

## Peace in Northern Uganda?

### I. OVERVIEW

The peace talks in Juba between the Lord's Resistance Army (LRA) and the Ugandan government have made surprising progress, with a formal cessation of hostilities agreement signed on 26 August. Led by Dr Riek Machar, vice president of the Government of Southern Sudan (GoSS), they evolved rapidly over five months and now offer the best chance to end a twenty-year civil war that has ravaged the north of the country and spilled into Sudan and the Democratic Republic of Congo (DRC). The immediate test is whether the LRA will relocate its forces to the two designated assembly areas in southern Sudan. Initial reports are that small groups of LRA troops, with LRA Deputy Vincent Otti amongst them, have arrived at the assembly areas, raising expectations the talks have overcome their first big hurdle; but if the rest of the forces do not arrive, they may yet fall apart.

Though there are reasons for optimism, the challenges are daunting. The discrepancies over expectations within the LRA itself, the questionable legitimacy of its delegation in Juba, differences in agenda and vision between the two parties, and limited GoSS capacity all suggest a new, two-phase mediation strategy may be required. Phase one would focus on the specific details of the LRA's return from the bush and technical issues such as disarmament, demobilisation and reintegration (DDR). Phase two would provide a more inclusive forum to deal with the underlying political and structural issues that have fuelled the cycle of conflict in the north. This should be held in Uganda and grounded in the recognition that the current conflict is not solely an Acholi or northern problem but rather a collective crisis that needs countrywide application. Sustained international engagement will be essential to keep the government motivated to deal with the difficult political problems of the north once the LRA has signed a peace agreement. Despite their momentum, the talks must still overcome many obstacles, including the following:

- The LRA must resolve the major differences between the leadership in the bush and its delegation in Juba. While the latter pushes a broad political agenda focused on the root causes of the conflict, the LRA leaders seem more intent on simply securing their personal safety and favourable terms for their return. Though the conflict's root causes

must be addressed if any agreement is to halt the cycle of conflict in northern Uganda, the LRA itself is not adequately representative or politically suitable to be the sole representative of the north in this discussion. The immediate focus of the Juba talks should instead be to bring the LRA leaders out of the bush and end the conflict, leaving broader political discussions for the more inclusive second phase.

- Though the government has been surprisingly willing to discuss in Juba the underlying issues driving conflict, it has fluctuated between positive engagement and violent, disruptive rhetoric. The 12 August killing of LRA leader Raska Lukwiya by the army nearly torpedoed the process. The government must respect the 26 August cessation of hostilities agreement and let negotiations take precedence over an effort to impose a military solution.
- The International Criminal Court (ICC) indictments of five senior LRA commanders, including Chairman Joseph Kony and his deputy, Vincent Otti, are a complicating factor. Along with military pressure, they have been important in bringing the LRA to the negotiating table, but balancing the need for accountability with the requirement to offer an inducement to the indicted leaders to make peace is not easy. Kony and Otti want a deal for personal security that shields them from prosecution. Strong justice and accountability mechanisms must be central to any agreement that can win domestic acceptance and broader international support. Because of constraints on the ICC Prosecutor, an agreement that calls for the indictments to be put on hold would probably require a UN Security Council resolution to this effect. If a deal has to be done to bring peace to northern Uganda, the least worst option might be asylum for the indicted commanders in a country not party to the Rome Statute, conditioned on their full compliance with the peace agreement. The prosecutions would remain alive, though the Security Council would have the option to renew suspension annually.
- To realise the great benefits that peace could bring southern Sudan, the GoSS must urgently upgrade its mediation, which has been virtually a one-man

show led by Riek, with limited support from Pax Christi, the Swiss government, and the Community of Sant'Egidio. A more systematic and institutionally supported approach is needed. Riek has done an impressive job but he cannot realistically navigate the waters ahead without more help from both his government and the international community. At the same time, the GoSS needs a Plan B for a more effective regional military approach to the LRA, should the talks collapse and violence resume. The UN, through its missions in Sudan and Congo, must also give greater political and diplomatic support to the negotiation and prepare for a role in monitoring and verifying the military terms of any agreement. The Security Council should amend the UNMIS mandate as necessary to allow it to assume these tasks.

## II. DYNAMICS OF THE PROCESS

Although marred by a continuing war of words and repeated walkouts, the talks in Juba have defied predictions of imminent collapse and are establishing a momentum of their own. Initial contacts between the LRA and the GoSS were facilitated in late 2005/early 2006 by Dr Leonzio Angole Onek, a Sudanese Acholi and former colleague of Riek's, with the financial and logistic support of Pax Christi-Netherlands.<sup>1</sup> Onek had failed in a previous effort to act as an interlocutor between the LRA and the Ugandan government. The Pax Christi team became directly involved in the mediation beside Riek and also gave the LRA delegation training and assistance in negotiation techniques.<sup>2</sup> Representatives from the Community of Sant'Egidio – involved in peace efforts in northern Uganda since the late 1990s – joined the process at the LRA's invitation. The Swiss government has also been supportive of Riek's efforts and provided a professional negotiator to assist the talks in Juba.

The opening ceremony on 14 July 2006 got matters off to a turbulent start. Martin Ojul, the U.S.-based leader of the LRA delegation, set the tone by arguing that the LRA remained strong, threatening that the government would be in for a "rude surprise" if it continued to pursue military options and accusing Museveni's NRM (National Resistance Movement) of being corrupt, ethnically divisive and war-mongering. According to a mediator, his speech put the Ugandan delegation on the defensive

and "contaminated the first two weeks of the talks".<sup>3</sup> Two days later, the LRA submitted its initial position paper, a fifteen-page document narrating in gruesome detail the conflict's history and alleged government abuses. The Ugandans responded by accusing the LRA of spreading "lies" and "falsehoods" through "unwarranted scathing attacks".<sup>4</sup>

Nevertheless, the parties accepted a five-stage negotiating framework proposed by the mediators: (1) cessation of hostilities; (2) comprehensive solutions to the conflict; (3) reconciliation and accountability; (4) formal ceasefire; and (5) disarmament, demobilisation, and reintegration (DDR). Cessation of hostilities was defined by the mediators as a declaration to stop fighting and a cessation of mutually hostile propaganda during negotiations, or as a mediator said, "a statement of good will without much substance".<sup>5</sup>

However, the cessation of hostilities issue quickly became a sticking point. The parameters of cessation of hostilities versus a ceasefire are ultimately subjective, which led to much confusion, and the mediators did not provide firm definitions to guide the discussion. Although the government accepted the full agenda in principle, it served early notice that a preliminary, good-faith military pause was non-negotiable. It asserted that the LRA had abused past cessations of hostilities to regroup and rebuild, so it would only be "upon signing of a conclusive peace agreement that all forms of hostilities between the two parties to the agreement shall totally, permanently and unequivocally cease".<sup>6</sup> The LRA demanded safe havens throughout northern Uganda to be monitored

<sup>3</sup> Crisis Group interview, 12 August 2006.

<sup>4</sup> "Government response on the LRA demands", *New Vision*, 20 July 2006.

<sup>5</sup> Crisis Group interview, 12 August 2006. However, there was great confusion among all actors about the distinction between these two expressions, "ceasefire" and "cessation of hostilities", which were often used interchangeably. After returning from a meeting with the LRA in Nabanga, lead mediator Riek said: "[W]e have told the Uganda government that they must declare unilaterally a ceasefire before they come to Juba. There must be a situation of cessation of hostilities". "Ceasefire is a must – Machar", *New Vision*, 3 August 2006. A cessation of hostilities is usually the less formal of the two mechanisms, whereas a ceasefire often includes provisions of technical military details and a monitoring mechanism. For example, the cessation of hostilities signed by the SPLM and NCP during the IGAD negotiations was a temporary, renewable agreement with limited monitoring or oversight, whereas the ceasefire signed as part of the final agreement is a detailed, highly technical agreement monitored by a UN force, for the full six-year interim period. Nonetheless, the cessation of hostilities agreement eventually signed by the parties contained formal monitoring mechanisms and other elements that exceed the mediator's original definition.

<sup>6</sup> "Government Response on the LRA Demands", a statement by Ruhakana Rugunda, re-printed in *New Vision*, 20 July 2006.

<sup>1</sup> Pax Christi is an international Catholic peace movement. Pax-Christi Netherlands is also active in Sudan and has been involved in peace efforts in northern Uganda since the late 1990's. Crisis Group interview, Juba, 2 July 2006.

<sup>2</sup> Crisis Group interviews, July 2006.

by international observers, a promise that the army would not pursue it in southern Sudan or Congo and a guarantee of “humanitarian assistance” for the duration of the talks.<sup>7</sup> Rather than get bogged down in premature technical discussions more appropriate for a formal ceasefire, the mediators persuaded the parties to leave the cessation of hostilities issue open and move to other agenda points.

The parties then opened discussions on the second agenda item, comprehensive solutions to the conflict. This was broken down into several subcategories, including the problems of political marginalisation, socio-economic development and resettlement of internally displaced persons (IDPs). Contrary to expectations that it would focus narrowly on the LRA’s negotiated surrender, the government delegation willingly engaged in a substantive discussion of the war’s root causes. It presented detailed proposals, supported by extensive documentation on its current efforts and future plans to tackle the problems of northern Uganda, then invited the LRA to explain how these plans were inadequate and what could be done to improve them.

As discussed in greater detail below, two of the many questions in these talks involve whether the LRA is a legitimate representative for northern Uganda’s political grievances and the discrepancy in the agendas of its military leadership in the bush and the predominantly diaspora delegation that is negotiating in Juba. The mediation made a strategic decision to broaden participation by soliciting contributions from other interested northerners, such as cultural, religious, civil society and political leaders.<sup>8</sup> The rationale is that the peace process can only lead to a sustainable, comprehensive agreement that resolves the complex causes of the conflict and reconciles the wide array of victims if all affected parties play an active, constructive role. The deeply rooted historical grievances and widespread sense of marginalisation felt by the Acholi community requires involvement of credible representatives of the community as a whole who can address the social and structural factors. Because the LRA’s credentials are questionable, and it lacks a clear political agenda, the mediators felt outside observers were necessary. A mediator told Crisis Group: “Bringing in civil society opened the door for the LRA, who can’t articulate their own agenda”.<sup>9</sup>

Initially, both the LRA and the government opposed outside observers. Under the guise of trust and confidence-building measures, the mediators introduced cultural and religious leaders into the process, requesting the Paramount Chief of the Acholi, Rwot David Acana II, to submit a paper

explaining how traditional reconciliation ceremonies could be incorporated into a final agreement as an accountability mechanism. Cultural leaders from southern Sudan were asked to submit a detailed list of crimes committed by either the LRA or the army and to develop their own accountability and reconciliation proposals. The mediators then arranged a meeting between the cultural leaders from northern Uganda and southern Sudan to discuss their mutual suffering.

The talks adjourned on 24 July to give a large delegation of civil, political and religious leaders from across northern Uganda and southern Sudan, as well as family members of several top commanders, including Kony, an unprecedented opportunity to meet the reclusive LRA leadership. Roughly 120 people converged at Nabanga, a tiny southern Sudanese town on the border with Congo, to meet Kony, voice their interests and begin a dialogue of reconciliation to pave the way for the rebels’ return.<sup>10</sup> Although attempts to include Kony’s mother failed, long separated family members were happily received. Kony apologised to southern Sudanese leaders for abuses.

While the Nabanga meetings promoted public participation in the peace process and forged links between the LRA and a broad base of concerned stakeholders, they also backfired as a trust and confidence-building mechanism. Kony surprised mediators by resurrecting the cessation of hostilities issue and asserting that talks would not go forward unless there was a military pause. The Juba delegation went to Nabanga, only to have Kony weaken its authority by ordering all fighters in its ranks to remain in Garamba until there was a cessation of hostilities. Although most of the LRA was secure in Garamba, that issue was important to Kony and Otti because several top commanders were cut off from the main group and vulnerable in northern Uganda.<sup>11</sup> In response, a mediator suggested to Otti that the LRA declare a unilateral cessation of hostilities to shift pressure onto the government. Kony did this during

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<sup>10</sup> The presence of chiefs and elders from northern Uganda is key for at least two reasons. First, the cultural leaders play an integral role in overseeing traditional reconciliation ceremonies and convincing the community to accept returning rebels. Secondly, Kony claims the chiefs and elders originally blessed his war in 1986-1987. The cultural leaders must be active in forging peace because the LRA leaders consider them responsible for unleashing the conflict.

<sup>11</sup> In early June 2006, a group of roughly 120 LRA rebels, including indicted commanders Raska Lukwiya and Dominic Ongwen, as well as commanders Ceaser Acellum and Francis Oyat Lapinyikwara (aka. Lapaicho) left Uganda and unsuccessfully attempted to cross into Congo. Stranded, the group split up and returned to Uganda. Lapaicho was captured on 12 July in Pader. Lukwiya was killed in Kitgum on 12 August. The others remain at large. Public reports attributed to the ICC claimed DNA tests showed Lukwiya was not killed. However, the ICC has confirmed his death.

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<sup>7</sup> “LRA rebels demand safe zones at peace talks”, *Daily Monitor*, 19 July 2006.

<sup>8</sup> Crisis Group interviews, members of the mediation team, July and August 2006.

<sup>9</sup> Crisis Group interview, 12 August 2006.

a phone call to the BBC on 4 August but the government refused to reciprocate.

Moreover, the meetings exposed growing friction between Riek and the LRA. Riek forcefully pressed Otti to come to Juba, even offering his own guards for security and his home as sanctuary. There are reports that Kony was willing but Otti refused for fear of the ICC indictments.<sup>12</sup> Riek also demanded to know the LRA's positions and troop strength for the purposes of the cessation of hostilities, creating suspicion that he was setting a trap. When the LRA delegates failed to persuade Otti to return with them, Riek angrily abandoned them in Nabanga, forcing them to make the long trip back to Juba by car. Thus, when the Nabanga meetings ended in early August, the negotiation had regressed, the legitimacy of an already questionable delegation had been weakened, and the tensions between Riek and the insurgents were complicating the mediation.

However, mediators continued to expand participation and support for the talks by requesting technical experts to observe and advise both parties. The immediate rationale was that the LRA delegation lacked the capacity to analyse and evaluate the government's complex proposal. Ugandan experts, ranging from academic authorities on conflict resolution and Acholi land policy to lawyers specialising in international criminal law, offered input. The UN first quietly sent an official from the Office for Coordination of Humanitarian Affairs (OCHA) to advise on protection, IDP's and the monitoring and implementation of a potential ceasefire, then sending officials from the Department of Political Affairs (DPA) to lend political support. The UN Mission in Sudan (UNMIS), however, has not been significantly engaged, aside from offering public reassurances that it would not arrest LRA leaders who went to Juba to negotiate. "The UN is absolutely supportive of the ICC, however there are no plans to make arrests in Sudan", said the head of UNMIS operations in southern Sudan, James Ellery.<sup>13</sup> UNMIS should use its good offices mandate to engage directly with the process and provide technical and diplomatic support.

When the LRA delegation returned to Juba but refused to talk unless the government declared a cessation of hostilities, GoSS President and SPLM Chairman Salva Kiir Mayardit called the delegation to his house on 11 August to calm tensions. Mediators assured the LRA that while a public declaration would be ideal, a de facto cessation of hostilities already existed, particularly in light of the government's commitment to pursue peace talks until

at least Museveni's then deadline of 12 September.<sup>14</sup> These efforts convinced the LRA to go back to the table.

The assurances, however, quickly proved hollow, as the Ugandan army intensified operations in northern Uganda and its rhetoric. On the same day, 12 August, that the LRA decided to restart the talks, the army killed Raska Lukwiya, a top LRA commander indicted by the ICC, near Mucwini in Kitgum district. Four other rebels were killed later in the week and at least fifteen in two weeks. The army asserted that these "mopping up" operations were necessary because the rebels had violated Kony's 4 August unilateral cessation of hostilities by attacking civilians.<sup>15</sup> A spokesman claimed that Raska killed a soldier and a civilian the day before his death and also pointed to four other purported LRA attacks in northern Uganda since 6 August. "What the LRA should do is advise their commanders on the ground to take advantage of the amnesty", the state minister for foreign affairs, Okello Oryem, said. "If they do not accept they will all die".<sup>16</sup>

The government also stepped up efforts to lay a foundation for a military re-entry into Congo. General Aronda Nyakairima, the chief of defence forces, sent a letter to the Congolese army, the FARDC,<sup>17</sup> and the UN mission there (MONUC)<sup>18</sup> on 8 August claiming that the LRA had adopted a more menacing posture by moving within 50 km of the Ugandan border and was planning to attack the towns of Koboko and Arua.<sup>19</sup> During an 18 August press conference, Museveni announced he had sent Minister of Security Amama Mbabazi to Kinshasa to seek approval from President Joseph Kabila and Vice President John-Pierre Bemba for a joint operation with MONUC and FARDC to root the rebels out of Garamba after Congo's elections. Museveni claimed that Kabila and Bemba supported this, though it seems unlikely given the animosity between the Congolese government and the Ugandan army. Military intelligence sources also leaked claims to

<sup>12</sup> Crisis Group interviews, August 2006.

<sup>13</sup> "UN insists on trying Kony", *New Vision*, 15 August 2006. Ellery has been publicly supportive of the negotiation and the leadership of Riek. See also Grace Matsiko, Frank Nyakairu and Emmanuel Gyazaho, "Uganda: I cannot betray Kony – Museveni", *Daily Monitor*, 16 August 2006.

<sup>14</sup> Museveni originally set a July deadline for the talks to conclude, then extended the deadline to 12 September. On 12 September the Ugandan government announced that the deadline would be extended in light of the progress thus far, without announcing a new deadline. "Uganda: Government to extend LRA talks deadline", IRIN, 12 September 2006.

<sup>15</sup> "UPDF to hunt LRA – Magezi", *Daily Monitor*, 15 August 2006.

<sup>16</sup> "LRA Resumes Peace Talks", *New Vision*, 14 August 2006.

<sup>17</sup> *Forces Armées de la République Démocratique du Congo*, the Congolese national army.

<sup>18</sup> The United Nations Mission in the Democratic Republic of Congo.

<sup>19</sup> There have been unconfirmed reports of increasing Ugandan army troop movements in West Nile, along the Congo border. There have also been unconfirmed reports of LRA troops moving further south into the DRC from Garamba, and two reported altercations between the LRA and the FARDC. Crisis Group correspondence, 6 September 2006.

the press that the LRA was enriching itself in Congo by engaging in gold and diamond extraction.<sup>20</sup>

The LRA denounced the developments, and seemed briefly to consider withdrawing from the talks.<sup>21</sup> Its delegation demanded a three-day hiatus to mourn Lukwiya's death, but simultaneously signalled willingness to continue. By 18 August, the parties were discussing DDR and the modalities of a ceasefire.

A major breakthrough was made on 26 August, when the parties signed a cessation of hostilities agreement. Under its terms, all LRA forces have three weeks to assemble at either of two assembly areas. Rebels in Uganda and Sudan are to go to Owiny-ki-Bul in Eastern Equatoria, those in Congo to Ri-Kwangba in Western Equatoria. Safe zones will be protected by the SPLA and compliance monitored and verified by a Cessation of Hostilities Monitoring Team (CHMT) composed of two representatives from each party, two senior African Union (AU) appointed officers and a senior SPLA officer as team leader. There is no sanction mechanism or clear recourse for violations but even this limited pact is more significant than anything previously achieved by the parties. The GoSS committed to provide food and services to the LRA in the camps. The agreement is subject to review and renewal every two weeks, from the time the LRA assembles in the safe zones.

Encouragingly, both sides compromised. The government dropped opposition to a military pause prior to a comprehensive agreement. The LRA consented to move its forces from Garamba – the vast majority of its fighters – where they were not under any active military pressure, to Sudan. Though it is not mentioned in the agreement, developing a role for UNMIS in monitoring the LRA in the assembly areas could provide additional guarantees for the process. Developing an entry point for the broader international community in both the monitoring and humanitarian support elements of the agreement will be necessary at some point – the sooner the better – to bolster the capacity of the GoSS and broaden technical and financial support.<sup>22</sup> The UN Security Council should

quickly amend the UNMIS mandate to give the mission flexibility to monitor and verify any agreement reached in Juba.

The cessation of hostilities agreement is tangible progress, a crucial confidence-building gesture and helps pave the way for a comprehensive agreement. However, it is only one step in a long process, not a guarantee of imminent success. The immediate test will be whether the LRA commanders go to the assembly areas in southern Sudan in a timely manner. Failure to comply would likely be seen as a violation by the government and could easily lead to a military strike and collapse of the process. On 11 September, Riek indicated that LRA troops were beginning to arrive in the two assembly areas, and that Otti himself had arrived at Ri-Kwangba, with Kony nearby.<sup>23</sup> Prior hopeful peace initiatives also achieved temporary suspensions of military operations but ultimately failed.<sup>24</sup> In the current process, four of the five agenda items remain open, including the complex problems of accountability and addressing the conflict's root causes.

### III. ACTORS AND MOTIVATIONS

#### A. THE GOVERNMENT OF SOUTHERN SUDAN

Of all the actors involved, the motivations of the GoSS are the most transparent. Southern Sudan has been the launching ground for an increasing number of LRA attacks over the past year, expanding westwards into Bahr-el Jebel and Western Equatoria states and with continued support from Khartoum's military, the Sudan Armed Forces (SAF). Since an informal cessation of hostilities between the LRA and the SPLA was negotiated on 11 April and 3 May 2006 by Riek with Kony and Otti,<sup>25</sup> the security situation in southern Sudan has improved noticeably.<sup>26</sup> In late May, the SAF redeployed most of its troops from positions in and around Juba to northern Sudan, thus severing the traditional supply links with the rebels, and leaving only those in the

<sup>20</sup> The Congolese government also reportedly demanded that Uganda pay the \$6 billion-\$10 billion recommended in the International Court of Justice's December 2005 ruling that condemned it for massive human rights abuses and illegal exploitation of Congolese natural resources during the second war in the Congo in 1998. Crisis Group correspondence, 30 August 2006. Figures denoted in dollars (\$) in this report refer to U.S. dollars.

<sup>21</sup> The LRA expressed no confidence in Riek and requested South Africa to take over. The Ugandan government rejected this.

<sup>22</sup> On 11 September, UN Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland promised during a visit to Juba that the UN would help provide humanitarian assistance and other services to the two assembly areas. "Top Uganda rebel at neutral camp – Sudanese

mediator", *Sudan Tribune* (Associated Press), 11 September 2006.

<sup>23</sup> Ibid.

<sup>24</sup> There was an informal ceasefire during the 1993-1994 peace process spearheaded by Betty Bigombe, and the government declared a unilateral cessation of hostilities during her 2004-2005 initiative. Bigombe is not directly involved in the Juba process, but has remained active as an interlocutor between the parties. She is currently focusing her efforts on developing a strategy and building support around the proposed second phase of this process, a national reconciliation agenda.

<sup>25</sup> Kony attended only the 3 May meeting.

<sup>26</sup> Crisis Group interview, UN security official in Juba, July 2006.

SPLA/SAF Joint Integrated Units that were created in the January 2005 Comprehensive Peace Agreement (CPA).<sup>27</sup>

Officially established on 22 October 2005, the GoSS faces enormous challenges in developing a functioning government in a region decimated by war. The SPLM is also early in its long transition from a rebel movement to a government and political party, while the SPLA is transforming itself from a volunteer to a professional army. Though the LRA has had bases in the Eastern Equatoria region of southern Sudan since the mid-1990s, its activities in the south increased substantially in August/September 2005, when its fighters first crossed the Nile westwards into Bahr-el Jebel and Western Equatoria states. Dozens of attacks attributed to it were carried out west of the Nile through April 2006, while the shuttle of its fighters between Sudan and Congo hampered access along the Juba-Yei road – the main road artery for goods in and out of Juba – and disrupted development activities.

The SPLA was unable to provide a sufficient military response. Though a priority for the GoSS and SPLM, its conversion into a professional army has progressed slowly, hampered by lack of resources and extended delays in payment of salaries, limited administrative capacity and unfulfilled promises of support from the international community, particularly the U.S.<sup>28</sup> The security situation in Western Equatoria was also negatively affected by two other factors: serious tribal clashes between the indigenous Zande and the internally displaced Bor-Dinka peaked in November 2005 but contributed to continued insecurity; and unruly SPLA soldiers, unhappy over delays in their pay, made trouble in and around Yei, though information about specific attacks was often scarce or contradictory, leading to blame being put solely on the LRA. A benefit of the cessation of hostilities is that it allows the GoSS to assess and identify the non-LRA security threats throughout Equatoria and devise appropriate responses. “There haven’t been any attacks attributable to the LRA in southern Sudan since 1 April”, said a senior UN official in Juba. “As far as we are concerned, the peace initiative has already worked”.<sup>29</sup> There have been high-profile, deadly

ambushes in and around Juba since the LRA-SPLA ceasefire, but though the tactics have been similar to LRA attacks, it is strongly believed in Juba that they are not the LRA’s work.<sup>30</sup> Both UN and SPLA security officials say they may be staged by Khartoum to implicate the LRA and undermine the mediation. The SPLA claim to have arrested SAF-affiliated agents responsible for two such attacks in June.<sup>31</sup>

The other major factor that limited SPLA activity against the LRA in the past year was fear that targeting the rebels would lead to confrontation with the SAF. Senior SPLA and SPLM officials, including Salva Kiir, had openly accused the SAF of supporting the LRA’s move west, and of supplying arms and ammunition to the group so as to destabilise the GoSS.<sup>32</sup> Convinced that the LRA was being sheltered in SAF barracks in and around Juba, the SPLA feared that a direct campaign could unravel the peace agreement. The SAF’s withdrawal from Juba in late May seemingly resolved this problem, though some in Juba still allege that it is re-supplying the LRA by airdrops inside Garamba National Park.<sup>33</sup> Nevertheless, Sudan’s ruling National Congress Party (NCP) has remained relatively quiet about the Juba talks, and the SAF withdrawal may signify that it is willing to let them proceed. Though the NCP continues to undermine the CPA and the SPLM, its focus seems to be shifting to frustrating the latter in Khartoum and undermining implementation on transitional issues that directly affect governance in the capital or the future southern referendum, such as Abyei, delineation of the North-South border and sharing of oil revenue.<sup>34</sup>

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<sup>27</sup> The CPA was signed on 9 January 2005 by the Sudan People’s Liberation Army/Movement (SPLA/SPLM), now the majority partner in the GoSS, and the National Congress Party (NCP). It granted an autonomous government to southern Sudan, with a self-determination referendum by the end of 2011. The SPLM also became minority partner in the Khartoum-based Government of National Unity. For more on the CPA, see Crisis Group Africa Report N°106, *Sudan’s Comprehensive Peace Agreement: The Long Road Ahead*, 31 March 2006; and Crisis Group Africa Report N°96, *The Khartoum-SPLM Agreement: Sudan’s Uncertain Peace*, 25 July 2005.

<sup>28</sup> Crisis Group Report, *Sudan’s Comprehensive Peace Agreement*, op. cit.

<sup>29</sup> Crisis Group interview, 2 August 2006.

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<sup>30</sup> Since the GoSS-LRA contacts began, the most serious attacks occurred in June and early July, just prior to the start of the negotiations. There were three incidents in the village of Gumba in a span of ten days in the beginning of June, with eight deaths. An attack on the road to Torit, fifteen miles outside of Juba, involved no fatalities. An attack on 5 July on a vehicle of the German Agency for Technical Cooperation (GTZ) on the road to Bor, fifteen km from Mongala, killed five and left one missing. Subsequent attacks have been attributed to bandits and remnants of Khartoum-aligned southern militias. The militia most commonly suspected in some of these attacks is a splinter element from the Equatorian Defence Forces (EDF), which remained loyal to Khartoum after the bulk of the troops re-joined the SPLA in early 2004. After returning in the first week of August from meetings with the LRA in Nabanga, Riek went immediately to Torit to negotiate an end to recent attacks with an EDF commander. He was told that if he wanted the EDF to stop, he had to speak to Khartoum. Crisis Group interview, August 2006.

<sup>31</sup> Crisis Group interview, 6 July 2006.

<sup>32</sup> See Crisis Group Report, *Sudan’s Comprehensive Peace Agreement*, op. cit.

<sup>33</sup> There continue to be contradictory reports about the SAF-LRA relationship, as discussed below.

<sup>34</sup> See Crisis Group Report, *Sudan’s Comprehensive Peace Agreement*, op. cit.

Before his death in a helicopter accident on 30 July 2005, then SPLM Chairman Dr John Garang had listed three options for the LRA in Sudan: to negotiate peace with the Ugandan government; to leave peacefully; or to be forced out militarily by the SPLA. Salva repeated this shortly after Garang's death.<sup>35</sup> Yet, GoSS policy remained confused and ambiguous, shifting between diplomacy, accusations of SAF support and threats of military retaliation up until the first meeting between Riek and Otti on 11 April 2006. In early November 2005, Riek publicly offered to mediate between the LRA and the Ugandan government and received a positive reply the next day from the LRA, via a press release.<sup>36</sup> Yet little happened for several months, as the LRA and the GoSS sought channels for contact. The decision to pursue mediation was taken in early April, after heated debate, at the inaugural meeting of the SPLM's Interim Political Bureau in Rumbek. Some were strongly opposed, for fear of damaging the SPLM's long ties with Kampala.<sup>37</sup>

Driving the GoSS efforts to find a negotiated solution to the LRA problem is a desire not only to deal with what has been its single biggest security threat, but also to get the Ugandan army out of southern Sudan. Since it entered in 2002 via an agreement with Khartoum to cooperate in fighting the LRA, many have worried that the conflict was slowly shifting from northern Uganda into southern Sudan. "The [army] brought the battle from Uganda to southern Sudan, but they didn't succeed in defeating the LRA", said a senior SPLM official. "The GoSS wants to stop the fighting in southern Sudan. The international community is pushing for the arrest of the LRA leaders, but they're not doing anything about it. We're reorganising our army; we can't hunt down the LRA....Now there's hope that we can end this through the peace talks".<sup>38</sup>

The GoSS needs to be careful that it does not put all its eggs into a basket as uncertain as the LRA. Despite the temporary lull in fighting, the LRA remains capable of producing havoc throughout the region. Parallel to the negotiations, the GoSS must continue to plan for a more robust, effective regional military response in case they collapse. This requires that the SPLA continue planning for a potentially hostile LRA and increasing military cooperation with the Ugandan and Congolese governments, as well as the UN missions in southern Sudan and Congo.

## B. THE LRA

Over two decades the LRA has failed to communicate a coherent political program. It is commonly perceived as a terrorist spirit cult led by the elusive Joseph Kony, an unstable man commanding an army of brainwashed children forced to commit atrocities in a messianic quest to rule Uganda according to the Ten Commandments. Kony has cultivated an air of mystery by shunning the press, living in seclusion, and largely leaving it for others to guess his motives. The LRA says its leadership's low profile has been necessary for self preservation, not due to an absence of coherent political aims. Throughout the war, occasional leaflets left in northern Uganda and internet messages published by the Lord's Resistance Movement (LRM), its political wing, hinted at genuine, albeit poorly defined political objectives.<sup>39</sup> Yet, the movement's prominent spiritual ideology, indifference to political engagement and brutal tactics directed at the same Acholi civilians it claims to be fighting to protect, have led many observers to conclude its adherents are killers with no discernible agenda other than power.

The peace process has challenged the LRA to articulate publicly a substantive political platform. Although Kony has broken his vow of silence, he has shed little light on what he aims to accomplish. In the videotape of the 3 May meeting, he stated that, "you cannot stay in the bush for twenty years for nothing". Yet he offered as explanation only three variations on a vague theme: "we are fighting for the people to be free", "for the right cause", and "I am fighting for peace".<sup>40</sup> Asked at a 1 August press conference why the war has lasted twenty years, he responded. "I don't know".<sup>41</sup>

The LRA's motivation for negotiating is another crucial question about which there is little concrete information. International assessments vary wildly. The most widespread is that held by the Ugandan government, which considers

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<sup>35</sup> "Sudan's FM stresses need to force out Uganda's anti-gov group from southern Sudan", *Sudan Tribune*, 25 August 2006.

<sup>36</sup> "Uganda rebel LRA welcomes Sudan's SPLM offer of mediation", press release, 15 November 2005.

<sup>37</sup> Crisis Group interview, August 2006.

<sup>38</sup> Crisis Group interview, 6 July 2006.

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<sup>39</sup> See Sverker Finnstrom, *Living with Bad Surroundings: War and Existential Uncertainty in Acholiland, Northern Uganda* (Upsala, 2003), particularly chapter 4, "The LRM/A's manifestos in context". The author cites a manifesto circulated in 1997 that outlined ten political objectives, including: restoration of multi-party politics and federalism; respect for human rights; developing a nationwide socio-economic balance; ending corruption; protecting the independence of the judiciary; and ensuring free and fair elections. Other manifestos attacked Uganda's involvement in Congo and reliance on structural adjustment programs while asserting that the LRM/A was an inclusive national political organisation, not primarily a religious movement.

<sup>40</sup> "I am not a terrorist, I am a freedom fighter, says Kony", *Daily Monitor*, 25 May 2006.

<sup>41</sup> "In the Presence of Joseph Kony", *Daily Monitor*, 6 August 2006.

the LRA a spent force struggling to survive: crippled by the army's increased effectiveness and dwindling SAF support, the LRA had no other option than to hide in Garamba National Park in August 2005.<sup>42</sup> Ugandan officials say the LRA has been reduced from 5,000 (3,000 of whom were armed fighters) in 2002 to around 400 (120-150 armed).<sup>43</sup> Otti has hinted at weakness, telling mediators, "peace talks come when war becomes difficult".<sup>44</sup>

There are also suggestions the LRA is using talks to regroup and rebuild, as it has in the past. Those sceptical of the LRA's peaceful intentions point to some circumstantial evidence. Since Riek's initial gift of cash and food, the SPLA has been regularly ferrying food to fighters in Garamba.<sup>45</sup> UNICEF provided a one time delivery of non-food items and medical supplies to the GoSS in its interactions with the LRA, in order to help build confidence between the rebels and the mediation, but did not trade relief aid for access, as was reported in the media.<sup>46</sup> There continue to be unsubstantiated reports that SAF elements are airdropping military supplies.<sup>47</sup>

The motivation question must be closely examined. Information available to Crisis Group suggests the assumptions that form the basis for the international assessment of a weak LRA may need to be re-evaluated. Although the number of LRA fighters is widely assumed to have shrunk into the hundreds, numerous credible eyewitness reports suggest much higher figures, significant military capability and high morale. An international observer concluded, it was "far from a spent force. ...Prior to the talks, I estimated the number of LRA fighters to be 500-1,000. After seeing them in person, I revised my estimate to 2,000-2,500 fighters and an equal number of women and children. The LRA are a serious force".<sup>48</sup>

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<sup>42</sup> The LRA's claim it was invited by the Congolese government for peace talks that never happened is denied in Kinshasa: Crisis Group Africa Briefing N°35, *A Strategy for Ending Northern Uganda's Crisis*, 11 January 2006. Yet another explanation for the LRA's move to Garamba is that the rebels were pursuing SAF supply airdrops that strayed far off target. Crisis Group interview, 19 August 2006.

<sup>43</sup> "Uganda's Foreign, Defence Ministers Brief Security Council, Call for Strong Measures to Disarm Lord's Resistance Army", UN press release, 19 April 2006, available at <http://www.un.org/News/Press/docs/2006/sc8695.doc.htm>.

<sup>44</sup> Crisis Group interview, an eyewitness to the meeting, 17 July 2006.

<sup>45</sup> Crisis Group correspondence, July 2006.

<sup>46</sup> Media reports initially suggesting that UNICEF traded relief aid for access turned out to be incorrect. "Kony hosts Acholi elders overnight", *New Vision*, 30 July 2006. Crisis Group interview, 18 September 2006.

<sup>47</sup> One report is that the SAF facilitated the LRA's move to Garamba by dropping rubber rafts for river crossings.

<sup>48</sup> Crisis Group interview, security official present at meetings with the LRA, 2 August 2006.

This assessment is consistent with reports from the initial GoSS-LRA meetings, when Otti asked Riek for food to feed 5,000, including women and children.<sup>49</sup> Recent reports in the Ugandan press cite army intelligence estimates that the LRA has 1,000 fighters.

Determining force levels for guerrilla groups is difficult. However, even if the low estimates are accurate, the LRA could still seriously destabilise large areas by using small, highly mobile groups that can advance rapidly on foot, hit and run and then disappear into the bush. While the Ugandan army's offensive capabilities have become better, civilian protection often remains a distant afterthought. With nearly two million IDP's in exposed camps, there is still a large pool of civilians vulnerable to abduction, a tactic the LRA could again use to bolster its ranks quickly.

Crisis Group also continues to receive contradictory reports of the relationship between the LRA and SAF. Some suggest a serious split, which if true could help explain an LRA perception of vulnerability and renewed interest in negotiations. These reports suggest there was a fallout as early as August 2005, when the SAF abducted some LRA fighters and took them to Kassala and Darfur.<sup>50</sup> In its early contacts with the GoSS, the LRA reportedly asked for help in recovering them.<sup>51</sup> The SAF apparently attempted to renew links around February 2006 but the LRA spurned the offer.<sup>52</sup> At the same time, some SPLM and GoSS officials continue to suspect a link between the LRA and Khartoum, alleging continued night airdrops in Garamba.<sup>53</sup> Though the SAF-LRA relationship was inevitably weakened, if not severed by the former's withdrawal from Juba in late May, GoSS and SPLM senior leaders were convinced as recently as March that SAF support was the crucial factor in the LRA's westward push that began in August 2005.<sup>54</sup> These conflicting reports are at least a caution against reaching sweeping conclusions about LRA weakness and motivation for talking.

Questions also linger about the apparent discrepancy between the political agenda expressed by the delegation in Juba and the true interests of LRA rebels in the bush. Of the fifteen delegates Kony sent to Juba, only two are active commanders.<sup>55</sup> Clarifying this will be critical if the talks are to have a chance for success. Except for three who are Uganda-based, the delegates are from Sudan, Kenya, Germany, the UK and the U.S. Most had never met Kony.

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<sup>49</sup> Crisis Group interview, 9 July 2006.

<sup>50</sup> Crisis Group interviews in Juba, July and August 2006.

<sup>51</sup> Crisis Group interview, 2 July 2006.

<sup>52</sup> *Ibid.*

<sup>53</sup> Crisis Group interviews, July and August 2006.

<sup>54</sup> See Crisis Group Africa Report, *Sudan's Comprehensive Peace Agreement*, op. cit.

<sup>55</sup> The two are Col. Lubwe Bwone and Lt. Col. Santo Alit. Both were present at the last failed peace talks in December 2004.

There are already signs of different approaches between the delegation and the bush leadership. When Obonyo Olweny, the delegation spokesman, scoffed at Museveni's offer of amnesty, he was quickly advised by Vincent Otti to "stop making comments without consulting the high command".<sup>56</sup> After delegation leader Martin Ojul gave an inflammatory opening speech, Otti reportedly called the Gulu resident district commander (RDC), Walter Ochora, to say it had not been cleared by the high command.

Although the Juba delegation has demanded the dismantling of IDP camps, Otti responded dismissively to a question: "IDP camps? That's a problem for the government of Uganda".<sup>57</sup> When asked what he hoped to accomplish in the peace initiative, Otti said nothing about social justice, economic equality, and political freedom, responding only "we want to go home".<sup>58</sup> This is in sharp contrast to the agenda put forward by the Juba delegation. Crisis Group interviews with members of the Juba delegation prior to the start of the talks revealed an expansive agenda, steeped in bitter memories associated with Museveni's rise to power.<sup>59</sup> From the delegation's perspective, Museveni's government is rooted in deception and deliberate destruction of the Acholi people.<sup>60</sup> Once in power, the argument went, Museveni used the war in the north as an excuse to perpetuate the economic, social and political alienation of the region, thereby creating a climate for intractable conflict. According to the delegates, the LRA wants to end the south's tyranny by reforming and restructuring the economy, military, and governance of the entire country. "The government must accept and correct all that has gone wrong", a delegate demanded.<sup>61</sup>

In the abstract, many of the historical grievances resonate with war-weary, poverty stricken and politically marginalised people in northern Uganda. Since 1986, Acholiland has been ensnared in a cycle of conflict as rebel groups fought the consolidation of NRM power.<sup>62</sup>

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<sup>56</sup> "Kony and Otti accept amnesty", *New Vision*, 8 July 2006. Kony commented during a radio interview with Radio France Internationale (RFI).

<sup>57</sup> Crisis Group interview, an eyewitness of the meeting, 17 July 2006.

<sup>58</sup> Ibid.

<sup>59</sup> Crisis Group interviews in Juba, July 2006.

<sup>60</sup> After fighting a five year guerrilla war, Museveni captured Kampala on 26 January 1986, overthrowing an Acholi-led military junta. Only forty days before, Museveni had signed the Nairobi Peace Agreement, in which he pledged to lay down arms and join a new power-sharing government.

<sup>61</sup> Crisis Group interview, Juba, 2 July 2006.

<sup>62</sup> Two of the most prominent rebel groups in Acholiland were the Uganda People's Democratic Movement/Army (UPDM/A), composed mainly of Acholi soldiers who served during the Obote II regime, and the Holy Spirit Movement (HSM), a popular spirit cult movement led by Alice Lakwena, purportedly Kony's relative. An LRA delegate told Crisis Group, "the nucleus of the

Museveni's brutal counterinsurgency campaign from 1986 to 1991 failed to end the Acholi rebellions and fuelled more discontent.<sup>63</sup> Persistent human rights abuses by the army have been well documented by human rights groups.<sup>64</sup> Moreover, as outlined in previous Crisis Group reports, there is widespread belief in northern Uganda that the war has been prolonged to punish the Acholi for continued lack of support for the NRM and has been manipulated by Museveni for his political benefit.<sup>65</sup>

The inability to alleviate the war's catastrophic social consequences has deepened the Acholi sense of collective victimisation and mistrust of the government. While much of Uganda has seen growth and development under Museveni, the north has suffered. 1.8 million people – 90 per cent of the population in the three main war-affected districts of Gulu, Kitgum and Pader – have been uprooted from their homes and forced to live with limited freedom of movement in IDP camps guarded by the army<sup>66</sup> in which conditions are so wretched they have proven a greater danger to the inhabitants than LRA attacks. A survey conducted by the ministry of health in conjunction with UN agencies found that up to 1,000 people die each week there from malnutrition and treatable illnesses like malaria and diarrhea.<sup>67</sup> Mortality rates are significantly above emergency threshold levels.<sup>68</sup> HIV rates in northern Uganda exceed the national average.<sup>69</sup>

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LRA is remnants of HSM and UPDA". Crisis Group interview, July 2006.

<sup>63</sup> See Robert Gersony, "The Anguish of Northern Uganda", submitted to the U.S. Embassy, Kampala and the U.S. Agency for International Development (USAID), Kampala, August 1997; "Behind the Violence", Refugee Law Project, working paper no.11, Kampala, and Doom, Ruddy and Koen Vlassenroot, "Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda", *African Affairs*, 98 (1999), pp. 5-36.

<sup>64</sup> See "Abducted and Abused", Human Rights Watch, July 2003, vol.15, no.12 (A), and "Breaking the Circle", Amnesty International, 17 March 1990.

<sup>65</sup> See Crisis Group Africa Report N°77, *Northern Uganda: Understanding and Solving the Conflict*, 14 April 2004.

<sup>66</sup> "Health and mortality survey among internally displaced persons in Gulu, Kitgum, and Pader districts, northern Uganda", a joint survey by the Ugandan ministry of health, the International Rescue Committee (IRC), the UN World Health Organisation, the UN Children's Fund, the UN World Food Program and the UN Population Fund, July 2005, available at <http://www.who.int/hac/crises/uga/sitreps/Ugandamortsurvey.pdf>.

<sup>67</sup> Ibid.

<sup>68</sup> According to the 2005 health and mortality survey, *ibid.*, the crude mortality rate in the IDP camps is 1.54 deaths per 10,000 per day. The emergency threshold level is one death. The mortality rate for children under five is 3.18 deaths per 10,000 per day, compared with the emergency threshold of two.

<sup>69</sup> Using self-reported causes of death, the health and mortality survey, *ibid.*, found an HIV rate of 13.5 per cent. As it also notes, "Preliminary results of the national Uganda HIV/AIDS

However, the Juba delegation's efforts to portray itself as the vehicle for articulating and addressing such grievances is highly problematic. First, few would agree with its spokesman that the LRA is a "credible opposition that speaks for all people of Uganda" or that the "LRA is a symbol of the wishes of [the] northern population".<sup>70</sup> Its brutal campaign of killing, abducting, mutilating and looting has targeted mainly Acholi civilians.<sup>71</sup> The LRA has abducted an estimated 25,000 children during the war, turning them into soldiers, sex slaves and porters. It is difficult to argue that the movement has been fighting for the Acholi people.

Secondly, the Juba delegation lacks the competence to translate its ambitious set of political grievances into practical policies. The movement has scrambled to develop realistic negotiating proposals. In its opening position paper, it made nine demands, including immediate disbandment of IDP camps, which delegates told Crisis Group are "concentration camps", a thinly-veiled attempt to commit genocide against the Acholi and loot their land.<sup>72</sup> It also called for economic compensation for the widespread theft of cattle in the late 1980s, allegedly by soldiers as part of a systematic policy to bankrupt the Acholi of their basic unit of wealth and social status; a new national army, to be created through internationally supervised recruitment to ensure greater national and ethnic diversity, particularly at the upper ranks;<sup>73</sup> an immediate ceasefire; proportionate

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serobehavioural survey 2004-05 estimate HIV sero-prevalence for the North Central region (Gulu, Kitgum, Pader, Apac and Lira) to be 9.4 per cent, the highest in the country along with the Central region, compared to the national average of 7.0 per cent for adults aged 15-59 years".

<sup>70</sup> Crisis Group interview, members of LRA delegation, Juba, 3 July 2006.

<sup>71</sup> Between 1988 and 1991, Kony's forces targeted government forces. In 1991, they began attacking and mutilating noncombatants as punishment for the creation of "Bow and Arrow" civilian militias. Beginning in 1994 when a peace initiative spearheaded by Betty Bigombe collapsed, and the LRA turned to Sudan for sanctuary and support, large attacks against civilians and abductions as a means of forced recruitment dramatically escalated.

<sup>72</sup> Several prominent Acholi leaders have also recently claimed that the war in northern Uganda should be classified as a genocide. See Olara Otunnu, "The Secret Genocide", *Foreign Policy*, July/August 2006. Otunnu was formerly the UN under secretary-general and special representative for children and armed conflict. In June 2006 retired Anglican Bishop of Kitgum Diocese Macleod Backer Ochola II called the war a genocide in a speech before the 75<sup>th</sup> General Convention of the Episcopal Church of the United States of America.

<sup>73</sup> For example, four of the five army generals are Bahima Banyankole: Salim Saleh, President Museveni, David Tinnyefuza, and Elly Tumwine. The fifth, Aronda Nyakairima, is not Bahima but from the south west. However, the next two tiers, lieutenant general and major general, are more ethnically diverse and include northerners.

power sharing; suspension of all land sales in the north; affirmative action; restraints on "abusive language"; and a "specific formula of development" to address economic imbalances.

A subsequent position paper presented by the Juba delegation on comprehensive solutions to the conflict added self-determination, federalism and reinstating presidential term limits.<sup>74</sup> When faced with government counterproposals, however, Juba delegates were unable to respond without help from local leaders and technical experts. The LRA's political agenda will remain a question mark until the delegation has a clear negotiating mandate from the senior leadership, or those principal leaders become directly involved, something Riek has thus far failed to achieve.

### C. THE GOVERNMENT OF UGANDA

Following the LRA's move into the Garamba National Park in September 2005 and until the eve of the current initiative, Museveni abandoned his diplomatic strategy and pushed for military intervention and ICC prosecutions. In April alone, the Amnesty Act was amended to permit exclusion of top LRA commanders.<sup>75</sup> The then defence minister, Amama Mbabazi, lobbied the Security Council for permission to reenter Congo in hot pursuit of a robust regional military response to wipe out the rebels.<sup>76</sup>

However, the videotape of Riek's 3 May meeting with Kony put Kampala in an awkward position and forced reevaluation. Officials who had said the LRA was penned up deep in Garamba had to explain how a large force could materialise seemingly overnight across the border in Nabanga. Uganda had strongly criticised MONUC and the Congolese for coddling the LRA and not taking seriously their responsibility to execute the ICC's arrest warrants. It was a stark about-face for Museveni to endorse

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<sup>74</sup> Crisis Group interviews, Juba, July 2006.

<sup>75</sup> The Amnesty Amendment Bill (2003) was passed on 18 April 2006. It empowers the internal affairs minister to draw up a list of specific individuals ineligible for amnesty. This list would not go into effect until approved by the parliament. Internal Affairs Minister Rugunda told Crisis Group on 10 July 2006 that since he has not yet tabled such a list, technically Kony and the other indicted commanders can still benefit from the original Amnesty Act. This contradicted his comments after the amendment was passed, when he was quoted as saying, "[t]he top leadership of the LRA, mainly those who have been indicted by the International Criminal Court, have been excluded from the new version of the amnesty law that has been passed by parliament". "LRA leaders not entitled to amnesty – Minister", IRIN News, 21 April 2006.

<sup>76</sup> "Uganda's Foreign, Defence Ministers Brief Security Council", press release, op. cit.

his SPLM allies in Juba breaking bread with the LRA and giving Kony \$20,000.<sup>77</sup>

Caught off guard, the government struggled to respond. Although the security minister, Amama Mbabazi, stated on 9 June that Kony would not receive amnesty, Museveni offered it on 4 July.<sup>78</sup> The Ugandans said on 22 June they would not send a delegation to Juba because the LRA representatives were neither credible nor genuine but reversed course a week later.<sup>79</sup> The state minister for international affairs, Henry Oryem Okello, was adamant in June that direct talks with indicted commanders were not possible but changed his tune on the eve of the July talks.<sup>80</sup> There may have been method in all this. "The Ugandans have played this perfectly", an observer close to the talks said. "They sat back, let the LRA delegation soften up in Juba for five weeks, kept everyone guessing, then suddenly announced that they wanted talks to start quickly and were willing to sit down with anyone".<sup>81</sup> Initially on the defensive, the government turned the tables by pushing for rapid progress, thus taking advantage of the lack of preparation within the LRA delegation and the GoSS mediation.

The decision to talk was motivated by several factors. First, Uganda was frustrated with the indifference and impotence of regional partners and the wider international community. The consensus that the LRA was a regional security threat did not translate into action. Preoccupied with elections and the multitude of armed militias on its territory, the Congolese did not view a small group of LRA fighters in a remote national park who were not attacking the local population as warranting a major response. Their army was in the midst of an integration process that made it difficult to divert troops from insecure, densely populated areas in the east. MONUC has 17,000 troops, the same number the UN deployed in much smaller Sierra Leone. Hamstrung by a mandate to protect civilians and support the Congolese army, it had little appetite for an independent campaign in Garamba, especially after a skirmish with the LRA took the lives of eight Guatemalan peacekeepers on 23 January.<sup>82</sup> The ICC lacks independent power with

which to enforce its arrest warrants. Bereft of a stick long enough to reach Kony, Museveni saw little choice but to opt for a carrot.

Secondly, the talks give Museveni an opportunity to polish an image increasingly tarnished by allegations of corruption, electoral malpractice and inability to end the humanitarian crisis in the north.<sup>83</sup> Although his campaign to amend the constitution allowed him to win a third term, the EU Election Observer Mission said the February 2006 elections were below international standards.<sup>84</sup> In both presidential and parliamentary elections, voters in the north and east of Uganda voted overwhelmingly in favour of opposition candidates. Donors, who finance 41 per cent of the national budget are increasingly wary of giving Museveni more funds without change in the north.<sup>85</sup> In July, dissatisfied with the governance record and uncontrolled expenditures, the UK withdrew \$36 million in direct budgetary support for the second time in two years, diverting most of it to humanitarian projects in the north. The Poverty Eradication Action Plan (PEAP) has not met its targets: national poverty levels increased from 35 per cent to 38.8 per cent. The north did worse, as it does in most development indicators, with

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protect civilians makes the almost empty Garamba national park a low priority, especially as the LRA has not targeted Congolese civilians there. Finally, the heavy civilian casualties in Katanga province (caused by the Mai-Mai) and Ituri province (caused by the Mouvement Révolutionnaire Congolais militia) has led it to prioritise those areas. Congo is 32 times the size of Sierra Leone.

<sup>83</sup> The most recent USAID assessment paints a gloomy picture of democracy and governance trends in Uganda. "The last five years have seen the progressive consolidation of what has been termed a "neo-patrimonial" regime – one dominated by an individual leader whose personal authority is indistinguishable from that of the state and in which political power is 'maintained through a combination of patronage and the selective use of intimidation and force'". "Democracy and Governance Assessment: Republic of Uganda, 2005", available at <http://www.monitor.co.ug/resources/Dga.zip>.

<sup>84</sup> According to Max van Den Ber, member of the European Parliament, Chief Observer of the EU mission, "[o]ur report contains two clear messages. First, that the 2006 presidential and parliamentary elections showed improvement in comparison to previous elections. They were generally transparent, relatively peaceful and held in an atmosphere in which freedoms of assembly and association were more widely respected than hitherto. Second, however, that overall the elections fell short of full compliance with international standards for democratic elections, particularly due to the fact that a level playing field was not in place". Press release, 17 July 2006. The final report is available at [http://www.deluga.cec.eu.int/en/whatsnew/Final\\_version\\_of\\_report\[1\].pdf](http://www.deluga.cec.eu.int/en/whatsnew/Final_version_of_report[1].pdf).

<sup>85</sup> Budget speech for 2006/2007 presented by Dr Ezra Suruma, Minister of Finance, Planning and Economic Development, 15 June 2006. <http://www.mediacentre.go.ug/uploads/Budget%20Speech.pdf>

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<sup>77</sup> When he handed over the \$20,000, Riek told Kony it was for food, not weapons. The Sudanese subsequently set up some markets for the LRA to buy food.

<sup>78</sup> Compare "No amnesty for Kony, says Amama", *New Vision*, 9 June 2006 with "Museveni offers Kony amnesty", *Daily Monitor*, 5 July 2006.

<sup>79</sup> Compare "Govt doubts Kony delegates", *New Vision* 22 June 2006 with "President now sends team to Juba", *Daily Monitor*, 29 June 2006.

<sup>80</sup> Compare "Prospects for peace talks between gov't and LRA uncertain", IRIN News, 12 June 2006 with "Expectations high for peace talks, but details vague", IRIN News, 10 July 2006.

<sup>81</sup> Crisis Group interview in Juba, 7 July 2006.

<sup>82</sup> MONUC has limited resources and manpower. Its mandate to

63 per cent below the poverty line.<sup>86</sup> With the high-profile Commonwealth Heads of Government Meeting (CHOGM) slated for Kampala in November 2007, Museveni has both a domestic and international incentive to replace images of war and poverty in the north with those of peace and development. As an indication of the renewed focus on the north, the government recently announced a \$336 million resettlement package for the north.

Thirdly, the government has an economic interest in maintaining positive relations with the GoSS and ensuring that southern Sudan is secure and stable. As that region rebuilds after decades of devastating conflict, both Uganda and Kenya stand to reap important economic benefits from a sizeable new market. Ugandan business people have flocked there to build roads and mobile phone networks and import consumer goods. The prospect of bordering an oil producing and exporting region adds to the incentive to keep the GoSS a close ally.

Finally, the cost of continued inactivity was becoming too steep. Reports that the LRA was using the Garamba sanctuary to resupply and forge links with other rebel groups in Congo spurred concern that Uganda could not wait indefinitely for others to act. When the GoSS, an ally with a common interest in dealing with the LRA problem, presented the peace initiative as a fait accompli, Museveni decided his best option was to accept it.

From the government's perspective, talks are primarily about giving rebels it regards as terrorists a soft landing.<sup>87</sup> While it acknowledges that northern Uganda has suffered tremendously during the past twenty years, it believes the LRA bears primary responsibility. It calls the historical grievances alleged by the LRA delegation stemming from the 1986-1991 counterinsurgency campaign isolated incidents, misunderstandings and lies, not proof of a systematic effort to destroy the Acholi. For Kampala, the continued underdevelopment in northern Uganda is an unfortunate yet logical consequence of long conflict best alleviated by the LRA's quick capitulation.

As a result, the government initially wanted a narrow agenda and pressed for a rapid, negotiated surrender. It dangled offers of amnesty and reintegration and resettlement aid in exchange for dissolution, disarmament and demobilisation. On the first day of talks, Dr Ruhakana Rugunda, minister for internal affairs and head of the government delegation, said Uganda "is working for a speedy, expeditious, and thorough conclusion of this effort".<sup>88</sup> Hardly a week later, the delegation issued a

statement suggesting that, "within a few days it is expected, if the LRA team is willing and ready, a peace agreement shall be concluded".<sup>89</sup> "The Ugandans are ready to talk, but not at any cost", remarked an observer close the talks.<sup>90</sup> However, as noted, the government now acknowledges that comprehensive solutions are needed and is discussing political and socio-economic policies with LRA delegates.<sup>91</sup>

#### D. OPPORTUNITIES FOR SUCCESS

The initial GoSS/LRA meetings and rapid movement toward peace talks surprised many observers. Though there are many pitfalls ahead, the negotiations offer a unique opportunity to reach a comprehensive solution to the conflict. This is the first peace initiative successfully organised outside Uganda. Past talks between the LRA and the government of Uganda have failed for a host of reasons, including that they have been held inside Uganda without substantive international involvement, under threat of renewed army violence.<sup>92</sup>

Members of the LRA delegation and interlocutors explained that the rebel leaders have been influenced by the success of the negotiations that led to the signing of Sudan's CPA. "Kony believes that if there are international monitors and verifications, then Museveni will implement an agreement. If it's an agreement born out of another internal Ugandan process, he believes Museveni will kill him", explained a source close to the talks who has met repeatedly with Kony.<sup>93</sup> The 26 August agreement includes limited third-party monitoring and protection by the SPLA; though short of the LRA's initial demands, this provides at least an aura of international guarantees. Though the government is unlikely to concede what the LRA could not win militarily, it has gone farther than many expected.<sup>94</sup> While it has

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<sup>89</sup> "Government response on the LRA demands", a statement by Ruhakana Rugunda, reprinted in *New Vision*, 20 July 2006.

<sup>90</sup> Crisis Group interview in Juba, 7 July 2006.

<sup>91</sup> One sign of the government's willingness to expand the political agenda was its agreement to allow a delegation of political leaders, including opposition figures, to attend the Juba talks. Samuel O. Egado, Emmanuel Gyazaho and Grace Matsiko, "Uganda: Museveni clears Mao for peace talks", *Daily Monitor*, 24 August 2006.

<sup>92</sup> Crisis Group interview, 2 July 2006. Though there have been internationally facilitated initiatives in the past, these have never moved beyond a preliminary stage, and never directly involved the LRA's core leadership.

<sup>93</sup> Crisis Group interview, 2 July 2006; in support of this, Crisis Group interviews in Juba, July 2006.

<sup>94</sup> The tactic in previous negotiations with rebel groups was to shun a political agenda and concentrate on coopting, reconciling and buying out opposition. Examples are talks with the Ugandan National Rescue Front (UNRF) II in 2002, the West Nile Bank Front (WNBF) in 1996, the Uganda Peoples Army

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<sup>86</sup> See "Uganda Human Development Report 2005", UNDP.

<sup>87</sup> The U.S. government agrees. It placed the LRA on its Terrorism Exclusion List in December 2001.

<sup>88</sup> "LRA talks begin in Juba", *New Vision*, 15 July 2006.

offered Kony and the other indicted LRA commanders a blanket amnesty, Rugunda told Crisis Group alternative accountability mechanisms, such as traditional Acholi reconciliation ceremonies, are a “logical modality that will supplement discussions”.<sup>95</sup> Another sign of surprising flexibility is that Rugunda has made contact with Otti,<sup>96</sup> there are even unconfirmed reports of a conversation between Museveni and Kony.

There are also reports that Kony has prophesied that 2006 will be the year for making peace, which – if true – cannot be underestimated as a factor driving the LRA’s interest in peace talks.<sup>97</sup> Kony’s initial reactions to Riek’s efforts have been positive, as evidenced by his unprecedented willingness to engage with the international media.<sup>98</sup> Though Kony may not yet have an elaborate political agenda, he may be more susceptible to political calculations and incentives than previously thought. Evidence from the GoSS-LRA meetings suggests that the LRA has become more secular in recent years. Unlike past negotiations, interlocutors have not had to go through elaborate cleansing rituals involving holy water to gain access to Kony, and he has not been surrounded by controllers. Kony has barely attempted to root his rebellion in a religious vocabulary. Even the popular notion that he wants to rule according to the Ten Commandments is given a worldly tint. “Yes, we are fighting for Ten Commandments”, Kony states. “Is it bad? It is not against human rights”.<sup>99</sup>

Another positive factor is the vested GoSS interest in success. It has a security priority in ending LRA activities, and these negotiations offer the best chance. Though the GoSS urgently needs a more systematic approach, the clear benefits of success will help push things forward. The talks have already overcome many obstacles. Reaching the present stage seemed extremely unlikely as recently as mid-July.

#### IV. OBSTACLES AND PITFALLS

The resiliency of the talks should not create a false sense of security. Unless significant flaws in their substance, structure and organisation are addressed, they will likely not achieve a durable peace. Failure could gravely impact regional stability.

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(UPA) in 1992 and the Uganda People’s Defence Army (UPDA) in 1988.

<sup>95</sup> Crisis Group interview in Kampala, 10 July 2006.

<sup>96</sup> “Rugunda in direct talks with Otti”, *New Vision*, 23 August 2006.

<sup>97</sup> Crisis Group interviews, July 2006.

<sup>98</sup> “I will use the Ten Commandments to liberate Uganda”, *The Times*, 28 June 2006.

<sup>99</sup> *Ibid.*

It is not yet certain that all parties are fully committed to the peace process. Neither the LRA nor the government have shown a past willingness to engage in a lengthy process of forging a comprehensive, sustainable agreement. The LRA’s main goal may be time, not peace. Negotiations could be a diversion to gain breathing space before a new chapter in the cycle of conflict. Despite talk of finding comprehensive solutions to underlying problems, the army’s recent successes may lead the government to constrict the negotiating framework and offer only minimal concessions. While the GoSS has a clear interest to broker a deal, some observers in Juba fear Riek is overly motivated by a desire to show himself as a peacemaker and is insufficiently focused on the tough issues of northern Uganda and resistant to delegating his authority to enable a more institutional GoSS approach. These critics point to the highly publicised and personalised nature of the process. In short, the fear is that the talks are a ploy for the LRA, a public relations stunt for Riek and an empty gesture by the government.

Unless the gap between the delegation in Juba and LRA leaders in the bush can be bridged, the talks will stagnate. After waiting five weeks in Juba for the government to send a delegation, the LRA had yet to compose a list of detailed policy goals. For some LRA delegates, getting the government to sit down with them was a victory that marked the culmination rather than beginning of a process. “This is not the strongest delegation that Kony could have sent”, worried one observer.<sup>100</sup> Several who briefed Kony on the talks said he was surprised by much of what he was told, suggesting the delegation was not fully informing the leadership.<sup>101</sup> More credible and capable representatives with closer ties to the bush will be required. Though Riek has tried in his two meetings with LRA leaders to coax Otti to attend the Juba talks, he may only have soured relations with the leadership. Shuttle diplomacy remains an option if senior figures refuse to come to Juba but the remoteness of their location and difficulties in gaining direct access make this difficult.

The broad brush strokes of an agenda that the LRA delegation has presented are not promising.<sup>102</sup> While it is normal in negotiations for rebels to start with expansive demands and the government to respond with a minimalist position, it is not at all clear that these talks, with the LRA as the government’s interlocutor, are appropriate for addressing the complex social, economic, and political sources of instability in northern Uganda and the country

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<sup>100</sup> Crisis Group interview, Juba, 7 July 2006.

<sup>101</sup> Crisis Group interviews, August 2006.

<sup>102</sup> Neither are some of the unrealistic or inflammatory demands of the LRA delegation. For example, the LRA have demanded the army’s immediate dissolution and called for Uganda to declare alleged stockpiles of weapons of mass destruction.

as a whole. The government must seriously address northern Uganda's underdevelopment and marginalisation, which are both causes and effects of the war, in order to ensure that a peace agreement does not simply pave the way for a more brutal successor to the LRA. However, the crucial process of national reconciliation should not be solely in the hands of the LRA, the prime perpetrators of the plight of northern Uganda.

The mediators recognise the limitations of the LRA, and have opted to turn the Juba talks into a broad-based, inclusive forum capable of credibly addressing the systemic problems in the north. The difficulty with this strategy is that it risks endowing the LRA with a political agenda and validity that is not their own, while burdening the talks with issues unnecessary to defuse the military problem presented by the insurgency. The talks could balloon into a forum for opportunistic political opposition and become a disincentive for the government to negotiate.

The initial gaping disparity in expectations has narrowed but not disappeared. The government's limited opening agenda was a far cry from the broad demands of the LRA delegation. The government has shown a willingness to talk about underlying issues, but it will also have to demonstrate a readiness to make tangible concessions and implement comprehensive solutions. The LRA bristles at the suggestion of a negotiated surrender; the government may lack patience to sit through long lectures. It is difficult to see how the talks can succeed if the parties diverge fundamentally over the nature of the issues that need to be addressed.

Ideally, it would have been the mediator's job to minimise differences in expectations and formulate a framework prior to the start of substantive talks. Yet Riek and the GoSS failed to fulfil this function and entered the negotiation process with little preparation. Persistent confusion among the parties, particularly the distinction between a cessation of hostilities and a ceasefire, suggests that the mediation team needs to do a better job of communicating on the basic elements of the agenda. It did get agreement on the cessation of hostilities but without more proactive and effective mediation to balance and temper expectations and help level the ground, the negotiating parties are likely to become frustrated and disengage.

The graveyard of past peace initiatives stands as a warning that foresight, planning and structure are needed. Riek has had an improvisational approach, which is needed for any talks of which Kony is part. His objective is to avoid micromanaging, get the parties to the table and see what happens. This has been remarkably successful so far. He has brought the enigmatic Kony out of hiding and resurrected a peace process that most assumed was hopelessly moribund after the ICC issued arrest warrants. But Kony has dashed the hopes of many previous would-

be peacemakers, and talks are only the start of a much longer and complicated challenge.

Riek originally resisted calls to create a structure within the GoSS to oversee and guide the negotiations, telling Crisis Group the initiative would be handled exclusively within his vice presidential office.<sup>103</sup> At the opening ceremony, however, Salva Kiir announced the creation of a GoSS committee to manage the process, including the ministers of information, police and security, and legal affairs as well as Riek, as chairman. However, it had yet to meet as of mid-August, suggesting little institutional support for the process within the GoSS.<sup>104</sup> Formulating a consensus within the GoSS about its collective role will be more difficult if the initiative remains essentially the responsibility of one man.

Greater external support is another prerequisite for success. Faced with the exigencies of consolidating and institutionalising power within their fledgling government, the GoSS may not have the focus and facilities to shepherd the talks alone. To construct a more stable and promising process, the international community must give the mediation more diplomatic and financial backing. Third-party monitoring and verification in the implementation phase of any further agreement will also be needed. The GoSS will be unable to perform these tasks on its own; the UN is best placed to take them on, initially via its missions in Sudan and Congo, though the AU might also become more engaged through its monitoring role in the current cessation of hostilities agreement.<sup>105</sup>

There should be a backup military option in place, coordinated with regional and other international actors, for the contingency that the mediation fails. However, there seems to be little such planning. Yet, this should be a priority for the SPLA and GoSS. A well-prepared, coordinated regional fall-back plan to deal with the LRA would increase pressure on the rebels to negotiate in good faith and help prevent another rampage through southern Sudan should the talks collapse. A regional approach requires cooperation from the Ugandan and Congolese governments, as well as UNMIS and MONUC.<sup>106</sup>

The burden is not on the GoSS alone. International support and pressure will be critical for success at all stages but a plausible process must emerge before significant leverage can be exerted. Limited support from Pax Christi, the

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<sup>103</sup> Crisis Group interview in Juba, 5 July 2006.

<sup>104</sup> Crisis Group interview in Juba, 10 August 2006.

<sup>105</sup> As discussed above, the AU will appoint two monitors to participate alongside the SPLA in the Cessation of Hostilities Monitoring Team.

<sup>106</sup> For more on these options, see Crisis Group Briefing, *A Strategy for Ending Northern Uganda's Crisis*, op. cit.

Community of Sant'Egidio and the Swiss government are bolstering Riek's efforts but much more is needed if the talks continue to evolve. If it insists on pushing an unrealistic political agenda, the LRA will discredit itself, and the international community will find it difficult to put its full weight behind the process.

## **V. THE ICC: RECONCILING PEACE WITH JUSTICE**

The ICC involvement in northern Uganda is viewed as a complication by all sides. While the ICC prosecutions have been an important factor in bringing the LRA and the government to the table, they now limit the options available to mediation and parties because the ICC and the broader international community are unlikely to accept a deal that provides a broad amnesty and lacks strong justice and accountability mechanisms. The indicted ICC commanders, however, will not be interested in a deal that fails to protect them from ICC prosecution and to guarantee their personal safety. Museveni has publicly floated domestic amnesty for the indicted commanders. If a deal has to be done to bring peace to northern Uganda, then the least worst option may be asylum in a country that has not signed the Rome Statute, such as Sudan, unpalatable though that may be. Such a deal would need the backing of a UN Security Council resolution, putting the prosecutions on hold pursuant to Article 16 of the Rome Statute.<sup>107</sup>

The ICC unsealed warrants against five LRA commanders on 13 October 2005.<sup>108</sup> These rattled the indicted commanders, reduced their opportunity to emerge from the conflict with impunity and put pressure on Khartoum to cut its umbilical cord to the LRA. They gave the rebels an incentive to start talking about a peace agreement that might bring them immunity from prosecution. As Kampala's frustration grew at the seeming unwillingness or inability of others to execute the arrest warrants or otherwise help it resolve the LRA problem, it became more willing to consider diplomatic alternatives. But the indictments have also had costs. Difficulties in executing the warrants showed the limitations of Uganda's capabilities

and international readiness to support it in pursuing those whose crimes are well documented.

All states party to the Rome Statute have a binding treaty obligation to "cooperate fully" with the Court.<sup>109</sup> Thus, Uganda has an international legal duty to arrest any indicted individuals it can. The Sudan government has signed a memorandum of understanding with the ICC pledging cooperation in the Uganda investigation, including execution of the arrest warrants nationally. The Congolese government is also a signatory to the Rome Statute, and MONUC has signed a memorandum of understanding with the ICC Office of the Prosecutor to help assist DRC in arrest efforts. The LRA is acutely aware of these constraints. When Riek urged that it boost the delegation's authority by sending at least one indicted commander to Juba, Otti refused. "It's easy for you to ask", he told Machar, "you're not indicted".<sup>110</sup> As long as arrest warrants hover over their heads, the indicted commanders are unlikely to risk immediate detention by appearing in Juba, though there are ways around this, including shuttle diplomacy by intermediaries. The warrants also give the government something of an additional advantage at the negotiating table, since the LRA knows that if the talks fail, the ICC threat will still be there.

Consequently, the rebels have demanded that the ICC cancel the warrants and terminate the prosecutions.<sup>111</sup> Museveni has promised a blanket amnesty against domestic prosecution and a guarantee that no indicted LRA will be turned over to the ICC, despite Uganda's international obligations.<sup>112</sup> Riek has taken a middle position. "We are

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<sup>109</sup> Article 86 of the Rome Statute.

<sup>110</sup> Crisis Group interview, eyewitness to meeting, 17 July 2006.

<sup>111</sup> For example, "Ugandan rebels in amnesty demand: Deputy Ugandan rebel leader Vincent Otti has warned there will be no peace deal unless international indictments for the top rebels are dropped", BBC, 6 September 2006.

<sup>112</sup> Museveni's options are limited. His offer of domestic amnesty cannot provide immunity from prosecution by an international tribunal. Nor is there any mechanism in the Rome Statute enabling a state unilaterally to revoke a referral or force the Court to close a case. Since the ICC is dependent on state cooperation, Uganda could in effect terminate the investigation by refusing to cooperate with the Court, though this could result in a judicial ruling of non-compliance and referral of the matter to the Assembly of State Parties, and is an unlikely scenario given the three year relationship between the Office of the Prosecution (OTP) and the Government of Uganda (GoU). With no access to witnesses, evidence, or indictees, the ICC would have difficulty proceeding. Despite Museveni's public statements, in meetings with the ICC his minister of security, Amama Mbabazi, has not asked for the warrants to be withdrawn, apparently wanting to maintain the threat of prosecution. Since Kampala was the main sponsor of the Union des Patriotes Congolais (UPC), a primary perpetrator of abuses being investigated by the ICC in Congo, Museveni may be keen to keep the Court focused on the LRA.

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<sup>107</sup> The Rome Statute, which established the ICC, entered into force on 1 July 2002

<sup>108</sup> The five commanders are: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya. The UPDF had claimed that they killed Dominic Ongwen in Soroti district on 30 September 2005. On 6 July 2006, the ICC unsealed the results of a DNA test conducted on Ongwen's purported corpse, stating that "the DNA results are negative, meaning that the body is not that of Dominic Ongwen." See: "ICC unseals results of Dominic Ongwen DNA tests", ICC press release, 7 July 2006. Available at: <http://www.icc-cpi.int/press/pressreleases/165.html>. Lukwiya, as noted above, was killed in August 2006.

not telling the ICC to stop what they are doing”, he told Crisis Group. “We are just asking them to give the peace process a chance”.<sup>113</sup>

But robust justice and accountability mechanisms are essential if the agreement is to be viable domestically and legitimate internationally. Although bringing an immediate end to the conflict and the IDP camps is a priority, there is evidence that the people of northern Uganda want both peace and punishment of the LRA’s leadership. A 2005 survey conducted in IDP camps throughout the north by the International Centre for Transitional Justice found that 76 per cent of the population believed that individuals who committed abuses during the conflict should be held accountable, and 66 per cent favoured some form of punishment (trial and imprisonment or execution) as the accountability mechanism, while only 22 per cent opted for forgiveness, reconciliation, and reintegration.<sup>114</sup>

Traditional reconciliation ceremonies receive tepid support in part because they are insufficient to the scale and nature of the conflict.<sup>115</sup> The most commonly advocated ceremony is *mato oput*, which requires a perpetrator to admit guilt voluntarily, ask for forgiveness and pay compensation to the clan of an identifiable individual who has been wrongfully killed. The victim’s clan must accept the plea for

forgiveness for the reconciliation to be complete. However, although Kony asked for forgiveness from southern Sudanese cultural leaders, he has consistently denied attacking Acholi.<sup>116</sup> *Mato oput* has never been applied to the types of crimes the LRA has perpetrated, such as abduction, mutilation, use of child soldiers and sexual slavery. There is no clear consensus about the elements of a ceremony among Acholi clans; the minor role for women marginalises female victims while reinforcing rigid male hierarchies.<sup>117</sup> Finally, *mato oput*, as an Acholi cultural practice, is of little relevance to the many other affected groups, such as the Langi and Iteso.

Peace deals without accountability have generally not worked in Uganda. Since Museveni took power in 1986, dozens of rebel groups have fought the government. Those that were not defeated militarily signed agreements offering amnesty, compensation and reintegration without accountability. With underlying grievances left unaddressed, other rebels invariably filled the vacuum. To break the cycle of conflict, an agreement that addresses root causes must be accompanied by strong accountability mechanisms. The violent aftermaths of failed amnesty agreements with Foday Sankoh in Sierra Leone and Jonas Savimbi in Angola show the potential costs of impunity.

In any event, the ICC’s Prosecutor, Luis Moreno-Ocampo, remains committed to prosecutions. “The best way to finally stop the conflict”, he argues, “is to arrest the top leaders”.<sup>118</sup> However, if the parties can negotiate a peace agreement that ends twenty years of conflict, allows nearly two million IDPs to escape squalid conditions and return home and removes the spectre of the LRA as a spoiler of stability in southern Sudan and eastern Congo, the ICC will come under strong pressure to yield. If the Ugandan government acts on its threat to withdraw support for the prosecution, the ICC or the Security Council may decide that the costs of prosecutions outweigh the benefits.

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<sup>113</sup> Crisis Group interview in Juba, 4 July 2006. The Government of Sudan (GoS), and by extension the GoSS, has no duty to execute the warrants because it is not a party to the Rome Statute. However, Khartoum, which is the subject of an ICC investigation in Darfur and has come under scrutiny for its support of the LRA, signed an agreement in October 2005 to cooperate with the Court and arrest the indictees in Sudan if possible.

<sup>114</sup> “Forgotten Voices”, International Centre for Transitional Justice (ICTJ) and the Human Rights Centre, University of California (Berkeley), July 2005. The ICTJ questioned 2,585 Acholi in 32 IDP camps. While this study is the most extensive and systematic survey of public opinion among Acholi IDPs, other research indicates that people may be willing to forgive senior LRA leaders. For example, the February 2005 Refugee Law Project report “Whose Justice? Perceptions of Uganda’s Amnesty Act 2000” interviewed 409 people and found strong support for giving a blanket amnesty to all LRA, including Kony. For more detailed discussion of Acholi support for forgiveness and amnesty, see “Peace First, Justice Later”, Refugee Law Project, July 2005.

<sup>115</sup> For a description of *mato oput* and a general overview of traditional reconciliation ceremonies in Acholi culture, see Liu Institute for Global Issues, “Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reconciliation”, September 2005. In particular, pp. 66-72 provide an excellent discussion of the difficulties with adopting *mato oput* to the current conflict. It should be distinguished from other ceremonies, particularly the *nyono tong gweno* (stepping of the egg) ceremony. While this practice has become increasingly common, it is a cleansing ritual that has been adapted for the reintegration of returnees. It is not a reconciliation ceremony that involves any measure of accountability or admission of guilt.

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<sup>116</sup> When asked about alleged abuses, Kony responded, “[T]hat is not true. It’s just propaganda. Museveni went into the villages and cut off the ears of the people, telling the people that it was the work of the LRA. I cannot cut the ear of my brother, I cannot kill the eye of my brother”. See “I will use the Ten Commandments to liberate Uganda”, *The Times*, 28 June 2006. Similarly, when asked in a 1 August press conference if he was willing to stand trial before the ICC, Kony answered, “[n]o, no, because I have not done anything”. “In the presence of Joseph Kony”, *Daily Monitor*, 6 August 2006.

<sup>117</sup> As noted in “Restoring Relationships”, op. cit., pp.64-65, women are allowed to participate in *mato oput*, but it is a male dominated process because women may not play the central role of mediator, and women’s voices are too often ignored during the evidence-collecting phase.

<sup>118</sup> “Kony will eventually face trial, says ICC prosecutor”, IRIN News, 20 July 2006.

Under Article 53 of the Rome Statute, the prosecutor has discretion to stop prosecutions that no longer serve “the interests of justice”. Article 53 can only be used to end, not suspend, a case. An option of last resort subject to serious constraints, it calls for the prosecutor to consider the “interests of justice”, not peace. As the ICC’s purpose, articulated in the Statute’s preamble, is to end impunity and ensure prosecution of those most responsible for the gravest crimes, any decision to stop a case prior to prosecution except on the most compelling grounds is contrary to the Court’s core principles. Broadening the phrase to make it synonymous with “the interests of peace” would plunge prosecutors into the political fray, divert scarce resources from the Court’s mandate and ensnare it in short-term political considerations that would eventually undermine its independence, impartiality and legitimacy.

As a result it is likely the prosecutor would only defer to a peace agreement with robust accountability mechanisms for indicted commanders. It is not clear if accountability mechanisms such as a South Africa-style Truth and Reconciliation Commission (TRC) would be sufficient.<sup>119</sup> Given the high threshold for applying Article 53, however, the “interests of justice” as a basis for stopping the prosecutions may be an insurmountable obstacle to a comprehensive peace agreement. In any event, the Court’s review would be rigorous, and, as outlined in earlier Crisis Group reporting, the standard for accepting alternate accountability mechanisms as functional substitutes for prosecution is high.<sup>120</sup>

Given the gravity of LRA crimes, the ICC may only be prepared to defer to prosecutions in a national court. “In the long run, Kony will be arrested”, Ocampo stated.<sup>121</sup> If the Government of Uganda was to exercise its own criminal jurisdiction, in the form of genuine domestic prosecutions of the LRA leadership, then the ICC would no longer have the jurisdiction to proceed against those leaders, as the Rome Statute gives priority to such domestic prosecutions on the principle of “complementarity”.<sup>122</sup>

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<sup>119</sup> The South African TRC was empowered to grant amnesty if the perpetrator publicly admitted their crimes and fully participated with the TRC, and the crime was politically motivated. See the final report of the Truth and Reconciliation Commission of South Africa: <http://www.info.gov.za/otherdocs/2003/trc/>.

<sup>120</sup> See Crisis Group Africa Briefing N°27, *Building a Comprehensive Peace Strategy for Northern Uganda*, 23 June 2005. For a more detailed discussion of factors that the ICC is likely to look at when reconsidering a decision to prosecute, see Darryl Robinson, “Serving the Interests of Justice: Amnesties, Truth Commissions, and the International Criminal Court”, *European Journal of International Law*, June 2003.

<sup>121</sup> “Kony will eventually face trial”, op. cit.

<sup>122</sup> Article 17 of the Rome Statute.

The international community is unlikely to support any agreement that grants a blanket amnesty to the LRA.<sup>123</sup> The fact that the process of criminal prosecution has already begun makes it even less likely it would countenance an agreement without accountability. During a recent Security Council visit to Africa, the UK ambassador, Emyr Jones Parry, tempered cautious support for the peace initiative as a means to eliminate a substantial regional security threat by stating: “I think I would support the proposition that the five indictments issued by the International Criminal Court should be given effect”.<sup>124</sup> If there were a blanket amnesty, donors would be unlikely to give the diplomatic and financial support essential for implementing a peace agreement. The Juba talks, therefore, are on a short leash. The mediators should recognise up front that strong justice and accountability mechanisms must be part of any agreement that has a hope of attaining international support.

Short of the unlikely event of genuine Ugandan prosecutions of the LRA leadership, any decision to put the prosecutions on hold should, therefore, be left to the Security Council, as provided by Article 16 of the Rome Statute.<sup>125</sup> This article permits the Council to determine that an agreement would be in the interests of peace and to require the ICC by a Chapter VII resolution to defer action for renewable one-year periods.<sup>126</sup> The prosecutions would be suspended, not stopped, and could be resumed if there was a breach of the peace agreement. The drafters of the Rome Statute envisioned that there might be short-term tensions between the simultaneous pursuit of peace and justice, recognised that the former might temporarily need to trump the latter and delegated to the Security Council the authority to make these difficult decisions.

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<sup>123</sup> In Sierra Leone, for example, the UN Secretary-General’s Special Representative, Francis Okelo, attached a handwritten disclaimer to the 1999 Lome Accord’s amnesty provision stating that the UN did not recognise amnesties for crimes of genocide, crimes against humanity, war crimes, and other serious violations of human rights and humanitarian law. Similarly, in the “Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone”, 4 October 2000, the Secretary-General wrote: “[w]hile recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of a civil war or an internal armed conflict, the United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law”.

<sup>124</sup> “Delegation heads to Sudan for negotiations with LRA”, *Daily Monitor*, 14 June 2006.

<sup>125</sup> For more on this argument, see: Nick Grono, “Sudan: Confronting the atrocities in Darfur”, posted on AllAfrica.com, 26 July 2006. Available at <http://www.crisisgroup.org/home/index.cfm?id=4286&l=1>.

<sup>126</sup> The Security Council has already recognised that the LRA poses a threat to regional peace and stability. See Security Council Resolutions 1653, 27 January 2006, and 1663, 24 March 2006.

In deciding whether to intervene, the Security Council considers the interests of peace, which gives it flexibility to accept alternative accountability mechanisms that may not meet the ICC's standard.

As discussed by Crisis Group in the past,<sup>127</sup> third-country asylum for the indicted LRA leadership in a country that has not signed the Rome Statute is a credible option that needs to be explored if the alternative is a return to conflict.<sup>128</sup> Vincent Otti's recent demand that the ICC arrest warrants have to be dropped before the LRA will surrender to end the war starkly illustrates the dilemma.<sup>129</sup> Third-country asylum would have to be approved by the Security Council, which could choose to suspend the ICC arrest warrants for up to one year, renewable. Any suspension of the warrants should be made clearly conditional on the LRA's full implementation of any agreement to come out of the Juba talks.

Though the ICC indictments are one factor complicating the talks, guarantees for the physical security of LRA leaders inside Uganda may be a harder nut to crack. Whatever guarantees are built into any agreement, the senior commanders will likely still mistrust Museveni, and despite the talk of reconciliation and forgiveness, it is far from certain northerners would accept their return. Third-country amnesty, on the conditions set out above, may again prove the only viable option.

Like Article 53, Article 16 is a flawed option. The image of the Security Council intervening to relieve a group as stigmatised as the LRA may appear to some an unacceptable affront to justice and victims, especially if a peace agreement does not include any substantial accountability mechanisms. The Council would have to be roused from institutional inertia; decisive action could not be taken for granted. Aware of what happened to Charles Taylor, the former Liberian president, Kony and Otti will probably want concrete assurances of permanent protection against prosecution, which may be more than Article 16's renewable annual deferrals can provide. Otti recently told an observer that the LRA would demand written assurances from Museveni,

the ICC and the UN that the arrest warrants would be dropped and adequate physical protection provided.<sup>130</sup>

In theory, the Security Council could give de facto amnesty by promising to renew the yearly deferrals for the lives of the indictees, though such a pledge should at least be accompanied by a clear understanding that LRA violations would mean a resumption of prosecutions. This would give the mediation more options. Because any provisions agreed in Juba will set a precedent for other ICC cases, the mediation has come under intense pressure from civil society groups to do nothing that might get the Sudanese government off the hook for Darfur crimes, which the ICC is investigating.<sup>131</sup> However, the time limitations placed on the Security Council by the Rome Statute were both a recognition that Article 16 should not become a back door to impunity and a realisation that the threat of not renewing a deferral gives the Security Council a tool for ensuring compliance with an agreement. Thus, even if the Council does intervene, the LRA may not be satisfied.

## VI. CONCLUSION: THE BEST WAY FORWARD

The 26 August cessation of hostilities agreement sets the stage for serious negotiations on outstanding issues. Yet, given the parties' divergent agendas, the relative silence of the mediation on how it means to guide the process, and most importantly the uncertainty over ultimate LRA desires and differences between its leaders and the Juba delegation, matters may proceed in three ways. The first would see the Juba talks evolve into a forum to discuss the broad political issues of governance and structural inequity in Uganda. This has been the mediation team's tentative objective and has met with surprising acceptance thus far by the government. However, the GoSS priority is to get the LRA out of Sudan, not supervise a long and difficult Ugandan national reconciliation for which it lacks the capacity, resources and motivation. The outpouring of support for the talks from Acholi community leaders and civil society groups is more indicative of desperation for a credible forum to discuss political and economic marginalisation than it is of acceptance of the LRA as the legitimate party to lead these discussions.

The second would focus on concrete terms for the disarmament, demobilisation and reintegration of the LRA into Ugandan society. Though dealing strictly with the LRA might be logical and satisfy the interests of the LRA leaders in the bush, it would fail to address the legitimate

<sup>127</sup> See Crisis Group Briefing, *A Strategy for Ending Northern Uganda*, op. cit.

<sup>128</sup> There have been reports that Kony has approached the Central African Republic seeking asylum. See: Emmanuel Gyezaho and Frank Nyakairu, "Uganda: Kony applies for asylum", *Daily Monitor*, 23 August 2006. The Central African Republic ratified the Rome Statute on 3 October 2001, so would have a legal obligation to hand over the indicted commanders to the ICC. Crisis Group Briefing, *A Strategy for Ending Northern Uganda's Crisis*, op. cit.

<sup>129</sup> Daniel Wallis, "Uganda Rebels want ICC arrest warrants scrapped", *Reuters*, 6 September 2006.

<sup>130</sup> Crisis Group interview, August 2006.

<sup>131</sup> Crisis Group correspondence, 30 August 2006.

political grievances of northern Uganda and the root causes of the conflict.

The third and most promising direction, therefore, would involve a two-phased approach: Phase one would concentrate on the technical issues of bringing the LRA in from the bush and ending the immediate conflict. The parties would need to commit to a second phase, however, involving a broader, more inclusive political discussion on governance in Uganda, including underlying causes of the conflict and Acholi political grievances. The Juba talks are the best catalyst to spark such a discussion. The LRA military threat and GoSS and broader international pressure provide leverage to induce the government to discuss these

political issues, but the LRA alone is not sufficiently representative or legitimate to pursue this discussion.

The solution would be to use the Juba process to gain a binding commitment by the parties to phase two, including a continued role for the international community. This second phase could be held inside Uganda. Justice and accountability mechanisms might be agreed in principle in the first phase, given their importance for a sustainable peace with international buy-in, but should be discussed in greater detail in the second phase. Such an approach would remove much of the ambiguity that plagues the Juba process and increase the likelihood of a comprehensive solution.

**Nairobi/Brussels, 13 September 2006**