several of those returned abductees that we spoke to at reception centres complained that their adult needs, responsibilities and commitments were not being met. In a somewhat similar way, the LRA commanders in the bush seem to want negotiations leading to a settlement rather than to accept the Amnesty and ask, like recalcitrant children, to be forgiven. Clearly the spiritual aspects of the LRA make it hard for outsiders to make sense of their behaviour. They have been dismissed as just mad. Nevertheless, they do have a political agenda (which incidentally includes an independent judiciary).<sup>89</sup> They want to be taken seriously. A corollary of this, of course, is that they can (and should) be held to account for their actions.

The other vulnerable group that has been highlighted is witnesses. When the ICC was described to them, many informants were wary about being called. According to one woman at Awere displacement camp:

The issue of being as witness or saying some about Kony is very dangerous to us, the civilians. If you say something the next day you plus your family would just be destroyed. It has been happening in the past. For example, while you are interviewing us now, somebody might just come and hear what we say, or an LRA coordinator might even be among us. He or she will be listening to what I am saying. Later people will just realize that I have disappeared. So it is really difficult for us to comment about the LRA. I think those who will testify to the court will have to be given protection and whom they are will have to be kept as a secret.... If you were to be as a witness and testify, would they take you and your family away from the camp to be given protection? If not, at least Kony should be captured first... We still fear the rebels because they come secretly and operate.

Witness protection is certainly an issue, and it is not yet clear what the ICC will do about it. Those people we spoke to who have been interviewed by the ICC investigators were clearly worried about the implications, and very concerned that we did not make an electronic recording of what they said to us. They explained that they were afraid it would appear on the radio, and then everyone would know who and where they were. There is also the issue of witnesses who have politically sensitive things to say about the UPDF and the Ugandan Government – something that will become an acute problem if UPDF officers themselves end up being prosecuted. When I spoke about this to a group of senior army officers in Gulu town, they made it plain that witnesses against the UPDF would not ‘be welcome’ in Uganda.

Article 68 of The Rome Statute deals with the protection of the witnesses and their participation in the proceedings. Various options are possible, including ‘the presentation of evidence by electronic or other special means’. However it is repeatedly stressed that measures adopted ‘shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.’ Also Clause 5 states that:

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<sup>89</sup> See Balam Nyeko and Okello Lucima, ‘Profiles of the parties to the conflict’, in Zachary Lomo and Lucy Hovil (eds.), *Protracted Conflict, Elusive Peace*, ACCORD, Conciliation Resources, London 2002, <http://www.c-r.org/accord/uganda/accord11>.

Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof...<sup>90</sup>

As so often with these kinds of things, the Devil is in the detail. The key phrase is ‘any proceedings conducted prior to the commencement of the trial’. The implication is that at the trial itself, a summary will not be sufficient. At no point is it stated that anonymity will be facilitated, nor does there seem to be provision for the allocation of new identities – although that might be a possibility. Measures were taken to allow for anonymity at the Yugoslav Tribunal, but proved to be very controversial. It was argued that they were inconsistent with the rights of the accused. So the wording of Article 68 is significant, and may limit the amount of protection to witnesses that the ICC can offer.

It should be stressed that staff at the ICC are well aware of the dangers. They recognise that security has paramount importance in dealing with any potential witness at all stages of the proceedings, including during the investigation. It is intended to create a protective bubble around those who testify in court (probably in The Hague). They also accept that there are serious risks involved. Confidentiality cannot be guaranteed, as we found out ourselves in November 2004 when it proved so easy to find a group of people who have been interviewed by the OTP. There are, however, certain other options. By no means all the evidence presented in court has to be in the form of witness statements. The ICC is also bound by the Rome Statute to act in the interest of victims. That is likely to mean that many possible witnesses will never be called, and the specific terms of incitements will be affected by how evidence might be presented without endangering particular individuals and their families.

### **2.3.1 Comment**

With respect to the impact of the ICC on the protection of witnesses and children, little can be added to the discussion above. There remain several unknowns. The ICC itself does not know exactly how it will deal with the former, nor has it yet made public who is going to be prosecuted or where. As far as children are concerned, we do not know whether many are in captivity, or, for that matter, what has actually happened to most of those that have returned. Partly for logistical and security reasons, monitoring has been poor. It is very unlikely that the numbers still with the LRA are as high as is persistently asserted, but there is also little doubt that those still in the bush will be in acute danger if anti-insurgency measures are stepped up, particularly if helicopter gunships are used. This is a concern, however it is relatively less significant than the vulnerability of children in the displacement camps. There are hundreds of thousands of these and, as we have seen, the mortality rate in some camps is already alarmingly high. They will be in grave danger if the war escalates. So, will this happen?

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<sup>90</sup> *Rome Statute of the International Criminal Court*, 1998, Article 68, Clause 5.



The LRA seems to have been weakened by the more recent UPDF (and SPLA) offensives, but it probably still has a capacity to resist the UPDF and to perpetrate massacres. Kony is also aware that the ICC has become involved. According to one of the recent arrivals at the World Vision reception centre in Gulu, Kony has told his followers that there are twelve judges in Gulu already waiting to put them on trial. So the serious concerns expressed by informants cannot be dismissed. However, as one of the Catholic Fathers at Opit Mission put it to us, 'Kony wants to talk. Maybe he fears the Court'. Father Carlos himself, who has spoken out against the ICC on several occasions, now accepts that there has been less violence in northern Uganda since the formal ICC investigation started.

Here is an extract from an interview with Father Carlos in Gulu on the 6<sup>th</sup> November 2004:

When the announcement about the ICC was made in January this year (i.e. 2004), my first reaction was that the LRA have perpetrated terrible crimes, but that they are part of the conflict. We should investigate the whole conflict. Not just the last two years. It would be better to have a truth and reconciliation like South Africa. The whole aspect should be investigated. We need a full investigation of everything. I am not putting the UPDF at the same level of the LRA, but the government are part of the conflict. The government should have asked people, those who are the victims, if the ICC suited them. Also, there are negotiations going on with the LRA. How can those continue if the LRA are going to be prosecuted? But things have changed. Something has happened since April that we did not expect. Between April and September 500 or so combatants have come out of the bush with their guns, including senior officers. So the ICC might not be so discouraging as we thought. Also those who have come out of the bush have told us that the Sudan Government has not been giving them anything since January this year. So the ICC may have had an influence on Sudan. The LRA will only reduce violence out of pressure, and Sudan has changed its attitude because of the ICC. They are concerned about being prosecuted. It gives a powerful signal. In the past, the LRA have only wanted peace talks when they are losing. They have withdrawn when they have got new supplies and weapons. Now that Sudan is not involved, it forces the LRA to talk about peace.

It seems unlikely that Sudan (or the Government of Sudan) will face prosecution – at least not through the ICC.<sup>91</sup> Nevertheless, the Court's investigation has concentrated minds, and it seems to be the case that the threat of prosecution by the ICC is a factor in encouraging some of the LRA to enter peace talks with a degree of urgency. There are various other reasons for this too. For example, it is the dry season, so the rebels are hungry, and Operation Iron Fist has prevented cultivation in Sudan. There have also been a host of prominent visitations since Jan Egeland of OCHA travelled to the region in November 2003 and compared the situation with Darfur, just before the formal referral to the ICC. But is reasonable to conclude that the growing international scrutiny of what has been happening in northern Uganda is partly to with the ICC's involvement. Various powerful countries have become more actively engaged. A British army officer is accompanying Betty Bigombe in her meetings with

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<sup>91</sup> It would require a referral to the International Court of Justice, not to the ICC.

the rebels. The US too has suddenly become an eager funder of the peace process, as well as supporting the military activities of the UPDF north of the border. That of course, may be in reaction to the ICC process rather than in support of it. The US does not want the ICC to succeed, and ending the war may be part of the Bush administration's deliberate strategy to sideline it. However, if peace in northern Uganda is the consequence, few will complain. Things may change, of course, when or if warrants are issued, but overall, the ICC's intervention must be viewed as having had positive effects, some of them unforeseen a few months ago.

## 2.4 Is the ICC is spoiling the peace process?

Several activists and analysts have vehemently expressed the argument that the ICC intervention will spoil the peace process. This, of course assumes that a genuine peace process, or a range of peace processes, is underway, and could result in a permanent solution. There are three aspects to the argument, relating to the Amnesty, to the ceasefire and to local conceptions of justice. The first two have already been discussed in some detail in Part One of this report and will be taken together here. The third requires more explanation and is addressed below under a separate heading (Does the ICC violate local understandings of justice?).

It is obvious that the ICC intervention cannot be reconciled with the existing Amnesty Act. Indeed, the point is made in the ICC's own statement on the referral to the Prosecutor, issued in January 2004:

In a bid to encourage members of the LRA to return to normal life, the Ugandan authorities have enacted an amnesty law. President Museveni has indicated to the Prosecutor his intention to amend this amnesty so as to exclude the leadership of the LRA, ensuring that those bearing the greatest responsibility for the crimes against humanity committed in Northern Uganda are brought to justice.<sup>92</sup>

More generally, as Barney Afako has noted, the ICC intervention in northern Uganda focuses attention on the relationship between amnesties and international law.<sup>93</sup> This is not a new issue; it was raised, for example, in South Africa in relation to the Truth and Reconciliation Commission. However, the ICC was set up 'to put an end to impunity for the perpetrators' of 'the most serious crimes of concern to the international community as a whole' and as a result, it has an institutional antipathy to amnesties.<sup>94</sup>

Under the ICC, it is no defence to claim that an accused person is covered by any kind of statute of limitations or other national laws preventing prosecution (such as presidential or parliamentary impunity). The position of the OTP is that domestic amnesties are strictly a matter for the national authorities and do not prevent the exercise of the ICC's jurisdiction. In practice this means that Uganda cannot maintain

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<sup>92</sup> 'President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC', *Press Statement*, The Hague, 29 January 2004.

<sup>93</sup> Barney Afako, *International and National Challenges to the Amnesty Process in Uganda*, mimeo, London, 3 February 2004, pages 3-6.

<sup>94</sup> The quotes are from the Preamble of the Rome Statute of the International Criminal Court.

a blanket amnesty if it is to adhere to the Rome Statute, which it obliged to do. The Act will either need to be formally amended, or be allowed to lapse. The former has not yet happened. The latter is looking ever more likely, although it may be replaced with something more reconcilable with the ICC's mandate and also more acceptable to President Museveni – who has always been sceptical about the usefulness of a blanket amnesty. There are models that might be drawn upon to allow a partial amnesty to coexist in law with an indictment of those alleged to bear the greatest responsibility for crimes. However, such a procedure could be difficult to implement. Several LRA commanders were themselves abducted, some of them when they were children. It will be hard to draw a precise line between those most responsible and those marginally less so, and impossible to avoid complaints about victimisation.

Recognising these problems, supporters of the Amnesty have responded to the ICC with understandable alarm. The July 2004 'Position Paper' of Makerere University's Refugee Law Project ends with a blunt recommendation to the Government of Uganda: 'Do not amend the Amnesty Act'. The following passage explains why.

It is possible that many LRA fighters will be reluctant to surrender under the Amnesty Law for fear that they might be handed over to the ICC. The implication for those who have already surrendered is even more uncertain. While critics of the Amnesty Act argue that the limited number of amnesty applicants is an indication of its ineffectiveness, the majority of those interviewed during our research in northern Uganda see amnesty as the most feasible option to ending the conflict and ensuring that their abducted children can be persuaded to come home. Our study also demonstrated that the overwhelming majority of people believe the amnesty law is the best way to resolve the conflict. In particular, amnesty is seen as being compatible with the people's existing traditional system of justice and dispute resolution mechanisms.<sup>95</sup>

At the time, there was little immediate prospect of the other peaceful option of resolving conflict through peaceful negotiations. However, the 'position paper' suggested that efforts in this direction were also potentially undermined by the ICC's announcement of formal investigations. It would make it impossible to create the necessary context of trust, and any overtures would be seen by the rebels as a ploy to arrest them. As we have seen, Father Carlos of ARLPI expressed a similar view. Nevertheless, to most peoples' surprise, Betty Bigombe did manage to broker a limited ceasefire in November 2004. When interviewed, both she and the team leader of the Northern Uganda Peace Initiative were reluctant to discuss the ICC in any detail, but expressed reservations about its role. For Bigombe, some sort of arrangement along the lines of previous agreements with other rebel groups remains a viable option, and she has been repeatedly prepared to risk her life to achieve it. She is confident that Sam Kolo (the LRA commander with whom she has most contact) will not be prosecuted by the ICC,<sup>96</sup> but the threat of prosecution is certainly a constraint in discussions with others, notably Vincent Otti and Joseph Kony himself. This is

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<sup>95</sup> Refugee Law Project, Faculty of Law, Makerere University, *Position Paper on the ICC*, page 7.

<sup>96</sup> However, she will not have been given a guarantee of this by the ICC-OTP.

probably part of the reason why they refuse to enter the ceasefire zone in Uganda, although Kony has been talking to Bigombe on the phone from Sudan.<sup>97</sup>

During our research in November 2004 we also found many people expressing this view. Here is an interesting exchange with Brigadier Kenneth Banya, one of the most senior LRA commanders to have been given amnesty.

*What are your thoughts about on the ICC – are you afraid of being charged?*  
I'm not afraid of being charged. I came at a time when they said amnesty. I think the government cannot make the mistake of reversing what they already have told the world. So I am not afraid of the ICC. Even though I know I was on the wrong side, I know that I never did it physically with my own hands (i.e. atrocities). I was forced to do most of the things. But I think it is premature for the ICC to come in, as the war is not yet over. The prime ... reason ... the top commanders are not coming out has been the fear to be prosecuted. And if the ICC starts involving (acting) right now that means the war will continue. Then the war will not stop now....

*But the ICC is an international court and they decide who they want to charge, not the Ugandan Government. How do you feel about that?*  
.... Would say then that they have breached the sovereignty of the Ugandan Government, because Uganda is a sovereign country and has its own laws. If the Ugandan Government have decided to give us amnesty, then the ICC should not overlook their decision.<sup>98</sup>

At the displacement camp at Awere we spoke to Ojolakome Martyn, who was one of the elders accompanying Betty Bigombe in the 1994 peace talks. His views about the ICC were similar to hers.

I think every one in this part of the country has witnessed what Kony has done in our land. But I would rather have Kony forgiven than spark another war.

Here is a range of other statements about the Amnesty from the displacement camps - first, some typical examples of positive statements.

Amnesty is good idea, because it encourages the rebels and children to come back.

Amnesty seems very good when we look at the rate at which the rebels are returning. Those who come back speak about amnesty (on the radio). Those in the bush are encouraged. If the government can accept it, the deadline should not be there.

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<sup>97</sup> At the time of writing, there are reports that Sam Kolo, the LRA, commander who has been talking to Betty Bigombe in the ceasefire zone, has been invited to cross into the Government sector and has actually done so. In other words he has accepted the peace terms. Kony, Otti and the other senior commanders, however, remain in Sudan. There are rumours that the Uganda Government is now determined again to pursue the military option, partly in the hope of killing the remaining LRA commanders before they can be arrested and prosecuted in open court.

<sup>98</sup> This interview with Kenneth Banya was conducted by Mikkil Dalum in November 2004.

*Have you heard about the ICC?*

No, it's our first time to hear about it. In my view, Amnesty should be extended to the top commanders of the LRA.

From one of the same camps, here are less positive views:

*Do you think Amnesty should go on being extended?*

(A woman speaking) It should just be extended for a small period.

(A man speaking) Amnesty has been given to rebels for quite along time and maybe it is the thing encouraging them. My request is that an international body comes and helps our situation.... I support the ICC. Kony and his commanders have been granted amnesty and it has been announced over the Radio. But they have failed to come back. So the Court should be there.

(An Acholi UPDF soldier speaking) The Rebels should be taken to court. People have suffered. The government has been calling for peace talks but they have failed many times. So it is useless to have peace talks again.

(Another UPDF soldier) Amnesty now should only be extended to those abducted and forced to become soldiers - even though they have committed a lot of atrocities. But the top commanders like Kony, Otti etc should face the court.

Next, here is a group of former LRA combatants, reflecting on their experiences of accepting the Amnesty.

(1)

*Did you hear anything about the Amnesty while in the bush?*

We heard that there was amnesty but we were told that some of us who were already fighters would not have amnesty but instead be killed. This gave us a lot of fear and I believe there are still many in the bush with such a mentality.... When I reached here, the treatment was the complete opposite from what we had heard. I learned that we were being deceived about the whole thing. The UPDF, whom we considered the number 1 enemy, were the ones who picked me from the battlefield and brought me here.

(2)

*While in captivity did you ever hear about amnesty?*

Yes I heard about it but others wouldn't have had the chance to hear or talk about it. I had a friend who was already a commander and had a radio. So I would move to his home and listen to the programme *Dwog cen paco* (Come Back Home) - a programme on amnesty on Radio Mega FM. In the LRA, only those from lieutenant upwards listen to the radio freely.

(3)

*While with the LRA, did you hear about Amnesty?*

Yes, I heard about it once in a while and at times when I had the chance to come and loot radios among other items, I would listen to the radio before the commanders took it away....

*When you came back, were you not surprised?*

Yes I was very surprised, because the commanders told us that if we came back the soldiers would detain us in a fenced place, and we would not be allowed to move freely. But when I came, there was nothing of the sort.

*Do you still have friends in the bush?*

Yes, I have many of them still in the bush. I think Amnesty should be extended to give them time. There is propaganda among the LRA that once you report, your voice is recorded and played over Radio Mega but you are killed. So it's difficult to be quickly convinced about Amnesty.

## **2.4.1 Comment**

There can be no doubt that the ICC intervention is both a threat to the Amnesty Act and a limitation on peace negotiations. According to one informant involved in the latter, ICC representatives have recognised that they are 'spoilers' in these respects, and this is probably one reason why the Court has taken such a low profile. Back in January 2004, the ICC press statement on the referral recognised that:

Many of the members of the LRA are themselves victims, having been abducted and brutalised by the LRA leadership. The reintegration of these individuals into Ugandan society is key to the future stability of Northern Uganda. This will require the concerted support of the international community - Uganda and the Court cannot do this alone.

It seems likely that ICC staff have been trying to adopt sensitive and appropriate strategies to allow positive developments to take their course, and this was confirmed to us in our discussions in The Hague in January 2005. It should be added that the various communications that have been going on between the ICC and other actors involved in northern Uganda is something of a departure from previous models. Although the OTP does not comment on investigations, there does appear to have been quite a bit of listening going on, and this has been incorporated into ICC procedures. When we visited The Hague offices of the Court we were impressed by the time and effort that was allocated to understanding what we had to say, and where possible responding to issues we raised. Such an approach is in marked contrast with, for example, the SCSL. In June 2003, Charles Taylor was indicted, stalling the peace negotiations that were happening in Ghana and prompting Taylor's immediate return to Liberia. Whatever the legal justification, the decision provoked a storm of controversy and prompted some African governments to refuse to serve the warrant.<sup>99</sup> Doubtless the ICC is eager to avoid such an incident.

With respect to the Amnesty, views about it are more mixed than has often been suggested. It is unusual for someone to say that the Amnesty was a failure, although a few did. But this is partly because of the use of the same term in Lwo for 'amnesty' and 'forgiveness', a point discussed below. Many informants began by stating that the

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<sup>99</sup> For an interesting discussion of this incident, see Joseph K. Tellewoyan, 'Analysis of the Indictment of President Charles Taylor of Liberia by the Special Court For Sierra Leone', available at <http://pages.prodigy.net/jkess3/CharlesTaylor2.htm>

Amnesty was a good thing, but would then contradict themselves by expressing enthusiasm for the prosecution and punishment of the LRA's senior commanders (as well as well as some UPDF officers).

With respect to the ceasefire and peace talks, there is a general awareness that these have happened before and eventually failed. So again there is scepticism. However, there is a widespread view that Kony himself does not want to be forgiven by the current Ugandan Government, and will not accept the Amnesty even if he trusted President Museveni to adhere to it. He and his senior commanders appear to want a negotiated settlement – probably one that allows them to live a relatively comfortable life somewhere. This will necessitate some form of impunity, making it almost inevitable that any long-term settlement based on negotiation with the rebels will be in direct tension with the ICC process. An implication will be that, if warrants do not result in the swift arrest of Kony and his senior officers, all those interested in a peace agreement will have an interest in sidestepping or 'getting around' the authority and jurisdiction of the Court. This would play directly into the hands of those that would like to see the ICC made irrelevant, notably the US Government.

## Part Three: Local conceptions of justice

In Part Three, I examine in some detail the supposition that the Acholi people have their own approach to justice, one that will be violated by the ICC process. Certain civil society groups and eloquent activists have propounded this view as an established truth, with some of those based in Gulu town being especially vociferous about it. They have also been influential in acting as advocates for the Acholi people to journalists and other outsiders. As a result, it has become a kind of ‘received wisdom’ that the Acholi people have a special capacity to forgive, and that local understandings of justice are based upon reintegration of offending people into society. It has become such an institutionalised perspective that it is expressed as a matter of course at virtually every public meeting on the conflict, and appears in most reports and articles.

Taking it into account, for example, one generally excellent study comments that the Amnesty Act:

.... is seen to be compatible with Acholi dispute resolution mechanisms: “Culturally, people’s ideas of forgiveness are entrenched. They don’t kill people; they believe the bitterness of revenge does not solve the problem. So it was easy for people to accept the idea of amnesty. The culture is for compensation.” As a religious leader said, “..... Some people say you can’t give in to Kony. But when you look at the Acholi people, they believe in *mato oput*, which is a reconciliation ceremony here. In Acholi culture there is no death sentence, because they know that the death sentence increases violence. They practice that in their culture, so why not in this?” Thus, there is a clear feeling that the amnesty is based on values that are seen as compatible with the context in which it is being applied.<sup>100</sup>

Adam Branch makes the same point in his highly critical analysis of the ICC intervention in northern Uganda, and ends his article with a powerful argument against the dangers of ‘international law fundamentalism’. He maintains that:

The decision, on the one hand, to seek justice through punishment or, on the other, to forgo punishment in favour of justice through reconciliation, is a decision that must be made by the concrete community that is the victim of the crimes and that will have to live with the consequences of the decision. “Humanity” is too thin a community upon which to base a universal right to punish... If local injustice is the price to be paid for the kind of international justice that results from ICC prosecution, then we must abandon the Court and imagine new modes of building a truly global rule of law.<sup>101</sup>

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<sup>100</sup> Zachary Lomo and Lucy Hovil, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, Refugee Law Project Working Paper No.11, February 2004, Makerere University, Kampala, page 45.

<sup>101</sup> Adam Branch, ‘International Justice, Local Injustice: The International Criminal Court in Northern Uganda’, *Dissent Magazine*, Summer 2004, page 5.



Many of our informants in November 2004 similarly stressed the need to draw on local ideas about conflict resolution. In fact the majority of those we spoke to felt that it was necessary to preface anything else they had to say with the observation that forgiveness is necessary. In mentioning the need for forgiveness, informants tended to refer to both the formal amnesty process and to more general notions of reconciliation and the setting aside of punitive judgement. As already noted, the Lwo term *timokeca* can be used to refer to all these ideas at the same time, something that creates confusion when trying to explain in Lwo why the Amnesty expires on a particular date and may need to be extended.

However, we also found that informants would often go on to contradict their initial statements, and express much greater enthusiasm for prosecution and punishment than other researchers have suggested. Our conclusion was that arguments about Acholi forgiveness need to be closely interrogated, and certainly not taken at face value. In the course of our fieldwork we become concerned that there was too ready an acceptance of the idea that the Acholi people have a special or even unique capacity to forgive those who abuse them. Staff working for international NGOs seemed very willing to believe it. For this reason, I include a substantial discussion of the issue here. Clearly it has relevance well beyond the current debates about the ICC, and raises important points about how reconciliation might prove to be exceedingly difficult when the fighting eventually ends.

### **3.1 Institutionalisation of *mato oput***

At the local level, arguments against the ICC intervention have been propounded most forcefully by certain traditional and religious leaders. The lobbying has been associated with very committed individuals who are connected with organisations like the Council of Elders Peace Committee, the Council of Chiefs and the Acholi Religious Leaders Peace Initiative (ARLPI). It has been concentrated in Gulu, where most international agencies and journalists are based. ARLPI was established in 1998 to coordinate peace-building initiatives of the Catholic and Protestant Churches and Muslim associations. In practice, the Catholic and Anglican clergy dominate it. The ARLPI and the Acholi traditional leaders' associations were both partly a product of funding from international aid agencies, and many of their public statements are jointly agreed.<sup>102</sup> The current consensus about customary Acholi conceptions of justice has largely emerged from the aid-funded collaboration between these groups.

In 1997, the first of several conferences known as *Kacoke Madit* (Big Meetings) was held in London. The idea was to create a forum for all Acholi people working for a peaceful resolution of the conflict in northern Uganda. Following the 1997 conference, research was commissioned on the views of Acholi 'opinion leaders' in Uganda about peace and reconciliation. An influential report was subsequently

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<sup>102</sup> For example, 'Suggestions by the Acholi Religious and Cultural Leaders in response to the request by the International Criminal Court', press release 12.11.04; and 'Joint Press Statement by the Cultural and Religious Leaders', ARLPI, 15.11.04, which deals with the peace talks and is signed by both Archbishop Odama and Paramount Chief Acana II.

written by Dennis Pain called *The Bending of the Spears*.<sup>103</sup> The author is both a passionate enthusiast of Acholi culture and a charismatic Christian.<sup>104</sup> He makes his point of view clear from the start. On the title page, Pain writes ‘*Lacwec tye!*’ (which means ‘The Creator is present!’), and he dedicates the report to ‘the one who has inspired it and is alone responsible for creating the consensus which it represents.’ He goes on to state that had been a close friend of Archbishop Janani Luwum, who he calls ‘one of Uganda’s and Acholi’s greatest leaders’. Luwum had been one of the most prominent figures in the Anglican Church to become a Balokole. He was murdered by Amin in 1977.<sup>105</sup>

*The Bending of the Spears* argued that the armed conflict was eroding ‘Acholi culture’ and that what was needed was a community-based approach drawing on Acholi values and institutions. A particular ceremony was highlighted known as *mato oput* (bitter root or juice). Mediated by elders, it requires the wrong-doer to admit responsibility, ask for forgiveness, and agree to pay compensation. Both parties drink *mato oput*, and the ceremony ends with the bending of spears to represent reconciliation. In fact the report mixes up two separate ceremonies here, *mato oput*, which is between a wrong-doer and those he or she has harmed, and the bending of the spears (*gomo tong*) which is performed to seal the resolution of conflicts between clans (or perhaps other kinds of groups).<sup>106</sup> A conclusion of the report was that a blanket amnesty was needed, but would not be sufficient. It was also necessary to have the support of Acholi chiefs so that *mato oput* can be conducted, something that would require funds for compensation.

In 1999, finance was offered by the Belgian government to do research on Acholi chiefs and build on Pain’s findings. The work was carried out under the auspices of ACORD, an NGO that had long been working from Gulu town. Working with government officials, local councils and religious leaders, efforts were made to identify ‘traditional chiefs’ - known as *rwodi* (in the plural) and *rwot* in the singular. In 2000, Acholi traditional chiefs were formally reinstated, and the *Rwot* of Payera was subsequently elected to become the paramount chief, and efforts have subsequently been made to perform collective *mato oput* ceremonies in Gulu town.

In November 2004, the Acholi Paramount Chief Elect, *Rwot* Onen David Acana II, was reported in the Government’s *New Vision* newspaper as opposing the prosecution of Kony and other rebel commanders, and asserting that:

The best way to resolve the 18-year old war in our region is through *poro lok ki mato oput* (peace talks and reconciliation) as it’s in the Acholi culture... I wonder who will help them in giving evidence to prosecute Kony since the Acholi do not buy their idea of taking him to court because the Acholi have

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<sup>103</sup> Dennis Pain, *The Bending of the Spears: Producing Consensus for Peace & Development in Northern Uganda*, London: International Alert and *Kacoke Madit*, 1997 (<http://www.km-net.org/publications/spear.doc>).

<sup>104</sup> He had at one time been a school teacher in Gulu town (on which he wrote a PhD thesis) and had worked for Oxfam in Uganda in the 1980s.

<sup>105</sup> Lowum is reported to have been one of twelve spirits that possessed a woman called Poline Angom in 1987. She was one of Joseph Kony’s followers, and Kony allowed her to work in one of his ‘yards’, Heike Behrend, *Alice and the Holy Spirits*, Oxford: James Currey, 1999, pages 186-7.

<sup>106</sup> Sverker Finnstrom has emphasised this point to me (personal communication, 07.02.05).

forgiven all LRA rebels and their leader Kony of crimes committed against them.<sup>107</sup>

In an interview (in English) a few days later, the Rwot reiterated and elaborated his view.

We the traditional leaders do not want to be seen to be blocking justice. We emphasise our justice system of reconciliation. I told the ICC Prosecutor when I met him in London that the timing is not right. Religious leaders are negotiating. Also we have letter from rebel commanders saying that they want to talk.... It is a fluid situation. Confrontation is still going on.... The LRA are in the bush. The Sudan Government has not signed the Rome Treaty. So how will they get the LRA? Military means have been going on for years. It has not worked. The ICC does not have an army... It is like a hostage situation. Someone is holding a child from a high building and says I will jump with the child. Then you come with flags and a warrant. It will not help. The LRA is suicidal and reacting to the situation. They want people to think they are powerful. The LRA will act so that lots of lives will be lost. What will the ICC do if they massacre people again? It will add to the crying... Also the senior commanders of the LRA were probably abducted themselves. We failed to stop them being taken and being turned into what they are today.... We have the blanket Amnesty. And we have the traditional culture. When someone kills we have a system to stop the killing. That is why we did not have death as a punishment. Nor did we have jail sentences. Rather we had reconciliation – *mato oput* .... Does the ICC not value community values of people? Does the ICC override all other systems? Even if Kony is taken to The Hague, that will not be a punishment. The prisons there are air-conditioned! Rather he should be in the community. He should see the suffering he has caused. Here people look in your eyes and say I forgive you. Then he will understand and recognise what he has done....

Religious leaders also discuss the concept of *mato oput*, although in a slightly different way. By and large the Protestant clergy seem to be more willing to become involved in supporting this ‘pagan’ ceremony than Catholics, but the difference is slight. Both Christian groups locate traditional Acholi rituals within their agenda of promoting or creating a truly Christian society, drawing on ideas of sacrifice and purification (or even sanctification) through the acceptance of suffering.

The following is from an interview (in English) with one of the Italian Catholic priests at Opit Mission.

In the villages the people welcome them back (those abducted by the LRA). A girl recently came back after six years – with children from the rebels. Her father was there to welcome her. People were clapping and welcoming them. They know that she and the other children were forced to go with the LRA.... I have not noticed myself any trouble with the returned people integrating.... We talk about reconciliation. They feel forgiveness. Rituals are alright for pagans, but they are superficial. But for someone with faith, they receive the

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<sup>107</sup> ‘Acholi chief opposes Kony trial’, *The New Vision*, Monday, 8th November 2004.

Sacrament. I don't discuss pagan rituals like *mato oput* with them. For a Christian, it is Christ. They are saved in the Sacrifice of Christ... Some have been shocked by what they have done or seen. They come for Confession, and they feel relief that it is secret. Acholi belief are based on fear. *Mato oput* is right, but it is God who puts that forgiveness in their heart.

The retired Anglican bishop of Gulu, Bishop Baker Ochola, is one of the ICC's fiercest local critics. Here he explains how his antipathy is linked to both his Acholi identity and his Christian faith.

The children are the victims. Bringing in the ICC at this stage is bad. The government is part of the conflict as well, The ICC is wrong.... Those who have come back, if they are prosecuted, what kind of justice is that?... The Government says it has killed so many – are they rebels or abducted children? If they just investigate the LRA it will be an injustice to society. It will destroy peace efforts and the Amnesty law. The Amnesty has done a lot to make the children come back. Even the top leadership, they should also be forgiven for the sake of peace. Impunity is not understood in World understanding of justice. God brings Mercy. Even in our culture. The Mercy of God allows us to deal with impunity. We don't say revenge should not happen. Justice means that you know the truth, and then arrive at peace. For the children who have suffered at the hands of the LRA and UPDF, there is no better justice than to end the war.... In Western society how you look at life forms your values. So if someone is found guilty they are punished. But that is not healing. Justice is to stop people committing crimes with impunity because they do not know God. God have revealed *mato oput* to our society - to taste the pain in our society, to taste pain and suffering and death. ... Both sides take the root. Anyone who come from outside must maintain impartiality.... You must go back many years. You must dig deep. Law is not made in the way we look at it. Law is holy. You can learn about justice. We say that where the LRA have abducted our children, killing them will not solve out problem. What we can do is to show them that we are different to them. Acholi know that it is only through forgiveness that the problems can be solved.... The good of society is to forgive. That will help society coexist... Reconciliation is the only way. The truth will be known and responsibility accepted. They (the ICC) will do what they want, but they will never have the consent of the people to do that .... We are against injustice. It is not in our nature to be unjust.

Individuals like Bishop Ochola, it needs to be stressed, are regarded with considerable respect, not least because they have sometimes acted with remarkable courage – liaising with the rebels, standing up to the Government, and assisting the afflicted. The Catholic Church in particular has enormous prestige, having kept the mission hospitals running throughout the troubles. So it is not surprising that the views of these traditional and religious leaders are accorded weight and significance. Their promotion of forgiveness played a significant role in pressurising the Ugandan Government to pass and (more importantly) to be willing to implement the Amnesty Act, and they have also been very successful in furthering the idea of forgiveness through various NGOs and the Local Council system.

As we have seen, several local NGOs and Local Council officers are in fact closely associated with the traditional and religious leaders, and are openly enthusiastic about their conceptions of peace making. At a meeting organised in Gulu with ten activists from the District Reconciliation and Peace Team in Gulu, seven of them were from District level Local Council (LC5), and all began by expressing the same opinions as Rwot Acana and Bishop Ochola. International aid agencies too have tended to accept traditional and religious leaders insights at accurate reflections of local beliefs and practices. Moreover, arguments about forgiveness are reinforced by the (mis)perception of the war as one that is being largely waged by children on children. By definition, this makes the perpetrators of atrocities less responsible for their actions, and has meant that aid agencies and Local Councils have been concerned about the protection of those accepting the Amnesty. For example, bye-laws have been passed making it an offence to disturb people who have been with the LRA once they return home, and these have been interpreted to mean that it is unacceptable, or at least inappropriate, to argue that forgiveness should be limited or denied.

### **3.2 The diversity of local views**

Particularly in Gulu District, we found it was rare for people to admit in a public venue that they wanted revenge or recompense, although there was a willingness to talk about prosecuting Kony and the senior commanders, and there were differences of opinion about whether or not this was a good idea. Generally informants were only willing to talk about their personal desire for punishment in private. Here is a typical exchange with a group of Local Council officials; it took place at Awere IDP camp.

*Have you heard about the ICC?*

No, it's our first time to hear about it.

*What are your views?*

Well, Amnesty should be extended to the top commanders.

*How about the ICC?*

The issue of the ICC is not good; it will cause persecution upon the innocent civilians by the rebels and Kony himself.

In Acholi, it is difficult to separate a father from his children since it breeds more conflict.

Children will assume their head/leader has been taken to court, so they will just decide to continue with the war. There for amnesty should be extended.

*Did you have many returnees from your area?*

Yes, many are coming back; Brigadiers, Captains and other low ranking officers.

*How does the community receive them?*

The community does receive them well because we the LCs sensitise them not to take revenge or harm the returnees. If you had the time you would talk to them so that they can assure you they are really free.

*Is there no problem welcoming the rebels back?*

No, there is no problem.

*Even for mothers who have lost their children?*

We really try to tell the mothers to try and forget all about what happened in the past and continue with normal life for peace to prevail.

*How can a mother forget her child killed innocently?*

Yes, they cannot forget but we try to tell them not to discuss issues that will force those who were affected to seek revenge.

In contrast, here are some examples of more complicated views. All of them are from interviews in less public environments. This one took place after a meeting with the Gombola chief (i.e. the government appointed chief – a civil servant) and his staff at Anaka. From his facial expression, it was clear that one person at that meeting was just for public consumption and did not really represent local views. We took him aside and asked him what he thought.

*What do you think about the ICC?*

It should put pressure on people in the bush.

*Should the ICC prosecute all of them?*

The top commanders should be the ones prosecuted. We need to say that terrorism is wrong. If those commanders took your kids and forced them to do things, would you say you would not fight them?

*Some people say even the top commanders should be forgiven.*

But I don't want to forgive them. We have to make them know it is wrong. We don't want to forgive. My brother was killed by Kony. And my sister. He tried to abduct them. They escaped, so he killed them.

*What about rebels who have returned home? What do you think about them?*

Some are in the community here. We just allow them back It is by force. People say there is a local law. You are not allowed to say that is the one who killed my sister. No one may point a finger and accuse. But in the mind it is there.

The next extract is also from a 'chairman' of a Local Council (LC3) at another displacement camp. She is a woman, and spoke very frankly to us.

According to me the people are very open to the ICC because Kony has committed atrocities. He has refused to come back home when people have tried to talk to him. Some people say they should kill such people. Some want to forgive them. Most people think they should go to court..... When people keep extending the amnesty, people just go on killing. The ICC makes them think they will go to court if they don't stop....

*What do you think when someone who has killed come back here to live?*

It is not good. Those people made a lot of atrocities here. People do not see them in a good way. Those people should be sent somewhere else, and kept

there for a long time. Forgiveness is not possible in the local community. God forgives them. But people do not think like that.

To give an example of what she means, here is an extract from an interview with a man living in the same camp.

Those people (the LRA officers) fear to come back. They don't fear the government. They fear the civilians. For example Vincent Otti. He fears to come back because he killed hundreds of people in Atiak. He fears the civilians. Other commanders killed in Lira district. Sam Kolo killed in Alero. He made many atrocities. They now fear to come back. It is the young commanders who have done the really bad things. They cannot come back. They fear what the civilians will do.

*What about the women - do people forgive them, those that have come back home?*

The women go looking for husbands here at home (i.e. they look for men to live with). Their activities are dangerous. They fight with men, and when they fight it is a war. People fear them. They cannot re-marry after being in the bush. They join the UPDF or the LDU (Local Defence Unit).

*Do people fear them because of cen (polluting spirits)?*

Yes. People fear them because they are polluting. They will not greet you by shaking hands. They are not friendly with us and do not trust us. In the bush they covered themselves in oil. If people have not been anointed like that, they do not greet them. If they do greet you, it is only out of fear. Some were living with the LRA for 10 years or more. They have that wild mentality.

This extract is from an interview with a woman at another camp. Her son had been abducted by the LRA a few months before.

*Do you forgive them for taking your son?*

No I will not forgive them. They picked my son. They do show forgiveness to me, why should I forgive them?

*If he survives, if he come back, will you forgive then?*

No I will not forgive them.

*Have you heard about the ICC?*

Yes I heard about it on the radio.

*What do you think about it?*

They should prosecute. But the commanders will go wild if there is a warrant but they are not caught. So just kill them. Don't take them to court if it takes time. If you take him (Kony) to Europe, that will be no good. He will escape.

The following is from an interview with another woman at a nearby home. She was in her forties and was sitting in her tiny compound, surrounded by graves with rocky surfaces, indicating violent deaths.

Yes they should take the top commanders to court. They made lots of atrocities. Have you seen the graves? They are my relatives and children – even a schoolboy. He went to collect food. They killed him.

*Do you look at returned rebels and say to yourself, “Is this the one that killed by child?”*

We see them – but we do not see them badly.

*Why not?*

Even if we see them with bad eyes it is useless now. If you see them you must just forgive. Maybe it could be your son who was taken. What to do?

(At this point a drunk man at the edge of the compound starts to sing a Protestant hymn, one sung at burials. Someone comments: “We drink so much to forget our problems.” We move to the side with the women we were talking to)

How do you feel about forgiving?”

I do not speak about it. If I talk I will lose all my people. I just want then to come home. I can’t say any more... (*she starts to cry*).

Most at the camp, one of the worst affected by LRA attacks, were enthusiastic about the ICC, once its role was explained to them. Here are comments from two elderly men, interviewed separately.

(1)

*What are your views about the Amnesty and ceasefire?*

If the peace talks and Amnesty are there, people should come home.

*What about prosecution for the commanders by the ICC?*

The commanders should go to court. Let them be charged.

(2)

*Should Kony come back home?*

No they should arrest him and take him to court. All the commanders should go to the Court.

The Chair of the Local Council at the camp also had very clear views about prosecution, and expressed them incisively in fluent English. In addition he made some interesting observations about the ideas about healing promoted by the traditional leaders in Gulu town.

*Have you heard about the ICC?*

It’s a bit late. We give the go ahead. We heard about international bodies in other places but not here. The Amnesty has done a lot – although the army claims that it is they who have really done it (*by forcing LRA soldiers to surrender*). Now the LRA is like a wounded buffalo. When they hear about the ICC. When they hear that they will be prosecuted. They will use guns. The ICC has to be quick, with international warrants of arrest for the biggest commanders... I do not forgive Kony or Otti (*a senior LRA commander*) – why should they kill people? Me personally, I don’t forgive. These Acholi are



killing their own people. There are also notorious commanders on the government side. They also committed inhumane acts....

*How do people react to returned rebels?*

It depends. The majority are OK, and some are productive. But there are those who have psychological torment. They are not staying well with people. Some are also over-drinking....

*Do you perform rituals for them?*

Yes we have prayers, and also various things to help heal them. The rwot (traditional chief) is involved in it, and the elders. However, they cannot reach the proper *abila* (ancestral shrine), so they do it here.

*What about the ceremonies performed in Gulu by the new paramount chief?*

The rwot here is negative about that. So am I. Each clan must do their own healing. It is a wasted effort to put resources with the paramount chief at Gulu.

Similar scepticism about collective Acholi healing in Gulu town and also similar views about prosecuting Kony have been expressed at public meeting by Walther Ochora, the Chair of Gulu District Local Council. He is an interesting character with a colourful past. He had been a senior army officer in the UNLA and had played a significant role in the coup of 1985, which brought Tito Okello to power for a short period. After the NRA seized Kampala, he fought in the UPDA, but was one of those who accepted peace terms. He has known Kony for a long time, and has had contact with the LRA, notably in June 2001 when he initiated a peace dialogue in a temporary 'demilitarised' zone. I was introduced to him in a bar in Gulu town as someone looking into the risks of the ICC intervention. He immediately assumed I was likely to be opposed to it, and asserted that 'Kony is a criminal', and that he should be prosecuted and sent to prison. At the discussion meeting on the ICC hosted by SCiU in Gulu in August 2004 he was one of the few participants to be unequivocally supportive of the ICC's role. Here is what he said (he spoke in English).

When it comes to the business of the ICC I am very grateful for the performance of this court worldwide. If you have been following international relations it is actually demystifying the issue of international leaders being above the law. We hope that the court will bring a bit of sanity to the world. Normally in society there are norms and laws. That is why there are always sanctions to make sure that these norms are followed. They are divided into two. If you do well you are given a reward and if you do the contrary you are punished. For example, in the army - the army is licensed to kill, at the same time if you murder you go for court martial. There is a difference between killing your enemy and murdering your enemy. We have the Geneva Conventions. You cannot capture the enemy and then murder them. Those are the laws that govern men.

There has been a lot of confusion about the way the Acholi have their norms and sanctions. The *matu opit* is there. What I know about *matu opit* is that you first have to admit that you have committed a crime and that you are repentant. Then the process goes from there. When you look at the LRA you see that there are those that have committed atrocities. There are those who see that

they have committed crimes against their own people and these are the ones that are coming out in big numbers. The Amnesty has been there for years but they are only responding now. I have been in touch with the LRA for a long time both when I was brigade commander and in civil society.... Some told me a few days ago that even if there are only five left they will still continue. For various reasons they get promoted for crimes. To them they take their ranks very seriously. They have a reason to stay in the ranks. They have free women. There are many reasons for those guys to stay in the bush....

Kony made it very clear that as long as he is still active he will remain in the bush and those that have left the bush he would destroy. How do we stop this? I am someone who is really pro the move by the Prosecutor. The ICC will not stop the LRA coming out. I want to allay the fear that the ICC will stop them coming. These boys who are ready to come will come and those who are not ready will remain. But we need to set a precedent that those who commit crimes unabated should not be able to get away with it. The ordinary citizens have not given their comment on the ICC. It is always coming from the top leadership.... We should move to our community ourselves and talk to them about this thing.

As has been shown, our experience of doing what Ochora suggested and talking to people out in the IDP camps was that his views are shared more widely than has been supposed. In the next subsection I take up this up with respect to Acholi healing. A consensus has been established that badly needs to be interrogated and unpacked. Things are by no means as straightforward they have been made to appear.

### **3.3 Questioning the established perspective**

The following remark about traditional Acholi healing was made by a man in his thirties He is living at Atiak IDP camp. He has been abducted by the LRA three times. Twice he was released after a few hours and once he managed to escape during an ambush by Government forces. It would seem that he does not so much want to forgive as to forget.

*If you met one of those who abducted you after they came back. What would you do?*

I would not fight them.

*Why? When someone kills your relative, do you forgive them?*

Yes we do. There is one here who killed his brother in law.

*Do you talk to him?*

Yes. We even drink beer with him.

*Do people say anything about what he did?*

No

*Has he performed mato oput?*

No! He would fear to do that.

Why?

To do that he would have to say I am the one that has done a bad thing. He would have to ask to be forgiven by the family he had killed from. That will be difficult. How could you live with a person who said that they had done such a thing? So we just look at him like a normal person (*i.e. we ignore what has happened*)....

Such an attitude to traditional healing is not uncommon. Nor is an antipathy to the lobbying by traditional leaders in Gulu town. In fact, members of staff at ACORD itself raised concerns about the policy of externally supporting traditional chiefs as part of the peace process right at the start. A few months into the research programme that was being funded by the Belgian Government to build on the findings of Dennis Pain's *The Bending of the Spears* (discussed above), they noted that healing and cleansing rituals were occurring, but that reconciliation rituals were much weaker. In addition, they pointed out that young people were less de-socialised than *The Bending of the Spears* had suggested, but they no longer automatically respected elders. Questions were raised about the emphasis in Pain's work on the views of 'acknowledged "opinion leaders"', rather than ordinary people, and it was observed that the research had created tensions between some elders, as there were expectations about financial benefits.<sup>108</sup>

It might have been added that much of the work of collecting information about *rwodi* had been done before by, amongst others, J.P. Crazzolaro in the 1930s and 40s and J.B. Webster and his colleagues at the History of Uganda Project in the 60s and early 70s. Moreover, the traditional roles of *rwodi* and clan elders had already been much debated and analysed.<sup>109</sup> Indeed, anyone acquainted with the existing literature on the Acholi might have predicted that there were going to be significant problems with the approach being taken.

On 17<sup>th</sup> January 2005, Rwot Acana II of Payera was crowned as Paramount Chief of the Acholi. President Museveni attended the coronation and the New Vision newspaper claimed that he was the '24th hereditary leader in a dynasty that begun in 1420 with Rwot Luo in Shiluk Bar-el-Gahazel, Sudan'.<sup>110</sup> This has required a great deal of myth making, including the remarkable early date,<sup>111</sup> and for many Acholi

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<sup>108</sup> These points are made by Mark Bradbury in *Reflecting on Peace Practice: An overview of initiatives for peace in Acholi, northern Uganda*, A paper commissioned by the Collaborative for Development Action, Inc., October 1999. Bradbury draws insights from ACCORD staff, including Chris Dolan, *Presentation at the Peace Research Conference*, Gulu, September 1999.

<sup>109</sup> J.P. Crazzolaro, *The Lwoo Part I: Lwoo Migrations; The Lwoo Part II: Lwoo Traditions*, and *The Lwoo part III: Lwoo Clans*, Verona: Museum Combonianum/Instituto missioni africane, 1950, 1951 and 1954; Onyango-ku-Odongo and J.B. Webster (eds), *The Central Lwo During the Aconya*, Nairobi: East Africa Literature Bureau, 1976. See also R.A. Atkinson, *The Roots of Ethnicity: The Origins of the Acholi of Uganda Before 1800*, Philadelphia: University of Pennsylvania Press, 1994. For critical discussion of this literature, see C.C. Wrigley, 'The problem of the Lwo', *History of Africa*, 8: 119-245, 1981; Tim Allen, 'Histories and Contexts: Using Pasts in the Present on the Sudan/Uganda border', in Paul Baxter and Richard Fardon (eds.), *Texts in Action*, Bulletin of the John Rylands Library University Library of Manchester, 73(3), Autumn 1991, and 'Review of Ronald R. Atkinson's *The Roots of Ethnicity: The Origins of the Acholi of Uganda Before 1800*', *Africa* 66(3): 472-475.

<sup>110</sup> New Vision, 17 Jan 2005.

<sup>111</sup> No explanation is given in the New Vision of how this date was established. Some oral historians working in Uganda have attempted to create chronologies based on lists of chiefs, allocating a certain

people, the setting up of a paramount chief is actually violation of traditional customs. In the past there was no such thing as a paramount chief and the numerous *rwodi* had a collaborative relationship with the elders of each clan associated with them. Many were essentially rainmakers rather than having political power. Several were appointed by the early British administration because they needed local authority figures to implement indirect colonial rule. Others are descendents of war leaders who forged alliances with the Nineteenth Century invaders, and obtained guns from them. This was true of Rwot Ocamo, the Rwot of Payera.

The earliest accounts of chiefs in the region come from the journals of the Victorian explorer and adventurer, Samuel Baker. In the book about his first expedition in the early 1860s, he noted that there were no 'big chiefs' in 'Shooa' country, but during his later expedition in the 1870s he met Rwot Ocamo (Baker calls him Rwotcamo), the chief of 'Payira' who claimed to be the ruler of the whole of 'Shooli'. Later writers demonstrated that this could not have been the case, or at least that 'Shooli' did not include other parts of what become known as Acholiland in the early Twentieth Century. Rwot Ocamo was actually at war with other clans and chiefdoms in the region, and the Rwot of Payera seems to have been affiliated as a kind of vassal to the Kingdom of Bunyoro. However, in the 1870s Ocamo had obtained guns and support from slave and ivory traders and seemed to be trying to assert a degree of independence and authority. He collaborated with Baker, who was at that time a mercenary in the employment of the Khedive of Egypt and launching brutal raids against those who would not accept his (and theoretically the Khedive's) authority. After Baker's departure, he continued to wage wars against his neighbours, but he seems to have had conflicts with some of the Nubi soldiers that Baker had left behind. The Rwot of Padibe managed to obtain their assistance, and was able to defeat Ocamo in 1877. His head was cut off and placed inside his own 'royal' drum, which the Padibe warriors had captured.

Ocamo successor, Awich, continued to fight his neighbours in the same way, and was apparently successful in capturing cattle and girls in great number, although he did not manage to recapture his father's head. He only managed to recover it in 1923 as part of the bridewealth and dowry exchanges that occurred when one of his daughters married Rwot Olia of Atiak. In the 1880s and 90s, with support from Bunyoro and some of the remaining Nubi soldiers, Awic managed to assert a degree of control over territory running from Kitgum to Pakwach. During that period he had accumulated an estimated 400-500 guns. To put this in perspective and to give an idea of the scale of the armed raiding, in 1913 the British administration collected a total of 5,000 guns from what became Acholi District.

Awich's power waned dramatically at the end of the 1890s when his enemy, Rwot Ogwok of Padibe formed an alliance with the British officers sent to the area. Awich

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number of years for each succession said to be of a brother and adjusting the allocation if there are stories about a brother or older relative succeeding. See, for example, Bethwell Ogot, *History of the Southern Luo*, Nairobi: East African Publishing House, 1967, and Onyango-ku-Odongo and J.B. Webster (eds), *The Central Luo During the Aconya*, Nairobi: East Africa Literature Bureau, 1976. The approach has been much criticised. Amongst other things it underestimates the degree to which stories about the past are myths, associated with ancestor veneration, which provide interpretations of the present.

was captured and imprisoned at Nimule in 1900, being replaced as Rwoth of Payera by his brother. He was reinstated by the British administration two years later, and then made a very interesting and important decision; he sent an invitation to Protestant missionaries in Bunyoro. He did not convert to Christianity himself for another 40 years, but he shrewdly realised that he could play one group of Europeans off against another. It was the beginning of a strong relationship between Payera and the Christian missions, one that has recently celebrated its hundredth year. After an uprising in Lamogi in 1912, the British deposed Awich again and deported him to Kampala. He returned to his home area in 1920 partly at the instigation of Rwoth Olia of Atiak, but was not reinstated as Rwoth. An assessment of his life written just before his death in 1946 declared him to have been a failure.<sup>112</sup> He was certainly less successful in political terms than Ogwok or several other Acholi chiefs. Nevertheless, his invitation in 1904 helped establish Gulu and Kitgum towns as important centres for the Catholic and Anglican Churches, and his imprisonment under the British Protectorate, has lent him and the chiefdom of Payera a certain status.

Under Protectorate rule there were several attempts to place the Acholi under a paramount chief. It was thought that this would make indirect administration more efficient. The model used was based on the administrative arrangements made with the kingdoms of southern Uganda. During the later Protectorate period there was also an eagerness amongst some Acholi political activists to establish a paramount chief in order to lever concessions from the British and counter the influence of Buganda in the run up to independence. However all these attempts were resisted, because of differences of opinion about who should take on such a role. These tensions have not disappeared. There does seem to be a general willingness now to have a paramount chief, but there is a widespread view that the elders of Payera have used their links with politicians, NGOs and religious leaders to inappropriately assert themselves. Moreover, the current Rwoth of Payera, Onem Acana II, is an educated young man who has spent many years living abroad. He has been elected as paramount chief after vigorous lobbying and political manoeuvring by his supporters. While he is widely viewed as a very decent, intelligent and likeable person, for several of our informants he is too much under the control of the established Christian churches, and does not really understand or share 'real' Acholi customs and traditional beliefs.<sup>113</sup>

The attitude of the Catholic and Protestant clergy towards traditional beliefs is a little complicated. There is a willingness to incorporate or reinterpret some local customs from a Christian point of view, particularly when they support the idea of forgiveness. Historically both churches have preached against 'Satanic' practices and initially put a great deal of emphasis on converting *rwodi*, like Awic. Ancestor veneration was discouraged, and chiefs and elders were told not to perform healing ceremonies at ancestral shrines (*abila*). However, there was a more lenient attitude towards *ajwaki* (*i.e.* spirit mediums, witchdoctors and healers). This was partly because they were initially viewed as relatively insignificant, because they were not perceived as 'traditional leaders' and many were female. Also, as we have seen, many asserted a strong Christian faith, and some would even refer to themselves as *nebi* (Christian prophets or teachers). In addition the status of Acholi possession cults was confused

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<sup>112</sup> R.M.Bere, 'Awich – A Biographical Note and a Chapter of Acholi history', *The Uganda Journal* 10(2), pages 76-78.

<sup>113</sup> No one we spoke to complained about Rwoth Acana's links with ARLP, but his strong connection with the established churches is underlined by joint press statements with the Catholic archbishop.

from the late 1940 by the spread of the Balokole movement from other parts of East Africa. The Balokole were fundamentalist Protestant revivalists, who criticised the lifestyles of the established clergy. They too preached against ‘Satanism’, but embraced Pentacostalism, exorcism of ‘demons’, and the laying on of hands. Given the ambiguities in the Lwo language with respect to *Tipu Maleng* and the Third Person of the Trinity, the connections between Christianity and local possession beliefs were reinforced. They became even more important for local diviners in the years immediately after independence, when numerous ‘witches’ were rounded up by order of chiefs. Many of those accused were tortured and some killed. Diviners or ‘witchdoctors’ had to be careful to assert their moral probity by linking their activities to Christianity (or in some cases, to Islam).<sup>114</sup> Such associations have remained important, and in the mid 1980s, both Alice Auma ‘Lakwena’ and Joseph Kony were *ajwaki* (they may also have sometimes been called *nebi*) and both had a relationship with the Catholic Church which was at least tolerated.

For obvious reasons, in recent years the established Churches have tended to preach against *ajwaki* (and *nebi*). The HSMF and the LRA have also sometimes killed them as part of their campaigns against witchcraft. As a result they have become secretive. Whereas in the early 1980s it was common to hear the drums of a séance, these are now rarely heard (in November we only heard them on one occasion). Local Council officers would also deny that there were any *ajwaki* in their displacement camps. Others admitted that they had introduced local laws to control them, because there is a concern that the activities of *ajwaki* will attract the LRA and lead to attacks. It is, however, easy enough to locate *ajwaki* by talking to people individually or in their own compounds. Those we spoke to tell us that they had to operate quietly, and they had introduced different ways of divining that did not involve drums. They also explained that *cen* (polluting spirits) could not be treated with such methods. If exorcism was necessary, they took their patients and their patients’ families out into the bush to do it. But it was a dangerous thing to do, both because of the LRA and UPDF soldiers, and because the *cen* themselves could be very powerful.

Here are some extracts from interviews to illustrate these points. First, some comments from the old man who is the *Rwot* of Atiak.

*How do you feel about the appointment of a paramount chief?*

That is just temporary. If there is going to be a paramount chief, the *Rwot* of Atiak must be the *rwot* of Acholi. Even the British sent robes to my predecessor, Olia. It was Olia who went to release Awic (the *Rwot* of Payera) when he was taken to jail... This new thing is politics. It all started when Philip Adonga of Padibe was made overall chief in 1958. But that was just for administration.

*Can the *Rwot* of Payera perform *mato oput* and other healing ceremonies?*

No that has to be done by the elders of each clan (*kaka*). This thing they have been conducting in Gulu is not good. But what can I do? They accepted to do it there. They must do it separately. If they do it in the town it will make things worse. It will bring *cen* there....

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<sup>114</sup> Tim Allen, ‘Violence and Moral Knowledge’, *Cambridge Anthropology*, 13(2) 1989: 45-66; ‘The Violence of Healing’, *Sociologus*, vol.47, No.2, 1997: 101-128; Heike Behrend, *Alice Lakwena and the Holy Spirits*, Oxford: James Currey 1999, pages 120-121.

Esther Aluk is an elder from Kitgum. She is well known as someone who has accumulated a great deal of knowledge about Acholi customs. She was involved in discussions with Dennis Pain when he was preparing his *The Bending of the Spears* report in 1997, but is appalled by the current developments. She spoke with great feeling in a mixture of Lwo and English.

It is no use performing healing rituals in town. The thing they are doing now is a big mistake. It will take all the *cen* to the place where it is done. Those rituals have to be done by clan elders. The Acholi are losing their culture. Culture was created by God. I am very Christian. Jesus goes with my culture. I love God so much. I respect Catholics. They brought Jesus to us. But they must correct their mistake. I helped set up the Acholi Traditional Ritual and Prayer Committee. We collected information and messages from old elders and summarised them. Instead of listening, the *rwodi mo* (the anointed traditional chiefs) are fighting those people. It is because the religious leaders are mobilising the *rwodi mo*. They are saying the old ways are Satanic.... I have also been with *ajwaki* and asked them about their spirits.... Some *ajwaki* are bad, but some do not want to kill. Some just want money – they are just thieves. But some of them are real *ajwaki*. We need a meeting for *ajwaki*. I even asked the Church of Uganda to be involved. Let us talk to *ajwaki*. Let us find out how the spirit came to Kony. Some say they can destroy the spirit. The elders of all the districts should sit together. The Verona Fathers should call a meeting for *ajwaki*. They should not say not to do so. They should talk to them.... Let us be one. There should not be a paramount chief. Acholi should follow their traditional culture.... The elders of Payera just used politics to make the paramount chief thing happen. They wanted the money that aid agencies gave for it, and they joined up with the Religious Leaders Peace Initiative in Gulu. They are fighting against the real rituals. We need to mobilise the elders for prayers and rituals. I don't want *rwodi mo* interfering

We also talked to Esther about the current peace talks, the Amnesty and the ICC. She was very sceptical that any of these will help much. The key issue is to deal with Kony's powerful and evil spirit, which she claims is essentially the same as the one that had possessed Alice.

Peace talks? What about the spirit? Kony may agree to talk, but you have to find the spirit. Museveni does not have a spirit, and Kony's spirit may come shouting, "No! no! no!". Some say that the (bad) spirit is not there with Kony at the moment. But it will come back and spoil everything. It may jump to another person. It jumped from Alice to Lokoya to Kony. It may jump again. If they arrest him, will they arrest the spirit? It will jump elsewhere... If they arrest Kony, the spirit will just continue. It is the spirit that has forced Kony to do things. He was an *ajwaka* before the war. He was healing people. The father of Kony came to my home. Both his sons were *ajwaki*... That was always that family's work -even the grandfather. But that (bad) spirit entered him (Kony) one day at 10am. It made him climb up into a tree. The spirit spoke through him and said that he must go to fight. Even if Kony has killed my brother, I forgive him. I don't want to kill him. He did not plan it. Other old people think the same as me, but not the young.... Young people do not

know about such things. They don't like to hear about it. We need to perform ceremonies to deal with the spirit. It is not just people who are crying. Spirits are crying too. We need to deal with the (bad) spirit. But young people don't want to finish things in that way. The old people who know the rituals are passing away. But if they are not performed we will all die. I don't know what will happen...

Many other informants raised the issue of Kony's spirit or spirits too. Ojolakome Martyn, the elder from Awere who accompanied Betty Bigombe at the 1994 talks observed that:

Kony is a demon-possessed man. Such people are uncommon here and they normally do things unknowingly or out of their consent. Kony acts under the influence of demons. I was actually in the team that went to meet him with Betty Bigombe. I was unable to understand what he said unless it was interpreted.

Like Esther Aluk, one of the *ajwaki* we interviewed at Awere had known Kony before he turned to fighting. Most of the text of the interview is presented here, because it raises issues of local healing and reintegration that are simply ignored in most of the current discussion about the role of traditional leaders. Like all the other *ajwaki* we spoke to, she is a woman.

*Have you been assisting people affected by afflictions and spirits?*

It's true I have been helping people. The spirits that make me able to do so came in my dreams. At first I tried to resist but they begun inflicting on me afflictions... that made me faint with epilepsy. Whenever I fainted, I saw angels who urged me to take up the job of being an *ajwaka*. I tried to resist telling them I was a Catholic since my birth... The persistent sickness made my husband divorce me and later sent me back to our home. Unfortunately I had lost both my parents but my only brother took me back. So with all this I submitted to the spirits and they begun showing me herbs to cure certain diseases and how to send away the evil spirits in children from the bush.

*Where do you send those spirits?*

The spirits are sent somewhere and buried.

*Do you think your spirits are clean/holy?*

The spirits are holy and four in number, each of them tells me their name.

*How do they appear?*

They appear in priestly gowns and with rosaries around their neck, holding bibles.

*What are their names?*

The leader is called 'Odora' and his other name 'Oyeyeng'. This means earthquake. The others are Labeja, Kalawinya and Abayo.

*Sometimes do other spirits come?*



No, only the four that I mentioned. And after me accepting their work, they showed me some medicine that cures epilepsy and they told me that I would never suffer from epilepsy again.

*What language do the spirits use?*

The three spirits use Acholi with the exception of Abayo who speaks British English. Kalawinya translates for him.

*Are they the spirits of the dead?*

Yes, they are spirits of the dead. I did not see them but I believe their spirits wonder and come to me because when they are not in me, I feel normal. But if they are in me I feel something different inside me....

*When you had these spirits, did you go to see another ajwaka?*

Yes, and he said that the spirits were the ones disturbing me. So I was trained from the village before coming to the camp. The spirits have now stayed in me for eight years....

*Was it not expensive to get trained?*

Yes it was, I had to spend 10,000 shillings.

*What kind of people come to you, are they also bothered by spirits or do they want to become witch doctors?*

Yes, those possessed by polluting spirits (*cen*) and those who have other kinds of wild spirits (*jogi*) come to see me. Often the problem comes in the form of sickness and affects their children. After trying the hospital in vain they come to me for help.... These days it is the returnees (*those who were with the LRA*) who come and behave in funny ways or run mad. The four spirits always tell me what medicine to use and they are cured....They were mainly abducted and made to kill or passed over dead bodies (i.e. were affected by *cen*). They might have also watched some one being killed while in captivity, sometimes from the same village. It can make them run mad.

*Do you think the cen made him run mad?*

Yes, if they are possessed, they say what they have been doing in the bush. Sometimes they carry pangas or knives to cut people.

*Are those who fail to get treatment from you dangerous?*

Yes they are. If the spirits come in them, they carry axes, pangas or a hoe with an intention of cutting someone. Such acts do not happen all the time, but are seasonal (i.e. *they happen sometimes*)....Before these children come home, they pass through centres (i.e. *GUSCO and World Vision reception centres*). When they come home they start experiencing demons and that's when they are brought to me for treatment....

We also asked her if she was worried about LRA attacks on *ajwaki* and if she her activities were supported by everyone in the camp:

I am always afraid that's why am in the camp. But whenever Kony is coming, the spirits inform me and even tell me which direction he is coming from and

where he is going... Kony is a mad man who does not give an ear to any of us *ajwaki*. He has actually killed them and even cooking them. He forces the clients he finds at an *ajwaka*'s home to eat the *ajwaka*'s body. Some people in the camp feel I am doing something bad and have a negative attitude towards me, but the work is necessary ... there are also many other *ajwaki* working here too...

Finally, she had some very interesting observations about Kony himself.

I think the spirits are influenced by an individual's own character... Once a spirit comes over someone it only gives the person the power to do their heart's desires. Therefore Kony had something wrong with his ancestral spirits and thus the spirits that came over him made him do the evil things. I remember Kony himself was an *ajwaka* to whom I took my son 'Ojok' for treatment of his umbilical cord - which had stayed for three month without healing. Kony referred me to his brother 'Ayeyo' who was also an *ajwaka*. Kony claimed he had to go to consult his spirits at that time. So it was his brother who helped my son. Later, before starting the atrocities on the Acholi people, Kony started by killing that very brother of his. So it depends on what kind of person you are. I once asked the spirits why Kony was behaving in such a way. They made it clear to me that once Kony and his family sacrificed a human being at their shrine at home (i.e. their *abila*). So it's the spirits of this person seeking revenge combined with other evils spirits that are possessing him.

### 3.3.1 Comment

It is entirely appropriate that priests should encourage Christians to forgive. 'Turning the other cheek' is an important aspect of the faith. It is also remarkable how some Acholi Christians seems to be able to act in this way. Similarly it is understandable that Christian leaders and traditional leaders influenced by their teaching should promote indigenous versions of Christian teachings. Even for non-believers, assertions about Acholi understandings of moral justice or Acholi notions of forgiveness are very seductive. Nevertheless, they must be treated with caution. Most of those we spoke to in the displacement camps mixed concern about the security implications of issuing warrants for the arrest of Kony and his senior commanders, with a willingness to see them prosecuted and punished. Certainly there was no general rejection of international justice. Instead there was concern about how such legal measures are going to be applied, and why it has taken so long for their plight to be noticed.

To the extent that there was ever an integrated Acholi justice system, it was introduced and regulated under the indirect rule of the British Protectorate. Government appointed chief were empowered to hold courts, and could dispense punishments such as beatings, but they were not allowed to execute the accused. To that extent, it is true that traditionally chiefs and elders did not impose the death penalty. However, individuals were killed when the chiefs became more independent in the 1960s, usually when they were found guilty of 'witchcraft', a term which could cover a variety of behaviours or traits. Those accused of being witches were, it seems,

often marginal individuals who might also be thought to be thieves or responsible for wide variety of misfortunes.

If 'traditional' refers to pre-colonial practices, then a great deal has to be speculative. There is no evidence that there existed some form of detailed legal code. Chiefs, elders and warlords needed to attract and sustain their followers by being generous, offering protection and arbitrating in disputes. Where there was an antipathy towards an individual, exile or death appear to have been likely. Also those leaders who had guns and external allies seem to have acted more ruthlessly and arbitrarily, partly to demonstrate their exceptional power.

It is very likely, however, that clans (*kaka*) had customs to control levels of violence between relatives and with allied groups. Armed conflicts would also have been resolved by negotiation on occasion. But this must be the case among just about every African population studied by anthropologists since Evans Pritchard's classic analysis of 'segmentary opposition' among the Nuer.<sup>115</sup> Although they might not always be applied, knowledge about rituals of reconciliation and the payment of blood compensation are widespread. So there is nothing particularly unusual about *mato oput*. It is one of a number of terms used for different kinds of purification, social healing and dispute settlement that have been described in the region. They are an important cultural resource, but they have not stopped many individuals being killed in the past, nor have they prevented collective killing between closely related groups.

Where they have been shown to be most valuable is after some kind of settlement has occurred. They may be useful tools in re-building communities - something that requires collective acceptance of certain social hierarchies, including gendered hierarchies, and making explicit certain moral norms. It should be added that the ceremonies and ritual behaviours that emerge to do this are by no means always old ones that are taken 'off the peg', but rather ideas about old models are often used to help shape new ones.<sup>116</sup> They are also as likely to be as concerned with setting aside or 'forgetting' wrongs as recalling them and 'forgiving'.<sup>117</sup>

There is evidence that something along these lines has been occurring in northern Uganda when former rebels have had to be re-integrated into the population. Those formally accepting the Amnesty spend time at one of the reception centres and undergo some basic psychosocial counselling, then they are sent back to their families. Many others return to their homes without ever formally reporting. Various healers, including female *ajwaki* and *nebi*, Christian activists and ritually significant elders have become involved in trying to contain their *cen* (polluting spirits) and wild behaviours. The Local Councils have also made it clear that people should not accuse such people of atrocities and should accept them as part of the Amnesty and peace

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<sup>115</sup> E.E.Evans-Pritchard, *The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic people*, Oxford: Clarendon Press, 1940.

<sup>116</sup> See, for example, Wendy James, *The Listening Ebony: Moral Knowledge, Religion and Power Among the Uduk of Sudan*, Oxford: Clarendon Press, 1988. James uses the concept of a cultural archive to describe and analyse this process.

<sup>117</sup> In Mozambique, for example, new forms of ritual have emerged which help communities cohere around a collective decisions to set aside the past, and see the future through the eyes of young children. See Sara Gibbs, 'Postwar social reconstruction in Mozambique: Reframing children's experiences on trauma and healing', in In Krishma Kumar, (ed.), *Rebuilding Societies After Civil War: Critical role for International Assistance*, London, Lynne Rienner Publishers, pages 227-238 1997.

process. In many cases, we found that this has worked in that former combatants are living in the displacement camps. However, the follow up of these people by concerned organisations is poor and experiences are very mixed.

Many of those we interviewed who had returned after a period with the LRA told us that they had experienced some persecution, even from within their own immediate families. They told us that things usually started quite well, but that after a while it became apparent that they would not be receiving any more commodities from aid agencies, such as blankets and mattresses. Then things would begin to deteriorate. Returned women complained that their children were called bad names and were treated spitefully. These children were born while the mothers were with the LRA, and their fathers are LRA commanders and soldiers, most of who have not accepted the Amnesty and are never going to pay any bridewealth to the mothers' clans. The young children themselves often have no clear clan identity (*kaka*). Normally they would gain the *kaka* of their father, but that is not going to be possible in most cases. Where a woman returns to her father's home with a child, in theory the child will have the original *kaka* of the mother (i.e. that of her father). But many people are reluctant to accept such children born in the bush into their lineages, not least because it would give the children claims over clan lands when people are able to leave the displacement camps. In several instances that we came across the local hostility to those who have returned from the LRA was intense, and people were living with the local UPDF or LDF soldiers for protection, or had chosen to join up. As has been noted, hundreds have been recruited into the 105<sup>th</sup> Battalion alone. Others have moved to other parts of Uganda, or have taken refuge at the urban centres. The girl we interviewed who was forced to kill her own mother is living in hiding in Gulu town.

The situation is by no means as bad as it could be. We did not come across any case in which neighbours had killed a returned rebel or one of their children. Also staff associated with the reception centres have the impression that returned children are generally being treated better now than they were a couple of years ago. They claim that this is linked to efforts aimed at 'sensitisation of the community' to the children's needs. It may be so, although monitoring is not adequate enough to make such statements with confidence. However, whatever the case at present, violent incidents can be anticipated when the close regulation of life in the displacement camps is no longer necessary. It was certainly something that was feared by returned people themselves, particularly the women. To give just one example, after interviewing a young woman who had been taken by Kony himself as one of his many 'wives', she asked us to come back and talk to her again later. When we returned, she had washed and dressed her two children and introduced them to us. "They are the children of Kony", she explained, "If I take them out of the reception centre they will be killed. Where can I take them? What is the ICC going to do about it?"

Overall, our assessment is that social tensions are acute, but are being contained. Ideas about forgiveness (*timokeca*) play a part, but attitudes are diverse about what it means or how it might be done, and are rarely consistent. People also apportion blame and want recompense. There is, I conclude, no such thing as a unique Acholi justice system. People in northern Uganda require the same kinds of conventional legal mechanisms as everyone else living in modern states. Many of our informants are eager too to embrace international principles of human rights - for all their contradictions and imperfections. We found no widespread enthusiasm for *mato oput*

ceremonies performed by the Paramount Chief. On the contrary, some informants were adamant that it would be useless, or would make things worse by concentrating *cen* in Gulu town. There are addition more specific problems with *mato oput*.

First, it requires one party to accept that he or she has acted wrongly and ask to be accepted back into the community, as well as to offer compensation. Would Kony or his senior commanders be willing or able to do this? Second, it is a ritual that was used in individual cases; even those promoting it accept that it was not a mechanism for collective dispute settlement (i.e. it was not linked with ‘the bending of the spears’ ritual). What evidence is there that it might be effectively adapted for this purpose, let alone generalised to all the Langi and Madi who will also need to offer forgiveness? Third, most local knowledge of both *mato oput* and ‘the bending of the spears’ (*gomo tong*) is second hand. Relatively few elders seem to have actually performed the former (I witnessed some ceremonies similar to *mato oput* performed at clan shrines in Sudan during the mid 1980s and Sverker Finnstrom attended four *mato oput* ceremonies performed by elders in the course of his fieldwork in northern Uganda between 1997 and 2002<sup>118</sup>). ‘The bending of the spears’ has probably only happened once or twice in living memory. Is it appropriate or feasible to rehabilitate or reinvent it? Fourth, the emergence of new spirit cults among the Acholi might be interpreted as a kind of ‘weapon of the weak’. They were associated with women and marginal groups, and with Pentecostalism. In its newer forms, possession has been outside of the influence or control of chiefs and lineage elders. Diviners and mediums have sought to make sense of upheavals and radical changes that the older ancestor cults could not interpret or mediate. The cults have been a form of resistance against the established Churches, and the patriarchal authority figures supported under Protectorate rule and by post independent governments. Is invigoration of such institutions a necessary part of peace building, or does it actually deflect attention from the many other things that are going on?

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<sup>118</sup> Personal communication, 07.02.05. Sverker Finnstrom presents a fascinating discussion of Acholi rituals in Chapter 7 of his book *Living with Bad Surroundings: War and Existential Uncertainty in Acholiland*, Northern Uganda, Uppsala Studies in Cultural Anthropology no 35, Uppsala 2003.

## Conclusion

No one could deny that there are risks with the ICC intervention in northern Uganda, and the Court has not adequately addressed questions about them in public. Many of the points raised a year ago in the SCiU Statement of February 2004 remain issues of concern. It is possible that the ICC will issue a warrant for someone who was abducted by the LRA as a child but is alleged to have perpetrated crimes as an adult. It is not unreasonable to suppose that the LRA might make children perform atrocities precisely because they are immune from prosecution under the Rome Statutes. It is the case that the long-term safety of witnesses and their families cannot be guaranteed, and the LRA commanders might choose to kill children and adults who they have abducted, and who might at some stage be asked to testify. It may also happen that the issuing of warrants will result in increased military activity, putting even more children in danger. There is no doubt too that in northern Uganda there are ambiguities about the allocation of blame, embedded in the fact that 'the communities are made up of victims and perpetrators, often in one and the same person.'<sup>119</sup> The ICC's reticence to make pronouncements on these and other points has given the impression that it is being evasive, and has exacerbated rumours about who it represents and what it intends to do. There are, however, good reasons why the Court has taken a low profile approach. and at least some of the fire directed at it is based on misconceptions.

Among the misconceptions is the vigorously promoted view that the ICC will undermine local justice procedures, premised on ideas about forgiveness.<sup>120</sup> I have had much to say about how Christian and 'traditional' interpretations of Acholi justice are constructed, and I have pointed to the rather different perspectives that come from people living in the IDP camps. Many individuals we interviewed are very interested in the punishment of Kony and his commanders, and forgiveness is by no means as prevalent as is asserted by some activists and interest groups. The research team additionally found that social divisions are severe, and that the Acholi are less exceptional in this respect than many seem to think.<sup>121</sup>

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<sup>119</sup> This quote and all other issues in this paragraph are raised in the SCiU Statement on the ICC of February 2004 - discussed in the Introduction. I would like to thank Matt Hobson for various specific suggestions that I have included in this section, and also for his very detailed comments on the report as a whole.

<sup>120</sup> Many otherwise thoughtful and well-informed contributions continue to assert this view without serious question. For example, on February 1<sup>st</sup> 2005, the Civil Society for Peace in Northern Uganda issued a briefing paper. It contains the following statement on 'traditional justice mechanisms in Acholi': 'It is worth mentioning a few words about the Acholi justice system, which is based on compensation, reconciliation and reintegration. The main objective of the justice system is to integrate perpetrators into their communities with their victims, through a process of establishing the truth, confession, reparation, repentance and forgiveness. Mechanisms such as *mato oput* and *bending of the spears* are ancient Acholi rituals which, despite many years of war and displacement are still being practiced in the sub-region, and have the support and confidence of the majority of Acholis and their traditional leaders....' CSOPNU, c/o CARE, Kampala, Uganda, Email: [csopnu@yahoo.com](mailto:csopnu@yahoo.com)

<sup>121</sup> These points have been highlighted recently by the events in Awach sub-county of Gulu District. Angry residents flogged the body of an LRA commander whom the UPDF had killed in an ambush. Eyewitnesses said the residents overwhelmed UPDF soldiers who tried to stop them. 'Mob flogs dead LRA commander', *The New Vision*, Saturday, 22<sup>nd</sup> January 2005.

I have also examined the other main criticisms of the ICC in Uganda: that it is biased in favour of the government; that it will exacerbate the violence, and that it is spoiling the peace process. In each case I have shown that there are indeed reasons to be worried, but again I have explained why some of the arguments are misplaced. I have indicated that the ICC may well have a useful role to play, and may currently be having positive effects – some of them unforeseen. Most importantly, the activities of the ICC have not led to the worsening of the situation that many commentators predicted. The numbers of abductions and killings have declined since the massacres of May 2004. There is also a continuous trickle of former rebels asking for Amnesty, and a ceasefire has been possible. The prospects for peace have actually improved. This is more than just a coincidence. The ICC has concentrated minds, including those of President Museveni and rebel commanders.

In other ways too the ICC interventions has shaken things up in potentially positive ways. The whole system of population displacement into camps, which has both caused extraordinary suffering in itself and has failed to provide adequate protection, can only be maintained with donor assistance. The situation is partly a product of well-meant aid, just as much as the controversial negotiated-access relief programmes in the war zones of Sudan, which have contributed to what David Reiff calls ‘a crisis of conscience among sensible humanitarian agencies’.<sup>122</sup> In Uganda, the achievement of President Museveni’s government in transforming the country into a relatively viable state has meant that contradictions of providing aid during ongoing war have not been fully addressed. The very success in effectively absorbing development finance has, in this part of the country, drawn international organisations into long-term, institutionalised arrangements with anti-insurgency strategies. The issue of ending impunity, with its inherent rejection of compromises made with the perpetrators of violence, cuts to the core of the dilemma. Perhaps some of the hostility to the ICC is to do with disquiet about changing the established dispensations. There is no doubt that they need challenging.

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<sup>122</sup> In Sudan, analysts have claimed that aid has been imposed, that agencies have fuelled armed conflict, and that the ‘humanitarian international’ has perpetrated famine crimes. Such critiques have led to a crisis of confidence amongst many aid workers, or as David Reiff puts it, a crisis of conscience. See David Reiff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002). Here are some remarks Reiff made at a recent talk to the Carnegie Council: ‘For a long time, humanitarians who were criticized were in denial about the down side, the unintended negative consequences of their actions... But as time went on, it became clear that they were their own failures... Some twenty-odd years ago it was decided to make a permanent humanitarian operation, a consortium of most of the mainline humanitarian agencies under UN auspices, called Operation Lifeline Sudan (OLS)... The trouble is that as humanitarians themselves, they realized before long that they were becoming logisticians to the war effort of the belligerents, that in effect what Operation Lifeline Sudan was doing, whilst doing a great deal of good by saving lives, the humanitarians were in effect allowing the war to continue, because both the government of Sudan, and the then two major insurgent groups in the south ..... were saying, “Okay, you are our social service arm. The people are hungry. Surely you, United Nations and OLS, will feed these folks. And we, whilst you are feeding them, will go about our merry way, slaughtering each other, and, incidentally, quite a few of these civilians you are trying to feed while we are at it.” There was a crisis of conscience among sensible humanitarian agencies.’ (<http://www.carnegiecouncil.org/viewMedia.php/prmID/169>). One of the most devastating critiques of humanitarian aid to Sudan, including OLS, is Alex de Waal, *Famine Crimes*, Oxford: James Currey, 1997. A good recent overview of the debates is Douglas H. Johnson, *The Root Causes of Sudan’s Civil Wars* 2003.

The intervention has also played a part in directing wider international attention at the crisis. Suddenly all sorts of new resources have become available for peace negotiations and longer-term development schemes. There are doubtless other reasons for these initiatives too, but the ICC has contributed. It has helped keep northern Uganda in the news. Carol Bellamy, the Executive Director of UNICEF, has been to the region recently and has said the usual things that such people say: ‘The World needs to wake up to the enormity of the crisis in northern Uganda... It is a moral outrage.... I cannot find any other part of the world that is having an emergency on the scale of Uganda, that is getting such little international attention.’<sup>123</sup> It is easy to be cynical, but such statements in the global media have prompted the UPDF to take the security of the camps a bit more seriously. There has been a persistent looking away from this tragedy. Hopefully that is no longer going to be the case

In the course of this report I have made many observations that are of relevance for SCiU and other child protection agencies. I am reluctant to end with a wish-list of anodyne ‘recommendations’. Nevertheless, there are several specific issues that need attention, and are worth highlighting.

(1)

Staff at the ICC have indicated that the Court will be doing more outreach work in the coming months. They are likely to have an uphill task with some groups. In certain quarters there is little trust to build on. It would help if the ICC re-confirms as a matter of urgency that children will not be used as witnesses during any prosecution. Also the ICC should clarify how it will protect children who are current members of the LRA or children who are affected by the conflict generally and what effective mechanisms are in place to protect witnesses generally. It would surely be appropriate to inform concerned parties of the procedures that were explained to us in The Hague.

(2)

The timing of investigations and possible prosecution during ongoing conflict needs to be more seriously examined, and not only from a legal perspective. It is possible to adhere to the Rome Statute while at the same time assessing the political realities. There are signs that the ICC has tried to do this in Uganda. It has avoided some of the problems that have arisen with the ICTR, the ICTY and the SCSL. It has, however, had to deal with the consequences of its press statements in January 2004 and also the initial wording of the referral. These gave an impression of bias, and reflected a lack of understanding of the context in northern Uganda.

(3)

More generally, it would be appropriate for child protection agencies and other concerned parties to focus on the repeated emphasis in the Rome Statute on acting in the ‘interests of justice’<sup>124</sup> and acting in ‘the interests of victims’.<sup>125</sup> These terms constrain the actions of the ICC in important ways, and suggest an important area of dialogue and discussion. The ICC is not empowered to end impunity at all costs. For child protection agencies, which have as their mandate the Convention for the Rights

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<sup>123</sup> For an interview with Carol Bellamy soon after her visit to northern Uganda in May 2004, see: [http://www.irinnews.org/report.asp?ReportID=41346&SelectRegion=East\\_Africa&SelectCountry=UGANDA](http://www.irinnews.org/report.asp?ReportID=41346&SelectRegion=East_Africa&SelectCountry=UGANDA).

<sup>124</sup> Rome Statute Articles 53, 55, 61, 65, 67.

<sup>125</sup> Rome Statute Articles 53, 54, 65, 68.



of the Child, it would be appropriate to locate their concerns about children in relation to the stress on these phrases in the Statute. In other words, SCiU (and the global Save the Children network) or UNICEF might express reservations to the ICC in terms of the interests of justice for children. This might be obvious, but so far it does not seem to have happened.

(4)

It should be recognised by the ICC's critics that so far its activities have not led to an escalation in the violence. Concerns about this remain, but the low profile approach of the OTP has been appropriate. It has allowed the peace process to continue. However, as soon as possible the ICC should accelerate its engagement, and amplify its dialogue with civil society, informing them in general terms of OPT progress, intentions and, crucially, impartiality. The relative secrecy and the lack of public information about the ICC in Uganda have added to local concerns, particularly in relation to (perceived) bias.

(5)

Child protection issues remain extremely relevant - particularly in relation to the likely reprisals that there may be on communities if a prosecution proceeds. Everyone is aware of this. It would be an abrogation of responsibility if the Ugandan Government, the ICC and donors failed to ensure that special procedures are in place to prevent violent revenge attacks. As one aspect of this, the practice of the ICC investigation staff in northern Uganda needs to be reviewed, to ensure that those children and individuals that it is speaking to are less easily identified or otherwise negatively impacted by their questioning.

(6)

The ICC and several other organisations have repeated assertions about child abductions that do not appear to be based on any adequate data. There is no evidence that 85% or more of those abducted by the LRA have been children. It is also clear that the majority of those abducted are released or escape quite quickly. Yet statements are repeated with apparent confidence that 20,000 or more children have been abducted, and implying that they are still being kept captive. The fact is that no one knows how many people have been abducted, how many have been released, or what percentage have been children. UNICEF has not undertaken systematic monitoring since 2001, and even those relatively robust figures seem to be ignored in most accounts. There is an urgent need to stop picking numbers out of the air, and to make a proper assessment. This is also essential, because the follow up of people who have passed through the various reception centres is very poor. Once they are returned to their families, they are largely forgotten.

(7)

A focus on the abducted should not be at the expense of the rest of the population living in IDP camps. The majority of people in this part of northern Uganda have been systematically terrorised and abused, caught between the LRA and rigorous population control programmes imposed by the government. Children have grown up in circumstances of appalling structural violence. Child abduction seizes headlines, and there is no doubt that many children who have been abducted, even for a short time, have been deeply affected by the experience. Nevertheless, it would be

inappropriate to privilege the suffering of those abducted over that of the hundreds of thousands living in fear and deprivation.

(8)

Things are changing in the war zone of northern Uganda. The effects of the latest Iron Fist operations in Sudan, which has involved collaboration with the SPLA in military action, appears to have weakened the LRA as a fighting force. Also the withdrawal of open support from the Government of Sudan and the incorporation of most of the EDF into the SPLA as part of the Sudan peace process have isolated the LRA. In the past the LRA has relied heavily on supplies from the former, and the latter were important local allies. On 11<sup>th</sup> of January 2005, John Garang, the SPLA leader and now 'first vice-president designate' of Sudan, has stated that the LRA 'are unwelcome in our territory.' Interestingly he added that they will be 'treated as enemies of the United States' – reflecting the US involvement in the Sudan peace deal, the US assistance for the Iron Fist offensive, and the inclusion of the LRA on the US list of terrorist organisations. Moreover, in Uganda the recent peace negotiations and the extensions to the Amnesty Act have served to isolate the LRA leadership. The negotiators themselves are upbeat about the prospects. On the 5<sup>th</sup> of January, Betty Bigombe was reported to have said that, "The whole thing looks very promising. We are continuing to explore more contact with the LRA with a view to a peaceful settlement to this conflict. It is a question of time."<sup>126</sup> Meanwhile, the government has continued to offer public assurances that the LRA 'hardliners' will be safe once they abandon rebellion, while at the same time pursuing the military option. Behind the scenes, the ICC has quietly negotiated with the Sudan government and other relevant parties to try to ensure that their warrants are going to be executed. On the face of it, there are few options left for Kony and his senior commanders. LRA attacks have still continued on a small scale, but it is possible that the stage is set for an endgame.

Even if it proves not to be the case, a broad conclusion of this report is that the current arrangements are unlikely to continue for much longer. Donors, aid agencies and the Government of Uganda need to start planning for a post-war situation. It is going to be fraught with difficulties and potentially violent. For many women, no bridewealth has been paid when they married. How will resources be allocated to them and to their children? For this and other reasons, there are large numbers of people who have no clear clan status, and will therefore have no claim to land. Others will have claims to land, but it will be bitterly resisted by some relatives.<sup>127</sup> For many people too, IDP camps are where they have always lived. Will they even want to go and live in rural places without shops, bore holes or roads? One reason why thousands of children migrate to Gulu and Kitgum at night is that there is electricity, lights and sociable company. Will they want to go and live in a village? In a baseline health survey carried out by MSF-Holland in October 2004, people were asked about their future plans. In some camps over 70% of respondents said they would not go home

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<sup>126</sup> 'LRA get new peace terms', *The New Vision*, 5<sup>th</sup> January 2005. A week later Bigombe revealed that the negotiators had met with the LRA again, and that, "We are progressing well... A very senior LRA commander called Onen Kamdulu even handed over his three wives to me. Two of Kamdulu's wives are pregnant while the third has a baby. This is a very good gesture of peace." 'Bigombe LRA meet again', *The New Vision*, Wednesday 12<sup>th</sup> January 2005.

<sup>127</sup> Limitations in Acholi customary land tenure, as well as many other crucial issues, are discussed in Judy Adoko and Simon Levine, *Land Matters in Displacement: The Importance of Land Rights in Acholiland and What Threatens Them*, CSOPNU, Kampala, December 2004 (csopnu@yahoo.com).

immediately.<sup>128</sup> Those were new camps. In the older camps it is possible that many will feel that they are already at home and have nothing to gain from moving. A long-term effect of the war will be urbanisation. Strategies need to be in place to support small town development. Otherwise, thousands will end up in slums at the edge of the major centres. There are health issues to think of too, including the highest recorded HIV/AIDS prevalence in the country (near Gulu town). Moreover, it cannot be assumed that Acholi customs will allow communities to re-emerge without pain. Gendered hierarchies will be imposed, and various kinds of recompense will be sought by those able to demand it. Social healing will be complex and sometimes brutal, as it has been in other places, including other parts of northern Uganda.

(9)

Planning for the future requires an understanding of the past and the political realities of the present. There is an urgent need for continuous research and for a serious engagement with information and analysis that is already available. Some people will read this and roll their eyes. Academics like me always conclude by maintaining that there is a need for more research. But I found a remarkable lack of knowledge among many people I spoke to in northern Uganda, some of who are in powerful positions, and even some of the best reports on northern Uganda ignore the existing literature. Yet parts of this region are among the most carefully studied places in the country, and have been for a long time. I have sought to demonstrate this in the footnotes. Quite apart from the various monographs, scholarly articles, and film documentaries, one of the most important of all African writers was an Acholi. Much of what Okot p'Bitek had to say in his poetry and prose remains very relevant. His books are readily available in Kampala bookshops.<sup>129</sup> But how many people working for aid programmes have bothered to read them? A University has been established in Gulu town, which teaches courses on war and peace making. Surely this is a place that might be encouraged and supported to run properly informed seminars and workshops, and perhaps also keep a small library of relevant material.

(10)

Finally, a big risk associated with the ICC intervention in northern Uganda has been largely overlooked in the furore. It is the risk to the Court itself. The ICC is a new institution that needs to demonstrate its capacities and competence. This is acutely so, given the open antagonism towards it from the US Government. It is fragile and vulnerable, and it will require the support of agencies such as Save the Children and UNICEF to become effective. Both these organisations have a rights based mandate in the Convention on the Rights of the Child. Like the ICC Statute, a wide range of problems can be raised about the Convention, not least that in practice it can be inappropriate or impossible to implement in many poor countries. It is nevertheless valuable. It is a benchmark for what should be appropriate for all children everywhere. To make its provisions a reality will require more than just gentle

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<sup>128</sup> *Internally Displaced Camps in Lira and Pader, Northern Uganda: A Baseline Survey, Preliminary Report*, MSF-Holland, Uganda, November 2004.

<sup>129</sup> Some of the most important works by Okot p'Bitek are: *Song of Lawino*, Nairobi: East Africa Publishing House, 1966; *African Religions in Western Scholarship*, Kampala: East African Literature Bureau, 1970; *Song of Ocol*, Nairobi: East African Publishing House, 1970; *The Religion of the Central Luo*, Nairobi: Kenya Literature Bureau, 1971; *Africa's Cultural Revolution*, Nairobi: MacMillan Books for Africa, 1973; *Horn of My Love*, Nairobi: East African Educational Publisher, 1974; *Artist, the Ruler: Essays in Art, Culture, and Values*, Nairobi: Heinmann Kenya, 1986.

persuasion. Amongst other things, it will need a more adequate system of international jurisprudence. In this respect, for all its obvious weaknesses, the ICC is a crucially important additional mechanism. For the first time there is an established procedure for holding people to account in a court of law beyond the measures enforced within sovereign states. The ICC does not provide justice for all. That was never the intention. But it creates possibilities that might help make the world a better place. It would be foolish to set it aside.

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