

The International Criminal Court (ICC), National Courts, Truth Commissions and Peace Negotiations; Complimentary or Alternatives to the Restoration of Peace in Northern Uganda?

By Nakitto Saidat*

Introduction

The Rome Statute of the International Criminal Court (1998)¹ establishes the ICC (International Criminal Court), which was adopted on 17 July 1998² by the UN Diplomatic Conference of Plenipotentiaries and later came into force on 1 July 2002.³ The ICC is in operation, currently investigating situations the Democratic Republic of Congo (DRC), Uganda, Sudan and the Central African Republic (CAR).⁴ The subject of this essay is limited to the ICC investigations in Uganda and encompasses the on-going peace negotiations (though currently suspended following the failure of the LRA leader to sign the comprehensive peace agreement) between the Government of Uganda (GoU) and Lord's Resistance Army (LRA), the anticipated criminal prosecutions by the ICC and the national courts and also the feasibility of the establishment of the truth commissions.

The first part of the essay discusses the historical background to the conflict in northern Uganda up to the current date and will explore the involvement of the ICC. The second part discusses the concepts of international justice, the national justice, the truth commissions and the peace negotiation, advancing the argument that the four are not alternative to achieve a goal. The third part discusses how the four mechanisms can and must work together to achieve one solution, and the last part is the conclusion that the four mechanisms should be integrated into a single comprehensive solution. This essay seeks to

*Nakitto Saidat, Lecturer Faculty of Law, Islamic University in Uganda, P.O. Box 2555, Mbale - Uganda.
E-Mail nsaddah@yahoo.co.uk.

¹ See Article 1 of the Statute. For a detailed discussion of the origin and establishment of the ICC, see Lee, R. S. (ed) *The International Criminal Court the making of the Rome Statute: Issues, Negotiation, Results.* (The Hague: Kluwer Law International, 1999), pp. 1- 4. See also Schabas, W. A. *An Introduction to the International Criminal Court.* (3rd ed) (Cambridge, Cambridge University Press, 2007). See also Bassiouni, M. C. *The Statute of the International Criminal Court: A Documentary History.* (Ardsey, Transnational Publishers, Inc. 1998); See also Kirsch, P., and Holmes, J. T. 'The Birth of the International Criminal Court: The 1998 Rome Conference.' (1998) 36, *Canadian Year Book of International Law*, at pp. 3-39.

² See Schabas, W. A. *An Introduction to the International Criminal Court.* (3rd ed) (Cambridge, Cambridge University Press 2007) at p. 21.

³ Ibid.

⁴ Ibid, at pp. 36-52; see also Grono, N. and O'Brien, A. (11 October, 2007). 'Justice in Conflict? The International Criminal Court and Peace Processes in Africa.' [Online] Available at <<http://www.crisisgroup.org/home/index.cfm?id=5120&l=1>> Accessed on 11 December 2007.

argue for the integration of the four mechanisms to achieve one comprehensive solution of attaining long lasting peace, justice and reconciliation.

Part 1: Historical background

The ICC investigations were triggered off on 16 December 2003 after the President of Uganda referred the situation in northern Uganda to the Chief Prosecutor for investigation.⁵ This situation concerns the armed conflict waged by the Lords' Resistance Army (LRA) for the past 21 years leading to massive displacement of people, killings, torture, mutilation, abduction and conscription of young boys into the LRA rebel group as combatants, among others.⁶ The referral to the ICC was made after a failed attempt by the Government of Uganda (GoU) to resolve the conflict amicably, more so when the leaders of the LRA ignored call for amnesty,⁷ and instead responded by intensifying the atrocities. On 29 July 2004, investigations were opened into the crimes committed by the LRA since 1 July 2002⁸ and sealed warrants of arrest of the five LRA commanders (Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya) were issued on 28 July 2005 and unsealed on 14 October 2005.⁹ However, note should be taken that these warrants have not been executed yet and two of the accused persons were reported dead, that is, Raska Lukwiya, Vincent Ott¹⁰, and now Okot Odhiambo is rumoured dead.

⁵ Moreno-Ocampo, L. (14 October 2005). 'Investigations in Uganda.' [online]. Available at <<http://www.icc-cpi.int/library/organs/otp/Uganda-PPpresentation.pdf>> Accessed on 18/01/08.

⁶ For a detailed discussion of the human rights violations committed by the LRA in northern Uganda, the International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley. (July 2005). 'Forgotten voices; A population-based survey on attitudes about peace and justice in northern Uganda.' [online]. Available at <<http://www.globalpolicy.org/intljustice/icc/2005/0725forgotten.pdf>> Accessed on 18 January 2008.

⁷ Refugee Law Project Working Paper No. 17 (July 2005) 'Peace First, Justice Later: Traditional Justice in Northern Uganda.' [online]. Available at <<http://www.globalpolicy.org/intljustice/icc/2005/07peacefirst.pdf>> Accessed on 7 December 2007, at pp. 3-4.

⁸ See Amnesty International. (November 16, 2004). 'Uganda: Government Cannot Prevent the International Criminal Court from Investigating Crimes.' [online]. Available at <<http://www.globalpolicy.org/intljustice/icc/2004/1116prevent.htm>> Accessed on 18 January 2008.

⁹ Ibid, see also Moreno-Ocampo, Luis. (14 October 2005). 'Statement by Chief Prosecutor on Uganda Arrest Warrants.' Available at <http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051014_English.pdf> Accessed on 7 December 2007.

¹⁰ See statement of the Prosecutor, Luis Moreno Ocampo. (8 November 2007). 'Information about the death of Otti-Prosecutor.' [online]. Available at <http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-258_English.pdf> Accessed on 18 January 2008.

These criminal investigations are carried out along side the peace negotiations between GoU and the LRA, which were opened on 14th July 2006, with South Sudan Vice President Riek Marchar as the chief mediator.¹¹ All these measures are undertaken in a bid to get solutions to the long-term armed conflict in northern Uganda. Other measures used by societies emerging from armed conflicts include, traditional justice mechanisms, truth commissions, vetting and lustration, reparations, legal and institutional reform.¹² The intervention by the ICC was criticised that it was to exacerbate violence and undermine the peaceful negotiations.¹³ As to whether ICC investigations are undermining the peace negotiations or whether both can be applied simultaneously together with national justice and the search for the truth, is better determined, first, by establishing the goals of criminal law. The fundamental sanctioning goals for criminal law of protection, restoration and improvement of public order can be categorized into specific goals of preventing, suspending, deterring, restoring, correcting, rehabilitating and reconstruction.¹⁴

In light of the four mechanisms, one can view international and national justice as serving the goals of preventing, suspending and deterrence, while the truth commissions and peace negotiations serving the goals of restoring, correcting, rehabilitating and reconstruction. The premise of this essay is that international justice, national justice, the search for the truth and peace negotiations are not alternatives to achieve a goal (since they have different aims and purposes), but can and must work together, and should be integrated into one comprehensive solution, a solution of achieving justice, long-lasting peace and reconciliation.¹⁵ This can be achieved through the prosecution and punishment of

¹¹ Mukasa, H. (2007). 'A Year of peace talks.' *The New Vision*, 14 July 2007, at p. 1.

¹² International Center for Transnational Justice and the Human Rights Center, University of California, Berkeley, 'Forgotten voices: A population-based Survey on Attitudes about Peace and Justice in Northern Uganda.' *Supra* note 6, at p. 8.

¹³ See Allen, T., (February 2005) 'war and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention.' [Online] Available at <<http://www.globalpolicy.org/intljustice/icc/2005/02ugandacrisis.pdf>> Accessed on 7 December 2007, at pp.3-4.

¹⁴ Reisman, W. M. 'Institutions and Practices for Restoring and Maintaining Public Order.' (1995) 6 *Duke Journal of Comparative and International Law* 175-186, at pp. 175-176.

¹⁵ This common goal can be inferred from the presentation of the Chief Prosecutor, Moreno-Ocampo, L. (14 October 2005) 'Investigations in Uganda.' [online]. Available at <<http://www.icc-cpi.int/library/organs/otp/Uganda-PPpresentation.pdf>> Accessed on 18 January 2008.

the major war criminals before the ICC, with the aim of ending impunity; and making the rest of the perpetrators accountable for their crimes before the national courts; or make them publically acknowledge their crimes and seek for forgiveness before the truth and reconciliation commission, or by use of the traditional peace mechanisms. All these mechanisms are hinged on the successful conclusion of the peace negotiations together with its five (5) point agenda,¹⁶ with the third agenda providing for the promotion of 'formal and non formal institutions and measures for ensuring justice and reconciliation.'¹⁷

Part 2.0 The concepts of International Justice, National Justice, Truth Commissions and Peace Negotiations as alternatives to achieve own goals?

2.1 The International Justice

It should be noted from the outset that the term 'justice' can be classified into two; that is, retributive justice, which is aiming at punishment for crimes committed and restorative justice which means 'to repair the injustice, to make up for it, and to effect corrective changes in the record, in relationships and future behavior.'¹⁸ From this distinction it can be implied that international and national justice mechanisms fall under the category of retributive justice while the search for the truth and peace negotiations are covered under restorative justice. In discussing international justice, regard is to be had to the operation of the ICC as a mechanism for the enforcement of international justice,¹⁹ and also because it is the subject of this discussion. The mission or main goal of the ICC is "of preventing impunity for the most serious international crimes,"²⁰ committed after the entry into force of the

¹⁶ The five-point agenda refers to the steps that will be taken for conclusive peace process between the LRA and Government of Uganda. These are the Cessation of Hostilities Agreement, the agreement on Comprehensive Solutions to the causes of the War, agreement on the Principles of Accountability and Reconciliation, Cease fire and Disarmament and lastly, Demobilization and Resettlement. This process is at the third stage.

¹⁷ See Mukasa, H. 'Government LRA agreement on accountability and reconciliation.' *The New Vision*, 3 July 2007.

¹⁸ Mallinder, L. 'Can Amnesties and International Justice be reconciled?' (2007) 1 *The International Journal of Transnational Justice*, pp. 1-24 at 13; see also Refugee Law Project Working Paper No. 17 (July 2005) Supra note 7, at p.11.

¹⁹ See paragraph 11 of the Preamble to the Rome Statute of the International Criminal Court.

²⁰ Brown, B. S 'Primacy or Complementarity: Reconciling the Jurisdiction of National Court and International Criminal Tribunals.' (1998) 23 *Yale Journal of International Law*, 383, p. 427. See also paragraph 5 and Articles

Rome Statute.²¹ From these provisions one can deduce that the goal of international justice is to prosecute individuals who are “most responsible”²² for the commission of international crimes, in a bid to end impunity of the perpetrators and prevent the reputation of such crimes.

The ICC investigations in Uganda are therefore intended to obtain sufficient evidence on individuals alleged to have committed the most serious crimes, that is, the LRA commanders who are charged with several war crimes and crimes against humanity.²³ However, the limitations of ICC jurisdiction on the nature of offences to be prosecuted, the category of criminals to be tried, and more so, on the temporal jurisdiction, eliminates many crimes from the ambit of the ICC. The effect of this is that few crimes committed by selected perpetrators are under investigation of the ICC for possible prosecution, and if the ICC is to act as an alternative to achieve a goal, many crimes and perpetrators will be eliminated. In the absence of any other accountability mechanism, the investigation (for future prosecution) of only a handful of perpetrators and leaving the majority at large will not only encourage impunity but also leave the victims’ claims unrecognized and unaccounted for. More still, the success of the ICC as an international justice mechanism largely depends on the assistance of the national justice system, in terms of investigation, arrest and detention of the criminals, imprisonment, among others. Thus international justice should not be exercised in alternative to achieve a goal, but for efficiency, it needs to operate along side the national justice mechanisms, each complimenting the other.

1 and 5 of the Rome Statute of the International Court.

²¹ Ibid, Article 11(1).

²² see Mallinder, L., *supra* note 18, at p.14.

²³ See For offences against Kony, see warrant of arrest ICC Doc ICC-02/04-01/05 dated 27 September 2005, for Vincent Otti see ICC Doc. ICC-02/04 dated 8 July 2005, for Okot Odhiambo see ICC Doc. ICC-02/04 dated 8 July 2005 and Domonic Ongwen see No.: ICC-02/04 dated 8 July 2005. For Raska Okwiya, the warrants of arrest was rendered without effect since he is deceased. See ICC-02/04-01/05-248 of 11 July 2007, accessed at <<http://www.icc-cpi.int/cases/UGD.html> on 12 March 2008.

2.2 National Justice System

It should be stated from the outset that the primary obligation to investigate, prosecute and punish criminals lies with the national courts²⁴ and the ICC's role is only complementary²⁵ to the national jurisdiction. According to Cryer,²⁶ complementarity means that the ICC is not 'intended to replace national prosecutions or even be superior to them. It is intended to work as a supplement to national courts, when the states are "unwilling or unable" to operate'; or carry out the investigation or prosecute.²⁷ This Complementarity 'applies to all aspects of the relationship between the ICC and national courts, including not only jurisdiction to prosecute, but also judicial assistance, extradition, and other forms of state cooperation with the ICC.'²⁸

The implication of the Complementarity provision is that ICC's role is only invoked where the State is unwilling or unable to investigate or prosecute; otherwise, the first priority to investigate or prosecute perpetrators is afforded to national courts. Of recent, GoU and the LRA signed 'another agreement on accountability and reconciliation which agreement provides for a special division of Uganda's High Court to prosecute serious crimes committed in the northern war.'²⁹ This implies that the GoU is making preparations to prosecute the perpetrators, commander or no commander and at the same time, ICC is also preparing for prosecution of the LRA leaders.³⁰ In such circumstances, the complementarity

²⁴ Lee, R.S. (ed) *The International Criminal Court the making of the Rome Statute: Issues, Negotiation, Results*. (The Hague, Netherlands: Kluwer Law International 1999), at p.1.

²⁵ See paragraph 10 of the Preamble and Article 5 of the Rome Statute of the International Criminal Court.

²⁶ Cryer, R. 'A Commentary on the Rome Statute for the International Criminal Court: A Cadenza for the Song of Those Who Died in Vain?' (1998) 3(2), *Journal of Armed Conflict Law*. at 272.

²⁷ See Article 17 of the Rome Statute for the International Criminal Court; also more discussion on the principle of Complementarity, see Brown, B. S. 'Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals.' (1998) 23, *Yale Journal of International Law*. p. 383-436; Concannon, B. 'Beyond Complementarity: The International Criminal Court and National Prosecutions, a View from Haiti.' (2001) 32, *Columbia Human Rights Law Review*, at pp. 201-250.

²⁸ Brown, B. S. 'Primacy or Complementarity: Reconciling the Jurisdiction of National Court and International Criminal Tribunals.' (1998) 23 *Yale Journal of International Law*, 383-436, at p. 386.

²⁹ Grace Matsiko, 'Juba talks; The bumpy ride to peace in north.' *Daily Monitor*, Wednesday, February 27, 2008. [online] Available at

<http://www.monitor.co.ug/artman/publish/inside_politics/Juba_talks_The_bumpy_ride_to_peace_in_north.shtml> Accessed on 27 December 2007; see also Julian Ku, 'Uganda and LRA Agree to Domestic War Crimes Court.' [online] Available at <<http://www.opiniojuris.org/posts/1203735265.shtml>> Accessed on 27 December 2007.

³⁰ See ICC Doc. [ICC-CPI-20080310-PR293-ENG] available at <<http://www.icc-cpi.int/press/pressreleases/344.html>> accessed on 10 March, 2008, where it is reported that the LRA rebel commanders charged before the ICC are to meet with the officials of the Registry of the ICC to discuss issues related to their legal representation.

rule requires the ICC not to exercise jurisdiction³¹ and this supported further by the concept of admissibility,³² which clearly provides that the ICC only has jurisdiction to investigate or prosecute the matter where the state is not willing or not able to do so.³³ However, the actions of the GoU of executing an agreement with the LRA intimating that the LRA will be prosecuted before a Special court created for such purpose, is an indicator of Uganda's willing to prosecute the case. However, the GoU has failed to arrest the accused persons³⁴ implying that is un able to investigate and prosecute the LRA. This reinforces the argument that national courts cannot work in isolation of the other three mechanisms but need the support of all, as discussed in the proceeding part.

It should however be noted that justice alone is not enough in the post-conflict situation because of its adversarial nature and largely serves the interests of the state and the international community, leaving the victims to deal with the effects of the atrocities, yet they suffered most and are still suffering. This necessitates the establishment of truth commissions in order to have the victims recognized.

2.3 Truth Commissions

Steiner defines Truth Commission to mean 'a generic designation of a type of governmental organ that is intended to construct a record of this tragic history...'³⁵ Such truth commissions have been held in states like Sierra Leone, Peru, Guatemala, El Salvador, Ghana, East Timor,³⁶ Argentina, Chile, South Africa, among others. According to Judge Robertson Truth Commissions 'offer two distinct prospects for victims-of truth, i.e. learning how and why they or their loved ones were murdered or mutilated, and of reconciliation, through

³¹ See Bassiouni, *supra* note 1, at p. 409.

³² See Article 17 of Rome Statute of the International Criminal Court.

³³ To determine 'unwillingness' and 'Inability,' see the Rome Statute of the International Criminal Court, Article 17(2) and (3) respectively.

³⁴ *Ibid* Article 17(3).

³⁵ See Steiner, H.. 'Introduction to Truth Commissions.' Cited in Steiner, H., Alston, P. and Goodman, R. (2008) *International Human Rights in Context: Law, Politics, Morals*. (3rd edn) (Oxford: Oxford University Press. (1997), at P. 1345.

³⁶ For a comprehensive discussion of the truth commissions see Schabas, W. A., and Darcy, S. (eds). *Truth Commissions and Courts The Tension Between Criminal Justice and the Search for Truth*. (The Netherlands: Kluwer Academic Publishers 2004).

understanding and forgiveness of those perpetrators who genuinely confess and regret.³⁷ This heals the victims upon discovery of the truth and the perpetrators own up their actions. Truth Commissions also lead to reconstruction of society, forgiveness, building of social cohesion and ultimately reconciles the people,³⁸ since amongst the objectives of truth-seeking is reconciliation.³⁹ The big question is whether the envisaged establishment of truth commission is to operate in parallel with the traditional mechanism of justice. The parties to the peace negotiations continuously make reference to the application of the Acholi traditional justice mechanism of Mato Oput, which 'requires that the offenders admit guilt and unequivocally ask the victims for forgiveness, coupled with discussions of integrating the LRA into the cabinet, diplomatic services and political arena other than prosecutions,⁴⁰ all raises suspicion of the commitment of the GoU to prosecute the LRA commanders.

The danger of applying truth commissions in alternative to the other mechanisms is that impunity will be encouraged leading to further atrocities, like in Sierra Leone.⁴¹ The other danger is of discrepancies in information, and sometimes the TRCs "have a bad habit of reflecting the prejudices and agendas of their framers"⁴² for instance in South Africa, thereby giving a one sided story and laying blame on another side and yet healing and reconciliation are not automatic. This necessitates the application of truth commissions simultaneously with other mechanisms to supplement them in the achievement of peace, justice and reconciliation. In order to achieve peace, there is need to give the peace negotiations between the GoU and the LRA a chance to success. The next part analyses whether the peace negotiations can sustain peace in northern Uganda in total disregard of the other mechanisms.

³⁷ See the case of Prosecutor v Norman (Case No. SCSL-2003-08-1), indictment, 7 March 2003.

³⁸ More on social reconstruction and reconciliation see Refugee Law Project Working Paper No. 17 (July 2005) Supra note 7, at pp. 7-9.

³⁹ Kemp, S., 'The Inter-relationship between the Guatemalan Commission for Historical Clarification and the Search for Justice in National Courts.' in Schabas, W. A. and Darcy, S. (eds). Supra note 36, at p.73.

⁴⁰ See Grace Matsiko, Juba talks: "The bumpy ride to peace in north" *Daily Monitor*, Wednesday, February 27, 2008. [online] Available at <http://www.monitor.co.ug/artman/publish/inside_politics/Juba_talks_The_bumpy_ride_to_peace_in_north.shtml> Accessed on 27 December 2007.

⁴¹ see Schabas, W. A. 'A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone.' in Schabas, W. A. and Darcy, S. (eds). Supra note 36, pp. 3-54 at p.3.

⁴² Mallinder, L., (2007). 'Can Amnesties and International Justice be reconciled?' (see note 18).

2.4 Peace Negotiations

Peace process refers to the resolution of conflicts through negotiations rather than use of arms. It is intended to ward off further conflicts by uniting the conflicting parties and settling their differences, through consensus. It is a method by which warring parties reach a compromise through peaceful means. The debate as to whether to pursue peace or justice hinges upon this discussion and the question is; whether one should come after the other or whether both can be applied concurrently is not settled.⁴³ Advocates of peace argue that the current ICC investigations with prospect of prosecution are threatening the peace negotiations in that no peace agreement will be sealed with the arrest warrants in place.⁴⁴ However, those in favour of justice advance the deterrence measure as the main point of argument that peace 'is not a viable long-term option.'⁴⁵ It can be argued that though the intervention of the ICC influenced the LRA to the peace negotiating table, it is the same body which has led to the stalemate of the peace process because the LRA's firmly stated that even though the peace agreement is signed, they will not disarm until the ICC indictments are lifted. Furthermore, research 'suggests that nearly half of all peace agreements breakdown within five (5) years, and more within a ten-year period, while many of the remainder enter a "no war no peace" limbo whose evaluation is difficult.'⁴⁶ This reinforces the view that the peace negotiations cannot work in alternative but must be complimented with other mechanisms in order to achieve long lasting peace, Justice and reconciliation as discussed in the next part.

Part 3. Can and must International Justice, National Justice, the Search for the Truth and Peace Negotiations work together?

⁴³ For a detailed discussion about peace and justice see Refugee Law Project Working Paper No. 17 (July 2005) Supra note 7, at pp. 9-19; see also Allen, T., (February 2005), supra note 13 at pp. 40-64; see also the International Center for Transnational Justice and the Human Rights Center, University of California, Berkeley. (July 2005), supra note 6, at pp. 17-19.

⁴⁴ Allen, T., (February 2005), supra note 13, at p.43.

⁴⁵ See International Center for Transnational Justice and the Human Rights Center, University of California, Berkeley. Supra note 6, at p.3.

⁴⁶ Chritine Bell, 'Peace Agreements: Their Nature and Legal Status.' 100 AJIL 373 (2006) p.375.

International Justice, national justice, the search for the truth and peace negotiations are not synonymous and have got different goals but they can and must co-exist clearly mapping out the roles of each to avoid confusion and conflicts. This part discusses the view that international justice, national justice, the search for the truth and peace negotiations can and must work together. First, the discussion analyses how the ICC can work in parallel with the national courts giving reasons why the two must work together. The LRA commanders, the army, with many captives, now turned rebels, wives and mothers, are still at large, all following the developments in the conflict. The issue is how best, can the rebels be brought to book and at the same time secure the release of the captives? With regard to arresting the rebels, the national justice mechanisms have so far registered failure and they need the assistance of the ICC, which has, throughout the peace negotiations proved a threat to the LRA. In event that the ICC withdraws from the investigations and prosecutions, it is doubtful whether the LRA will continue to cooperate in the peace process up to the signing of the comprehensive agreement. However, the ICC has no enforcement mechanism and being largely dependent on states parties for assistance with 'identification and location of persons; the taking of testimony and production of evidence, the service of documents; and the arrest or detention of persons,'⁴⁷ it cannot work alone but must work with the GoU to secure the arrest of the LRA rebels, prosecute and punish them. Alternatively, the arrest of the LRA perpetrators can be achieved successfully with the LRA's full cooperation, which can only be secured through the peace negotiations.

Therefore, GoU should cooperate with the ICC by assisting in the investigations,⁴⁸ making arrests, collecting and storing evidence, among others,⁴⁹ and the ICC should assist through lobbying for financial assistance from the international bodies and member states and more importantly by urging member states to cooperate in the arrest of the rebels. Since the

⁴⁷ Sadat-Wexler, L. 'The Proposed Permanent International Criminal Court: An Appraisal.' *Cornell International Law Journal*. (1996) 29, pp. 665-726, p.706

⁴⁸ More of the forms of state cooperation see part IX of the Rome Statute for the International Criminal Court, particularly, Article 93.

⁴⁹ Harris, D. J. 'Progress and Problems in Establishing an International Criminal Court.' (1998) 3(1), *Journal of Armed Conflict Law*, p. 2.

LRA rebel leaders are stated to be hiding in the Central African Republic⁵⁰ and their arrest warrants are pending execution, there is need for regional and international support to secure their arrest. The cooperation of these states can be secured by the ICC, not GoU and this shows that the successful resolution of the armed conflict in Uganda and the establishment of long-lasting peace require the cooperation of several actors not only domestically, but also internationally.

The argument that the 'relationship between national and international jurisdiction depends upon a delicate balance of national interest and international community interests,'⁵¹ is plausible because the conflict in northern Uganda has affected both the interest of Uganda and the international community because it spread over the neighboring states and the nature of atrocities deeply shock the conscience of humanity. In the interests of international and national justice, the ICC and GoU should assist each other in every way, with the ICC availing the resources in terms of finance, equipments and personnel and GoU availing bodies like police, military intelligence, infrastructure, among others, to assist in the investigations, identification of the accused persons, the victims, collection of evidence and securing the arrest of the perpetrators. This reinforces the argument that international justice and national justice should not be applied in alternative but can and must work together to ensure the successful arrest and prosecution of the LRA commanders. However, to avoid confusion amongst the two mechanisms, the ICC should exercise jurisdiction over the LRA commanders, having committed the most serious crimes of international law and GoU should deal with the rest of the perpetrators.

In addition, the successful operation of the ICC and national mechanism in upholding justice and ensuring accountability for the crimes committed, warrant the compliment from

⁵⁰ Nyakairu, F, 'Kony Crosses into Central African Rep.' *The Sunday Monitor*, Wednesday, March 16, 2008. Available at <http://www.monitor.co.ug/artman/publish/sun_news/Kony_crosses_into_Central_African_Rep.shtml> Accessed on 19 March 2008.

⁵¹ Brown, B. S. 'Primacy or Complementarity: Reconciling the Jurisdiction of National Court and International Criminal Tribunals.' (1998) 23 *Yale Journal of International Law.*, 383, at 391.

truth commissions, because Truth commissions help to construct the history and also establish more facts on which to base conviction. In addition, the lengthy period of criminal prosecutions, the strain on the prison systems, the insufficient resources, among others, all operate against criminal prosecutions. Considering the numerous crimes committed in armed conflicts, gives rise to trial of many perpetrators, most of who cannot be prosecuted in Courts, like for the case of Rwanda. The end result is that few trials are conducted, which take long to completion thus rendering the deterrence role meaningless. This necessitates the establishment of truth commissions to operate along side the Courts, more so in regard to child soldiers who are forced into the criminal acts, or even perpetrators of minor offences, and also victims of sexual abuse, to protect them from the stigma associated with criminal trials. For instance the Sierra Leone truth commission had special attention on child perpetrators and victims of sexual abuse.⁵²

Owing to the differences in the objectives of criminal prosecutions, being, to establish who the most responsible perpetrators are and punish them, and for the truth commission, seeking to establish the truth about the conflict, tracing it from the causes of the conflict, the perpetrators the victims and also solutions, warrants the operation of these mechanisms. They can work together with different mandates for instance, truth commissions can operate in regard to Child perpetrators and perpetrators of minor offences and the rest face criminal prosecutions in order to enforce justice and prevent impunity. The testimonies before truth commission will avail information of the roles played by individual perpetrators thereby establishing which accused persons are to appear before the truth commission and before the courts, and basing on such information, more perpetrators will be arrested, same applies to evidence thus they must work together.

Truth-seeking should not be thought of as a replacement to criminal prosecutions because the two have different goals and are not synonymous, however, they should be allowed to co-exist but the inter-relationship between the two should be clearly mapped out,

⁵² See Schabas, W. A., *supra* note 36, p.9.

for instance, it should be clearly indicated whether the information divulged in the truth commission is to be used in prosecutions so that people who confess before these Commissions know before hand that their disclosures may be based upon for criminal prosecutions. This will avoid a scenario of accused persons confessing guilt when in the first instance they are not guilty, but just to do away with criminal trials. As to whether the information obtained from the truth commission is admissible in court, will depend on the agreement of the parties concerned, but preferably if they are two work together, there must be a provision in the legislation establishing the Commission that self-incriminating evidence given before truth commission is inadmissible, in order to safe guard the people who confess before commissions, encourage more disclosures and avoid distortions of the story. This will maintain the credibility of the commission.

Restorative justice sometimes deal in parallel with the criminal justice system, however it has the disadvantage of pressuring the accused to admit the crime even if he is innocent, to pretend that he is sorry even where he does not feel sorry and the objective of reconciliation is never achieved. Thus the issue of the perpetrators confessing and seeking for forgiveness, as well as the perception that the victims will forgive outright, is not automatic. Where both the perpetrators and the victims are forced into accepting truth commissions for various reasons, then the result of these Commissions will have a sort-lived impact and the chances are that it may spin into another conflict. Thus there is need to inculcate a culture that perpetrators of international crimes are accountable for the crimes they commit to avoid the culture of impunity. The peace negotiations should not be made solely on the basis of according the former rebels complete immunity from criminal prosecutions. This will encourage justice, long lasting peace and reconciliation.

Most Truth Commissions are a result of peace negotiations exhibiting the willingness of the perpetrators to seek forgiveness, be reconciled and integrated in the society. The peace negotiations between GoU and the LRA are alluding to the establishment of the traditional justice mechanism, which has got almost similar functions like for truth commissions. In view

of the problems discussed above relating to the arrest of the LRA, it is pertinent that the peace negotiations progress to facilitate the surrender of the rebels to the authorities for prosecution depending on the level of individual responsibility and the nature and gravity of the offences committed.

However, the argument that peace will conflict with justice is baseless because the peace deal does not rule out prosecutions by the state, the peace negotiations having intimated on the establishment of a Special division in the Uganda High Court to prosecute serious crimes. However, the view that Kony and his senior commanders 'appear to want a negotiated settlement' so that they can live a comfortable life thereby facilitating impunity,⁵³ is already manifested in the recent discussion between the parties of sharing top government positions. Despite the trend the peace negotiations are taking, they should not be antagonized, reason being that they have lead to the conclusion of a permanent ceasefire agreement.⁵⁴ This has not only improved security in northern Uganda but it also brings the rebels closer to home and in event that the comprehensive peace agreement is signed and the rebels disarmed and demobilized, then the prosecutions and truth commissions will begin operation. Without the peace negotiations, the arrest of the rebels is far from being realised unless if the United Nations avail its force for the same as the last alternative.

Part 4 Intergration of International Justice, National Justice, Truth Commission and Peace Negotiations into one Comprehensive Solution.

This discussion argues that international justice, national justice, the search for the truth and peace negotiations should be integrated into one comprehensive solution. The major purpose of the Accountability and Reconciliation agreement signed between the GoU and the LRA, is to attain accountability and reconciliation, through the promotion of 'national legal arrangements, consisting of formal and non formal institutions and measures for

⁵³ Allen, T. (February 2005), *Supra* note 13, at p.64.

⁵⁴ See Matsiko, G., 'Govt, rebels sign a permanent cease fire agreement in Juba.' *Sunday Monitor*, 27 February 2008. [Online] Available at <http://www.monitor.co.ug/artman/publish/sun_news/Govt_rebels_sign_permanent_ceasefire_agreement_in_Juba.shtml> Accessed on 27 February 2008.

ensuring justice and reconciliation...⁵⁵ This implies that the GoU and LRA rebels are already anticipating the combination of the various mechanisms, in this case criminal prosecutions, truth commissions, traditional mechanisms of justice (the Mato Oput) to compliment the ongoing peace process.; but the operation of the ICC contested by the LRA and the GoU is adamant about withdrawing the warrants of arrest not until the conclusion of the comprehensive peace agreement.

In order to realise one comprehensive solution of creating of long lasting peace, enforcement of justice and reconciliation, the four mechanisms should be allowed to operate at the same time, each fulfilling its role, that is, for the ICC to continue with the investigation and preparations for the prosecution of perpetrators charged with the most serious crimes thereby ending impunity; for the national justice mechanisms, to assist the ICC in fulfilling its work by carrying out arrests, collection of evidence, identification of the accused persons and victims, witness protection, among others, and at the same time make preparations for prosecution of the rest of the perpetrators.

Preparations should also be made for the establishment of a truth commission to cater for the child perpetrators and those alleged to have committed minor offences in order to reduce on the strain on national courts, prisons, as well as the saving finance and time. The truth commission also of much importance in the healing process for the victims since it recognizes the wrongs caused to the victims by giving them a voice to talk about their suffering. More importantly, the peace negotiations should also be facilitated till conclusion together with the disarmament and demobilization of the former rebels into society, especially the former abductees whose offences are minor and also child soldiers whose integration into the society is of vital importance.

In conclusion, it is only by applying the four mechanisms that Uganda will have long-lasting peace and also facilitate accountability for the heinous crims committed during the conflict. So far hostilities have ceased and there is relative peace. It is this peaceful

⁵⁵ Paragraph 2.1 of the Accountability and Reconciliation agreement, See supra note 17.

environment together with the surrender of the LRA after the successful peace process, which will nurture other mechanisms to operate successfully.

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