



Amnesty and International Law: The case of the Lord's Resistance Army insurgents in Northern Uganda

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Abstract

The conflict in northern Uganda is about to enter its twentieth year since it began in 1986. As at the time of writing, there is no sign that the conflict is about to come to an end. For a long time, the government has tried the military option to end the conflict but to no avail. However, recently the government under pressure from local and international civil society organizations and the Acholi population opted to talk peace with the rebels. The proponents of peaceful methods to end the conflict have mooted the Acholi traditional reconciliation mechanisms of

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Mato oput and *Gomo tong*, and the government instituted amnesty to try and lure the Lord's Resistance Army (LRA) from the bush. In their efforts, the peaceful methods proponents have incessantly campaigned against the on-going International Criminal Court (ICC) investigations into the LRA activities. Meanwhile however the LRA has continued to commit egregious international crimes, which its top leadership must answer for. Whilst the abducted and conscripted LRA foot soldiers (mainly children) may be amnestied, customary international law demands that the top leadership of the LRA must be punished for the *jus cogens* crimes that have been and continue to be committed in the conflict.

1. Introduction

To date the rebel group, the Lord's Resistance Army (LRA),¹ has waged 20 years of war against the government of the National Resistance Movement/Army (NRM/NRA) in Uganda. Since 1986 when the government of NRM led by Yoweri Museveni came to power, the people of northern Uganda have never known peace. All this time, the insurgency has pitted the LRA of reclusive Joseph Kony against the national army of Uganda, the National Resistance Army (NRA) – later renamed the Uganda People's Defence Force (UPDF) – supported by a myriad of local militias. The LRA insurgency, it should be noted, is the only one that has persisted against the NRM government as all the others have petered out. The defeated insurgencies include those of the Uganda People's Defence Army (UPDA) of Brigadier Odong Latek, the Uganda People's Army (UPA) of Peter Otai, the Holy Spirit Movement I (HSM I) of Severino Lukoya, the Holy Spirit Movement II (HSM II) of Alice Lakwena, the Western Nile Bank

1 The LRA has changed names a number of times. It started as the Lord's Salvation Army (LSA) then it became the United Salvation Christian Army (USCA) and finally the Lord's Resistance Army in 1994. For a detailed background about the group and the rebel movements in northern Uganda, see Human Rights Watch 2003, and Behrend 1998:107-118.

Front (WNBF) of Juma Oris and the Allied Democratic Forces (ADF) of Jamil Mukulu, among others.

The conflict in Northern Uganda has been very brutal and debilitating, especially for the civilian population. Women and children have been the most vulnerable groups. The tactics of the LRA have included: murder, abductions, rape, body mutilations and pillage. The government forces have also not escaped accusations of committing crimes such as murder and rape. On a number of occasions the LRA and the government have engaged in peace talks, but every time they have broken down. The latest attempts at talks began in November 2004, when the government announced a limited unilateral cease-fire in parts of Northern Uganda.² The talks broke down at the end of December 2004, but Chief Peace mediator Betty Bigombe³ has pressed on and has been working hard to get the two sides to sign a comprehensive cease-fire agreement. It appears that Bigombe's efforts have begun to pay off as a number of top LRA commanders have come out of the bush, including Chief Spokesman and Peace Negotiator Sam Kolo, and Operations Commander Onen Kamdulu.

Meanwhile in January 2004, the government of Uganda concluded an agreement with the Office of the Prosecutor of the International Criminal Court (ICC),⁴ for the latter to start investigating the activities of the LRA⁵ with a view

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- 2 The government extended the cease-fire up to 22 February 2005, to give the rebels a chance to assemble in the cease-fire area and wait for the rebel leaders and the government team to sign the Peace Talks Memorandum (*The New Vision* 19 February 2005).
 - 3 Betty Bigombe was a Minister of State for the Pacification of Northern Uganda in the Museveni government up to 1996. Having failed to become a Member of Parliament for Gulu Municipality after the 1996 parliamentary elections, she left to work for the World Bank in New York.
 - 4 See International Criminal Court 2004. In fact President Yoweri Museveni first referred the situation concerning the LRA to the Office of the Prosecutor of the ICC in December 2003. On 29 January 2004, President Museveni and the Prosecutor of the ICC, Luis Moreno Ocampo, met at Hotel Intercontinental, Hyde Park, London, where the formal referral agreement was announced.
 - 5 In accordance with Articles 13(a), and 14(1) of the Rome Statute.

to indicting and bringing to justice all those who have committed atrocities in the long running conflict. At the time of writing, the ICC investigators have been in Northern Uganda gathering evidence (*The Monitor* 28 February 2005). Meanwhile, sections of the local civil society groups, the traditional leaders in Northern Uganda, politicians from the conflict area and individuals have come out to strongly argue against the ICC investigations. Their argument has been that the threat of prosecuting LRA leaders will only harden them not to abandon their rebellion. It has been argued that the LRA rebels must be lured from the bush through peaceful means – such as amnesty. In fact, the Parliament of Uganda enacted an Amnesty Act in 2000, and to date more than ten thousand former rebels have taken advantage of this law (*The New Vision* 2 March 2005).

The aim of this paper is to discuss the issues of amnesty and prosecutions for the LRA's top leadership, in the context of international law. This is in view of the continued opposition by some sections of the civil society and Acholi leaders and population that the ICC should drop its investigations into the activities of the LRA. Axiomatically, war crimes and crimes against humanity have occurred in the conflict in northern Uganda, mainly perpetrated by the LRA. Whilst children who were abducted and conscripted in LRA ranks may benefit from amnesty, the top leadership of the LRA must bear responsibility for all the crimes that have been committed. The proponents of peaceful methods to end the LRA insurgency have continuously opined that measures aimed at promoting reconciliation across the community in northern Uganda must be adopted to lure the LRA out of its rebellion. Whilst this argument may be correct, international law obliges states to prosecute the perpetrators of crimes, like those that the LRA has continuously visited upon the people of northern Uganda.

2. The Roots of the Insurgency

There are multifarious explanations as to the root causes of the various rebellions in northern Uganda. The conflict has been variously explained. For instance, that it is a struggle between the government and the LRA; that it is a struggle between the predominantly Acholi LRA and the wider Acholi

population who have borne the brunt of violence that includes indiscriminate killings and the abduction of children to become fighters, auxiliaries and sex slaves; that it is fuelled by animosity between Uganda and Sudan, who support rebellions on each other's territory; and that it is a continuation of the North-South conflict that has marked Uganda politics and society since independence (International Crisis Group 14 April 2004).

The North-South divide is explained in terms of the economic imbalance that was perpetrated by the colonialists. The British deliberately reserved the introduction of industry and cash crops for the South, and regarded the North as a reservoir of cheap manual labour and recruits for the army (International Crisis Group 14 April 2004). This situation was never changed by the successive governments of post-colonial Uganda. The army was continuously and heavily recruited from the North, with the South enjoying relative economic prosperity. The Museveni rebellion against Obote has also been explained in the context of the North-South divide. For many, the rebellion was merely a continuation of the ethnic competition that has typified Uganda politics – a case of Bantu speaking Southerners wanting to remove from power Northerners speaking Nilotic languages (International Crisis Group 14 April 2004:2).

Broadly therefore, all the insurgencies in northern Uganda, including that of the LRA, can be explained as an attempt by the people of that region to regain power that they lost in January 1986. Suffice it to note that from 1962 to 1986, the people of northern Uganda had ruled the country for a whooping twenty two years. However, the immediate cause of the rebellion against the Museveni government that started in 1986 can be found in the way the NRA soldiers behaved when they reached the district of Gulu. Gulu town, which is predominantly inhabited by the Acholi people, was captured by the NRA in early March 1986 without a fight. According to Heike Behrend (1991:165),

[S]oon afterwards, the 35th battalion of the NRA was sent to Kitgum. This included remnants of UNLA who had surrendered, and ex-Federal Democratic Movement (FEDEMO) troops who being mainly Baganda, had been formed to fight Obote. They took the opportunity to loot, rape and murder. To escape this, some of the Acholi ex-soldiers took up their weapons again and went into the bush to join the newly founded UPDA.

So, clearly it can be argued that the underlying cause of the LRA insurgency in northern Uganda was an attempt by the defeated northern forces that had presided over Uganda's state affairs since independence to regain power. However, the immediate cause of the rebellion against the Museveni government in 1986 by the people of Acholi was the unbecoming and undisciplined behaviour of the 35th battalion of the NRA.⁶

3. The Lord's Resistance Army

As Museveni's NRA was seizing power in Kampala in January 1986, the bulk of the former Ugandan army, the Uganda National Liberation Army (UNLA), predominantly made up of people from Lango and Acholi districts of Uganda, retreated northwards. When the NRA reached these areas, the defeated UNLA attempted to stage a come-back. Their hope was that the people of the north would rise up against the invading southerners who predominantly made up the NRA. By late 1988, the NRA had already been able to see off a number of rebel groups that had risen to fight against it in the north of the country. Prominent among these groups were the UPDA and HSM I and II. By the early 1990s the rebellion in Teso region led by the UPA had all but petered out. However, from the ashes of the UPDA and HSM I and II was to rise the LRA.

The LRA was started by Joseph Kony, a former altar boy, after the defeat by the NRA, of Alice Lakwena's HSM II at Maga Maga in Jinja district in 1988. Kony

6 For example, it is reported that these forces massacred 40 civilians in former Head of State Tito Okello's village of Namokora, Kitgum district. Many Acholi and others believe that the NRA chose not to use its disciplined forces in the North, sending instead the most brutal and unruly elements of the 35th battalion in a deliberate strategy of revenge and subjugation. See International Crisis Group (14 April 2004:3), and Simba (2000:12) who noted that the conduct of the 35th Battalion reinforced UPDM/A propaganda to the effect that the NRA, a southern army, was plotting to kill all male Acholi, leaving those men no alternative but to defend themselves and their community.

is a nephew of Alice Lakwena, who herself is a daughter of Severino Lukoya. Kony proclaimed himself a messianic prophet (United Nations Integrated Regional Information Networks 28 January 2004), and stated that he aimed at overthrowing the Museveni government and ruling Uganda according to the Biblical Ten Commandments. However, as the rebellion lost popular support among the people of the region and was under pressure from both the UPDF and local resistance, the LRA and Kony fled to Southern Sudan (United Nations Integrated Regional Information Networks 28 January 2004). From the start, Kony's programme was 'a mixture of political entrepreneurship, personal frustration and war-lordism' (Doom & Vlassenroot 1999:22). Kony found a fertile ground to operate in Southern Sudan because the area had been wracked by war while the Sudanese People's Liberation Army (SPLA) of John Garang was fighting the Khartoum government since May 1983. The Sudanese government found an ally in Kony as the government of Uganda openly supported the SPLA. Kony was able to get bases and the much needed supplies of weapons to continue fighting the Uganda army. The LRA's tactic throughout its insurgency has been to attack and terrorise civilians through killings and abductions. In effect, the LRA has been able to keep its ranks swelled through child abductions and forceful recruitments.

Having been stung by the continued LRA presence in Southern Sudan, President Museveni with the help of then President Daniel Arap Moi, reached a diplomatic agreement with President Bashir of Sudan in 1999 in Nairobi, Kenya. Among the stipulations of this agreement, was the cessation of support by either government to the LRA and the SPLA. But this agreement failed to stop the LRA insurgency.

In March 2002, the UPDF launched what it called 'Operation Iron Fist',⁷ aimed at routing the LRA from its bases in Southern Sudan. This operation followed an agreement reached by the government of Uganda and that of Sudan, allowing the former to send her troops into the territory of Sudan below

7 The protocol authorising the operation has been renewed periodically. The current renewal period, which was signed between the two countries on 15 May 2005, is slated to end on 30 June 2005 (*The Monitor* 17 May 2005).

the 4th parallel, in order to deal with the LRA insurgents. In July 2002, President Museveni moved to Gulu and at the time promised Ugandans ‘that he would militarily end the northern rebellion by the start of the next rainy season (April 2003)’ (*The Sunday Monitor* 27 April 2003:8). The results of the operation have been mixed. Whereas the government and the UPDF have claimed success on account of the fact that Kony no longer has permanent bases in the areas of Southern Sudan near the Uganda border where he can launch attacks into the territory of Uganda, civil society groups like the Acholi Religious Leaders’ Peace Initiative (ARLPI) – a group that has been seeking peaceful ways to end the conflict – has noted that ‘the operation was the biggest mistake of the government as it has doubled the numbers of the displaced and [has made the] security [situation] worse than ever’ (*The Sunday Monitor* 27 April 2003:8).

The effects of Operation Iron Fist, among others, were the expansion of the LRA’s operational area from its traditional bastions of Gulu, Pader and Kitgum districts to the districts of Lira, Apac and the two districts of Katakwi and Soroti in Teso region.⁸ As a result of the LRA’s invasion into Teso, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) has estimated that the number of the internally displaced persons (IDPs) fleeing LRA terror rose from 800 000 to at least 1,2 million (Human Rights Watch 2003). The IDPs, who are largely composed of malnourished children, live in squalid make-shift camps called ‘protected villages’. These camps are devoid of food or clean water, and sanitation and medicine are nonexistent (Human Rights Watch 2003). The concentration of people in IDP camps gives the LRA a chance to attack, kill and abduct many people. This is in spite of these camps being protected by local militias. The United Nations Children’s Fund (UNICEF) has estimated that in the year 2003, a staggering 8 500 children were abducted by rebels (Human Rights Watch 2003). Many of these children once abducted, are never seen again.

The government’s response to the increased LRA attacks has been to ask the local communities in affected areas to raise militias who are trained

8 The other districts that make up the Teso region are Kumi and Kaberamaido.

and armed by the government, ostensibly to protect the local populations from the marauding LRA. As a result, the Teso region has seen the rise of the para-military Arrow Group militia, while in neighbouring Lango region there is the Amuka Boys. These para-military groups are aimed at protecting the people while freeing the army to pursue the LRA. But, some of these militias have been used in the army's offensives against the rebels. This has raised concerns among the local peoples and civil society groups about the long-term security of these regions. Suffice it to note, many people who have joined the militias have been rebels in the past. For example, many members of the Arrow Group in Teso region were once part of Peter Otai's UPA which operated in the area between 1987 and 1993. The concern is whether, after defeating the LRA, these former rebels will disarm. The government and army have given assurances that they will. The army spokesman, Major Shaban Bantariza, was quoted as saying that [the army] will ensure that they demobilise when Eastern Uganda has been rid of terrorists (Human Rights Watch 2003).

4. Lord's Resistance Army Crimes

The LRA crimes have been well documented over the years.⁹ The group has committed egregious offences that include: war crimes, crimes against humanity and torture.¹⁰ The LRA tactics of attacking the civil population have resulted in whole villages being emptied of people. By the end of 2004, an estimated 1,6 million people were living in IDP camps in northern Uganda.¹¹ These camps are a bit safe from LRA attacks because they are protected by the army.

9 This article does not concern itself with crimes which the government forces may have committed during the course of this conflict.

10 For a comprehensive discussion of these offences in relation to the LRA leaders being indicted and prosecuted for the same by the ICC, see Apuuli 2004:1-19.

11 According to Oxfam International 2005, two million people have been displaced and half a million have been killed since the start of the conflict.

However, they are not totally insulated, as the attacks in early 2004 on the camps of Abiɛ and Barlonyo showed. The living conditions in the IDP camps have been described as inhuman, due to their lack of infrastructure, adequate food and water, and medical care.¹² Earlier on, the LRA had been responsible for massacres at Atiak in April 1995 which left between 170 and 220 people dead; Karuma in March 1996, 50 dead; Acholi-Pii Refugee Camp in July 1996, 100 dead; and, Lokung-Palabek in March 1997, over 400 dead (Doom & Vlassenroot 1999:25).

The LRA has been notorious for wantonly and systematically abducting people, particularly children. These abductions are aimed at accomplishing a number of things. The abducted boys and girls are forcibly recruited into the LRA ranks.¹³ In addition, the girls are also married to the LRA rank and file. It is reported that Kony himself maintains a number of these abducted girls as his wives. In addition, the LRA uses the children as human shields, porters and labourers. According to Human Rights Watch, an estimated 10 000 children had been abducted by the LRA by mid-2002 (Human Rights Watch 2004). These children are forced to fight, kill civilians and abduct other children. Those who fail to comply with LRA orders are murdered, often by other children who are forced to kill them.

Many of the abducted women and girls are subjected to rape, unwanted pregnancies, and risk sexually transmitted diseases, including HIV/AIDS. According to officials of the Gulu Support the Children Organisation (GUSCO),

12 This description was given by John Baptist Odama, the Catholic Archbishop of Gulu Diocese. He said that 962 000 IDPs live in 62 camps spread around the Acholi sub-region in unhygienic and inhuman conditions.

13 According to reports, over 85% of the LRA forces are made up of children. As part of initiation into the rebel movement, abducted children are forced into committing inhuman acts, including ritual killing and mutilations. In order to evade capture, thousands of children have become 'night dwellers', walking large numbers of kilometres to regroup in centres run by non-governmental organisations, on the streets, on shop verandas, on church grounds, and in local factories, heading back to their villages at dawn.

a local non-governmental organisation that counsels and assists rescued abducted children, the girls who turn up at the centre tend to have had as many as three children while in captivity (Westcott 2003). The abducted girls find it hard to escape because they are kept in close proximity to their 'husbands', the LRA commanders. Whereas the intention of the LRA is not to alter the ethnic composition of the population in northern Uganda by its policy of enforced pregnancies, this tactic may well be a crime against humanity.

Generally, as we have noted elsewhere,

[T]he brutality of the LRA is legendary. The only other comparable organization with tactics of similar kind was the Revolutionary United Front (RUF) of the late Foday Sankoh in Sierra Leone. At the height of its insurgency, the RUF would attack villages, hacking civilians to death, while those who would be abducted would have their arms and limbs hacked off. The LRA uses similar tactics on civilians (Apuuli 2004).

The question that arises then is: In view of the LRA's continued atrocities against the people of northern Uganda, should its top leadership benefit from amnesty?

5. The Amnesty Law

Successive governments in Uganda have used the instrument of amnesty to end various insurgencies that had been started against them. For example, after overthrowing the Obote II government, the military junta led by General Tito Okello invited all the other groups that had been fighting against Obote to join the government.¹⁴ Implicitly, the military junta amnestied all these groups of all the crimes that they had committed during their insurgencies. When Museveni came to power, he also used amnesty to lure his political opponents from exile.

14 Other than the National Resistance Army (NRA), all the other major rebel groups joined the military junta government.

As a result, people like former military junta leader, Tito Okello, and his deputy, Wilson Toko, among others ended their exile and returned home. In 1988 when Museveni concluded a peace agreement with the rebel group, UPDA/M, amnesty for the former rebels was part of the peace deal. Earlier on in 1987, the National Resistance Council (NRC), the then parliament of Uganda, had passed the Amnesty Statute, which had sought to encourage the various fighting groups, such as UPDA/M and UPA/F, and their sponsors to end their activities (Afako 2002).¹⁵ However, the statute excluded four offences from its range of possible offences. These were: genocide, murder, kidnapping and rape (Afako 2002).

In 1998, the government came under renewed pressure from at home and abroad to end peacefully the various rebellions¹⁶ raging in the country, especially that of the LRA. As a result, an Amnesty Bill was introduced in parliament by the government (Afako 2002). In introducing the Bill, the government was revisiting an old political formula of offering pardons to insurgents as a means of ending intractable conflict (Afako 2002). The Amnesty Bill was finally passed into an Act in 2000. The Amnesty Act 2000 offers pardon to all Ugandans engaged or engaging in acts of rebellion against the government of Uganda since 26th January 1986 (Refugee Law Project 2005:4).¹⁷ The act stipulates that it has to be renewed every six months by Parliament. Since it was passed, it has been extended periodically.

The Amnesty Act extends amnesty to all Ugandans, irrespective of age, who have been involved in insurgency through actually participating in combat, collaborating with insurgents, committing other crimes to support insurgency, or in any other way assisting others involved in the insurgency.¹⁸ This means

15 The statute was targeted at Ugandans in exile who were afraid to return home due to fear of possible prosecution.

16 At that time the Allied Democratic Forces (ADF) rebellion was raging in the districts of Kasese, Bundibugyo and Kabarole in western Uganda.

17 According to this source, altogether 22 known groups have taken up arms to fight the government since President Museveni's NRM came to power in January 1986 (Refugee Law Project 2005:6).

18 Section 3, Amnesty Act 2000.

that a person who is engaged in or engaging in war, or armed rebellion for the purposes of influencing the government or the public for whatever reasons – political, religious or economic – would fall under the Amnesty Act (Refugee Law Project 2004:46). Receiving amnesty is contingent upon reporting to a recognized official, renouncing conflict, and surrendering any weapon that the reporter may have in his/her possession (Refugee Law Project 2005:7). As at the end of January 2005, 14 695 reporters had been received by the Amnesty Commission (AC) (Refugee Law Project 2005:7).¹⁹ Reporters denounce their activities by signing a declaration, after which they are registered, receive an Amnesty Certificate, and then in theory, a package.²⁰ In the case of former combatants who are in prison on charges of treason and want to receive amnesty, the Director of Public Prosecutions (DPP) clears them before their applications are passed on to the AC.

As at the time of writing, thousands of combatants have renounced rebellion, and have been re-integrated into the civil community in different parts of the country (Refugee Law Project 2005:8). Specifically as regards the LRA, its Chief spokesperson, Brigadier Sam Kolo, number three Brigadier Kenneth Banyana, Chief Operations Officer Brigadier Onen Kamdulu, among

19 The Amnesty Commission is a body established by parliament under the Amnesty Act 2000 to oversee the implementation of the Act. Its two objectives are: to persuade reporters to take advantage of the amnesty and to encourage communities to reconcile with those who have committed offences; and, to consolidate the progress so far made in amnesty implementation and to ensure that more insurgents respond to the amnesty and that the community is ready to receive them. Section 12, Amnesty Act 2000, establishes a Demobilisation and Resettlement Team (DRT) whose function is to decommission arms, demobilise, resettle and reintegrate reporters. The DRT functions at regional level and it has six offices around the country in the towns of Gulu, Kitgum, Arua, Kasese, Mbale and Kampala. It is the one that is directly responsible for the implementation of the amnesty.

20 A standard package (totalling Uganda shillings 350 000) contains Uganda shillings 263 000 in cash (equivalent to three months salary of a policeman or teacher at the time the Amnesty Commission began plus 20 000 transport money), and a home kit (which includes a mattress, saucepans, blankets, plates, cups, maize flour and seeds).

others, have all come out of the bush, and have been amnestied by the government. The argument generally has been that the amnesty process should be allowed to continue and that therefore, there is no need for the LRA leaders to be threatened with prosecution. Any threat of prosecution, even of a minority of combatants, it has been posited, will pose an obstacle to the peaceful resolution of the conflict. However, instead of Kony and Otti taking advantage of the peaceful overtures, recent reports from the region suggest that the LRA has intensified its attacks against the civilian population.²¹ Before we explore the argument for granting amnesty, we need to first look at the position of international law *vis-à-vis* amnesties.

6. Amnesty and International Crimes

According to Orentlicher, amnesty constitutes a declaration that the government intends to obliterate (and not merely forgive) a crime (Orentlicher 1991:2537, 2543). Prado Valejjo, on the other hand, as cited in Bhargava (2002:1327), posits that ‘amnesty is a juridical measure taken by a state ... [by] means of which, the criminal consequences of certain punishable offences are ignored’. In other words, amnesty represents a fundamental subversion of the rule of law. It seeks to offer impunity for gross violations of human rights and as a result, ‘corrodes respect for the law and the institutions designed to uphold it’ (Bhargava 2002:1309). Chigara (2002:61) has noted that amnesty attempts ‘to edit life’s un-editable record’.²² No government can legitimately deal with a victim’s property rights as a sacrifice for the purchase of national stability (Chigara 2002:38). Accordingly, ‘amnesty [for] crimes against humanity [and war crimes] (such as those that are alleged to have been committed by the LRA) ... is both inconsistent and incompatible with international law’ (Chigara 2002:2).

21 For examples of LRA’s intensification of killings and abductions, see International Crisis Group 11 April 2005:2-3.

22 On the various debates concerning the validity of amnesties in international law, see Sadat 2002:62-69 and Meintjes 2000.

Manifest in the idea of amnesty is the utilitarian argument that not punishing the perpetrators of crimes against humanity and war crimes is acceptable where that action results in the achievement of a greater social good. Chigara (2002:2) notes 'that social good is often perceived as the purchase, through the currency of amnesty laws, of the threat of disruption to the ... social order posed by those that perpetrated [war crimes and] crimes against humanity, should attempts be made to prosecute them'. In the instant case, therefore, the argument is that the threat of prosecution will harden the stance of Kony and his cohorts, encouraging them to continue fighting and thus further disrupting the peace that is returning to northern Uganda.

Elsewhere, the theory of justice as fairness holds that members of a community come together to create rules with which the future conduct of agents of the community must comply (Rawls 1986:3-5). The principles of justice are chosen behind a veil of ignorance and confer basic rights and duties. By these principles Rawls (cited in Chigara 2002:4) notes that

[M]en decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society. Just as each person must decide by rational reflection what constitutes his good, that is, the system of ends which it is rational for him to pursue, so a group of persons must decide once and for all what is to count among them as just and unjust. The choice which rational men would make in this hypothetical situation of equal liberty, assuming for the present that this choice problem has a solution, determines the principles of justice.

Rawls states that 'the law exists and operates to justify victims of breaches of their pre-determined legal rights' (Chigara 2002:4). This is consistent with John Stuart Mill's utility of the law concept, which posits that 'in the conduct of human beings towards one another, it is necessary that general rules should for the most part be observed in order that people may know what they have to expect' (Mill 1869:Chapter IV). National amnesty laws for their part disregard the rights of the victims (Chigara 2002:4). They treat victims as if they did not have pre-determined rights at the moment of abuse, and if they did, as if they had not been breached at all (Chigara 2002:4).

Accordingly, national amnesty laws that purport to expunge criminal liability of [war criminals] appear to contradict the theory of justice as fairness, because they violate the basis and ethos of law as self-constituting (Allot 1999:31). They oppose the function of law, as a community's preferred agent for distinguishing acceptable conduct from unacceptable conduct (Chigara 2002:4). The very declaration of amnesty laws is not only a recognition that crimes against humanity and war crimes have occurred; but that also no one should be investigated and held accountable. Amnesty laws therefore, that purport to expunge criminal liability for war crimes and crimes against humanity, appear to be illegal under both customary and treaty international law.²³

The position of international law, therefore, is that *jus cogens* crimes cannot be amnestied. Cherif Bassiouni has aptly opined that, 'for the four *jus cogens* crimes of genocide, crimes against humanity, war crimes and torture...there should be no general amnesty...'²⁴ Further, the founding treaty of the ICC has established that amnesties are not a bar to the prosecution of egregious crimes. For example, the preamble to the treaty suggests that deferring a prosecution because of the existence of a national amnesty would be incompatible with the purpose of the court, namely to ensure criminal prosecution of persons who commit serious international crimes.²⁵ Several authors, with whom we concur, have opined that,

23 Note that governments argue that Article 6(5) of Protocol II to the Geneva Conventions of 1977 calls for the broadest possible amnesty following conflicts on non-international character. As a result, they argue that amnesties even for *jus cogens* crimes are legal. The article states that, 'at the cessation of hostilities, authorities in power shall procure granting the broadest possible amnesty to persons that have taken part in armed conflict or that are deprived of their liberty, detained or interned by motives related with the armed conflict.' In the case of the LRA, since the conflict has not stopped, this article does not apply.

24 See generally Bassiouni 1996:63-74.

25 Paragraphs 4, 6 and 10. See also Scharf 1999:507,522.

[H]uman rights obligations are contracted on an international level... where these obligations are breached, the individual may be punished for such international crimes as a matter of international law, even if his or her own state, or the state where the crime was committed, refuses to do so (Schabas 2000:2).

Finally, the Secretary General of the United Nations has observed that ‘amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law’.²⁶ In this regard he is supported by the Princeton Principles on Universal Jurisdiction, which express a presumption that amnesties are incompatible with a State’s obligation to prevent impunity.²⁷

Following from the above therefore, it is clear that there is a duty to prosecute the LRA’s top leadership, which has been responsible for organising and directing the *jus cogens* crimes that have been visited upon northern Uganda. Children who were abducted and conscripted in LRA ranks as foot soldiers may benefit from amnesty, but the top leadership must be punished. In fact, as we write, a delegation of leaders from Lira district in northern Uganda, comprised of the Local Council Five (LCV) Chairman, Franco Ojur, and his Vice, Rebecca Atango, are in The Hague, Netherlands, meeting the Prosecutor of the ICC and demanding the arrest and prosecution of Kony and his cronies (*The Monitor* 5 May 2005). Earlier on this year, the ICC prosecutor announced that he would soon release warrants of arrest for five top LRA commanders (*The Monitor* 28 February 2005).

26 See *Report of the Secretary General on the Establishment of a special Court for Sierra Leone*, par. 22.

27 Principle 7 reads: ‘Amnesties are generally inconsistent with the obligation of states to provide accountability for serious crimes under international law as specified in Principle 2(1)’. Principle 2(1) lists as serious crimes under international law (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide; and, (7) torture, available at <http://www.princeton.edu/~lapa/unive-jur.pdf>

7. The Case for Amnesty

According to civil society groups such as the ARLPI and sections of the Acholi population, amnesty 'is compatible with [traditional] Acholi dispute resolution mechanisms' (Refugee Law Project 2004:45). Culturally, the argument goes, the Acholi's ideas of forgiveness are entrenched [...] as they believe [that] the bitterness of revenge does not solve the problem (Refugee Law Project 2004:45). Amnesty it is argued, is rooted in the cultural values of the Acholi people, and is therefore compatible with the context of the LRA insurgency. As one religious leader who was interviewed by the Refugee Law Project (RLP), an organisation that researches in the conflict areas in Uganda, posited,

[I] am very proud of amnesty. 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 this? (Refugee Law Project 2004:45)

In Acholi tradition, many offences such as homicides, are mediated and resolved by traditional chiefs (*Rwods* – plural for *Rwot*), with a view to promoting reconciliation within the community (Afako 2002).²⁸ Whenever a homicide takes place, the *Rwot* intervenes in the situation to cool down the temperature and to offer mediation (Afako 2002). Whereas the British colonial government eroded the authority of the *Rwods* by appointing chiefs called *Rwod Kalams* in the early years of the last century, the institution and authority of the traditional *Rwods* survived and were revived by the 1995 constitution. The *Rwods'* greatest asset is their political independence, which gives them enhanced credibility in mediating reconciliation (Afako 2002).

28 See also Finnstrom 2003:291 (noting that compensation and reconciliation rather than revenge or blood vengeance is the institutionalised Acholi way of handling disputes, homicides and unnatural deaths).

The unique contribution of the *Rwods* is through their mediation of the reconciliation process, *Mato Oput*, which many Acholis believe can bring true healing in a way that formal justice cannot (Afako 2002).²⁹ The ceremony of clan and family-centred reconciliation incorporates the acknowledgement of wrongdoing, the offering of compensation by the offender and then culminates in the sharing of a symbolic drink.³⁰

In addition, there is the traditional ritual of *Gomo tong* (International Crisis Group 21 February 2005:7). This means the ‘bending of spears’. According to anthropologist Finnstrom (2003:298), spears from each party involved in the conflict are bent in the form of a U, and then passed on to the former enemy as proof that fighting can never again be allowed between the two groups. In Acholi tradition, the spear is a weapon of war, so therefore, to bend it symbolises an end to hostility.

In addition to *Mato Oput* and *Gomo tong*, individual cleansing rituals are available to the returning ex-rebels, to be re-integrated into the community.³¹ The tradition of performing cleansing rituals to purify people from experiences of wartime atrocities makes it possible, after the purification, for links to the past to be cut and the individual to be re-integrated into the community (Olson 2002:186). Thus, all recent LRA returnees are first subjected to the process to reconcile them to (sic) their communities and encourage others to return (International Crisis Group 21 February 2005:7). The Amnesty Act itself enjoins

29 *Mato Oput* in Acholi means ‘drinking bitter roots’. *Mato* is to drink and *Oput* is a local tree that has bitter roots. The drinking symbolises the quenching of anger.

30 See also Finnstrom 2003:290 (observing that the ritual involves many people and takes a full day. Before the actual ritual, however, many things must be arranged, discussed and decided upon. The ritual can be preceded by weeks, months or even years of careful negotiations).

31 For example former LRA spokesman, Brigadier Sam Kolo together with some of the former LRA rebels underwent such a ritual at Ker Kwaro, in Gulu Municipality, Gulu District. Kolo and the rest of the former rebels stepped on raw eggs and other items as a symbol of welcome into the community, before Acholi paramount chief, *Rwot* David Onen Acana II. See *The New Vision* 4 April 2005.

the Amnesty Commission 'to promote appropriate mechanisms of reconciliation in the affected communities'.³²

The proponents of the amnesty law therefore, have argued that the Acholi people should be allowed to end the LRA insurgency using their traditional dispute resolution institutions. This view has been buttressed by a recent study carried out by the Human Rights Centre, the International Centre for Transitional Justice and Makerere University Institute of Public Health, which found that 70% of the people in the North want conditional amnesty for Kony (*The Daily Monitor* 3 August 2005:7).³³ As a result, they have opposed the government's continued use of military force as well as the ICC's investigation into the activities of the LRA. According to the Vice-Chairman of the ARLPI, Bishop McLeod Ochola, '[the ICC probe] 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'. Ochola further argues that 'the ICC probe must come after the war [has] ended' (United Nations Integrated Regional Information Networks 30 January 2004).³⁴

The AC and politicians from Northern Uganda have concurred with Ochola, on the argument that the ICC probe into the LRA activities would make a peaceful settlement of the conflict impossible. Moses Saku, the AC spokesman is quoted to have said, 'certainly this is going to make it difficult for the LRA to

32 Section 9(c), Amnesty Act 2000.

33 See story, 70% in North want Conditional Amnesty for Kony, says Study. 2 585 respondents were interviewed for the study. 40% had been abducted by the LRA, 45% had witnessed the killing of a family member, while 23% had been physically mutilated at some point during the conflict. 65% of the respondents in the districts of Gulu, Kitgum, Lira and Soroti said they supported the amnesty for the LRA. 4% want amnesty to be granted unconditionally, but the vast majority said some form of acknowledgement and/or retribution should be required of all those granted amnesty.

34 This seems also to be the view of Samuel Tindifa of the Human Rights and Peace Center (HURIPEC) of the Faculty of Law at Makerere University, Kampala. He suggests that 'the ICC should join the diplomatic bandwagon to put pressure on both parties to come to a negotiated settlement'.

stop doing what they are doing. They have already been branded “terrorists”,³⁵ which isn’t going to persuade them to come’ (*The East African* 16 February 2004). The head of the AC, Justice Peter Onega, has also not been in favour of the ICC probe. According to him, ‘if the rebels – who come from the Acholi community – are prosecuted, it would send a wrong signal to the people of the region as they are still campaigning for a blanket amnesty’. To him, ‘given the history of Uganda ... reconciliation is the best option ... at the moment’ (*The East African* 16 February 2004).

Politicians from Northern Uganda have warned that the threat to prosecute Joseph Kony and his top lieutenants could trigger fresh violence. Reagan Okumu, a Member of Parliament for Aswa County in Gulu district, has observed that ‘the debate [about prosecuting Kony and his top lieutenants] is not healthy as it could scare [him] into killing innocent people. He should be arrested first before any prosecution can take place’ (*The East African* 16 February 2004).

In order to press their case for amnesty and reconciliation, Acholi leaders have frantically been lobbying the ICC Prosecutor to drop his investigation, although not all of them have been supportive of this move (United Nations Integrated Regional Information Networks 16 March 2005). One group that includes the MP for Lamwo County in Gulu district, Hillary Onok, has reportedly been against the ICC dropping its investigations into the activities of the LRA. Onok is said to have argued that ‘Kony has been given all the opportunities to come out of the bush and end the war, but he has ignored it (*sic*)’ (*The New Vision* 18 March 2005). The pro-dropping-of-investigations group includes Archbishop John Baptist Odama, Bishop McLeod Baker Ochola, Bishop Nelson Onono Onweng, MP’s Jane Akwero Odwong and Jacob Oulanyah, the LCV Chairman of Gulu district, Colonel Walter Ochora, and the Acholi Paramount Chief, Rwot David Onen Acana (*The Monitor* 14 April 2005). Rwot Acana has strongly argued against the ICC issuing arrest warrants against

35 Uganda Anti-Terrorism Act 2001, schedule 1. Under this law, the LRA and another rebel group called the Allied Democratic Forces (ADF), which has now been defeated by the Museveni government, were declared terrorist organisations. Any person dealing with them commits a criminal offence.

the LRA top commanders, because '[it would] not be good for the on-going negotiations with the government' (*The Monitor* 18 February 2005). Both groups were invited by the ICC Prosecutor to The Hague, after which, they have all now agreed that investigations into the LRA activities should go ahead (*The Monitor* 29 March 2005). The government, on the other hand, has been steadfast in its argument that Kony and his top henchmen must be prosecuted for their crimes (*The Monitor* 19 March 2005).³⁶ In fact, it has been considering revising the Amnesty Act in order to withdraw amnesty from Kony and his top henchmen (*The New Vision* 23 January 2004).³⁷

8. The Faltering Peace Talks

As at the time of writing, the Uganda army continues to battle the LRA rebels.³⁸ Kony is nowhere near abandoning his rebellion. LRA attacks against the civilian population, while continuing unabated, have become 'more frequent and are conducted by large units' (International Crisis Group 11 April 2005:1). The peace talks initiated by chief mediator Betty Bigombe seem to have stalled. Suffice it to note that we have been here before. In 1994, the same Bigombe had nearly clinched a peace deal between the government and the rebels. The peace deal at that time was scuttled by President Museveni's sudden announcement that 'he was giving the LRA rebels seven days to put down their weapons and turn themselves over to the government' (Westbrook 2000).³⁹

36 See story Government insists on ICC trial for Kony. (The Minister of State in charge of Northern Uganda, Grace Akello, is reported to have said that efforts by the Acholi [groups] to appeal to the ICC to refrain from issuing arrest warrants against LRA leaders were contrary to the government position).

37 See story Kony to lose Amnesty. Rationalising this move by the government, the Minister of Internal Affairs, Dr Ruhakana Rugunda, said that 'a distinction must be made between those who plan, organize and direct crime, and those who are held against their will and are forced to commit crimes'.

38 See for example, *The Monitor* 30 April 2005 and *The New Vision* 30 April 2005.

According to the International Crisis Group (ICG), the LRA is reorganising for intensified conflict (International Crisis Group 11 April 2005:1). While Bigombe has remained in telephone contact with Vincent Otti, her designated LRA contact, Kony, the LRA's single real decision maker, has not responded to any government proposal (International Crisis Group 11 April 2005:1). Meanwhile, the United States which has recently increased non-lethal military assistance to the Uganda army⁴⁰, has doubted the military option to end the conflict (*The Monitor* 27 April 2005). Donald Yamamoto, the Deputy Assistant Secretary of State for African Affairs, while appearing before the Congressional Human Rights Caucus on Northern Uganda, is reported to have intimated that 'there cannot be a military solution to this issue' (*The Monitor* 27 April 2005).

From the frequency and intensity of the LRA attacks, it appears that persons who are advocating for amnesty for Kony and his top lieutenants are *backing a wrong tree*, in our view. At least for now, neither Kony nor his top cohorts appear willing to abandon their rebellion. For the high ranking rebels, 'amnesty means nothing other than plain surrender' (Finnstrom 2005:11). According to Oxfam, a British aid agency, the violence in northern Uganda has increased... since the surrender of the LRA's top [peace] negotiator [Brigadier Sam Kolo] (*The New Vision* 11 May 2005). This view has been corroborated by the United Nations Emergency Relief Coordinator, Jan Egeland, who is quoted to have said that 'violence has increased since [the] peace talks stalled, with more atrocious massacres and mutilations of civilians in the last few weeks' (*The Monitor* 13 May 2005). As we write, there is no sign that the government and the LRA are about to reach an agreement for a cease-fire.

39 Some commentators have opined that some sections of rebel supporters and the government army did not want the peace deal to mature. According to Doom and Vlassenroot (1999:24), some Acholi politicians in exile may have undermined the process, while some army officers were not in the mood to make agreements with an enemy who was close to defeat. Double dealing was clearly evident.

40 This includes vehicles, spare parts and radios worth US\$ 4,9 million for the 2003-4 budget, up from US\$ 1,7 million in the 2002-3 budget.

9. Conclusion

It is coming to twenty years since the conflict in northern Uganda first broke out. The Civil Society Organisations for Peace in Northern Uganda (CSOPNU), a coalition of about 40 national and international non-governmental organisations from across Uganda, working to support a just and long lasting peace in northern Uganda, has estimated that the LRA conflict has cost Uganda's national economy at least US\$ 1,3 billion since it started, which is approximately 3% of the Gross Domestic Product (GDP) of US\$ 100 million annually (Oxfam International 2005). This money could have been spent on productive ventures, other than on this senseless war.

The abductions, mutilations and killings carried out largely by the LRA, but in some instances also by the government forces, cannot go unpunished. The proponents of peaceful methods to end the conflict have argued that the top LRA leadership should be given amnesty for all the crimes that they have committed and continue to commit. However, Kony has been given countless opportunities in the past to take advantage of the existing amnesty arrangements to come out of the bush, but he has not.⁴¹ In our view, he is not about to do so now.

While as we have argued above, amnesty might help in mitigating the conflict and even bringing it to an end, under international law, there is a duty to punish Kony and his top cohorts. The abducted and conscripted members of the LRA may be amnestied, but Kony and his top lieutenants in the LRA must bear responsibility for the *jus cogens* crimes that have been committed. In his meetings with delegations from the Acholi region, the ICC Prosecutor has stated that in the interests of peace, he is ready to suspend but not end the investigation into the activities of the LRA. Our hope, just like that of all the other peace-loving Ugandans, is that one day, Kony will stand before the ICC judges at The Hague.

41 For example, while touring northern Uganda in May 1999, President Museveni announced that Kony was to be amnestied. See Westbrook 2000.

Epilogue

On 14th October 2005, the Chief Prosecutor of the ICC, Luis Moreno Ocampo, unsealed the warrants of arrest for the five leaders of the LRA, which had been issued and sealed by Pre-Trial Chamber II⁴² of the ICC on 8th July 2005. Earlier on, the United Nations Secretary General's Special Representative (UNSGSR) to the DRC, Ambassador Lacy Swing, had announced in New York that the ICC had indicted and issued warrants of arrest for the top five leaders of the LRA. The five were named as: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen⁴³ and Raska Lukwiya. The warrants had been issued and sealed 'to ensure the safety or physical or psychological well being of and to prevent the disclosure of the identity or whereabouts of any victims, potential witnesses and their families' (International Criminal Court 2005). In issuing the warrants, Pre-Trial Chamber II concluded that 'there are reasonable grounds to believe [that the five LRA leaders] ordered the commission of crimes within the jurisdiction of the court' (International Criminal Court 2005).

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42 Pre-Trial Chamber II was constituted as follows: Judge Tuiloma Neroni Slade (Presiding Judge), Judge Mauro Politi, and Judge Fatoumata Dembele Diarra.

43 Dominic Ongwen was killed by the Uganda army, the Uganda Peoples Defence Forces (UPDF) in Amuria, Soroti district on 30th September 2005, days before the warrant against him was unsealed. *The New Vision* 6 October 2005:1-2.

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