Uganda's Civil War and the Politics of ICC Intervention

Adam Branch

INTRODUCTION

With its 2003 "Referral of the Situation Concerning the Lord's Resistance Army" to the International Criminal Court (ICC), the Ugandan government launched a legal process that, it claimed, would bring peace and justice to war-torn northern Uganda. The ICC prosecutor officially opened an investigation in response to the referral in July 2004, and in October 2005 the ICC unsealed arrest warrants, its historic first warrants in its historic first case, charging five of the top commanders of the rebel Lord's Resistance Army (LRA) with war crimes and crimes against humanity.[1] For two decades, Uganda north of the Nile has been ravaged by a brutal civil war between the LRA and the Ugandan government, so any possibility of productive change is to be warmly welcomed. The sanguine predictions proffered by the Ugandan government and by the ICC's supporters, however, are called into question by doubts about the court's ability to achieve peace or justice in Uganda, doubts stemming from the specific way the ICC has pursued the Ugandan case, and because of more inherent problems with the ICC as a legal institution.

This article analyzes the political effects and the consequences for peace and justice of the ICC's intervention into northern Uganda, drawing from this analysis disturbing implications about ICC interventions generally. In order to better comprehend the nature of those consequences, I have divided them into two categories: first, those resulting from the political instrumentalization of the ICC by the Ugandan government; and second, those resulting from the discourse and practice of the ICC as a body purporting to enforce international law.

Following section one, which provides a brief background to the conflict, section two examines the ICC's political instrumentalization. First, I argue that the Ugandan government cynically referred the ongoing conflict to the ICC, expecting to restrict the ICC's prosecution to the rebels in order to obtain

international support for its militarization and to entrench, not resolve, the war. Second, I argue that the ICC, in accepting the referral and prosecuting only the LRA, in effect chose to pursue a politically pragmatic case, despite that doing so contravened its own mandate and the interests of peace, justice, and the rule of law. Thus, the ICC has allowed itself to be politically instrumentalized by the Ugandan government to the detriment of its own legitimacy.

Section three considers the political effects of the ICC intervention that stem not from the ICC's politicization but from the discourse and practice of the ICC as an agent of global law enforcement. It reveals the deleterious effects that ICC intervention can have on the capacity for autonomous political organization and action among the civilian victims of violence, arguing that ICC intervention tends to lead to a *depoliticization* of those victims by promoting among them a political dependency mediated by international law. This depoliticization hinders the realization of justice for those subject to violence. Section four, the conclusion, asks if and how the negative consequences of the ICC's involvement in Uganda might be mitigated in future interventions.

WAR AND INTERNATIONAL CRIMES IN NORTHERN UGANDA

Civil war, though it has waxed and waned in intensity, has been an enduring aspect of life for Uganda's Acholi for twenty years. Rebel groups, some with significant popular support, have operated in the Acholi subregion of northern Uganda ever since Yoweri Museveni, at the head of the National Resistance Army (NRA), seized power from a principally Acholi government in 1986.[2] The LRA emerged as the most potent rebel force in the early 1990s, at a point when the support enjoyed by other rebel organizations among the Acholi peasantry had diminished, a casualty of the rebels' military failures and the government's brutal counterinsurgency. In that atmosphere, the LRA interpreted the reduced popular support to indicate that the Acholi had come to support the government, and the rebels turned their violence upon suspected government collaborators and supporters. Since then, the LRA has become infamous for massacres, maimings, and the forced recruitment of thousands of Acholi, many of them children. Significant LRA violence has taken place within the temporal jurisdiction of the ICC—that is, since July 1, 2002; for example, the arrest warrant issued for Joseph Kony, the leader of the LRA since its inception, charges him with thirty-three counts of war crimes and crimes against humanity since that date.[3]

The Ugandan government's counterinsurgency has also been brutal toward Acholi, as the NRA and its successor, the Uganda People's Defense Force (UPDF), have focused their use of force on destroying suspected rebel support among civilians.[4] Government violence peaked during Operation North in 1991, when the NRA carried out a number of massacres and other atrocities.[5] Another period of intense government violence occurred in the Gulu district in September 1996, when the government instituted its policy of forced displacement and drove hundreds of thousands of Acholi peasants out of their villages into camps through a campaign of murder, intimidation, and the bombing and burning of entire villages.[6] After the formation of the camps, the UPDF announced that anyone found outside of the camps would be considered a rebel and killed. While the government euphemistically calls the camps "protected villages," they are most accurately identified as internment or concentration camps, given their origins in forced displacement and the continued government violence used to keep civilians from leaving. The total population of these camps stood at a few hundred thousand by the end of 1996, but by the time of the ICC's intervention it had grown to almost a million, encompassing nearly the entire rural population of the Acholi subregion.[7]

If one puts aside for the moment the government's mass internment of the Acholi peasantry, then the level of overt government violence against civilians that has occurred since the end of Operation North in 1992 is low compared to that of the LRA—although murder, rape, the enlistment of children, arbitrary arrest, and torture by the UPDF or government militias do regularly occur.[8] The devastating consequences of the government policy of forced displacement are too dire to ignore, however, and many scholars and activists have argued that displacement clearly represents a war crime or crime against humanity. Indeed, the government has failed to provide adequate relief aid to the camps, leading to a massive humanitarian crisis with excess mortality levels of approximately 1,000 per week.[9] Moreover, the camps have been tragically unprotected; for example, in 2003, one camp of over 50,000 people was being protected by 45 irregular militia, while another camp of 15,000 was being protected by only 12. Accusations that government soldiers fail to protect the camps and refuse to respond to LRA incursions, and thus have turned them into easy targets for the LRA, are heard regularly from camp inhabitants. This continuing internment of over a million people without military necessity and without adequate protection and aid constitutes a grave violation of the laws of war and certainly falls within the ICC's

temporal jurisdiction.[10] Olara Otunnu, the former UN Undersecretary-General and Special Representative for Children and Armed Conflict, himself a Ugandan, has argued forcefully that, given that internment is an explicit government policy that targets the Acholi as a group and has led to tens, or even hundreds, of thousands of deaths and to the slow destruction of an entire ethnic group, it in fact amounts to genocide.[11] Thus, there is a clear record of international crimes perpetrated by both the rebels and the government forces in northern Uganda, many within the ICC's temporal mandate.

In dominant international portrayals of the conflict, however, government violence has been downplayed, if not entirely ignored. This "official discourse" limits its focus to the LRA's brutality, in particular its violence against children.[12] In most accounts the rebel group is, in a word, "bizarre," and LRA violence simply defies understanding. Media reports tell of a rebel army of abducted children led by a self-proclaimed spirit medium in an attempt to overthrow the government of Uganda, using violence against their own people seemingly for its own sake. These accounts sum up LRA motivations in the endlessly iterated declaration that "the rebels have no clear political agenda but have said they want the country governed in accordance with the Christian Ten Commandments."[13] It is concluded that the LRA, embodied in Joseph Kony, is simply insane, the latest manifestation of incomprehensible African violence. If any explanation beyond madness is offered, it is usually limited to noting the role of Sudan in sponsoring the LRA's random terror. It is this reductive official discourse that, it seems, has informed the ICC's Uganda intervention, with highly deleterious consequences. I will call this discourse further into question below.

POLITICS OF THE WAR AND INTERVENTION

Politics of the War

It was this situation of extreme, widespread, and long-standing violence that the Ugandan government referred to the ICC and into which the ICC intervened in response. The Ugandan government explains its motivation for the referral as follows:

> Having exhausted every other means of bringing an end to this terrible suffering, the Republic of Uganda now turns to the newly established ICC and its promise of global justice. Uganda pledges its full cooperation to the Prosecutor in the investigation and prosecution of LRA crimes, achievement of which is vital not only for the future

> progress of the nation, but also for the suppression of the most serious crimes of concern to the international community as a whole.[14]

Despite this lofty language, Uganda stood to gain very secular benefits from ICC intervention, especially if it could ensure that the ICC would prosecute only the LRA; indeed, international criminalization is an excellent strategy for states wishing to rally foreign forces to their side and to delegitimate political or military opposition. According to the official discourse on the war, however, these benefits to the Ugandan government did not present a problem; since the LRA was already devoid of political legitimacy, Uganda was waging a just war, and it was presumed that the ICC intervention would, by speeding the rebels' demise, serve everyone's interests in justice and peace. But this optimistic account begs two questions: first, whether the ICC's intervention would actually help bring the war to an end; and second, whether the official discourse was correct in representing the Ugandan government as genuinely interested in ending the war. I will answer both in the negative.

As to the first question, supporters of the ICC have argued that its intervention will catalyze productive local, national, and international political developments leading to peace. One version of this pragmatic argument[15] asserts that the LRA's criminalization will put political pressure on the Sudanese government to stop supporting the LRA and to assist in their capture.[16] A second version maintains that international arrest warrants will isolate the top leadership from the rest of the LRA, making them easy targets; once they are removed, this argument goes, the LRA will collapse. Critics have contested the validity of these arguments. One lawyer warns against putting too much trust in the ICC's ability to pressure Sudan,[17] a country that is already subject to intense pressure over Darfur and in fact maintains that it has ended support for the LRA. Also, given the composition of the LRA, which is made up in great part of those conscripted as children who fear Kony's threats of violence and spiritual authority, it is unlikely that arrest warrants would provoke significant internal challenges.[18]

Instead, critics have argued that the ICC's intervention will in fact make the war more difficult to resolve. First, arrest warrants have removed the LRA command's incentive to leave the bush, which has made peace talks difficult, if not impossible. In the words of Father Carlos Rodríguez of the Acholi Religious Leaders' Peace Initiative, "Obviously, nobody can convince the leaders of a rebel movement to come to the negotiating table and at the same time tell them that they will appear in courts to be prosecuted."[19] The unsealing of the arrest

warrants prompted head mediator Betty Bigombe to abandon the peace process;[20] and while a new set of talks are under way in Juba, their outcome is uncertain. In fact, one of the most significant obstacles to their success appears to be the ICC arrest warrants, which have kept the LRA leadership from attending out of fear of arrest. For its part, the Ugandan government has in the past failed to follow through with peace negotiations, several times sabotaging talks at key moments.

Second, the warrants eviscerate the Ugandan Amnesty Act of 2000. The broad understanding in Acholiland that the war will not end until the LRA leadership abandons the rebellion provided the impetus behind the mobilization for the Amnesty Act, which, at the insistence of Acholi civil society organizations, granted a general amnesty to the LRA, including its top commanders.[21] ICC arrest warrants fly in the face of the popular demand for general amnesty, rendering the act inapplicable to the very people to whom it most needs to be applied for peace to arrive. The ICC has dismissed the Amnesty Act: "In a bid to encourage members of the LRA to return to normal life, the Ugandan authorities have enacted an amnesty law. President Museveni has indicated to the Prosecutor his intention to amend this amnesty so as to exclude the leadership of the LRA, ensuring that those bearing the greatest responsibility for the crimes against humanity committed in northern Uganda are brought to justice."[22] The ICC irresponsibly frames the Amnesty Act not as the product of mobilization by the Acholi trying to find peace and duly promulgated by the Ugandan Parliament, but as a gift from the Ugandan executive, to be withdrawn by President Museveni at his convenience.

The arrest warrants have also undermined the peace process by enabling the Ugandan government to focus attention on its military solution, a "solution" that has shown no success for twenty years. Indeed, since 1986 the government has vigorously promoted a military approach to the northern crisis, and so the ICC intervention, by providing international legitimation for the military campaign in the name of enforcing international law, has cleared the way for the government's militarism. The effects of this have already begun to be apparent: simultaneous with the announcement of the appointment of the investigation's prosecutor, the UPDF announced that it would reenter Sudan to hunt down the LRA leadership.[23] Museveni has also attempted to use the arrest warrants—thus far unsuccessfully—to justify the UPDF's reentry into eastern Democratic Republic of Congo (DRC), where their prior intervention led to massive looting and atrocities against Congolese civilians.[24]

Thus, by hindering peace talks, justifying the amendment of the Amnesty Act, and legitimating further militarization, it seems that the ICC intervention has a greater chance of prolonging the conflict than of helping to solve it. In intervening, the ICC has also provided significant support to the Ugandan government's long-standing military approach to Acholiland and to its position against peace talks with the LRA. It is not inconceivable that these destructive consequences were precisely what the Ugandan government intended when it referred the LRA to the ICC, for, as political analysts have increasingly made clear, the Ugandan government and military have significant interests in maintaining the contained war in Acholiland.

On the national level, the war against LRA "terrorists" allows the government to silence political dissent by disqualifying and persecuting political opposition, even including Museveni's main challenger, Kizza Besigye, in the name of counterterrorism. It maintains military control over the north, a potential base of political opposition, while being able to invoke the specter of the LRA to maintain support in the south. Furthermore, the war allows President Museveni to maintain a large, unreformed army upon which he increasingly bases his own power.[25] High levels of defense spending, justified by the war, have created a constituency within the UPDF for its continuation, and many Acholi see their displacement as a strategy by the government to open their land to occupation by southerners and foreigners.[26]

On the international level, the continuation of the war has provided the means for Museveni to reinvent himself, especially in the wake of 9/11, as the key U.S. ally in the region. Museveni has been the recipient of significant American military aid and diplomatic support for his own "war on terror" against the LRA in exchange for serving as a conduit for support and resources to the Sudanese People's Liberation Army (SPLA) in southern Sudan, the front line in the American war on terror against the Khartoum government (and now for its support in Somalia).[27] Additionally, Museveni has managed to dodge donor demands for reduction of the military budget by citing the presence of the war in the north—even while much of the foreign aid, including military aid, has been diverted to the Ugandan invasion and militarization of eastern DRC.

Thus, it can be plausibly maintained that the Ugandan government called in the ICC against the LRA not to help bring the war to an end but to entrench it. In so doing, the government has acquired resources and legitimacy for its militarization, its increase of executive authority, its suppression of democracy, and its

destabilizing foreign adventures. The ICC prosecution furthermore provides support to Washington's partner in the war on terror and to the World Bank's neoliberal success story, while further demonizing the LRA.

Politics of the Intervention

In 2003, the fledgling ICC faced the urgent need to establish its efficacy through a viable first case. Such a case would have to be feasible on the local level, preferably by being conducted with the cooperation of a state or occupying force, since the ICC lacked the capacity to intervene without a local partner. At the same time, the case would have to be viable on the global level, where the ICC's principal concern was to avoid the censure of the United States, which was bent on undermining the court's fragile legitimacy and might very well obstruct cases that contradicted its interests. In this context, the Ugandan case fit the twofold requirement perfectly: it was a voluntary referral by a government that pledged its assistance, and it would prosecute a Sudanese ally and support an American ally. In deciding to accept the Ugandan referral and then deciding to restrict its prosecution to the LRA, however, the ICC's desire for effectiveness seems to have trumped its concern with peace, justice, or legality.

Three challenges—pragmatic, moral, and legal—can be raised to the ICC decision to admit the Ugandan case. First, based on the deleterious political consequences outlined above and on the immediate and vociferous opposition voiced by Acholi human rights and peace activists to the ICC's involvement, it seems that the ICC failed to fully consider the pragmatic arguments against intervention. Indeed, it probably took the official discourse on the war at face value and failed to undertake either the independent political analysis or the consultation with the Acholi that might have alerted it to the potential negative consequences of its investigation.

Second, given that the conflict reaches back to 1986, the ICC's limited temporal jurisdiction makes the court a highly inappropriate vehicle for finding justice in response to this legacy of violence, especially since much of the most atrocious violence took place before 2002. Indeed, this time limit, while legally unassailable, has been criticized by a number of Acholi leaders and activists for establishing an arbitrary barrier that leaves the bulk of the war beyond the reach of justice.

Third, it has been questioned whether the Uganda case was legally admissible according to the principle of complementarity enshrined in the Rome Statute.

Complementarity, the principle that the ICC only take cases in which national courts are "unable" or "unwilling" to undertake investigation and prosecution,[28] is essential since it guarantees to states that their domestic legal systems will not be preempted by this international institution and ensures that the ICC serves only as a court of last resort. Complementarity also serves to promote the development of national legal systems and international legal agreements since, according to the Rome Statute, the "effective prosecution" of international crimes "must be ensured by taking measures at the national level and by enhancing international cooperation," and "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes."[29]

Given the functioning status of Uganda's judiciary and the fact that Uganda was admittedly calling in the ICC only to assist in the LRA's capture,[30] questions have been raised over whether, by admitting the case, the ICC has taken over judicial responsibilities that Uganda could and should have fulfilled itself, but wished to hand off out of political self-interest. That is, Uganda was not "unable" to prosecute certain LRA commanders, except that it had failed to capture them; and it was not "unwilling" to prosecute, except that it wanted the ICC's intervention to delegitimate peace talks and the Amnesty Act. In accepting such referrals, the ICC risks reducing itself to the role of filling in for faulty national security services or being manipulated by anti-democratic regimes. Indeed, the law professors Mahnoush H. Arsanjani and W. Michael Reisman argue that the ICC has undertaken an "innovative allowance of voluntary referral,"[31] one that "may take the ICC into areas where the drafters of the Rome Statute had not wished to tread,"[32] and conclude that "in strict legal terms, a voluntary referral such as the one by Uganda appears to fail to satisfy the threshold for admissibility set out in Article 17 of the Statute."[33] For its part, the ICC has made little effort to explain how its admission of the Ugandan case complies with the doctrine of complementarity, and in failing to do so has shirked its responsibilities.[34] These controversies over the admission of the case highlight the prosecutor's apparent willingness to disregard concerns about the ICC's suitability as a tool of peace and justice and even to circumvent proper legal procedure in order to pursue politically pragmatic cases.

The same apparent willingness to disregard legal or moral principles in the pursuit of viable cases also underlies the ICC's decision to, so far, prosecute only the LRA. In its 2003 referral, the Ugandan government, not surprisingly, cited only LRA crimes—this was even reflected in its one-sided title. Since then, the

Ugandan government has threatened several times to withdraw its referral to the court, implying that it will cease cooperating if its own military becomes subject to prosecution, which is a concern for the ICC, since the termination of Ugandan cooperation could effectively close down the investigation. Further, Ugandan government and military officials have made it clear that they would not be subject to the court's jurisdiction: Attorney General Amama Mbabazi has stated categorically that the UPDF is not guilty of crimes and will not be tried by the ICC.[35]

More surprising, however, is that the ICC has responded by apparently conforming to Uganda's demands, limiting its investigation to the LRA and issuing arrest warrants only for LRA commanders. The ICC offers legal reasons for this decision; as Luis Moreno-Ocampo explains:

> The criteria for selection of the first case was gravity. We analyzed the gravity of all crimes in northern Uganda committed by the LRA and Ugandan forces. Crimes committed by the LRA were much more numerous and of much higher gravity than alleged crimes committed by the UPDF. We therefore started with an investigation of the LRA.
>
> At the same time, we also collected information on other groups from a variety of sources. We collected documents and conducted interviews. We will continue to collect information on allegations concerning all other groups, to determine whether the Statute thresholds are met and the policy of focusing on the persons most responsible is satisfied.[36]

ICC public relations adviser Christian Palme echoed this argument, stating categorically that "LRA crimes are far more serious than the crimes of the UPDF."[37]

But these explanations have failed to convince many, for whom the decision to exclusively prosecute the LRA and not the Ugandan government, despite their shared responsibility for international crimes, signals an unacceptable selectivity on the part of the ICC, contravening justice and the rule of law. Human rights organizations and Acholi leaders have called for the ICC to show its impartiality and commitment to justice by prosecuting both sides, instead of taking sides, in the ongoing civil war.[38] Fears of ICC partiality are reinforced by what many Acholi whom I have interviewed perceive to be the ICC's lack of transparency and its aloof and secretive demeanor; there is even a case where ICC investigators were accompanied by the UPDF divisional commander when seeking witnesses. Statements by the chief prosecutor dismissing the LRA's commitment to peace talks have further strengthened this sentiment.[39] Until the ICC makes its

impartiality evident in practice, and until it establishes its independence from the Ugandan government in more than just its rhetoric—for many, until it issues arrest warrants against the UPDF—its capacity to establish justice or conform to the rule of law in Uganda will be seriously impaired. Demands for impartiality may simply be impossible to meet, however, if the ICC sees a tacit guarantee of immunity to the government as a necessary price to pay for ensuring its cooperation.

In short, in making its decisions to take the Ugandan case and to prosecute only the LRA, the ICC seems to have been willing to put its institutional self-interest in carrying out an effective prosecution ahead of careful consideration of the implications of that prosecution. Given the possibility that the ICC's intervention may prolong the conflict and intensify the government's militarism, the ICC, in a quest for effectiveness, may end up not only undermining its legitimacy but also lending support to violent and anti-democratic political forces.

This reflects a dilemma at the heart of ICC practice. In making decisions as to what cases to accept and whom to prosecute, the Office of the Prosecutor responds to genuine episodes of egregious violence, but must also respond to the ICC's need to be effective. Thus, global and local politics enter ICC decisions mediated by the court's institutional self-interest. The ICC's ability to conform its practice to political realities is primarily institutionalized in the significant discretion granted to the prosecutor. But the fact that the ICC must conform to powerful global and local political interests does not justify its doing so; instead, it puts into relief the limits to the ICC's capacity to realize justice and the rule of law. On the global level, the selectivity displayed by the ICC in deciding what cases to pursue, especially in its apparent willingness to conform to American interests, puts into doubt the optimistic proclamations made by the ICC's most enthusiastic supporters that the court will help usher in global justice or the rule of law. The ICC's politically pragmatic selectivity as to who to prosecute can damage the chances for justice and the rule of law on the local level as well. Most disturbingly, if the ICC is willing to conform to the demands of abusive or anti-democratic states, the court may find itself complicit with the very crimes it claims to prosecute and responsible for intensifying the very violence it claims to resolve.

With the Ugandan case under way, it has become evident that the problems relating to the ICC and state sovereignty in practice may end up being the opposite from what had been feared in the deliberations leading up to its creation. The overwhelming concern had been that the ICC, in imposing its

jurisdiction, could run roughshod over the sovereignty of states. Instead, in the Ugandan case, the invocation of the ICC by President Museveni has only increased the autonomy of his government, since the politicization of the ICC intervention serves his interests against those of the Ugandan people.[40]

THE GLOBAL CRIMINAL LAW DISCOURSE AND POLITICAL DEPENDENCE

The second set of political effects and consequences for peace and justice derive from the repercussions of the ICC's intervention on the potential for political organization and action among Acholi civilians in the conflict zone. These can be analytically separated into two related categories: first, those stemming from the discourse of global criminal law that informs the epistemology and practice of ICC intervention; and second, as a consequence of the first, those stemming from the removal of the responsibility for implementing justice out of the hands of the community that has been subject to violence and into the hands of an international body that is unaccountable to those it claims to serve.

The discourse of global criminal law that informs ICC interventions embodies a specific epistemology that interprets situations of violence through certain categories—namely, the criminal, the victim, and the transcendent judge.[41] I will argue that the ICC itself tends to impose these categories upon situations into which intervention takes place, in effect giving rise to the very identities through which the situation was interpreted and upon which the intervention was justified—but which did not antedate the intervention itself.[42] It is through this bootstrapping operation that ICC interventions at times can tenuously establish their legitimacy.

Chief Prosecutor Moreno-Ocampo's characterization of the situation is paradigmatic of this reductive epistemology: "Let me start with the conflict in northern Uganda. The Lord's Resistance Army, the LRA, is an armed rebel group, claiming to fight for the freedom of the Acholi people in northern Uganda. The LRA has mainly attacked the Acholis they claim to represent. For nineteen years the people of northern Uganda have been killed, abducted, enslaved and raped."[43] At another point, he refers simply to the "criminal campaign of the LRA." The LRA is reduced to a criminal group; the Acholi peasantry are turned into innocent, passive victims; and the ICC itself, aligned with the military force of the Ugandan government, becomes the exclusive interpreter and enforcer of justice—the judge, police, and jailer.

First, by criminalizing the LRA leadership, the ICC denies the rebels the possibility of political relevance or of becoming a political force. Their leaders are to be hunted down and captured, and the rest of the LRA is to disintegrate.[44] The ICC dismisses the political demands that the LRA leadership has made, some of which have resonance with many displaced Acholi: a return to their homes, the end of government violence and repression, the political and economic equalization of north and south, and reparations.[45] The ICC disregards what support the LRA may build in the future and reduces the deep internal political crisis of the Acholi to a simple division between the criminal LRA and innocent civilians. It denies that the existence of the LRA is a symptom of deeper national problems that would require a political solution involving the LRA, the Ugandan government, and the various political and social factions among the Acholi.

Second, by reducing the Acholi to victims, ICC intervention rejects the possibility that the realization of justice might be a project within which the Acholi community organizes and acts to bring about a more just social and political order. Instead, it turns the realization of justice into a pacifying process. The involvement of the victims of violence in the ICC's practice is limited to individual testimony, performed in private and with high value put on the confidentiality of the victim. These individual testimonies cannot lead to the articulation of common grievances and demands among the Acholi, as testimony in the public sphere would. Instead, testimony is divested of its capacity to produce meaningful collective action and becomes the raw material for arrest warrants, law journal articles, and international law. The judgment as to whether an individual's experience of suffering deserves reparation is removed from the individual and the community; it is not to be arrived at through common reflection, but through the ICC's nontransparent decision-making process.

This leads to the related question of the effects stemming from the relocation of the decision about the meaning of justice from the people subject to violence to an international body that focuses on punishment at the expense of alternatives. Indeed, the ICC's insistence that justice will be achieved by punishing the LRA has met with vociferous opposition from northern Uganda, as human rights and peace organizations have rejected justice-through-punishment on the grounds that it contradicts "traditional" Acholi practices of justice-through-reconciliation.[46] "Traditionally," these groups argue, the Acholi found justice after periods of violence not by punishing the perpetrators but by forgiving them via the means of certain rituals and ceremonies, especially *mato oput*, the

drinking of a bitter root extract, presided over by elders and chiefs. Thus, they argue, justice will in fact be made more difficult by the ICC intervention, since it precludes the possibility of community reconciliation by spiriting away key perpetrators, those who most need to be reconciled or dealt with by their communities. Instead, justice can best be realized by empowering elders and chiefs to take a central role in mediating the return of the LRA into Acholi society.

It must be noted that this invocation of Acholi tradition as the most just way of dealing with the LRA and its legacy has met with criticism from those who, like the anthropologist Tim Allen, see it as self-serving on the part of its proponents.[47] Behind the traditional reconciliation argument, Allen locates two factions that have seen their authority wane under the protracted war: male elders, who claim customary authority, and (older male) church officials. Thus, Allen argues, "The current consensus about customary Acholi conceptions of justice has largely emerged from the aid-funded collaboration" between Acholi traditional male elders and the Catholic and Anglican churches.[48] The traditional reconciliation agenda signifies a convergence of interests between certain foreign humanitarian organizations, who invoke African tradition to claim cultural authenticity for their own activities, and older male Acholi who want to reinforce their faltering power with outside support. By claiming to be the exclusive arbiters of the reconstruction of Acholi society and culture, they have put forth their own version of justice as universally acceptable to the Acholi, as "Acholi."

Allen argues that this agenda has silenced the voices of those Acholi in the camps who would like to see the LRA punished. He writes:

> There is, I conclude, no such thing as a unique Acholi justice system. People in northern Uganda require the same kinds of conventional legal mechanisms as everyone else living in modern states. Many of our informants are eager too to embrace international principles of human rights—for all their contradictions and imperfections. We found no widespread enthusiasm for *mato oput* ceremonies performed by the Paramount Chief.[49]

In conclusion, Allen writes, "there was no general rejection of international justice."[50] As an aside, I would note that the legal processes carried out by the ICC are not "conventional" and do not correspond to the "modern state." Indeed, ICC interventions reject and suppress conventional, modern state–based legal mechanisms in favor of tenuous global mechanisms, thus bringing into question the very foundation of the modern state—namely, the concept of sovereignty. In this sense, the ICC intervention is just as inimical to the "conventional

legal mechanisms [required by] everyone else living in modern states" as is the practice of "traditional" justice.

Nevertheless, the illumination of the political interests behind, and the lack of consensus on, the traditional reconciliation agenda is important. The fact that some Acholi express support for punishing the LRA does not thus render the ICC intervention legitimate, however. What it demonstrates instead is the fundamental uncertainty and controversy among Acholi over what "justice" will mean in response to the LRA and the war. Indeed, both the ICC intervention and the traditional reconciliation agenda suffer from the same flaw: each claims incontestable legitimacy for its own ideal of justice—one by invoking a universal language of human rights and crimes against humanity, the other by invoking the particular language of custom—and attempts to impose that ideal upon all Acholi.

In order to transcend this false dichotomy, we need to broaden our conceptual framework and reaffirm our normative orientation. Conceptually, the current debate has focused on a narrow understanding of *corrective justice*. Because the proponents of global justice and the proponents of traditional justice have been the most outspoken, it has generally been ignored that there are many more options for how corrective justice could be realized than international punishment or traditional reconciliation, including through institutional arrangements such as national courts of law or truth and reconciliation commissions, or through extra-institutional, locally oriented options effected through democratized local government and civil society–based institutions. But corrective justice is not the only concept of justice; indeed, there is also the broader concept of *social or political justice*, in the sense of establishing a social and political order in which the fundamental injustices that led to conflict and violence have been rectified. The debate over the Ugandan case has restricted "justice" to corrective justice, so it must be expanded to understand justice as potentially being manifested through bringing about a more fair, less oppressive, and less violent social and political order. Indeed, in this sense, the insistence on a certain kind of corrective justice—such as punishment—may make the realization of social or political justice, arguably the broader and more fundamental kind of justice, impossible.

The normative commitment to democracy and political autonomy that has informed this article dictates that the legitimacy of any specific model of justice for dealing with legacies of extreme violence will not come from putatively absolute, unquestionable sources, whether human rights or tradition, but only through autonomous, democratic processes of deliberation, organization, and action within

the community, including those who have been subject to violence themselves. The ICC intervention shuts down this deliberation and organization, rendering communication in the Ugandan public sphere irrelevant. Because such debate is essential for resolving the conflict and for furthering democracy in Uganda, the ICC intervention has had a wide-ranging effect of empowering an unaccountable international body to the detriment of domestic democratic processes. Indeed, even if the Acholi were eventually to call for international prosecution, such prosecution would only be legitimate if it were in response to this prior deliberative process and not by fiat of the Ugandan government and the ICC prosecutor.

The kind of deliberation and organization that should occur for people to decide what justice means, however, can only happen once peace had been established.[51] With nearly the entire rural population of Acholiland displaced into internment camps, many of them starving to death, the question of what justice means is secondary to, and in fact irrelevant in the face of, the overwhelming need for the war to end and for the Acholi to go home. To talk about justice as being realized through the capture of five men and to spend millions of dollars and a massive international effort on capturing them in the midst of a humanitarian disaster of this scale, especially when there is no guarantee that they will be captured or that their capture will bring peace, is myopic and morally indefensible.

In sum, ICC intervention removes the site at which the meaning of justice is decided upon and from which justice will be realized out of the community and invests it in an ambiguous transcendent locus: the provision of justice becomes attributed to a humanitarian interventionist imaginary that conflates the ICC, the UN, the United States, and the "international community." The ICC teaches people to wait for justice at the hands of the "international community" and not to organize on their own so as to realize justice; indeed, their own organization may be shut down in the name of global justice. Justice is reduced to a good to be delivered by foreign institutions and organizations that claim the right, but refuse the general duty, to intervene. In this way, the ICC promotes a kind of political dependency among the citizenry, mediated by global law.

MITIGATING THE NEGATIVE EFFECTS OF ICC INTERVENTION

ICC intervention has the potential to undermine popular political organization and action through two routes: first, by supporting the militarization of the state and providing external symbolic resources that the state can instrumentalize to

use in place of domestic support; and second, by channeling popular energies into fundamentally nonpolitical forms, forms that lack the capacity for victims to challenge the violence being wielded against them or to make their own demands as to what justice would mean. By way of these two routes, the ICC has the potential to end up supporting the violence it purports to resolve and engendering the very helpless victims it claims to be saving.

How might these potential negative political effects of ICC intervention be guarded against? First, the Ugandan case makes clear the importance of the question of timing. The ICC should avoid intervening into ongoing conflicts, since the instrumentalization of ICC intervention by states may lead to further militarization and violence. Moreover, only when a conflict has ended will those subject to violence have the capacity to deliberate, organize, and act toward realizing and effecting their vision of justice and defining the place of the ICC within it. Finally, focusing on the capture and trial of a few rebel leaders when a war is still ongoing can take vital resources away from the peace effort and can introduce an inflexibility into the situation—as it has in Uganda—that might make impossible the kinds of bargains necessary to bring about peace.

This raises the larger question of how to mitigate the ICC's potential to provide resources to states (or nonstate actors) that the states can instrumentalize and use against their own people. First, obviously, the ICC must treat all sides to a conflict equally (which is also easier to achieve once a conflict has ended). The ICC would also need to work at the behest of and in coordination with democratic forces. Of course, this is difficult since it would require that the ICC make judgments as to the democratic credentials of those calling for intervention and to make predictions as to the possible repercussions of its intervention. Both would embroil the ICC in inveterate and resoundingly political controversies concerning the meaning of democracy and the identification of democratic states and substate forces and movements. It is improbable that the ICC has the capacity or mandate to undertake such analyses.

There is finally the question of whether ICC interventions can avoid promoting political dependency among the victims of violence on whose behalf it intervenes. Once again, this would require a careful, and perhaps impossible, consideration by the ICC of the potential effects of intervention. The ICC would find a place within autonomous local processes instead of subverting or trumping them. Whether these goals can be achieved remains an open question, but it

is one upon which the future of the ICC, and its ability to promote justice instead of presiding over its miscarriage, depend. In any case, as international bodies and Western states increasingly take over the functions of African governments, provide external support to them in lieu of internal support, and reorient populations from demanding change on the national level to appealing for intervention on the international level, African citizenries have found their terrain for democratic organization and action disappearing out from under them and the very category of citizenship being eviscerated. The ICC should not, in the name of justice, be complicit in that process.

NOTES

[1] UN Integrated Regional Information Networks (IRIN), "Uganda: ICC Issues Arrest Warrants for LRA Leaders," October 7, 2005; available at www.irinnews.org/report.asp?ReportID=49420&SelectRegion=East_Africa&SelectCountry=UGANDA.

[2] On the history of the conflict, see Heike Behrend, *Alice Lakwena & the Holy Spirits: War in Northern Uganda 1985–97* (Kampala, Uganda: Fountain Publishers, 1999); Sverker Finnström, *Living with Bad Surroundings: War and Existential Uncertainty in Acholiland, Northern Uganda* (Uppsala, Sweden: Uppsala University Press, 2003); and Adam Branch, "Neither Peace nor Justice: Political Violence and the Peasantry in Northern Uganda, 1986–1998," *African Studies Quarterly* 8, no. 2 (Spring 2005).

[3] ICC, "Warrant of Arrest for Joseph Kony," The Hague, September 27, 2005; available at www.icc-cpi.int/library/cases/ICC-02-04-01-05-53_English.pdf.

[4] Human Rights Focus (HURIFO), *Between Two Fires: The Plight of IDPs in Northern Uganda* (Gulu, Uganda: HURIFO, 2002); and Acholi Religious Leaders' Peace Initiative (ARLPI), *Let My People Go* (Gulu, Uganda: Gulu Archdiocese, July 2001).

[5] Behrend, *Alice Lakwena & the Holy Spirits*, pp. 188–89; and Branch, "Neither Peace nor Justice," pp. 15–18.

[6] ARLPI, *Let My People Go*, pp. 8–10; and HURIFO, *Between Two Fires*, pp. 16–24.

[7] United Nations World Food Programme, "WFP Emergency Report No. 41 of 2004," October 8, 2004; available at www.reliefweb.int/rw/RWB.NSF/db900SID/JCDR-65KT9Y?OpenDocument.

[8] Human Rights Watch, "Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda," *Human Rights Watch* 17, no. 12(A) (September 2005); available at hrw.org/reports/2005/uganda0905/.

[9] UN IRIN, "Uganda: 1,000 Displaced Die Every Week in War-torn North," August 29, 2005; available at www.aegis.com/news/IRIN/2005/IR050886.html.

[10] See Articles 13 and 17 of Protocol Additional II to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts; available at www.unhchr.ch/html/menu3/b/94.htm.

[11] See the text of his Sydney Peace Prize Lecture, "Saving Our Children From the Scourge of War," *Daily Monitor (Kampala)*, January 8–9, 2006; available at www.essex.ac.uk/armedcon/story_id/000290.html.

[12] Finnström, *Living with Bad Surroundings*, pp. 149–61; and Branch, "Neither Peace nor Justice," pp. 2–8.

[13] "Girls Escape Ugandan Rebels," BBC News Online, June 25, 2003; available at news.bbc.co.uk/2/hi/africa/3018810.stm.

[14] Government of Uganda, "Referral of the Situation Concerning the Lord's Resistance Army," Kampala, December 2003, para. 6.

[15] See Leslie Vinjamuri and Jack Snyder, "Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice," *Annual Review of Political Science* 7 (May 2004), pp. 352–56.

[16] ICC, "Statement by the Chief Prosecutor on the Uganda Arrest Warrants," The Hague, October 14, 2005, p. 7; available at www.icc-cpi.int/library/organs/otp/speeches/LMO_20051014_English.pdf. See also Tim Allen, *War and Justice in Northern Uganda* (draft) (London: Crisis States Research Centre, February 2005), pp. 58–59; available at www.crisisstates.com/download/others/AllenICCReport.pdf.

[17] Katherine Southwick, "Investigating War in Northern Uganda: Dilemmas for the International Criminal Court," *Yale Journal of International Affairs* (Summer/Fall 2005), p. 108; available at www.yale.edu/yjia/articles/Vol_1_Iss_1_Summer2005/SouthwickFinal.pdf.

[18] UN IRIN, "Uganda: ICC Indictments to Affect Northern Peace Efforts, Says Mediator," October 10, 2005; available at www.irinnews.org/report.aspx?reportid=56654.

[19] Cited in Adam Branch, "International Justice, Local Injustice," *Dissent* 51 (Summer 2004), p. 24; available at www.dissentmagazine.org/article/?article=336.
[20] UN IRIN, "Uganda: ICC Indictments to Affect Northern Peace Efforts." For a comprehensive treatment of the effect of the ICC arrest warrants on the peace process, see Southwick, "Investigating War in Northern Uganda," pp. 110–13.
[21] For more on the Amnesty Act, see Lucy Hovil and Zachary Lomo, "Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation," Refugee Law Project Working Paper No. 15 (Kampala, Uganda: February 2005); available at www.refugeelawproject.org/resources/papers/workingpapers/RLP.WP15.pdf.
[22] ICC Press Release, "President of Uganda Refers Situation Concerning the Lord's Resistance Army (LRA) to the ICC," The Hague, January 29, 2004; available at www.icc-cpi.int/pressrelease_details&id=16&l=en.html.
[23] "U.S. Lawyer to Probe Kony," *Monitor (Kampala)*, February 5, 2004.
[24] "Museveni Wants to Hunt LRA in Congo," *New Vision (Kampala)*, June 19, 2006; available at www.newvision.co.ug/D/8/13/504856.
[25] International Crisis Group (ICG), "A Strategy for Ending Northern Uganda's Crisis," Africa Briefing No. 35 (Nairobi/Brussels, January 11, 2006), p. 12; available at www.crisisgroup.org/home/index.cfm?l=1&id=3864.
[26] Refugee Law Project, "Behind the Violence: Causes, Consequences, and the Search for Solutions to the War in Northern Uganda," Refugee Law Project Working Paper No. 11 (Kampala, Uganda: February 2004), p. 28; available at www.refugeelawproject.org/resources/papers/workingpapers/RLP.WP11.pdf.
[27] Finnström, *Living With Bad Surroundings*, p. 155.
[28] See Mohamed M. El Zeidy, "The Principle of Complementarity: A New Machinery to Implement International Criminal Law," *Michigan Journal of International Law* 23 (Summer 2002), pp. 897–905; ICC Office of the Prosecutor, "Informal Expert Paper: The Principle of Complementarity in Practice (2003); available at www.icc-cpi.int/library/organs/otp/complementarity.pdf; and J. T. Holmes, "Complementarity: National Courts versus the ICC," in Antonio Cassese et al., eds., *The Rome Statute of the International Criminal Court: A Commentary* (New York: Oxford University Press, 2002), pp. 667–86.
[29] Rome Statute of the International Criminal Court, Preamble, paras. 4 and 6; available at www.un.org/law/icc/statute/romefra.htm.
[30] Sverker Finnström, "No-peace-no-war in Uganda," *News From the Nordic Africa Institute* 1 (January 2005), p. 11; available at www.nai.uu.se/publications/news/documents/news1_2005.pdf.
[31] Mahnoush H. Arsanjani and W. Michael Reisman, "The Law-in-Action of the International Criminal Court," *American Journal of International Law* 99, no. 2 (2005), p. 397; available at www.asil.org/ajil/ajil046.pdf.
[32] Ibid.
[33] Ibid., p. 395.
[34] El Zeidy, "The Principle of Complementarity," p. 899.
[35] Public statement at Uganda Human Rights Commission's conference on "The Implications of the ICC Investigations on Human Rights and the Peace Process in Uganda," Kampala, Uganda, October 5, 2004.
[36] ICC, "Statement of the Chief Prosecutor on the Uganda Arrest Warrants."
[37] "UN Criminal Court to Target Uganda Rebels, DR Congo Militia," AFP, February 8, 2005; available at www.monuc.org/news.aspx?newsID=5480.
[38] Interviews, James Otto, Director, Human Rights Focus, Gulu, Uganda, November 5, 2005; and UN IRIN, "Amnesty and Peace Groups Urge ICC to Probe Government Army Too," February 3, 2004; available at www.globalsecurity.org/military/library/news/2004/02/mil-040203-irin03.htm.
[39] Ronald R. Atkinson and Sverker Finnström, "Uganda's Moment for Peace," Opinion, *International Herald Tribune*, August 9, 2006; available at www.iht.com/articles/2006/08/09/opinion/edatkins.php.
[40] The Ugandan case puts into doubt the general validity of the claim made by Jamie Mayerfeld that the ICC will promote democracy and democratic institutions; see Jamie Mayerfeld, "The Democratic Legacy of the International Criminal Court," *Fletcher Forum of World Affairs* 28, no. 2 (Summer 2004), p. 147; available at faculty.washington.edu/jasonm/mayerfelda.pdf.
[41] See Makau wa Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002).
[42] This approach is inspired by the approach of Michel Foucault; for his account of the form of criminal justice, see "On Popular Justice: A Discussion with Maoists," in Colin Gordon, ed., *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (New York: Pantheon, 1980), pp. 8–9.
[43] See ICC, "Statement by the Chief Prosecutor on the Uganda Arrest Warrants."
[44] The ICG proposes a bounty on Kony's head; see ICG, "A Strategy for Ending Northern Uganda's Crisis," p. 11.
[45] For more on the LRA's politics, see Finnström, *Living with Bad Surroundings*; and Branch, "Neither Peace nor Justice."

[46] There is a vast literature on this subject: Dennis Pain, "'The Bending of the Spears': Producing Consensus for Peace and Development in Northern Uganda" (London: International Alert and Kacoke Madit, 1997); Chris Dolan,"'Bending the Spears': Notes on Dennis Pain's report to International Alert," COPE Working Paper 31 (2001); Lucy Hovil and Joanna R. Quinn, "Peace First, Justice Later: Traditional Justice in Northern Uganda," Refugee Law Project Working Paper No. 17 (Kampala, Uganda: July 2005); available at www.refugeelawproject.org/resources/papers/workingpapers/RLP.WP17.pdf; and Liu Institute and Gulu District NGO Forum, "Roco Wat I Acholi: Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reintegration" (Vancouver, B.C.: September 2005); available at www.ligi.ubc.ca/admin/Information/543/Roco%20Wat%20I%20Acoli-20051.pdf.

[47] Allen, *War and Justice in Northern Uganda.* See also International Center for Transitional Justice and The Human Rights Center, "Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda" (Berkeley: University of California, July 2005); available at www.hrcberkeley.org/download/Forgotten_Voices_Report.pdf.

[48] Allen, *War and Justice in Northern Uganda,* p. 66.

[49] Ibid., pp. 85–86.

[50] Ibid., p. 83.

[51] Hovil and Quinn, "Peace First, Justice Later," p. 31.