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Catch-22 in Uganda: The LRA, the ICC, and the Peace Process

JURIST Guest Columnists [Amy Ross](#) of the University of Georgia Department of Geography and [Chandra Lekha Sriram](#), Chair of Human Rights at the University of East London School of Law (UK), say that as the Ugandan government starts peace talks with the notorious Lord's Resistance Army and holds out a promise of amnesty for leader Joseph Kony, already wanted by the International Criminal Court for war crimes, it is unclear whether either peace or a prosecution is really going to be possible...



Joseph Kony, the leader of the Lord's Resistance Army (LRA), a rebel group in Northern Uganda, is accused of the forced conscription of children, sexual slavery, torture, mutilations, and mass killings. Last October, the International Criminal Court (ICC) announced its first indictments, of Kony and four of his top commanders, transforming the cult-like, mysterious and violent rebel leader into one of the world's most wanted war criminals. But President Yoweri Museveni of Uganda, who referred the case to the ICC in the first instance, is now offering amnesty to Kony and his fellow indictees. Amnesty, however, is antithetical to the ICC's mandate. Those seeking peace and justice in the region face more than a dilemma: they face a Catch-22.



Will the ICC's threats of arrest disrupt the prospects for peace? Or has the ICC's intervention pushed Kony towards negotiation? If Kony negotiates, can the international community and an ICC still in its infancy tolerate an amnesty that allows him to escape judgment for his many crimes? The problems and solutions are so intertwined that at this juncture, neither prosecution nor a peace deal appears feasible.

The violence in Northern Uganda has persisted for two decades, has cost thousands of lives and forced as many as two million people from their homes.

The chaos has spread into neighboring countries, with the LRA fighting in Southern Sudan, where an uneasy peace between Southern rebels and the government has just begun to be implemented. Having his lost refuge in Sudan, Kony moved to the Democratic Republic of the Congo, a country only partially emerging from conflict (and the site of one of the ICC's other 'situations'.)

While previous rounds of peace talks between the LRA and the Ugandan government have failed, the new government in South Sudan has initiated negotiations this week in what some have

described as the "last best chance" at peace, for Uganda and its fragile neighbors.

Demands for peace are strong, most vocally expressed by civil society and local leaders representing the estimated 1.6 million Ugandans forced into Internally Displaced Persons camps, where the United Nations has estimated an 'excess mortality' rate of more than 1,000 persons per week (a figure nearly twice the estimated rate in Darfur).

The ICC has stepped into this disaster, with the mandate to prosecute crimes of international concern. If the demands for peace are apparent, so too are the demands for justice, and the scale of atrocities committed by the LRA is virtually unquestioned, save by Kony himself, who dismisses them as fictions invented by the Ugandan government. The government, international human rights groups, and the International Criminal Court (ICC), are clear: the actions of Kony and many of his followers constitute international crimes.

The ICC took action against Joseph Kony following Museveni's referral of the situation in Northern Uganda. For the ICC, the invitation was a blessing: a so-called 'state-party referral' was seen as the best means for the ICC to take action, much preferred to the 'trigger' mechanism by which the prosecutors would move on his own (*proprio motu*). For the newly established ICC, conscious of its critics (including the US administration), acting at the invitation of a government was far preferable to being seen as intervening in the internal affairs of a sovereign state.

But then, what once seemed like a blessing could be a curse. By accepting Museveni's invitation to investigate the LRA (announced in London at a press conference where Chief Prosecutor Luis Moreno-Ocampo and President Museveni stood side by side), Moreno-Ocampo appeared to the people in Northern Uganda as having taken Museveni's side. As such, the ICC became viewed locally as a protagonist in the conflict rather than a promoter of peace. An organization of NGOs and representatives of civil society has actually asked the ICC, point-blank, to withdraw its indictments in order that an extremely popular amnesty program could tempt combatants (many of whom were abducted as children and forced to fight) out of the bush.

Now, amnesty and prosecution are both in play. In advance of peace talks, which were initially to begin in Juba, the capital of South Sudan, on 12 July, Uganda's President Museveni declared that he would grant Kony an amnesty if he reached a peace agreement and renounced terrorism. A condition of government participation was that the top LRA leader attend the talks. Kony refused to participate, apparently due to his fear of arrest and international prosecution.

Kony meanwhile "invited" ICC investigators to his hideout in DRC to hear his side of the story, an offer declined by Moreno-Ocampo. He emphasized "This is a court. The Court has to respect the law.... If these people want to give their version, they have to come to the court." Moreno-Ocampo

has insisted that the ICC is under no obligation to respect an amnesty issued by the Ugandan government. He emphasizes the legal duties of the court, as against the political concerns now being raised.

But the ICC has been embroiled in politics from the time it responded to Uganda's invitation. Its investigations have focused only on the LRA, and not the atrocities committed by the Ugandan military, contributing to the appearance that it lacks impartiality. A recent UN report noted that more than 90% of the fatalities in Northern Uganda are the result of the policy of forced displacement, with 9% attributed to attacks by the LRA.

For the communities closest to the violence, returning to their villages and therefore their livelihoods is paramount. The role of international prosecutions in this is unclear.

Many observers suggest that Museveni simply saw the Court as another weapon in his arsenal against the LRA, and some Acholi tribal leaders have raised concerns that ICC indictment might actually intensify fighting, kidnapping, and atrocities. Museveni's cavalier attitude towards anything resembling justice can be seen in his one-sided request for investigation, carefully shielding his own officials, in his call for an amnesty, and indeed in the very way in which he called for an amnesty.

Museveni has announced that he is prepared to revoke the arrest warrants -- a dubious statement given that the warrants are not his to revoke, and indeed Uganda is under a legal obligation to arrest Kony and the other indictees should the opportunity arise. Museveni railed against the Court and the United Nations, for having failed to arrest Kony and the other indictees just nine months after the warrants were issued. He suggested that, having failed to do so, the UN and the ICC had lost all moral authority to demand that cases be tried.

It is unclear what Museveni's agenda is in offering amnesty. He could be seeking to draw Kony into the open so that he can be captured and turned over to the ICC, or killed. Or he could simply be feigning interest in a peace process to enhance his international standing, whilst remaining certain that Kony will refuse to meet. The latter explanation is often invoked by experts, who see in Kony, Museveni's justification for remaining in power.

Nonetheless, the amnesty offer has been repeatedly extended, and the government sent its Security Minister to ask the ICC to quash the indictments. At the time of this writing, the Ugandan government had revised its demand that Kony and top leadership attend talks in Juba, indicating that they would negotiate with any legitimate LRA representatives. On the 14th of this month, an LRA delegation arrived to begin talks, but few have actually fought, and many were from abroad, meaning their authority to take decisions was unclear.

The Vice-President of South Sudan, Riek Machar, who is convening the talks, has issued a plea to the ICC to refrain from pursuing Kony, stating "...there is the need to separate the peace process from the legal process." But therein lies the problem: the legal and political processes are intimately linked. Amnesty might just help bring an end to the bloody fighting and might well be popular locally. Yet the ICC cannot support an amnesty, nor is Kony likely to put himself in a position where arrest is feasible in the absence of one.

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July 17, 2006