

## ESSAY

### UGANDA: A NATION IN CRISIS

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On October 10, 1996, at 2:15 in the morning, the girls of St. Mary's College, an all-girls convent school located in the tiny northern Ugandan village of Aboke, awoke to the sound of breaking glass. A few minutes later, members of the Lord's Resistance Army (LRA) raided their dormitory and dragged the frightened girls out from under their bunk beds.<sup>1</sup> The insurgents tore 159 students from the peace and serenity of their elite Catholic boarding school and forced several to march, in the middle of the night, to an LRA camp in southern Sudan.<sup>2</sup>

At dawn, Sister Rachele, the school's headmistress, traced the army's footprints and a trail of candy wrappers looted from the pantry. She eventually caught up with the rebel commander at a banana plantation and, after hours of pleading, succeeded in persuading him to free all but thirty girls.<sup>3</sup> He kept those he considered the most beautiful and subjected them to years of rapes, beatings, and armed conflict.<sup>4</sup>

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\* J.D. 2006, St. John's University School of Law; B.A., Philosophy, Binghamton University, May 2002. I would like to thank Professors Charles S. Bobis and Margaret V. Turano from St. John's University School of Law for their invaluable guidance, both with this Essay and throughout my three years of law school.

1. Paul Harris, *Fighting the Pied Piper*, THE HERALD (Glasgow), Feb. 17, 2001, at 14.

2. *Id.*

3. Henk Rossouw, *An African Tale: First Hell, Then College*, THE CHRON. OF HIGHER EDUC., Aug. 8, 2003, at 32. The commander told Sister Rachele, "Jesus chose twelve apostles. We choose thirty angels." *Id.*

4. See Harris, *supra* note 1.

As an initiation ceremony, the LRA commanders demanded that the thirty girls beat a twelve-year-old child to death.<sup>5</sup> Initially, the girls refused, but conceded after the rebels relentlessly struck them with sticks.<sup>6</sup> Within hours, the LRA rebels had stripped these girls of their childhood and catapulted them into a life of sexual slavery and guerilla warfare.

Kidnapping of children is not unique in Uganda. Since 1986, the LRA has abducted more than 25,000 children to serve as soldiers, sex slaves, and porters.<sup>7</sup> The children are necessary to replace the thousands that have died fighting in a war the LRA has raged against the government for nearly two decades. This conflict has ravaged northern Uganda, leaving approximately 100,000 people dead, and another 1.6 million displaced.<sup>8</sup> Thousands more die each month from malnourishment and preventable diseases.

This Essay provides an overview of the civil war in Uganda and suggests that Uganda can achieve both peace and justice through a comprehensive system combining amnesties, prosecution, the International Criminal Court's (ICC) involvement, and a truth commission. Part I examines the roots of Uganda's current conflict, and presents the history and origin of the Lord's Resistance Army. Part II discusses Uganda's primary efforts at achieving peace from military tactics, an amnesty Act, and, finally, referral to the ICC. Part III recommends that Uganda prosecute only high-ranking LRA rebels, while subjecting lower-level members to a truth commission. This section contends that Uganda should amend its current policy which provides amnesties only after reporters publicly admit to their wrongdoings and apologize to their victims and the community. Finally, the Essay concludes with the assertion that peace and justice are equally important goals for Uganda, and both are attainable through an exhaustive system incorporating prosecution, amnesty, and truth commissions.

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5. *Id.*

6. *Id.*

7. UNICEF, *Uganda Background*, [http://www.unicef.org/infobycountry/uganda\\_background.html](http://www.unicef.org/infobycountry/uganda_background.html) (last visited Mar. 12, 2007).

8. Tim Large, *Crisis Profile: What's Going on in Northern Uganda?*, REUTERS FOUND. ALERTNET, Feb. 23, 2006, available at <http://www.alertnet.org/thefacts/reliefresources/111996997351.htm>.

## I. HISTORY

Uganda's current civil war began in 1986, but the controversy has its roots in conflicts arising after the country seceded from decades of British colonization in 1962.<sup>9</sup> The British had divided the nation into a northern and southern region, and attempted to maintain order by pitting the two areas against each other.<sup>10</sup> They recruited northerners into the armed forces, and employed southerners in civil service.<sup>11</sup> As a result, the South prospered and contained the majority of Uganda's educated citizens, while the North, where the Acholis reside, became poor and undeveloped.<sup>12</sup>

This "divide and rule" policy stirred resentment and animosity between the two regions, resulting in a polarized nation ripe for conflict.<sup>13</sup> Ethnic groups within the North and South vied for political and economic power, and feared political domination by a singular regional group.<sup>14</sup> Succeeding presidents utilized this division to their benefit, causing the polarization to linger long after Uganda gained its

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9. Uganda became a British protectorate after the 1890 Treaty of Berlin. *See, e.g.,* Encyclopedia.com, *Uganda*, available at [http://www.encyclopedia.com/html/section/Uganda\\_History.asp](http://www.encyclopedia.com/html/section/Uganda_History.asp).

10. HUMAN RIGHTS WATCH, *THE SCARS OF DEATH, CHILDREN ABDUCTED BY THE LORD'S RESISTANCE ARMY IN UGANDA* pt. II (1997), available at <http://www.hrw.org/reports97/uganda/#II.%20THE%20ABDUCTION%20OF%20CHILDREN%20BY> [hereinafter SCARS]; *see also* PHUONG PHAM ET AL., INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, *FORGOTTEN VOICES: A POPULATION-BASED SURVEY ON ATTITUDES ABOUT PEACE AND JUSTICE IN NORTHERN UGANDA* 7 (July 2005), available at <http://www.ictj.org/en/news/pubs/index.html> [hereinafter FORGOTTEN VOICES].

11. SCARS, *supra* note 10, pt. II; *see also* Refugee Law Project, *Behind the Violence, Causes, Consequences, and the Search for Solutions to the War in Northern Uganda* 10 (Refugee Law Project, Working Paper No. 11, 2004), available at <http://www.refugeelawproject.org/papers/workingpapers/RLP.WP11.pdf>. [hereinafter Refugee Law].

12. SCARS, *supra* note 10, pt. II. A human rights worker who recently traveled to Uganda was "struck repeatedly by the contrast between north and south." *Id.* at pt. IV. In Kampala, the nation's capital, "the streets are bustling [and] there is construction everywhere." *Id.* The South "is a blanket of green farms, plantations and forests," whereas in the North, the "landscape [is] filled with burnt huts, deserted compounds, and abandoned fields." *Id.*

13. *See* Refugee Law, *supra* note 11, at 10.

14. *See id.* at 10-11.

independence.<sup>15</sup> Milton Obote, Uganda's first post-colonial president, continued to pit the regions against each other, and exploited the Ugandan Army to create a reign of corruption and suspended rights.<sup>16</sup> Obote's use of the military backfired, as his reign ended in 1971 by a military coup led by Colonel Idi Amin.<sup>17</sup>

Amin embarked on a regime notorious for its political violence, beginning with an order demanding the murder of Obote supporters.<sup>18</sup> Amin eventually targeted his brutality on the northern Acholi and Lango tribes, whose members comprised a majority of the Ugandan Army during Obote's reign.<sup>19</sup> Dissatisfaction and frustration under Amin's reign resulted in the creation of several rebel and anti-government groups, which were successful in overthrowing Amin in 1978.<sup>20</sup> For the next few years, Uganda suffered through several governments, with each collapse adding to the fragility of the nation.<sup>21</sup> The indifference and failure of successive governments to create a unified nation contributed to northern Uganda's instability, setting the stage for further rebellions and insurgencies.

By 1986, the National Resistance Army (NRA), an organization created in 1981 by President Yoweri Museveni, had gained control of Uganda.<sup>22</sup> Members of previous governments fled to northern Uganda and neighboring Sudan and formed the Uganda People's Democratic

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15. *See id.*

16. *See id.*; SCARS, *supra* note 10, pt. II.

17. ANDREAS O'SHEA, AMNESTY FOR CRIME IN INTERNATIONAL LAW AND PRACTICE 39 (2002).

18. FORGOTTEN VOICES, *supra* note 10, at 44.

19. *Id.*

20. International Crisis Group, *Northern Uganda: Understanding and Solving the Conflict* (Apr. 14, 2004) at 2, available at [http://www.icg.org/library/documents/africa/central\\_africa/077\\_uganda\\_conflict.pdf](http://www.icg.org/library/documents/africa/central_africa/077_uganda_conflict.pdf). [hereinafter *Northern Uganda*].

21. *See id.* The short-lived presidencies of Yusuf Lule and Godfrey Binaisa followed Idi Amin's downfall. In 1980, Obote regained presidency after rigging the elections and governed the nation until 1985, when a military coup led by Lt. General Bazilio Okello and General Tito Okello again ousted him. *Id.* Tito ruled for six months until the National Resistance Army, operating under the leadership of Yoweri Kaguta Museveni, overthrew him. Museveni has been the president since January 29, 1986. FORGOTTEN VOICES, *supra* note 10, at 44.

22. FORGOTTEN VOICES, *supra* note 10, at 44.

Army (UPDA),<sup>23</sup> a military group that waged a war against the NRA in northern Uganda for two years.

During this time, several splinter groups formed, consisting mostly of members of the Acholi tribe, who were growing resentful and frustrated by the constant chaos and lack of security in the North. The Holy Spirit Mobile Forces was the most powerful and successful new organization.<sup>24</sup> Alice Auma Lakwena, a spiritual medium, led the rebellion, proclaiming that a holy spirit told her to fight against the government and protect the Acholi people from the atrocities suffered for the past few years.<sup>25</sup> Her army was successful for a short period, but met its defeat at the hands of the NRA in 1987.<sup>26</sup>

The Holy Spirit Mobile Forces was highly influential on the Lord's Resistance Army, which grew in strength shortly after Lakwena's defeat.<sup>27</sup> Joseph Kony, the LRA's leader, claimed to have inherited the spirit of Lakwena, and marketed himself as a "messenger of God and a liberator of the Acholi people."<sup>28</sup>

The LRA fused politics and religion, and drew on a mixture of Christian, Islamic, and animist beliefs to validate its actions.<sup>29</sup> Despite its spiritual similarity to Lakwena's group, the LRA did not gain popular support at the outset, and initially faced rejection by Acholi leaders.<sup>30</sup> Because of his early rejection, Kony grew hostile towards the civilian population, and organized attacks on villages he feared were conspiring against him.<sup>31</sup>

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23. HUMAN RIGHTS WATCH, *STOLEN CHILDREN, ABDUCTION AND RECRUITMENT IN NORTHERN UGANDA* 4 (Mar. 2003), available at [http://hrw.org/reports/2003/uganda0303/uganda0403-02.htm#P113\\_9289](http://hrw.org/reports/2003/uganda0303/uganda0403-02.htm#P113_9289) [hereinafter *STOLEN CHILDREN*].

24. *Northern Uganda*, *supra* note 20, at 4.

25. *Id.* Lakwena claimed to possess spiritual powers that would protect soldiers in battle. She professed that the spirit of an Italian World War I veteran buried in Uganda spoke to her and guided her through her mission. See *FORGOTTEN VOICES*, *supra* note 10, at 45 n.63.

26. *Refugee Law*, *supra* note 11, at 5.

27. *FORGOTTEN VOICES*, *supra* note 10, at 13.

28. *Id.* Kony originally named his rebel group the Lord's Salvation Army, then changed it to the United Christian Democratic Army and, finally, the Lord's Resistance Army. See *STOLEN CHILDREN*, *supra* note 23.

29. *FORGOTTEN VOICES*, *supra* note 10, at 13.

30. *Id.*

31. *Id.*

Although the LRA has professed a desire to overthrow the Ugandan government, its motivation, ideology, and exact political agenda are unclear. Kony's extreme brutality against the Acholi people contradicts his occasional promises of Acholi liberation and emancipation. His rebels have killed, kidnapped, raped, and maimed thousands of northern Ugandan civilians, including many belonging to the Acholi tribe. "The LRA routinely cuts off lips, ears, and breasts; gouges eyes; and amputates limbs" under the pretense of avoiding a betrayal.<sup>32</sup> Perhaps most astonishing atrocity is the LRA's frequent kidnapping of Ugandan children to serve as child soldiers and sex slaves.<sup>33</sup> Reports estimate that the LRA currently consists of approximately two hundred armed commanders and three thousand child soldiers.<sup>34</sup>

Child abductees are immediately taught to fight, kill, and steal for the LRA, and are forced to participate in the abduction of other children.<sup>35</sup> The LRA initiates the children by beating them with sticks and machetes, and smearing their bodies with shea-nut oil in the sign of a

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32. *Id.* at 14. A seventeen year-old escapee painfully recalled her experience with the LRA:

We would walk through villages where the civilians had fled . . . we would sleep in deserted villages, and eat and stay in the houses. Sometimes there were villagers who had stayed behind . . . the rebels would accuse them [of supporting the government]. One day, they found a man riding a bike. They just cut off his foot with an ax. When his wife came out of the house, they told her to eat the foot. I turned away not to see what happened.

SCARS, *supra* note 10, pt. II (alternation in original).

33. FORGOTTEN VOICES, *supra* note 10, at 14; *see also* Refugee Law, *supra* note 11, at 13. The LRA is notorious for its frequent and ruthless abductions of village children, who Kony uses to replenish his army. *Id.*

Indeed, the group is one of the most brutal across the globe, forcing young children to kill and torture soon after capture, making them massacre their own communities to create a "clean break" with the past, and coercing abductees to walk for miles with their hands tied together with rope.

*Id.* at 13. LRA members subject young girls to long hours of exhausting domestic work, but "has a practice of not raping the younger girls so that they will be free of infection when, at the age of 14 or 15, they may be 'married' to commanders." FORGOTTEN VOICES, *supra* note 10, at 14-15.

34. Refugee Law, *supra* note 11, at 13.

35. STOLEN CHILDREN, *supra* note 23, at 2.

cross under the pretense of hardening them for life as soldiers.<sup>36</sup> To instill fear and crush their spirits, the LRA then forces the new recruits to commit atrocious acts, such as killing children who attempted to escape, disobeyed orders, or were too weak to fight.<sup>37</sup> A nine-year-old ex-abductee gave the following gruesome account of his life with the LRA:

There is nothing that I liked there. They collect all the children together and make you beat someone to death. Once there were about seven who tried to escape, including two girls. The commander decided not to kill the girls. He picked one boy to be killed. . . . [and] placed his head on a piece of wood. He told one of the girls to . . . chop this boy into small pieces. She started . . . to cut his head off, but was not doing a good job. The other boys were told to help. When they had almost taken the head off, they had to chop the body into small pieces. Then they were told to play with the dead

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36. *Id.* at 8. Grace T., a former child-soldier, told the Human Rights Watch that shortly after her abduction, an LRA commander informed her that he had to beat her with twenty strokes to train her to be a soldier. *Id.* Soldiers demanded that the new abductees strip naked, and then proceeded to strike them with sticks and machetes. *Id.* John W., a sixteen-year-old abductee, witnessed the LRA kill a young boy by clubbing him on the back of his head for crying during the beatings. *Id.*

The use of shea-nut oil traces back to Alice Lakwena, who anointed her soldiers with the oil before battles, assuring that it would make their bodies immune to bullets. SCARS, *supra* note 10, at 32.

A young LRA escapee stated that an LRA member told him the oil “would make us not escape, for if we would try, this would help them track us down and find us.” STOLEN CHILDREN, *supra* note 23, at 8.

37. FORGOTTEN VOICES, *supra* note 10, at 14. In an interview conducted by the Human Rights Watch, several child soldiers revealed that the LRA forced them to participate in the killing of other child soldiers. James K. stated:

Just a few days before an air assault by UPDF helicopter gunship, there was a group of children who escaped. Two girls, aged fourteen, were captured . . . and we were told that we must kill them with clubs. Every one of the new recruits was made to participate. We were warned that if we ever tried to escape, we would be killed in the same manner.

STOLEN CHILDREN, *supra* note 23, at 10. According to Mark T., soldiers captured an eighteen-year-old male who tried to escape, “laid him on the ground and told [the children] to step on him.” *Id.* During Mark’s time with the LRA, seven children were killed for attempting an escape. “Of them, two were hacked to death with machetes and five were clubbed or trampled. [The remaining children] were either made to participate or watch the killings. The youngest recruit killed was maybe nine or ten years old.” *Id.*

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person's head. The boys had to throw it in the air four times and the girls three times. The girls were bare-chested. After that, they commanded the girls to smear blood of the dead boy on their chest. [Then the LRA] put the head . . . in a central place, put clubs all over it covering the head, and informed us that anyone who tries to escape will have the same thing.<sup>38</sup>

These child soldiers are both perpetrators and victims, ironically forced to commit violent acts against Acholi villages in the name of Acholi nationalism.

Escape does not bring peace to former abductees, as they continue to suffer from ongoing physical and psychological injuries.<sup>39</sup> The trauma arising from their own injuries and memories of having to kill and torture civilians makes it difficult for the children to reintegrate into society.<sup>40</sup> Girls often return with sexually transmitted diseases and young children fathered by LRA commanders.<sup>41</sup>

To avoid capture, thousands of children have become "night dwellers." Every night, up to 25,000 Ugandans, mostly children, walk miles into town to sleep in verandas or shelters to escape LRA attacks.<sup>42</sup> At dawn, they make the trek back home on empty stomachs and return to their villages in time for school or the start of the work-day.<sup>43</sup>

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38. Refugee Law, *supra* note 11, at 32.

39. STOLEN CHILDREN, *supra* note 23, at 18. A World Vision nurse reported that returnees suffer from flashbacks and nightmares, injuries from gunshot wounds and bomb fragments, and skin problems from walking long distances. *Id.*

40. "The task of integrating into society a teenaged boy whose only skills are operating an AK-47 and mutilating others upon order would daunt Sisyphus." Bruce M. MacKay, *War Crimes Research Symposium, The Role of Justice in Building Peace, A View from the Trenches: The Special Court for Sierra Leone—The First Year*, 35 CASE W. RES. J. INT'L L. 273, 281 (2003).

41. World Vision nurses state that approximately fifty percent of the girls at their shelter have sexually transmitted diseases. STOLEN CHILDREN, *supra* note 23, at 14. UNICEF estimates that roughly one thousand girls have given birth while in captivity. See CIVIL SOCIETIES ORGANIZATIONS FOR PEACE IN NORTHERN UGANDA, COUNTING THE COST, TWENTY YEARS OF WAR IN NORTHERN UGANDA 18 (Mar. 30, 2006), available at [http://www.oxfam.org.uk/what\\_we\\_do/issues/conflict\\_disasters/downloads/csopnu\\_nuganda.pdf](http://www.oxfam.org.uk/what_we_do/issues/conflict_disasters/downloads/csopnu_nuganda.pdf).

42. Refugee Law, *supra* note 11, at 26.

43. See John Goddard, *Uganda's Night Walkers*, TORONTO STAR, Mar. 14, 2006 at A03; Raymond Thibodeaux, *Ugandan War Forces Children into Violence*,



The large number of child combatants complicates any efforts at transitional justice, as many Ugandans are reluctant to prosecute the LRA because they fear their own children may be amongst those who committed the crimes.<sup>44</sup> While these civilians want to stop the LRA, they are hesitant to support any military efforts at eradication because they would result in the assassination of their own children. “When children are killed, their parents mourn their death and condemn the army for killing those who are the victims of the war, adding to the resentment for failing to protect them from being abducted in the first place.”<sup>45</sup>

## II. THE GOVERNMENT’S RESPONSE

### A. Military Efforts

The Ugandan government has made several attempts to disband the LRA and halt the violence in northern Uganda. In 1991, it launched Operation North, a military offensive that succeeded in greatly weakening the LRA.<sup>46</sup> To follow up on its military action, the government initiated formal peace talks with the remaining rebel leaders in 1994.<sup>47</sup> Although the initial peace process was promising, it did not succeed because both sides grew distrustful of each other.<sup>48</sup> After this first failed attempt at peace, the LRA grew in strength, renewed by support from neighboring Sudan.<sup>49</sup> For the next several years, violence in northern Uganda intensified, intimidating any large-scale efforts at disbanding the LRA.

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ATLANTA J. CONST., Mar. 12, 2006, at 3B; Jeevan Vasagar, *The Nightwalkers: Every Evening, in War-torn Uganda, 40,000 Children Leave Home and Trek to the Safety of Special Night Shelters*, THE GUARDIAN (London), Feb. 10, 2006, at 10.

44. FORGOTTEN VOICES, *supra* note 10, at 14. “When the government announces, ‘20 rebels were killed,’ many Acholi grieve, as they know these casualties could be their own offspring.” *Id.*

45. *Northern Uganda*, *supra* note 20, at 6.

46. FORGOTTEN VOICES, *supra* note 10, at 16.

47. *Id.*

48. *Id.*

49. *Id.* Sudan has continuously supported LRA activities, and, in fact, was the LRA’s principle base until 2002. See STOLEN CHILDREN, *supra* note 23.

By 2001, relations between Uganda and Sudan improved, allowing the Ugandan government to launch Operation Iron Fist in 2002 with the support of the Sudanese government.<sup>50</sup> Under this new initiative, Sudan permitted Ugandan troops to cross the border and attack LRA campsites located in southern Sudan.<sup>51</sup> The troops successfully destroyed numerous camps but did not eradicate the LRA, as several rebels fled further into Sudan or returned to northern Uganda. In response to Operation Iron Fist, the LRA increased the severity and frequency of its attacks on civilians, spreading the violence into the non-Acholi districts of Lira and Soroti.<sup>52</sup>

In 2004, Uganda launched Operation Iron Fist II, again with the support of the Sudanese government. Similar to the first military operation, the LRA met Iron Fist II with increased violence, and this time concentrated its attacks on displaced persons' camps.<sup>53</sup>

### B. Protected Camps

In an effort to shield villagers from LRA pillaging, the government of Uganda created a number of protected camps. LRA raids have forced approximately three-quarters of the Acholi population into these protected camps.<sup>54</sup> Despite the violence faced at home, several Ugandans protested leaving their villages, and have complained that the government ignored their objections, and mandated that they move into the camps.<sup>55</sup>

Living conditions in the protected camps are squalid.<sup>56</sup> Displaced persons residing in camps grapple with a loss of community and live-

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50. FORGOTTEN VOICES, *supra* note 10, at 16-17.

51. *Id.*

52. *Id.*

53. *Id.*

54. International Criminal Court, *Background Information on the Situation in Uganda*, [http://www.icc-cpi.int/cases/current\\_situations/Uganda.html](http://www.icc-cpi.int/cases/current_situations/Uganda.html) (click on "Situation in Uganda" link) (last visited Mar. 31, 2007).

55. Refugee Law, *supra* note 11, at 25.

56. *Id.* at 24-27. One woman in a Kitgum town expressed gratitude at being able to stay in her home. *Id.* at 27. She considers herself "lucky" because she does not have to "stay in the camp," and describes the camps as a place where women "do not have food, and . . . have to risk going to the farms every day to look for food to feed the children." *Id.* Women risk being "raped by both rebels and soldiers and sometimes by criminals," and people in the camps "are sick and hungry." *Id.*

lihood, and must rely on humanitarian aid for provisions.<sup>57</sup> The government has not provided enough food for the thousands of displaced persons, causing the residents to resort to looting and prostitution for sustenance.<sup>58</sup> Many have died from hunger, disease, and malnutrition.<sup>59</sup>

Although designed to provide refuge from the LRA, the camps have failed to protect civilians from violence. Between June and September of 2003, the LRA attacked sixteen protected camps in the Gulu, Kitgum, and Pader districts.<sup>60</sup> Several residents claim Ugandan soldiers fled and told the civilians to protect themselves when the rebels attacked.<sup>61</sup> The military provides little security, and, in fact, has been responsible for additional acts of violence.<sup>62</sup> Acholi religious leaders report that soldiers raped over twenty-seven women and girls between June and December 2002.<sup>63</sup> The actual number is probably

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57. *Id.* at 26. A displaced person residing in the Kitgum district camp stated, "I used to eat fresh food from my gardens but now I am being fed like a child . . . My husband and children are dead. I am poor, helpless, and waiting to die." *Id.*

58. *Id.* Parents residing in the camps are sending their daughters to "lodges to be raped so that they get money to buy food." *Id.* (interview with a Kitgum religious leader).

59. *Id.* at 25-27.

60. *Id.* at 25.

61. *Id.* at 29-32.

62. One Ugandan stated, "The rebels are killing us and the [soldiers] are killing us. Where should Acholis go?" *Id.* at 34.

63. STOLEN CHILDREN, *supra* note 23. Human Rights Watch recently conducted an interview with two cousins, aged thirteen and nineteen, who were raped by Ugandan soldiers. HUMAN RIGHTS WATCH, ABDUCTED AND ABUSED: RENEWED CONFLICT IN NORTHERN UGANDA 45-46 (July 2003). On October 12, 2002, the girls were returning to their displaced persons camp from work when two armed soldiers stopped them, and questioned whether the girls had any chickens at home. *Id.* When they responded in the affirmative, the soldiers said they would escort them home to pick up the chickens. *Id.* On the way, the soldiers stopped at a patch of grass, and, according to one of the teenagers,

[One of the soldiers] said to sit down and then ordered us to take off our clothes. First we refused, and one of the soldiers said that if we didn't, he would shoot us. Then he told us to lie down. When Alice [her cousin] didn't, one of the soldiers kicked her in the chest. My mother said "don't mistreat my children; they are very young." The darker soldier took Alice a short distance away, while the other one stayed with me. He threatened me with a gun and raped me. I was just crying. The other soldier raped Alice. Then the darker soldier who had raped Alice called me to him and raped

greater, as women are reluctant to report these crimes because of the social stigma attached to being a rape victim, and from fear of angering the soldiers.<sup>64</sup>

### C. *Amnesty Act of 2000*

In addition to military initiatives, Uganda adopted the Amnesty Act of 2000, pardoning insurgents who voluntarily renounced rebellion and surrendered their arms.<sup>65</sup> The Act defines amnesty as “a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State.”<sup>66</sup> Once an individual satisfies the requirements of the Amnesty Act, he receives an Amnesty Certificate, and, in theory, should receive money and a home kit.<sup>67</sup> By the end of January 2005, 14,695 Ugandans reported to the Amnesty Commission.<sup>68</sup> The vast majority of reporters were foot soldiers, comprised mostly of child abductees; not a single LRA commander took advantage of the policy.<sup>69</sup>

This act of amnesty is unique to the international community, as it was afforded during an *ongoing* conflict, rather than at its end, and it initially provided a *blanket* amnesty. Amnesty is widely supported by northern Ugandans, who have lost faith in military efforts and view

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me too, while the other one raped Alice.

*Id.* The girls feared an HIV infection because neither soldier used a condom. One girl lamented, “People tell us we will die. They say the soldiers may be infected. I think about it a lot.” Both girls later tested positive for HIV. *Id.*

64. HUMAN RIGHTS WATCH, *ABDUCTED AND ABUSED*, *supra* note 63, at 45-46.

65. *See* FORGOTTEN VOICES, *supra* note 10, at 46-49. The Act only applied to individuals who engaged in rebellions occurring after 1986. *Id.*

66. O’ SHEA, *supra* note 17, at 41 (citing to Amnesty International Report 2000: Uganda).

67. Refugee Law Project, *Whose Justice, Perceptions of Uganda’s Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation*, 7-8 (Refugee Law Project, Working Paper No. 15, 2005), available at <http://www.refugeelawproject.org/papers/workingpapers/RLP.WP15.pdf>. [hereinafter *Whose Justice?*]. Home kits contain a blanket, mattress, dinnerware, maize flour and seeds. *Id.*

68. *Id.* at 7.

69. Payam Akhavan, *Developments at the International Criminal Court: The Lord’s Resistance Army Case: Uganda’s Submission of the First State Referral to the International Criminal Court*, 99 AM. J. INT’L L. 403, 410 (2005).

“amnesty [as Uganda’s] only hope.”<sup>70</sup> Many Ugandans disagreed with the military’s use of force against the rebels because of the large number of abducted children fighting for the LRA. The Act provides former LRA members an opportunity to reunite with family members and reintegrate into their original community.

The international legal community criticized the amnesty, and argued, “a blanket amnesty, particularly where war crimes and crimes against humanity have been committed, promotes a culture of impunity and is not in conformity with international standards and practice.”<sup>71</sup> The United Nations acknowledged that prosecution would not be practical for the vast majority of LRA rebels because of their youth, but maintained that Uganda had a duty under international criminal law norms to hold top LRA commanders accountable for their crimes.<sup>72</sup>

On April 18, 2006, Uganda amended the Amnesty Act to exclude the top leaders from eligibility for amnesty.<sup>73</sup> The bill gave intelligence services responsibility for providing a list of individuals unqualified for amnesty to Parliament for approval.<sup>74</sup> To allay the concerns of those who feared that the government had given up on negotiating a resolution to the conflict, Dr. Ruhakana Rugunda, Uganda’s Internal Affairs Minister, assured that the government was still amenable to a peaceful solution, but had to revoke its offer of amnesty for LRA commanders because of their persistent refusal “to respond positively to [the] government’s olive branch.”<sup>75</sup>

Several politicians and civilians expressed concern over the new Amnesty Act, and worried that the amendment would anger the LRA and provoke a new onslaught of its violence.<sup>76</sup> Despite Rugunda’s assertions, many still believe that the new amendment, along with ongoing military efforts and the President’s recent International Criminal

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70. *Whose Justice?*, *supra* note 67, at 9.

71. Akhavan, *supra* note 69, at 409 (quoting from a report by the U.N. High Commissioner for Human Rights on the situation in northern Uganda).

72. *Id.* at 409-10.

73. Apollo Mubiru & Cyprian Musoke, *Kony Denied Amnesty*, NEW VISION (Uganda), Apr. 20, 2006.

74. Emmanuel Mulondo & Gerald Walulya, *Uganda: No Amnesty for Rebel Leaders*, THE MONITOR (Kampala), Apr. 18, 2006.

75. *Id.*

76. *Id.* (“[T]he Bill was a declaration of outright war by the government.”).

Court (ICC) referral, undermine the government's pledge of a peaceful resolution to the conflict.<sup>77</sup>

#### D. ICC Referral

In December 2003, President Yoweri Museveni referred the situation to the Prosecutor of the ICC.<sup>78</sup> In its referral, Uganda agreed with the United Nations and decided that prosecution, and not amnesty, was appropriate for LRA leadership.<sup>79</sup>

Uganda ratified the Rome Statute, ICC's mandate, on June 14, 2002.<sup>80</sup> The U.N. General Assembly passed the Rome Statute in 1992 in an effort to create a tribunal with the power to investigate and prosecute crimes against the international community.<sup>81</sup> The Court's jurisdiction is limited to genocide, crimes against humanity, war crimes, and the crime of aggression.<sup>82</sup> The Court can only exercise its jurisdiction when a member state or the Security Council refers a situation to the Prosecutor, or "when the Prosecutor decides to initiate an investigation [on] his or her own . . . and on the basis of information received."<sup>83</sup> Additionally, ICC only investigates crimes that national courts are unwilling or incapable of prosecuting.<sup>84</sup>

77. See *Whose Justice?*, *supra* note 67, at 19-22.

78. Press Release, Int'l Criminal Court, *President of Uganda Refers Situation Concerning the Lord's Resistance Army (LRA) to the ICC* (Jan. 29, 2004), available at [http://www.icc-cpi.int/pressrelease\\_details&Id=16&l=en.html](http://www.icc-cpi.int/pressrelease_details&Id=16&l=en.html).

79. *Id.* At that time, Museveni already "indicated to the Prosecutor his intention to amend this amnesty so as to exclude the leadership of the LRA." *Id.*

80. Human Rights Watch, *International Justice: Rome Statute Ratifications*, at <http://www.hrw.org/campaigns/icc/ratifications.htm> (last visited April 20, 2006). The crime of aggression has not yet been defined. The statute states that the court will have jurisdiction over crimes of aggression "once a provision is adopted . . . defining the crime . . ." United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Court, *Rome Statute of the International Criminal Court*, pt. II, art. V (1998) [hereinafter *Rome Statute*].

81. John Seguin, *Denouncing the International Criminal Court: An Examination of U.S. Objections to the Rome Statute*, 18 B.U. INT'L L.J. 85, 86 (2000).

82. See *Rome Statute*, *supra* note 80.

83. Int'l Criminal Court, *About the Court*, <http://www.icc-cpi.int/about/ataglance/jurisdiction.html> (last visited Apr. 5, 2007). If the Prosecutor unilaterally decides that a certain situation warrants ICC attention, he must first obtain permission from the court's Pre-Trial Chamber to continue with the investiga-

With Museveni's referral, Uganda became the first state to invoke the Rome Statute's referral power.<sup>85</sup> In July of 2004, ICC Prosecutor Luis Moreno-Ocampo determined that the requirements of the Rome Statute had been met, and the court could safely proceed with an investigation of the situation in Uganda.<sup>86</sup> Oddly, a few months later, Museveni indicated a desire to withdraw his referral,<sup>87</sup> but did not follow through with this thought.<sup>88</sup>

Interviews with Ugandans reveal that many do not support ICC involvement and view the government's referral as a threat to a peaceful resolution of the conflict.<sup>89</sup> Some fear that the LRA will increase its attacks in retaliation for the referral.<sup>90</sup> Initially, Acholi leaders pleaded with the ICC to delay investigations, arguing that Ugandans need peace first and justice later.<sup>91</sup> The Uganda Program Development

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84. *See id.*

85. Akhavan, *supra* note 69, at 403.

86. Press Release, Int'l Criminal Ct., Prosecutor of the International Criminal Court Opens an Investigation into Northern Uganda, (July 29, 2004), *available at* [http://www.icc-cpi.int/pressrelease\\_details&Id=33&l=en.html](http://www.icc-cpi.int/pressrelease_details&Id=33&l=en.html). On July 8, 2005, the ICC issued an arrest warrant for Joseph Kony based on thirty-three counts of war crimes and crimes against humanity. On that same day, the court also issued warrants for four other high-level members of the LRA: Vincent Otti, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen. *See* Int'l Criminal Ct., *Situation in Uganda*, [http://www.icc-cpi.int/cases/current\\_situations/Uganda.html](http://www.icc-cpi.int/cases/current_situations/Uganda.html) (last visited Apr. 22, 2006).

87. *See* Alex B. Atuhairu, *LRA Probe Still On, Says AI*, THE MONITOR (Uganda), Nov. 20, 2004. Amnesty International reported that the President made a statement encouraging LRA members to "engage in internal reconciliation mechanisms put in place by the Acholi community such as *mataput* or blood settlement," and mentioned the possibility of withdrawing his recommendation as an incentive for LRA cooperation. *See* Press Release, Amnesty International, Uganda: Government Cannot Prevent the International Criminal Court from Investigating Crimes, (Nov. 16, 2004), *available at* <http://web.amnesty.org/library/Index/ENGAFR590082004?open&of=ENG-385>.

88. An attempt at withdrawal would have been problematic, as the Rome Statute does not contain a provision for the revocation of a referral. *See* Amnesty International Press Release, *supra* note 87.

89. Akhavan, *supra* note 69, at 416-18.

90. *Id.* at 416.

91. Josefine Volqvartz, *ICC Under Fire Over Uganda Probe*, CNN, Feb. 23, 2005, *available at* <http://www.cnn.com/2005/WORLD/africa/02/23/uganda.volqvartz>.

Officer for Conciliation Resources argued that “the ICC has committed a terrible blunder” by initiating “war crimes investigations for the sake of justice at a time when northern Uganda sees the most promising signs for a negotiated settlement.”<sup>92</sup>

Others welcome ICC intervention, and agree that the international community should prosecute senior LRA members and hold them accountable for their crimes.<sup>93</sup> Still others support the ICC, but believe it should also investigate crimes committed by the government.<sup>94</sup>

### III. PEACE AND JUSTICE: RECOMMENDATIONS FOR AN EFFECTIVE TRANSITIONAL GOVERNMENT

Uganda can achieve peace, justice, and reconciliation through an inclusive process combining trials, amnesty, and truth commissions, and a mixture of national and international participants. An effective transitional government in Uganda must consider the goals of justice and deterrence, the interests of the Ugandan people, and the need for peace in a country ravaged by violence for nearly twenty years. This Essay offers the following recommendations to Uganda and the International Community to achieve both peace and justice in post-conflict Uganda:

#### A. Amnesty

Amnesty is a necessary component for a peaceful transitional government in Uganda, but the amnesty should be limited to lower-level LRA members. Additionally, Uganda should only offer amnesty to LRA members who participate in the truth commission discussed in section III.B. Although the lower-level members are also guilty of committing grotesque crimes, most of them were forcibly conscripted

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92. *Id.*

93. See REFUGEE LAW PROJECT, KAMPAL, UGANDA, ONLY PEACE CAN RESTORE THE CONFIDENCE OF THE DISPLACED: UPDATE ON THE IMPLEMENTATION OF THE RECOMMENDATIONS MADE BY THE UN SECRETARY-GENERAL'S REPRESENTATIVE ON INTERNALLY DISPLACED PERSONS FOLLOWING HIS VISIT TO UGANDA 14 (2d ed. 2006), available at <http://www.refugeelawproject.org/papers/reports/RLP.IDMC.pdf>.

94. See *id.* Several non-governmental organizations, including Human Rights Watch, agreed that the ICC should investigate all sides of the atrocity, including crimes committed by the Ugandan Army. Akhavan, *supra* note 69, at 411.



as children and are victims themselves. Penalizing these child abductees might serve to prolong the suffering faced by northern Ugandans, who want their children back home with them and not at a remote prison. Mandating participation in a truth commission ensures some level of accountability, as the lower-level LRA members must confess to their wrongdoings and apologize to their victims before receiving amnesty. This provides closure and justice to the victims, and simultaneously ensures that child-abductees are reintegrated into their former communities.

Providing amnesty to human rights violators has been a controversial issue in the international community. Amnesty and justice have differing goals; the former focuses on forgiveness and moving forward, whereas the latter stresses punishment and deterrence. While some recognize amnesty's ability to promote healing and reconciliation, others argue that "trading criminal justice for a general social benefit is . . . morally suspect."<sup>95</sup>

Advocates of Uganda's initial blanket amnesty believe that it would encourage LRA members to escape from the bush and return home without fear of reprisals or community ostracism.<sup>96</sup> This in turn facilitates reconciliation and healing, letting "bygones be bygones."<sup>97</sup>

Critics argue that amnesty allows perpetrators to go unpunished and encourages a culture of impunity.<sup>98</sup> They fear that it thwarts justice and encourages victims to take matters into their own hands to seek retribution.<sup>99</sup> Opponents raise Rwanda as an illustration of amnesty's failure to deter future incidences. In 1959, the Rwandan government failed to prosecute Hutu rebels for the massacre of approximately 20,000 Tutsis.<sup>100</sup> Rwanda declined to undertake any punitive methods partially because the civilians advocated peace and did not want to relive the violence. In 1994, the slaughter repeated itself; Huti

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95. Amy Gutmann & Dennis Thompson, *The Moral Foundations of Truth Commissions*, in TRUTH V. JUSTICE 22 (Robert I. Rotberg & Dennis Thompson ed., Princeton University Press 2000).

96. See generally UNITED NATIONS INSTITUTE FOR DISARMAMENT RESEARCH, BOUND TO COOPERATE: CONFLICT, PEACE, AND PEOPLE IN SIERRA LEONE 168 (2000).

97. *Id.*

98. *Id.* at 170-71.

99. *Id.*

100. *Id.*

extremists killed nearly 800,000 Tutsis and moderate Hutis in 100 days, creating one of the most notorious genocides since the Nazi's "final solution."<sup>101</sup> Amnesty adversaries argue that the cycle of violence would not have reoccurred if the government punished the initial wrongdoers.

Although these are legitimate concerns, ensuring that Uganda continues to limit its amnesty only to lower level LRA members alleviates the threat of impunity. ICC intervention, in addition to the possibility of national trials, upholds justice by prosecuting high-ranking LRA officials, the individuals most responsible for the acts of savagery committed in Uganda. Limited amnesty is appropriate in this situation because the vast majority of LRA members are abductees forced to commit atrocities against their will, and prosecution is inappropriate for these children, who did not voluntarily commit a wrong. Requiring the children to participate in a truth commission will ensure a form of accountability commensurate with their level of culpability.

### B. Truth Commission

Transitional governments have increasingly adopted truth commissions to alleviate the pain and suffering caused by past atrocities. The commissions are limited to discovering and documenting the truth, and do not have the power to prosecute. "Although the actual responsibilities and mandates vary from case-to-case, there are a few fundamentals inherent in every truth commission."<sup>102</sup> They exist for a predetermined period, and generally focus only on past grievances.<sup>103</sup> Additionally, the commissions attempt to address the overall human rights violations over a certain timeframe, rather than focusing on a specific incident.<sup>104</sup>

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101. Linnea D. Manashaw, *Genocide and Ethnic Cleansing: Why the Distinction? A Discussion in the Context of Atrocities Occurring in Sudan*, 35 CAL. W. INT'L L.J. 303, 321 (2005).

102. Hema Chatlani, *Peace v. Justice*, at 2 (forthcoming).

103. Rose Weston, *Facing the Past, Facing the Future: Applying the Truth Commission Model to the Historic Treatment of Native Americans in the United States*, 18 ARIZ. J. INT'L & COMP. LAW 1017, 1021 (2001).

104. Angelika Schlunck, *Truth and Reconciliation Commissions*, 4 ILSA J. INT'L & COMP. L. 415, 417 (1998).

A truth commission would be beneficial for Uganda because it would enable victims to come forth and narrate their pain and anguish, and provide an alternative form of accountability for perpetrators. While prosecution is inappropriate for the LRA members who committed atrocities against their will, truth commissions are a suitable method of ensuring some level of responsibility. Justice for the victims of LRA atrocities mandates that Uganda hold rank LRA members morally accountable for their crimes because a complete amnesty, without any form of responsibility, denies reparations for victims.

Before receiving amnesty, LRA members would have to acknowledge their crimes and apologize to both the community and their victims. A recent survey taken in Acholi land indicates that the Ugandan people support this approach. This survey revealed that sixty-five percent of the survey participants favored amnesty for LRA members possibly because it encourages their children to return to their communities without fear of reprisals, but only four percent supported unconditional amnesties.<sup>105</sup> “The vast majority stated that some form of acknowledgement and/or retribution—confessing wrongdoing, apologizing to the victims and community . . . should be required of *all* those granted amnesty.”<sup>106</sup> While thirty-seven percent of respondents supported trials for LRA leaders, more than fifty-eight percent did not want to prosecute lower-level LRA members.<sup>107</sup>

A truth commission would also create a forum for victims to publicize their grief. Past commissions imparted a therapeutic effect on participants, because victims are finally presented with the opportunity to tell the world that they have suffered.<sup>108</sup> Ninety-two percent of

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105. FORGOTTEN VOICES, *supra* note 10, at 40. Researchers from the Human Rights Center at the University of California, Berkeley, and the International Center for Transitional Justice interviewed 2,585 residents from four northern districts (Gulu, Kitgum, Lira and Soroti) between April 20 and May 2, 2005. *Id.* at 3.

106. *Id.* at 40 (emphasis added).

107. *Id.* at 26.

108. At the Truth and Reconciliation Commission established in South Africa to confront crimes committed during the Apartheid era, Elizabeth Hashe learned the fate of her husband, who had been missing for over thirteen years. Police officers kidnapped him, along with two of his colleagues, killed all three, and “roasted their bodies over a fire for six hours until they turned to ashes, and dumped the remains into the Fish River.” PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: FACING THE CHALLENGES OF TRUTH COMMISSIONS 3 (2002). Hashe expressed relief at discovering the truth, stating, “At least now I know a bit of the story. It’s better to

interviewed Ugandans support a truth commission, and eighty-one percent said they wanted to speak publicly about what had happened to them.<sup>109</sup>

### C. ICC Involvement

ICC involvement is imperative because a system utilizing only amnesty and reconciliation methods overlooks the importance and necessity of prosecution, and forgoing punitive methods sends a message to the public that acts of violence are forgivable. Uganda's inability to prosecute top-level LRA members necessitates ICC intervention.

Uganda's decision to invoke the ICC has been beneficial and, contrary to critics' fears, has decreased LRA violence. Since the president referred the situation to the ICC, the Ugandan plight has received increased international attention.<sup>110</sup> The international community persuaded Sudan to end its support of the LRA, which resulted in the March 2004 protocol allowing the Ugandan Army to, once again, attack LRA bases in southern Sudan.<sup>111</sup> The lack of Sudanese support has severely weakened the LRA, "encouraged significant defections among LRA commanders, and forced otherwise defiant leaders to the negotiating table."<sup>112</sup> The absence of LRA retaliation suggests that the ICC referral has already been beneficial.

To improve its efforts at achieving justice in Uganda, the ICC should take steps to incorporate Ugandans into the process of justice. Of the Acholi members who had knowledge of the ICC, ninety-four percent supported its involvement, but ninety-one percent stated that the court should ask Ugandans to assist in its prosecution.<sup>113</sup>

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know . . . how they killed him." *Id.* Similarly, Mr. Sikwepere came to the South African Truth and Reconciliation Commission to tell others how he had lost his sight after being shot in the face. He revealed, "I [felt] that what has been making me sick all the time is the fact that I couldn't tell my story. But now it feels like I got my sight back by coming here and telling you the story." Brandon Hamber, *Does the Truth Heal? A Psychological Perspective on Political Strategies for Dealing with the Legacy of Political Violence*, MEDICO INTERNATIONAL (2001), available at [http://www.medico-international.de/en/projects/social/ps\\_hamber\\_en.pdf](http://www.medico-international.de/en/projects/social/ps_hamber_en.pdf).

109. FORGOTTEN VOICES, *supra* note 10, at 35, 39.

110. See Akhavan, *supra* note 69, at 404.

111. *Id.*

112. *Id.*

113. FORGOTTEN VOICES, *supra* note 10, at 32-33.

To integrate the Acholi victims into the justice system, the court should implement an outreach program to disseminate information and provide updates on LRA prosecutions. Justice is effective for victims only if they are adequately aware of its existence and its process. The court should engage Acholi religious and tribal leaders in the prosecution, perhaps by sending envoys to Uganda for regular meetings, and thereby create a bridge between the distant Hague and Acholiland. Local leaders could then disseminate information to the Acholi people. Perhaps cognizant of this need, the ICC recently invited Acholi members to its headquarters in The Hague,<sup>114</sup> and translated its arrest warrants into the traditional Acholi language.<sup>115</sup>

#### D. *The Ugandan Army*

To truly achieve justice, Uganda must also prosecute the members of the Ugandan Army who have contributed to the conflict. Focusing solely on the LRA creates an impunity gap by allowing the Ugandan Army to escape accountability for the same crimes for which senior LRA members are being prosecuted.

Members of the Ugandan Army are also “accused of summary killings of civilians, arbitrary detention and rape.”<sup>116</sup> Interviewed Acholis indicated a desire to prosecute and punish the Ugandan Army members who have also committed human rights abuses. Fifty-one percent of respondents stated that they should be placed on trial, thirty-three percent wanted them to be punished, and only eighteen percent supported amnesty for the soldiers.<sup>117</sup> Prosecution is particularly relevant here because the Ugandan government supports and finances the army. Forgoing prosecution sends the message that Uganda is not committed to ending torture and violence in its nation.

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114. FORGOTTEN VOICES, *supra* note 10, at 19. “The Prosecutor and leaders noted in April 2005 that they had ‘agreed to work together as part of a common effort to achieve justice and an end of violence in northern Uganda.’” *Id.*

115. See International Criminal Court, *Situation in Uganda*, [http://www.icc-pi.int/cases/current\\_situations/Uganda.html](http://www.icc-pi.int/cases/current_situations/Uganda.html) (last visited Apr. 22, 2006).

116. Apolo Kakaire, *Uganda: Even-Handed ICC Approach Urged: International Criminal Court Under Pressure to Investigate Crimes Committed by Uganda’s Army*, INST. FOR WAR AND PEACE REPORTING (Afr. Rep. No. 43, Oct. 7, 2005).

117. FORGOTTEN VOICES, *supra* note 10, at 26-27.

#### IV. CONCLUSION

The people of northern Uganda have suffered in a cycle of violence that the U.N. Under-Secretary-General for Humanitarian Affairs has referred to as, “one of the world’s most neglected crises.”<sup>118</sup> For nearly twenty years, the LRA has brutalized the nation, waging a callous war against the government of Uganda that has engulfed thousands of innocent people in its web of violence. ICC intervention and the international community’s pressure on Sudan has slowed down the hostility, and offered a realistic possibility of an end to the fighting. In the post-conflict nation, the Ugandan government and the international community must take action to achieve peace, justice, and reconciliation for the people of northern Uganda. The ICC is currently prosecuting the LRA leaders most responsible for the war, but the government of Uganda should also take legal action against the members of the Ugandan Army who have contributed to the disaster. Additionally, the establishment of a truth commission would create accountability for lower-level LRA members, while simultaneously allowing them to return to their former communities. The combination of prosecution and a truth commission is commensurate with the needs of the Ugandan people, who want justice, but also desire to return to their villages and their former lives.<sup>119</sup>

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118. Akhavan, *supra* note 69, at 420.

119. See FORGOTTEN VOICES, *supra* note 10, at 24-25.