



Refugee Law Project

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The Refugee Law Project's position paper on the announcement of formal investigations of the Lord's Resistance Army by the Chief Prosecutor of the International Criminal Court and its implications on the search for peaceful solutions to the war in northern Uganda.

1. Introduction

On 29 January 2004, Mr. Luis Moreno Ocampo, the Chief Prosecutor of the International Criminal Court (ICC), in a joint press conference with the President of Uganda, Yoweri K. Museveni, announced that his office would begin preliminary investigations into crimes committed by the Lord's Resistance Army (LRA) during its 18-year war against the Government of Uganda. This followed President Museveni's December 2003 formal referral requesting the ICC to look into crimes committed by the LRA.

While the initial announcement by the Chief Prosecutor was enthusiastically welcomed by many international human rights organisations and other activists for international justice outside Uganda, it was coldly received by most local and international NGOs working in northern Uganda and peace groups such as the Acholi Religious Leaders Peace Initiative. The Government's own Amnesty Commission expressed fears that the announcement by the ICC could make a peaceful resolution of the 18-year conflict impossible. Then, on 28 July 2004 it was publicly reported that the ICC would commence a formal investigation into alleged crimes against humanity committed by the LRA.

The Refugee Law Project (RLP), based on its study of the war in northern Uganda, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, believes that, although the ICC investigation is in principle a positive initiative, the initiation of an investigation while the conflict is ongoing, is ill conceived. This position is based on two major reasons: first, the announcement of the investigation will increase the incentive for the LRA to fight, exacerbating the existing cycle of violence and violation of human rights; and second, it will most likely obliterate any opportunities for a peaceful end to the war.

In addition, we believe the announcement raises a number of practical and legal issues, which the drafters and supporters of the Rome Statute never envisaged and which undermine the legitimacy of the ICC at the grassroots level. Of particular concern is the disjuncture between international conceptions of justice and local community traditions, values, and notions of justice. Several questions come to mind:

- ?? Can an investigation by the ICC help bring an end to an ongoing conflict?
- ?? Is the Prosecutor informed of the political context in which the referral was made in December by the Government of Uganda? And does the political context matter?
- ?? Should the Prosecutor have taken into consideration the interests of those affected by the war before going public? Is he aware of those interests?
- ?? What are the likely consequences of the Prosecutor's announcement on the victims?
- ?? Can those affected by the ongoing war challenge his decision?
- ?? What power and procedural guidelines does the Statute establishing the ICC give the Prosecutor in dealing with situations as complex as the war in northern Uganda?
- ?? If the Prosecutor goes ahead to institute the investigations as planned, what are the consequences on those living in the war zone, especially potential witnesses?
- ?? How will the ICC protect victims and witnesses in northern Uganda while the perpetrators are still and large? Particularly considering that the State itself has failed to guarantee the security of its citizens?
- ?? Will the Ugandan People's Defense Force (UPDF) be investigated as well? If so, what cooperation will the Prosecutor's Office get from the Government?

We do not intend to answer all these questions here. However, in the sections that follow, we shall examine and discuss the political context from which President Museveni made the referral to the ICC in December 2003; whether the ICC should be involved at all; the implications of the announcement of the referral; and what will happen if the prosecutor goes ahead to launch formal investigations. We shall conclude with specific recommendations to the ICC, the Government of Uganda and civil society organisations in regards to the war in northern Uganda.

2. The Political Context

While it is important that the Office of the Prosecutor, and *ipso facto* the ICC, should work with States Party to the Rome Statute, which established the Court, it is equally important that the Office of the Prosecutor understand the context in which some of the States will choose to make a referral. Context is an important determinant of the nature of responses the Office will give to a particular referral and how it communicates that response. In addition, it is important that each case should be treated on its own merits. For example, while the crimes committed in the DRC and Uganda remain crimes, the socio-political contexts in which they are committed vary and necessitate different approaches. Thus, it is imperative we understand the context in which Museveni chose to refer the 'situation concerning the Lord's Resistance Army (LRA) to the ICC' in December 2003.

The timing of the January announcement by the ICC is crucial and should be seen from two inter-related perspectives. First, the events in northern Uganda, and the country as a whole, following the launch of *Operation Iron Fist* in 2002, not only put immense

pressure on Museveni to explore peaceful means to ending the war¹ but also diminished his international standing. These events include the failure to end the war by December that year as promised by Museveni and his generals as well as the spread of fighting to the districts of Soroti and Katakwi in 2003. Although the LRA was quickly driven out of these two districts by a combination of government sponsored militias and the UPDF, the LRA's ability to extend the war to these districts following *Operation Iron Fist* demonstrated that the operation had not succeeded in diminishing the LRA's capacity to fight and that they were not on the verge of being crushed, as the Government had claimed on numerous occasions. These incursions also seriously compromised the effectiveness of the military option to ending the war as well as undermined the credibility of the UPDF and the Government. Perhaps most significant is the fact that the number of internally displaced persons dramatically increased from around 400,000, prior to *Operation Iron Fist*, to 1.6 million in mid-June 2003. In other words, the humanitarian situation had drastically deteriorated.

As the situation continued to decline, civil society groups, particularly inter-religious leaders and NGOs providing services to IDPs and the war-affected communities in northern Uganda, urged the Government to explore peaceful means in order to end the war. The pressure to explore peaceful means to ending the war did not only come from within. Western donor countries, normally reluctant to comment on "internal" matters, began speaking openly about the need to explore a non-military means to ending the war. For example, in October 2000, the Dutch Minister for Development and Co-operation, Ms. Agnes van Ardenne told President Museveni that the military option had failed and that it was time he explored peaceful means to ending the conflict.² Weeks after Ms. Ardenne's bold statement, the EU urged the Ugandan Government to explore options other than war because it had 'reservations about the military option'.³ Immediately following these statements, the Deputy British High Commissioner to Uganda urged the Government to explore peaceful means because the 'war effort has failed'.⁴

These statements clearly reflect the degree to which the humanitarian situation in the north of Uganda, despite years of denials by the Government, had increasingly become visible to the international community. The fact that over 1.6 million displaced people were living in squalid conditions and increasing insecurity could no longer be denied, even by the Government's best spin-doctors. Some of the foreign diplomatic missions in Uganda had visited the north and seen for themselves the conditions in which the IDPs lived.⁵

¹ President Museveni has consistently argued that a military solution to the war is feasible.

² See for example, 'Museveni, Dutch Minister Disagree over Kony War', *The Monitor*, October 25, 2003, p.4.

³ Per Mr. Sigurd Illing, head of EU Delegation to Uganda, quoted in *The Monitor*, October 31, 2003, p.2

⁴ See for example, 'Talk to Kony, UK tells govt', *The Monitor*, November 2, 2003, p.

⁵ For example, the deputy British High Commissioner to Uganda, in addition to expressing reservations with the war efforts of the Government, 'acknowledged the suffering in northern Uganda caused by the LRA rebels' and pledged the support of his government to the internally displaced persons. See, *The Monitor*, November 12, 2003, p. 2.

The visit of the UN Under-Secretary General for Humanitarian Affairs, Mr. Jan Egeland, in November 2003 was possibly the final straw for Museveni. After visiting the north, Mr. Egeland stated that, 'The situation is intolerable and we must all agree as an international community, the UN and donors, that this is totally unacceptable. Northern Uganda is the most forgotten crisis in the world'.⁶ For the first time in 18 years of war, a high profile UN official had acknowledged publicly that the situation in northern Uganda was far worse than presented by the Government of Uganda, and that the UN and the international community were culpable for allowing the situation to deteriorate to that level. This acknowledgement was particularly damaging coming so close on the heels of the donor countries' public questioning of the military option to ending the war. As such, the Government was challenged to entertain non-military alternatives, including negotiations.

Thus, by November 2003, Museveni had seemingly lost the diplomatic battle on the military solution to the LRA. To regain lost ground and to re-assert his democratic credentials, he took a number of actions in rapid succession which served to obfuscate the debate on the war in northern Uganda, which was now gaining momentum. First, a day after Mr. Egeland's comments on the situation in northern Uganda, the Government announced that it was going to prosecute those implicated by the Sebutinde Commission probe into the purchase of un-airworthy helicopters for the army in 2001.⁷ It should be noted that the Sebutinde Commission report had been turned over to the Government in May, and had languished there for almost six months. This decision was followed by the resignation of the president's half-brother Caleb Akandwanaho (a.k.a. Salim Saleh – who was implicated in the Sebutinde report) from Parliament⁸ and the announcement of the prosecution of army officers accused of corruption in the war in northern Uganda. Then Museveni gave the LRA's Joseph Kony and his deputy Otti an ultimatum: come out of the bush before December 2003 or the Government would issue an international warrant of arrest.⁹ However, instead of issuing a warrant of arrest for Kony and Otti, the Government referred the case of the LRA to ICC.

In light of the above, the referral to the ICC served two political purposes.

1. It shifted public and international discourse from the plight of the people affected by the war and the need to end it through peaceful means to discourses on justice and punishing perpetrators of crimes against humanity and war crimes. Seen from this perspective, the referral served to mobilize new international alliances – ones more tolerant of Museveni's military option to ending the war. If the top LRA leadership is to be tried for the crimes they have committed, first they have to be arrested.
2. The referral exerted pressure on neighbouring countries to support the Government in the search for the top leadership of the LRA. Under article 86 of

⁶ See *The Monitor*, November 11, 2003, p. 4.

⁷ See, 'Saleh, Kato face jail over choppers', *The Monitor*, November 14, p.1

⁸ See, 'Saleh resigns as army Mp', *The Monitor*, November 29, 2003, p. 1 and 'Saleh Quits Parliament', *The New Vision*, November 29, p.1

⁹ See, 'We'll kill Kony, says Museveni' and 'Kony, Otti must surrendered by December, says Museveni', *The Monitor*, November, 14, 2003, pp. 1 and 26.

the Rome Statute, ‘States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in investigations and prosecution of crimes within the jurisdiction of the Court.’

In the final analysis, the referral of the LRA to the ICC by Museveni did not reflect an honest desire to meet international obligations under the Statute, but was a trump card to re-assert democratic credentials at the international level, ones which had been damaged by the failure of *Operation Iron Fist*. It should be remembered that in 2003 Museveni had also signed a pact with US President George Bush under article 98 of the Statute, whereby Uganda agreed not to surrender US citizens to the Court – and that the US has not ratified the Rome Statute. It is curious that Museveni would agree to not surrender US citizens who may have committed crimes within the jurisdiction of the ICC – thus minimizing the effectiveness of the court – but was equally eager to send his own citizens to the Court, when it benefits his own political agenda.

3. Should the ICC be involved at all?

The Rome Statute expressly vests the ICC with the power to investigate groups like the LRA. Article 1 of the Statute stipulates that:

‘An international Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise jurisdiction over persons for the *most serious crimes of international concern* (emphasis supplied), as referred to in this Statute, and shall be complementary to national criminal jurisdiction...’

In addition, under article 4, the Court has international legal personality and legal capacity for it to exercise its power vested onto it by article 1 as cited, in part, above. The jurisdiction of the Court in relation to the crimes that it can prosecute is stipulated in article 5 and articles 6, 7, and 8 of the statute. Furthermore, Articles 15 and 53 give the Prosecutor the power investigate crimes that fall within the jurisdiction of the Court.

By the very nature of the definition of the crimes – crimes against humanity, which include murder, torture, rape, sexual slavery, any form of sexual violence, enslavement, ‘when committed as part as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’ – the activities of the LRA constitute crimes that fall within the jurisdiction of the Court. There is no question about the involvement of the court. It has the mandate to investigate.

From the perspective of the RLP, however, the question which should be asked is whether the cause of justice will actually be served by an ICC investigation while the war is ongoing? While the Rome Statute gives the ICC the mandate to prosecute perpetrators of the crimes defined in Article 5, it is silent on how the Court should proceed in situations of active conflict. Thus, it neither defines situations nor a context in which the Prosecutor should initiate investigations. However, it does provides under article 29 that,

the ‘crimes within the jurisdiction of the Court shall not be subject any statute of limitations’. In the final analysis, it appears that the primary concern of the drafters of the Rome Statute was that crimes committed, whatever the situation, must be investigated. It is up to the Prosecutor to determine when it is appropriate to initiate investigation. It would have been helpful if the drafters had clarified how the Prosecutor should handle referrals under articles 13, 14 and 15 if there is a protracted ongoing war. But in the case of Uganda, the Prosecutor has welcomed the referral from the Government of Uganda (GoU) and made a public statement in support of the referral. What are the implications of this public announcement? This and other related issues are the focus of the sections that follow.

4. What are the implications of the ICC’s announcement/involvement?

On the basis of our analysis of the war in northern Uganda, we foresee continued violence, a weakening of the existing Amnesty Act, an undermining of local conflict resolution mechanisms, and loss of opportunities for peaceful resolution of the conflict. While the killing of Jonas Savimbi of UNITA led to the demise of UNITA, killing Kony might not automatically lead to an end of the war. In fact, during our research into the northern conflict, it was clearly stated that, while there were no sympathies for the leadership of the LRA, the killing of Kony or the placing of him on trial in an international venue could serve to foster resentment and further civil unrest. The emphasis was clearly on bringing him to justice within local cultural systems.

4.1. The continuing cycle of violence

While the LRA and its top leadership have been degraded by a recent spate of defections, they still have the capacity to elude the UPDF and militias and hit soft targets. They continue to kidnap and kill civilians. Past experience has shown that statements such as ‘the LRA is finished’ only serve to provoke LRA attacks on more civilian targets to demonstrate that they are not a spent force. For example, in February 2004, at ceremonies marking the formation of new militias in Lira, a minister officiating at the ceremony stated that, with the new militia force, the LRA is already defeated; the war is over and the Government is planning for the reconstruction of the north. Barely a week after the ceremony, the LRA struck a camp for internally displaced persons at Barlonyo and massacred more than 190 people, although the Government claims that *only* 84 people were killed.

While Barlonyo and other such massacres cannot be directly linked to specific announcements, they do fit a consistent pattern, such as the invasion of Soroti and Katakwi following *Operation Iron Fist* mentioned above. As such, the announcement of the ICC investigation has the potential to raise the stakes in the conflict and make the LRA become even more elusive and aggressive. As noted above, it may increase the incentive, especially of LRA leadership, to fight and avoid capture at all costs. In the mean time, many more children, women, and men will be harmed or killed; many more

homes and communities will be destroyed. More human rights will be violated, and the cycle of violence will continue.

4.2 The undermining of the Amnesty Act

The second implication of the ICC announcement is that it is likely to undermine the existing blanket amnesty for ex-rebels and forced conscripts as provided by the Amnesty Act of 2000. It is possible that many LRA fighters will be reluctant to surrender under the Amnesty law for fear that they might be handed over to the ICC. The implication for those who have already surrendered is even more uncertain. While critics of the Amnesty Act argue that the limited number of amnesty applicants is an indication of its ineffectiveness, the majority of those interviewed during our research in northern Uganda see amnesty as the most feasible option to ending the conflict and ensuring that their abducted children can be persuaded to come home. Our study also demonstrated that the overwhelming majority of people believe that the amnesty law is the best way to resolve the conflict.¹⁰ In particular, amnesty is seen as being compatible with the people's existing traditional system of justice and dispute resolution mechanisms.

The critics of the Amnesty Law tend to look at the statistics¹¹ and the continuation of the killings by the LRA as proof of the failure of the law. This represents a mechanistic notion of the working of the law – critics expected the LRA to surrender in droves after the law was enacted. This view is also based on a lack of understanding of the sophistication of the LRA, ignores the difficulties in communication in the north, and is misleading. From the perspective of those living in the war zone, those who have a child or relative abducted by the LRA, the amnesty law has provided a framework with which they can woo back forced conscripts. Critics of the Amnesty Law would say that the recent increase in LRA commanders surrendering would be a result of the threat of the ICC investigations. There is no proof of this, but the reality is that these commanders are accessing the amnesty, and without the law there would be little incentive to escape the LRA, especially with the brutal force used against those rebels suspected of wanting to leave.

4.3. The undermining of local notions of justice and conflict resolution

Related to the undermining of the Amnesty Law is the question of weakening the local mechanism of conflict resolution and justice. The people affected by the war support the Amnesty Law because it is based on principles similar to their own traditional values regarding justice and conflict resolution.¹² For this reason, international conceptions of justice must be seen to have some complementarity with the local ideas of justice. Article 53 (1)(c) of the Rome Statute states that, in deciding if an investigation is to be initiated,

¹⁰ See, RLP Working Paper No. 11, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, February 2004

¹¹ According to Justice Peter Onega, Chair of the Government's Amnesty Commission, as of 15 July 2004, 13,231 persons had taken advantage of the blanket amnesty offered by the Commission. Of this figure, 5,000 are said to be ex-LRA.

¹² *ibid.* p. 45.

the Prosecutor should also consider whether the investigation will ‘serve the interests of justice.’ This raises a key question: whose definition of justice? Article 1, of the Rome Statute enshrines the principle of complementarity between the Court and the national criminal jurisdictions. What remains unclear is if complementarity is intended to include the notions, norms, and values of traditional communities? Likewise, do national rules of criminal justice and community rules of criminal justice complement each other? A reading of article 21 of the Statute on ‘applicable law’ suggests that international and national rules override rules, norms, values and traditions of local communities. In other words, international justice is not the same as justice as understood by the local people affected by the war. Given that the perception of a denial of ‘justice’ has been the cause of armed rebellion in Uganda and elsewhere, this concern should not be taken lightly.

According to the majority of the people who support the Amnesty Law, criminal justice – in this sense, punishing the LRA leaders for the crimes they have committed – must lead to an end of the conflict. Seen from their perspective, criminal justice is a process of confessions, forgiveness, cleansing, reconciliation, responsibility, restoration, rehabilitation, stability and continuity. Unlike the adversarial nature of existing national and international concepts of criminal justice, the sense of justice described here is consensual and restorative with the primary aim of re-establishing social cohesion and ending communal violence. However, critics of this form of justice (especially some international human rights organisations) often claim that it rewards the crime with impunity because the perpetrator is not ‘punished’ and is therefore inconsistent with concepts of international justice. Since the perpetrator is not ‘convicted’ and ‘sentenced’ to either death or life imprisonment, it is believed that he or she is not made accountable for his or her crimes.

While the systems of justice in local communities do have flaws, standard criticisms are often based on sweeping generalisations and without proper research and understanding of the notions of punishment within these systems. In some traditional communities, such as the Acholi and the Kakwa, there is no death penalty or prison sentence for the ‘convicted’ murderer. However, this is not to say that those who commit crimes are not made accountable. There is punishment and there is accountability. For example, a person who commits murder not only might be required to make material restitution to the family of the bereaved, but also might be assigned the responsibility of taking care of the family for the rest of his/her life. Particularly for communities such as those living in northern Uganda, which live in extreme poverty and marginal conditions, this ‘replacement’ of the role and service of the deceased usually seems more ‘just’ than punishing both communities by imprisoning or killing the offender. Thus, punishment in these communities is seen as restorative and rehabilitative rather than as retributive or a deterrent.

By their very nature, local community forms of criminal justice also serve as conflict resolution mechanisms. The process usually involves whole communities and the ‘trial’ not only deals with the particular crime or crimes but also addresses the root causes. In that sense, it has a particular incentive for perpetrators to turn themselves in. By contrast, national and international forms of criminal justice are not only adversarial; they are

vindictive and retributive and as such decrease the likelihood of surrender and increase the incentive for violence. We believe that if international justice is to be relevant to the people most affected by conflicts such as the LRA war, it has to find a way of allowing local values, norms and systems to play a part in dealing with the perpetrators.

4.4. The undermining of peaceful options

The fourth implication of the ICC announcement is that it has the potential to undermine efforts to resolve the northern conflict through peaceful negotiations. As previously noted, the knowledge that the top leaders of the LRA will be prosecuted increases the incentive to fight in order to avoid arrest. Any peace process will be seen by the rebel leadership as a ploy to arrest them. While critics of the peaceful alternative will argue that negotiations have been tried before but have not worked, our study clearly demonstrated that looking at peace within the constraints of a set timeframe is a flawed approach. What is important for people affected by a war such as that in northern Uganda is that there exists a mechanism through which they can reach their children and convince them to come home. Indeed, there are significant numbers of children who have been able to come home. Furthermore, our study has shown that past peace efforts failed because the conditions for negotiations did not exist. There has been mutual suspicion between the LRA and the Government; suspicions fed by prejudices, past experience and by conflicting public pronouncements that have undermined the government's own efforts at negotiation.¹³ For real peace negotiations to take place, we believe that the necessary environment of trust must first be established. Existing traditional mechanisms and institutions for peace building in the communities should be recognised and utilised where possible; and in identifying and supporting community initiatives for peace, all voices and actors must be included in every step. The peace process – cessation of hostilities, a negotiated peace agreement, justice and reconciliation, security, human rights as well as reconstruction and development – must be seen as an indivisible whole.

The greatest interest of the victims of the war in northern Uganda is ending the vicious cycle of violence. This was clearly reflected during our research. The victims know what they want: first, an end to the war; second, to return to their ancestral homes and start a new life; and third, reconstruction of social services like schools and dispensaries. Once they are safe at home, and their children can go to school without fear of abduction, only then can they be asked about those who visited horror on them. Thus, justice, at least in the legalistic sense of the word, is last on their list of priorities.

5. What will happen if the ICC goes ahead with Investigations?

The subject of investigations is covered by article 53 of the Statute. Under Article 53(1), the Prosecutor, before initiating an investigation, should consider whether:

- (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the court has been or is being committed;

¹³ *ibid.* pp 42, 43

- (b) The case is or would be admissible under article 17; and
- (c) Taking into account the gravity of the crime and the interests of the victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

Thus, the Prosecutor has enormous discretionary powers regarding initiation of investigations. Paragraph c of subsections 1 and 2 are pertinent to the situation in northern Uganda. The Statute enjoins the Prosecutor, to consider the interests of the victims and justice before deciding to investigate. When he or she decides not to launch an investigation in the interest of the victims and justice, he or she will inform the Pre-Trial Chamber of the Court. However, with the investigation already announced, we will focus on the likely impacts on the people in northern Uganda.

5.1 Victims and Witnesses

As noted above, the announcement of initiation of investigations might drastically increase the incentive for the top leadership of the LRA to fight, evade arrest and destroy evidence. In wars such as the one in northern Uganda, the primary evidence is the people themselves and the LRA has already demonstrated the willingness to punish entire villages for the offenses of an individual. If the Prosecutor goes ahead to launch investigations, we envisage three likely outcomes: first, violence will increase as Kony attempts to elude arrest or prove his continued strength, this will be complicated if, as can be expected, the Government of the Sudan and the Sudanese Peoples Liberation Army (SPLA) are employed to tighten the noose around his neck; second, it will become harder for abducted children and adults to escape; and third, potential witnesses and the communities they live in will be exposed to higher risks.

The safety of witnesses is a primary concern given the fluid security situation in northern Uganda. Although article 68 of the Statute stipulates that the ‘Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity, and privacy of victims and witnesses,’ it does not include the protection of interests of victims and witnesses in situations of investigations. Clearly, the protection envisaged here relates to proceedings in the Court. Under Rule 87 of the ‘Rules of Procedure and Evidence’, of the Court, the Prosecutor or ‘the defence’ or the witness, or a victim or his or her legal representative may, in consultation with the ‘Victims and Witnesses Unit’, apply to a Chamber of the Court for measures to ‘protect a victim, or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2’. Upon critical analyses of the provisions on protection of victims and witnesses, our view is that the measures envisaged by the Rome Statute and its Rules of Procedure will not adequately address the protection needs of witnesses and victims in northern Uganda for three main reasons: first, the LRA are still at large and under such situation, it is not possible to protect witnesses and victims without creating further displacement; second, and related to the first, the Government of Uganda has not been able to adequately guarantee the security of people in the north and the LRA have succeeded in attacking civilians in government protected camps; third, in the context of northern Uganda, witnesses and victims include extended families and communities. Ensuring the safety of victims and witnesses by the Court will be a huge challenge.

6. Conclusion and Some Recommendations

We conclude by attempting to answer one of the pertinent questions we posed above: can an international tribunal or court like the ICC bring an end to an ongoing war or conflict? Sadly, we answer that question in the negative. The involvement of the ICC at this particular time is diversionary. While we have some faith in international justice, we do not believe that it will necessarily lead to stability. From our perspective, justice must include socio-economic justice; it must include fairness in political competition. Hanging criminals or locking them behind bars might help, but as Henry George aptly predicted centuries ago, ‘our charities, our penal laws, our restrictions and prohibitions, by which, with so little avail, we endeavor to assuage poverty and check crime, what are they, at the very best, but the device of the clown who, having put the whole burden of his ass into one pannier, sought to enable the poor animal to walk straight by loading up the other pannier with stones?’¹⁴

We must get to the roots causes of both crimes and insurgencies. We need to honestly and sincerely deal with the root causes as well as punishing the criminals. Emphasizing one at the expense of the other will lead us back to where we began. George cautioned, ‘What we must do if we would cure social diseases and avert social danger is to remove the causes which prevent the just distribution of wealth’.¹⁵

We thus make the following recommendations:

1. To the ICC:

- a) In light of the ongoing war, and the potential of it further endangering the civilians in northern Uganda, the ICC should suspend the formal launch of investigations into the situation of the LRA. It is not possible to guarantee the safety of victims and witnesses under such circumstances. It is in the best interests of the victims and witnesses to suspend investigations.
- b) Guard your independence by *inter alia*, strictly observing procedural decorum or matters, especially with regard to referrals by States Party to the Statute. Although in some cases procedural rules are said to be simply the hand maid of substantive rules, in some situations procedural rules are as important as the substantive rules because they can make or break a case.
- c) First conduct research in order to understand the political contexts from which a State Party to the Statute will make a referral. Prosecutor’s staff should discreetly travel to northern Uganda in order to better understand the situation there.
- d) Investigate potential crimes of all parties in the war – both the LRA and UPDF – in accordance with the Statute.

¹⁴ George, Henry, *Social Problems*, 1883, available on <http://www.schalkenbach.org/library/george.henry/sppf1981.html>

¹⁵ *ibid.*

- e) Further consideration must be given to a community's traditional forms and concepts justice.

2. To Civil Society:

- a) Immediately, step up your advocacy work and make your position clear; either for the ICC involvement or for peaceful resolution of the conflict.
- b) Consider legal options within the Rome Statute that will allow you to halt the process, in the event that the Prosecutor goes ahead with formal investigations. Through the services of a lawyer, an application on behalf of the victims of the war could be filed with the Pre-Trial Chamber of the ICC requesting a stay of the formal launch of the investigations.
- c) Continue to lobby both against amending the Amnesty Act and for its extension for periods of six more months.

3. To the Government of Uganda:

- a) If power belongs to the people, listen to them. The overwhelming majority of those affected by the war want a peaceful end to the conflict, but this is not to say that they are against punishment of the perpetrators.
- b) Approach peace talks sincerely and with words and actions which are consistent with sustaining negotiations.
- c) Do not amend the Amnesty Act.