

AMBIGUOUS IMPACTS

THE EFFECTS OF THE INTERNATIONAL CRIMINAL
COURT INVESTIGATIONS IN NORTHERN UGANDA



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REFUGEE LAW PROJECT
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The results introduced here are preliminary results based on a first analysis of the data which was gathered during the fieldwork. The paper takes into account events until November 2011, when the research was completed. For the full and final results please refer to the upcoming PhD dissertation due in late 2012 / early 2013. The territory of the now independent state of South Sudan is referred to as Southern Sudan in passages that refer to events before its independence in July 2011.

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EXECUTIVE SUMMARY

The following report analyses the impact of the International Criminal Court investigations on the conflict between the Lord's Resistance Army and the Government of Uganda in northern Uganda and neighbouring countries. The report is written against the background of a growing global trend to prosecute crimes committed during ongoing conflicts, including in Uganda. The case of northern Uganda serves as a useful example to examine the utility of prosecutions and whether such prosecutions influence the course of conflicts and deter future crimes, and if so, how.

A review of the literature shows that there are supporters and critics of investigations in conflict contexts. These authors present vastly differing claims about the impact of such investigations. The claims have so far not been based on sufficient evidence or a solid empirical foundation. In the case of the ICC investigations in northern Uganda, a number of assertions are brought forward: The mainstream narrative claims that the ICC helped to force the LRA to the negotiation table after years of failed attempts but subsequently became an obstacle to the ensuing Juba peace talks. Others claim that the ICC helped to deter war crimes during the later phase of the conflict and that the investigations reinforced its military logic. Finally, there are general claims that trials contribute towards promoting reconciliation in conflict contexts by addressing the needs of victims and countering perceptions of collective guilt between the conflict parties.

Based on expert interviews conducted in Uganda between August and November 2011, this report traces some of these allegations and argues that the ICC contribution towards national reconciliation is difficult to uphold, much less the claim that prosecution of war crimes has a deterrent effect in the case of Uganda. Drawing from evidence in the interviews conducted in northern Uganda and in Kampala, it is clear that many more factors could have been at play: The ICC had a limited impact in pressuring both the LRA and the government of Uganda to negotiate and in isolating the rebels from external sources of support, but the processes that led to the inception of the Juba talks had been ongoing long before the ICC became active in Uganda.

The ICC did play a role in heightening security fears of the LRA leadership, which contributed to the failure to sign the final agreement of the Juba talks. It also brought into focus prosecutorial justice to complement other measures of justice like reparations, reconciliation, reintegration, demobilisation and psycho-social healing. This scenario is likely to repeat itself in negotiations in similar contexts.

Finally, the procedural decisions taken by organs of the ICC in pursuing investigations and prosecutions in a situation country, as well as the perceptions of local and international stakeholders concerning the ICC's work play an important role in determining the impact of ICC investigations in conflicts. The ICC should thus focus on tailoring investigation and outreach strategies to match local contexts more closely in the situation countries, and where peace negotiations are ongoing; it should consider keeping secret any indictments.

KEY FINDINGS AND RECOMMENDATIONS

- Claims that the ICC contributed to reconciliation and deterred additional crimes in the LRA conflict cannot be upheld under closer scrutiny. The ICC is in particular not able to meet the justice needs of the victims of the conflict in northern Uganda.
 - The ICC investigations might have played a role in supporting institutional reforms towards a better human rights record within the Ugandan People's Defence Forces (UPDF).
- Claims that the ICC helped to isolate the LRA and force it to the negotiation table are partly true, but the peace negotiations are mainly a result of processes that started long before the ICC investigated the LRA conflict.
- The ICC arrest warrants for the LRA commanders increased security fears of the LRA high command and thus contributed to the failure to conclude the Juba talks with a final agreement.
 - Similar scenarios can be expected for future negotiations with ICC involvement.
- The procedural decisions taken by ICC organs in investigating a conflict situation, as well as the stakeholders' perceptions of the investigations are factors that influence the performance of the ICC on the ground.
- There is a need for the ICC to tailor its investigation strategies and outreach work more closely to the local context in the situation countries.

GLOSSARY OF ABBREVIATIONS

ARLPI	Acholi Religious Leaders' Peace Initiative
CAR	Central African Republic
DRC	Democratic Republic of Congo
GoS	Government of Sudan
GoU	Government of Uganda
ICC	International Criminal Court
LRA	Lord's Resistance Army
NRA	National Resistance Army
NRM	National Resistance Movement
OLT	Operation Lightning Thunder
OTP	Office of the Prosecutor of the ICC
SAF	Sudanese Armed Forces
SPLA	Sudan Peoples' Liberation Army
TFV	Trust Fund for Victims of the ICC
UHRC	Uganda Human Rights Commission
UNLA	Uganda National Liberation Army
UNSC	United Nations Security Council
UPDF	Uganda People's Defence Forces

INTRODUCTION

METHODOLOGY

The findings of this paper are based on both a comprehensive literature review on prosecutions and investigations during conflicts, particularly in northern Uganda, as well as on qualitative field research in the country and an in depth analysis of the conflict with the LexisNexis newspaper database. The claims pertaining to the impact of ICC investigations in northern Uganda were collected from the relevant literature. The claims were evaluated systematically and reformulated as causal mechanisms on the basis of conflict resolution theories. Causal mechanisms describe a certain chain of events, purportedly set in motion by ICC investigations in conflicts, and which have a positive or a negative impact on conflict resolution opportunities. The aim of the research project was to attempt to trace these causal mechanisms by collecting first hand information

A total of 39 interviews were conducted in Kampala and Gulu. 37 of them were semi-structured face-to-face interviews with one to three interview partners. Two of them were conducted via e-mail as written questions. The sampling of the interviews followed the ‘purposeful sampling methodology’, choosing sources with a direct stake in the LRA conflict, the Juba negotiations, or the ICC investigations. Other interview partners were chosen for being in a unique position to relate about the events (mostly direct personal involvement). Interview partners included representatives of institutions of the Government of Uganda (GoU), parliamentarians, judges and court officials, lawyers and researches working on transitional justice and criminal prosecutions, NGO staff from the human rights sector, UN staff from different institutions with a stake in the conflict or the ICC investigations, former fighters, officers, and commanders of the Lord’s Resistance Army, regional, traditional and religious authorities in Gulu, members of the LRA and GoU delegations during the Juba talks, as well as diplomats. The interviews focused on specific questions connected to the causal mechanisms derived from the literature and varied according to the field of expertise of the interview partner.

The results from the interviews were complemented through the findings of an analysis of news sources with the LexisNexis database. The news sources were used to follow the developments of the LRA conflict and the ICC investigations on a day-to-day basis and were used to trace the causal mechanisms brought forward in the literature. The news research covered all English articles containing the word ‘LRA’ since January 1st 2000. LexisNexis includes articles from relevant Ugandan newspapers such as the New Vision or the Daily Monitor.

The findings presented in this paper are the combined result of the literature review, the expert interviews, as well as the in-depth analysis with LexisNexis. Due to reasons of confidentiality interviews are quoted anonymously and no verbatim excerpts from the recordings are being used.

THE LRA CONFLICT

The conflict between the Government of Uganda (GoU) and the Lord’s Resistance Army (LRA) has devastated East and Central Africa for over 25 years. While the conflict emerged in northern Uganda and was limited to the northern districts and some parts of Southern Sudan for the first

20 years, it has since spread beyond the borders of the country, gradually encompassing the Democratic Republic of Congo (DRC), the Central African Republic (CAR), and additional parts of South Sudan. Northern Uganda saw its last major LRA attacks in late May 2005 when a total of 62 people were killed in separate incidents near Lakale and Pagak (Allen and Vlassenroot 2010, p. 15, Rodriguez 2009, p. 224). Since the Juba talks between the GoU and the LRA started in 2006, peace has returned to northern Uganda. Yet, the failure of the LRA to sign the final agreement, concluded during the Juba talks, and the subsequent attack by the Ugandan People's Defence Forces (UPDF) on the LRA headquarters in Garamba National Park, DRC, put an end to the efforts to find a peaceful solution to the conflict in December 2008. Even though northern Uganda remains calm and peaceful, the LRA is still killing and abducting civilians in parts of the DRC, CAR and South Sudan. The conflict can thus be considered as ongoing.

Even though the conflict has been pushed out of northern Uganda during the last five years, the root causes of the conflict are still to be found in Uganda's history of tribal divisions. The coming to power of the current government party, the National Resistance Movement (NRM), in 1986 sparked a number of rebellions in different parts of Uganda. Members of the army of the ousted regime, the Uganda National Liberation Army (UNLA), retreated to the northern districts, where a majority of their rank and file, the Acholi and Langi, hailed from. They became a recruitment reservoir for a number of consecutive rebel groups which were all defeated or signed peace with the NRM government. Out of this legacy of armed rebellion arose the Lord's Resistance Army, which recruited members of its predecessors and soon started filling its ranks through abductions when popular support in the north faltered. The root causes of the struggle of the different rebel movements in the north have been analysed in depth in a number of excellent publications including a previous RLP Working Paper by Zachary Lomo and Lucy Hovil (Lomo and Hovil 2004), as well as books by Sverker Finnström (Finnström 2008) and Chris Dolan (Dolan 2009). This introduction to the LRA conflict will thus focus on the events that led to the inception of the Juba peace talks and the developments since their failure.

The GoU has failed to wipe out the LRA in northern Uganda in various military offensives, including Operation North (Operation Simsim) in 1991, Operation Iron Fist in 2002, Operation Iron Fist II in 2004, as well as Operation Lightning Thunder in 2008. Alternating between a military approach and the attempt to negotiate a surrender of the LRA, the GoU also engaged in peace talks with the LRA in 1994, 2004-2005 and 2006-2008. In 2000 the Government furthermore passed an Amnesty Act under heavy civil society pressure from the north, providing amnesty to all rebels who were willing to lay down their arms. Meanwhile, there have been reports that the GoU did not pursue negotiations seriously in the 1994 and 2004 talks and sabotaged several peace initiatives at various times during the conflict (Dolan 2009 p. 98, Hovil and Quinn 2005, p. 5, O'Kadameri 2002, p. 35-40, Prendergast 2005, p. 4, Rodriguez 2009, p. 3 & 77). The 2008 Juba Talks were widely seen as the first credible and realistic attempt to find a peaceful solution to the conflict (ICG 2007, p. i). The main reasons for this optimism were the involvement of Southern Sudan as a neutral mediator with a real stake in the process, the growing international attention for the conflict and increasing support towards finding a peaceful solution, as well as the personal statements by the LRA leadership indicating a real commitment to peace talks. Indeed the Juba peace negotiations soon yielded some tangible results. A Cessation of Hostilities Agreement was signed on 26 August 2006. This was followed by agreements on a comprehensive solution for the conflict (May 2007), and on accountability and

reconciliation measures (June 2007). Despite the signing of a permanent ceasefire in February 2008, the peace talks failed soon thereafter as the LRA leadership did not show up to the final signing ceremony on several occasions. The reasons for the eventual failure of the peace talks are discussed in section 4.4 of this paper.

The hopes for a successful conclusion of the Juba talks were buried when the GoU started Operation Lightning Thunder (OLT) in December 2008, a joint offensive with the governments of Southern Sudan and the DRC on the LRA main base in Garamba Park, located at the north-eastern border of the DRC. Despite US military support, the LRA got wind of the planned attack and was able to flee before the UPDF's main forces arrived in Garamba.¹ Since then, the LRA has scattered into ever smaller groups moving around in the Haut Uélé and Equateur Provinces of the DRC, as well as in parts of South Sudan and CAR. There have been several reports of sightings of LRA fighters as far north as Western Bahr el-Ghazal and even Darfur in North Sudan (Enough Project 2010, Radio Dabanga 2010). Since the failure of the peace talks, the LRA has also taken up once again its campaign of maiming, killing and abducting local villagers. There have been large massacres in the DRC during the Christmas seasons of 2008 and 2009 with up to 865 individuals who were killed in 2008 (HRW 2010a), and another 321 whose lives were taken during the 2009 Makombo Massacre (HRW 2010b). In a recent report, the International Crisis Group estimated that the LRA has killed more than 2,400 and abducted over 3,400 civilians since the inception of Operation Lightning Thunder (ICG 2011, p. I). The LRA may be militarily weakened, but there are no signs that their low intensity campaign of violence against civilians will end any time soon. The remaining UPDF forces in DRC and CAR have been close to capturing Kony twice (Cakaj 2010, Straziuso 2011), but so far the LRA leadership is successfully escaping any attempts to hunt it down. Reports about the LRA gaining access to new forms of income by smuggling gold and ivory, and forging alliances with local militias (Allen and Vlassenroot 2010, p. 20, ICG 2008, p. I & 15, Perrot 2010, p. 203) also indicate that the group is in a position to prolong the conflict. Former LRA officers have suggested in interviews with the author that Kony is now holing up in the jungles of Central Africa, trying to surround himself with a constant number of abductees as human shields to elude capture.

Against this background, US President Barack Obama decided to deploy 100 armed military advisors to Uganda and the LRA affected countries in the region in order to help apprehending or killing Joseph Kony. The decision was taken in the framework of the LRA Disarmament and Northern Uganda Recovery Act, signed into law by President Obama in May 2010. Even though the US has made clear that the military advisors are not expected to engage in direct combat with LRA forces, there are some hopes that the deployment might help ending the conflict (Wegner 2011). On the other hand, the US deployment has been criticised for focusing on Joseph Kony, neglecting the protection of local civilians, and accepting further casualties amongst the abducted civilians travelling with the LRA (McClain 2011).

The next section will briefly outline how the International Criminal Court got involved in the LRA conflict and how efforts of prosecuting alleged war crimes and crimes against humanity have developed since then.

¹ For background information on Operation Lightning Thunder and its failure please refer to (ICG 2010).

THE REFERRAL TO THE INTERNATIONAL CRIMINAL COURT

Ugandan President Yoweri Museveni and ICC Chief Prosecutor Luís Moreno Ocampo announced the self-referral of Uganda to the ICC at a joint press conference in London in January 2004. It is widely known that both sides to the conflict have committed human rights abuses, especially in its early phases.² Against this background, the decision of Moreno Ocampo to announce investigations by the side of a conflict party was unfortunate and created the impression that the ICC was just a tool of the government to tackle the LRA conflict through different means. The local population in northern Uganda was especially sceptical, raising allegations of bias against the Court and fears that the ICC might push aside peace and reconciliation efforts, as well as traditional justice practices.

Indeed, it is pretty apparent that President Museveni had referred the situation to the Court hoping to heighten international pressure on the LRA.³ The ICC Chief Prosecutor soon made clear that he would conduct independent investigations into both sides of the conflict, but the initial impression of the joint declaration with President Museveni was not easy to revoke.

In July 2004, the ICC decided to open investigations in Uganda. Warrants of arrest against five top leaders of the LRA were unsealed in October 2005. They included Joseph Kony, Chairman of the rebels, Vincent Otti,⁴ his then second-in-command, as well as three high-ranking commanders by the names of Dominic Ongwen,⁵ Raska Lukwiya,⁶ and Okot Odhiambo. Since then, the ICC has not had a lot of success in enforcing the warrants. As described above, those LRA leaders that are still alive remain elusive in the jungles of DRC, CAR and Southern Sudan. At the same time, the ICC has taken up new cases in situation countries like Kenya, Côte d'Ivoire and Libya. Against the background of the limited resources of the Court, this automatically means that resources in other situation countries have to be cut. While 3.5 million EUR and 27 staff members were assigned to the Uganda situation in 2006, the ICC requested 111,200 EUR and one staff member for 2012 (HRW 2011, p. 26). Taking into consideration that the ICC has not managed to apprehend any of its Ugandan indictees, and it has so far not published any meaningful information on its investigation of the government side in the conflict, these resource cuts are not a good sign for the long-term impact of the ICC in Uganda. Apart from limited Victims' Trust Fund projects to support those affected by the LRA conflict and a lot of outreach in northern Uganda, the ICC does not have much to show after nearly eight years of investigations in Uganda.

² For reports on human rights violations committed by the UPDF please refer to (Amnesty International 1999a, Amnesty International 1999b, HRW 2005).

³ One Member of Parliament from an opposition party suggested in an interview that Museveni's aim was in fact to target Sudanese President Omar al-Bashir for his support of the LRA.

⁴ Vincent Otti was later executed by Joseph Kony when rifts within the LRA emerged during the Juba talks. The ICC is waiting for official confirmation of Otti's death.

⁵ Dominic Ongwen was himself abducted as a child by the LRA but has since risen in the ranks of the rebels, building up a fearsome reputation as a brutal fighter and respected commander.

⁶ Raska Lukwiya was killed in combat with the UPDF on 12 August 2006. The ICC has confirmed his death and stopped the proceedings against him.

1 TRIALS IN CONFLICTS: EXPECTED IMPACTS

The referral of the northern Uganda conflict to the ICC follows a growing trend of conducting investigations and prosecutions in the context of ongoing conflicts. Figures show that while 17 trials were carried out in conflict contexts between 1972 and 1991, 34 were initiated between 1992 and 2007 alone (Wegner forthcoming).⁷ Yet, the consequences of this development remain contested. What exactly happens if conflict parties that are still engaged in hostilities find themselves prosecuted for alleged atrocities?

The relevant literature is divided between supporters and critics of prosecutions in conflicts. Advocates of trials claim that justice and accountability further conflict resolution efforts (Crowley 2010, du Plessis and Ford 2008, p. X, Lederach 1995, Thony and Schneider 2003, p. 33, Van Acker 2004, p. 356). Chief Prosecutor Luis Moreno Ocampo himself has brought forward rather strong claims, declaring that the ICC forces armed groups to the negotiation table, brings accountability issues surrounding the conflict into focus, helps deterring further crimes, weakens external support for armed groups, and advances reconciliation in post-conflict situations (Moreno Ocampo 2008, p. 13).

Other authors are deeply sceptical about the impact of investigations and prosecutions in conflicts and suggest that they might lead to an impasse in peace negotiations and conflict resolution efforts. One of the main worries is that conflict parties might reject a compromise out of the fear of being tried after the conflict (Akhavan 2009, p. 625, Sriram 2008, p. 306). Some authors go as far as claiming a connection between criminal prosecution in conflicts and rising tensions or increased conflict intensity (Mendeloff 2004, p. 374, Osiel 2000).

Yet, claims brought forward by both sides have so far not been founded on clear empirical data, which admittedly is very difficult to collect in conflict contexts. This lack of a sound empirical foundation is increasingly criticised in the relevant literature (Akhavan 2009, p. 627, Hazan 2006, p. 19, Ryngaert 2009, p. VII, Thoms et al. 2008). Little is therefore currently known about the impact of prosecutions and investigations on conflict resolution opportunities. A final and comprehensive evaluation of the claims brought forward by advocates and critics of trials in the context of conflicts is not feasible at the moment since it may take many more years until the final outcomes are clear. At the same time, the stakes of investigations and prosecutions in conflict contexts are high. Accordingly, the question of the impact on the ground is too important to postpone due to methodological difficulties.

A case study on the investigations carried out by the ICC in the context of the LRA conflict between 2004 and 2011 can help to clarify some of the claims brought forward in the literature concerning the impact of these investigations. Additionally, a case study approach is helpful in identifying external factors that influence the impact of trials on conflict resolution efforts.

⁷ These figures were taken from a database of transitional justice mechanisms conducted during conflicts. The figures for trials include national trials, trials at hybrid tribunals and trials at international courts and tribunals. Primary data was taken from the Transitional Justice Data Base Project (Olsen et al. 2010).

2 CONFLICTING CLAIMS: WHAT THE LITERATURE SAYS ABOUT NORTHERN UGANDA

Both critics and supporters have brought forward numerous claims pertaining to the impact of the ICC investigations on the LRA conflict. Some of them are quite broad and general, others are very specific. It is also important to note that some of the claims emphasized in the debate directly contradict each other. The claims put forward in the literature will be briefly introduced here, starting with the arguments which are brought forward most often.

The mainstream narrative of the ICC investigations in Uganda asserts that the International Criminal Court investigations focused international attention on the Lord's Resistance Army. It therefore put pressure on the rebels to return to the negotiation table and played a role in isolating the LRA from its main sponsor, the Government of Sudan (GoS). The ICC is therefore often credited with having helped to initiate the Juba Peace Talks between the LRA and the GoU. Yet, according to the prevalent view, the ICC then became a stumbling block to the successful conclusion of the Juba talks. The LRA made it clear from the very beginning that it would not sign a peace agreement as long as the warrants for their top leadership were outstanding. The GoU on the other hand did not agree to withdraw the warrants before the signature of the final agreement. Additionally, there are serious doubts whether the GoU could have successfully challenged the ICC's jurisdiction and its warrants for the LRA leadership. According to the mainstream narrative, the ICC thus contributed to the failure of the Juba talks. This view has become increasingly dominant in the academic literature on the ICC investigations in Uganda and was also often repeated to the author during the expert interviews.

It is commendable that the mainstream view of the ICC investigations in Uganda does not follow the black and white approach often still prevalent in the field of transitional justice research. Supporters and critics tend to advocate investigations or condemn them without paying sufficient attention to the grey areas. The dominant narrative in the case of Uganda accepts that criminal investigations may have ambiguous impacts on a conflict depending on the context. The message is that the ICC warrants may have been helpful in the beginning, but became a stumbling block over time when the conflict moved towards a peaceful resolution.

If analysed carefully, the mainstream narrative of the ICC investigations in northern Uganda contains three separate claims. They are at the same time the claims brought forward most often in the literature. The first claim says that the ICC focused international attention on the LRA and augmented the pressure on the group which led to the LRA engaging in negotiations with the GoU (Allen and Vlassenroot 2010, p. 17, Hayner 2009, p. 17, Lanz 2008, p. 60, Prendergast 2007, p. 9, Uganda Victims Foundation 2010, Uganda Law Society and FES 2007, p. 2). The second claim states that the ICC made the LRA an outcast on the international level, thus prompting the GoS to reduce its support for the LRA. The resulting lack of resources made it more difficult for the LRA to uphold the armed conflict (Akhavan 2009, p. 641-646, Darehshori and Evenson 2010, p. 36, Uganda Law Society and FES 2007, p. 2). The final claim says that the ICC became a stumbling block for the Juba talks as the LRA refused to sign the agreement out of fear of being arrested and tried by the ICC after having disarmed (Allen 2006, p. 81-82, ARLPI 2009, Buckley-Zistel 2008, p. 14-15, Baines 2007, p. 91, Lanz 2008, p. 60, Latigo 2008, p. 99, Schomerus 2007, p. 47).

Apart from these most prevalent claims, authors have also brought forward other descriptions of the impact of the ICC investigations in Uganda. A number of authors claim that the ICC helped in strengthening the rule of law and accountability in Uganda in a number of ways. The ICC is being credited for having helped to set up the International Crimes Division (ICD) of the Ugandan High Court. The Division was set up in 2008 and was soon strengthened through the passing of the ICC Act, the Rome Statute national implementing legislation passed in 2010. The ICD is now in the position to prosecute ICC crimes under the national act⁸ and will supposedly ensure that war criminals are held accountable in the future (Human Rights Watch 2009, p. 94-102, Singh et al. 2010, p. 72, Tolbert and Wierda 2010, p. 5). Additionally, the ICC is being credited for the strong focus laid on accountability issues during the Juba talks that resulted in the Agreement on Accountability and Reconciliation, which ensured that accountability would play an important role in the post-conflict phase.

One of the most popular claims brought forward by advocates of prosecutions is the deterrence factor. Practitioners and authors claim that punishing perpetrators of war crimes, crimes against humanity and genocide will reduce the number of those crimes committed in the future. Unsurprisingly, there have also been claims that the ICC investigations have had a deterrent effect in Uganda. Some scholars and journalists say that the level of violence has been reduced due to the ICC's involvement. This includes the claim that LRA commanders who have not yet been indicted by the ICC might be wary of committing atrocities out of fear of being prosecuted by the ICC as well (Allen and Vlassenroot 2010, p. 16, Anderson 2006). Other authors claim an impact of the ICC investigations on the human rights conduct of the Ugandan Army (Allen and Vlassenroot 2010, p. 16, Struett 2009, p. 128). According to those authors, the UPDF has gone to great lengths in order to avoid human rights abuses by its troops due to the fact that the ICC is monitoring the situation in the country.

In direct contradiction to the deterrence claims, there have been reports that the LRA has attacked humanitarian organisations in northern Uganda as a reaction to the ICC investigations (Finnström 2006, p. 200, Hovil and Quinn 2005). According to this view, the ICC warrants did not deter violence but even led to direct retaliation attacks by the LRA on foreigners associated with the ICC indictments. Human Rights Watch has also claimed that the ICC indictments helped to marginalise the LRA, even within Uganda itself, and have weakened the position of the LRA's leader Joseph Kony (Human Rights Watch 2009, p. 31).

Finally, a number of authors have argued along the lines that the ICC warrants for the LRA leadership have reinforced military approaches and a zero-sum mentality in the conflict of northern Uganda (Branch 2007, p. 184-185, Mamdani cited in Namutebi 2005). According to this view, a negotiated solution has become more improbable with the ICC entering the picture, as the GoU can now use the ICC to legitimise a military approach towards ending the conflict by painting the LRA as mere war criminals. Additionally, the ICC warrants have added another point of contention between the conflict parties as there were disagreements about how to deal with the ICC during the Juba talks.

⁸ Before the ICC Act was passed the ICD had to rely on ordinary criminal law or international law like the Geneva Conventions to try cases. The charges against former LRA Commander Thomas Kwoyelo were based on these legal sources.

Apart from claims specifically made for the case of Uganda, there are a number of general claims in the literature about the impact of trials in conflicts. These include claims that trials further reconciliation by addressing the needs of victims of the conflict (Bogoeva 2010, Cassese 1998, p. 6, Lu 2006, p. 194, Minow 1998, Stromseth 2003, p. 8) and by countering perceptions of collective guilt that stand in the way of reconciliation of conflict parties (Goldstone 1998 p. 201, Grodsky 2009 p. 820, Lu 2006, p. 199, Malan 2008, p. 146, Minow 1998).

3 THE IMPACT OF THE ICC IN NORTHERN UGANDA: A PERSPECTIVE FROM THE GROUND

When interviewing people who were involved in the peace negotiations between the LRA and the GoU, individuals who have been working with the victims of the LRA conflict for years, as well as with experienced staff of human rights organisations, it becomes clear that some of the claims brought forward in much of the academic literature are somewhat removed from the local realities. This is especially obvious for the claims that international investigations and prosecutions further reconciliation.

3.1 RECONCILIATION CLAIMS

Staff members of those organisations who have worked with the victims of the conflict, particularly those based in northern Uganda have made clear that the main worry of the survivors of the conflict is to receive aid and compensation to rebuild their lives and secure their livelihoods. Many victims have survived torture or mutilation at the hand of the rebels or government soldiers and are as a result unable to till their land. Others have lost their land or their property. In both cases, victims are unable to provide for themselves and for their families. Many formerly abducted youths who were forced to fight with the LRA have lost their families in the conflict and missed out on education opportunities.⁹ After returning, they find themselves alone and without any real perspectives on the job market. Surveys with victims also show that they regularly put these immediate livelihood needs before the need to see the perpetrators of crimes brought to justice (ICTJ and HRC 2005, p. 25, Murithi and Ngari 2011, p. 5). Against this background, it is a rather far-fetched assumption to believe that the ICC can meet victim needs and thereby further reconciliation in the conflict areas. The ICC does not have the resources to pay compensation for large parts of the affected population. Even though the ICC Trust Fund for Victims (TFV) does fund organisations that work with victims and provides for example plastic surgery for those mutilated by the LRA, the support only reaches a small percentage of the victims. Compensation payments could only be ordered by the ICC if one of the LRA indictees would be sentenced, and even then only his direct victims would profit from such court ordered reparations, beyond victims' assistance.

3.2 DETERRENCE AND RETALIATION CLAIMS

Claims pertaining to the deterrence of further LRA attacks are equally difficult to uphold. They seem to be based on a misunderstanding of the nature of the LRA conflict. Juan Méndez, the Special Advisor to the Chief Prosecutor of the ICC on the Prevention of Crimes, introduced a number of graphs during the Rome Statute Review Conference in Kampala in May 2010 (Mendez 2010). In the case of Uganda the graph shows how the number of reported killings

⁹ This was emphasised in interviews with a former LRA fighter as well as with organizations working with formerly abducted persons.

drops sharply by the end of 2004 to reach zero by mid 2005. Yet, the LRA continued killing, abducting and maiming civilians in CAR, DRC and Southern Sudan. In fact, the LRA committed some of its worst massacres after being driven out from northern Uganda into the DRC. Between Christmas and the 17th of January, the LRA killed 865 people in Doruma, Faraje and other villages of Haut Uele District in DRC (HRW 2010a). Close to Christmas 2009, the LRA again moved out to kill at least 321 and abduct 250, including 80 children, in the Makombo Area of Haut Uele District (HRW 2010b). According to information collected by Human Rights Watch, the LRA commanders who committed the Makombo Massacre in December 2009 reported to Dominic Ongwen, who is already sought by an ICC arrest warrant (HRW 2010b, p. 4). The NexisLexis analysis also revealed that the attack patterns of the LRA have hardly changed since the height of the conflict in northern Uganda. Only the frequency of the attacks has declined, presumably due to the military pressure on the LRA.¹⁰ The empirical evidence on the ground thus suggests that actual deterrence by the ICC investigations is at best very partial, especially considering that the troops of the very commanders who have been indicted continue committing crimes.

As for the claims pertaining to an improvement of the human rights record of the UPDF through the ICC investigations, there are indeed some findings that suggest that there has been an improvement and that the ICC played a role in that. The worst crimes allegedly committed by the Ugandan army date back to the late 1980s, the time at which the UPDF was still the NRA. During the 1990s and the 2000s there are allegations against the UPDF of regularly looting and committing rape offences in the IDP camps (Weeks 2002, p. 21 & 28). There were also reports of assaults, torture and even some unlawful killings committed by UPDF soldiers. According to Amnesty International and Human Rights Watch, most of these crimes went unpunished (AI 2008, p. 5, HRW 2005). According to recent reports and interviews with national and international rights monitors, there has been some improvement within the UPDF. For example a Human Rights Desk was opened within the army. They are open to complaints lodged by citizens, even though civilians are still generally afraid of reporting abuses to the UPDF. At the same time guidelines for cordon and search operations were improved after allegations of human rights abuses during the disarmament exercises in the Karamoja region were reported in the national media. Both cases are indicators for an institutional reform process within the UPDF. At the same time, reports that UPDF soldiers who commit crimes are indeed held to account are increasing. This development could also be traced in the NexisLexis analysis, even though the number of cases of soldiers put on trial reported in the media remains low. UPDF soldiers for example faced court martial for rapes committed in the CAR (Cakaj 2010, p. 16). Reports on the human rights conduct of the UPDF in the DRC have also generally been positive (Ronan 2011, UN Source 2011).

The question that remains is whether these improvements have any connection with the ICC investigations. Again, the process of improving the human rights record of the UPDF had started even before the ICC started its work on northern Uganda. The Uganda Human Rights

¹⁰ The process tracing with LexisNexis possibly even underestimates the frequency of LRA attacks in DRC as northern Uganda was well covered by the New Vision and Daily Monitor newspapers while the areas currently affected by the LRA lack similar press coverage. On the other hand, UN sources have suggested during interviews that some attacks attributed to the LRA might have actually been carried out by local militias trying to cover up their banditry as LRA attacks.

Commission (UHRC) was founded during the constitutional reform in 1995 and had been working to put pressure on the UPDF for nearly ten years before the ICC came into the picture.¹¹ Still, there are some facts that speak for a direct ICC impact in the improvement of the UPDF's human rights record. First, most changes took place after the ICC became active in Uganda (human rights desk, new rules for cordon and search operations) and not in the ten years before, when the UHRC and other human rights advocates had been already active in Uganda. Secondly, Colonel Felix Kulayigye, the spokesperson of the UPDF, explicitly described the ICC as a 'yellow card' to the Ugandan army, warning the UPDF to ensure that no human rights abuses should be committed (Kulayigye 2011). Further analysis of the data is necessary to arrive at a conclusive result concerning the possible ICC role in improving the UPDF's human rights record.

Some claims brought forward by the critics of the prosecutions are based on equally shaky facts than the deterrence claims of the supporters. The claims that the LRA started to attack humanitarian agencies on the ground due to the ICC warrants have to be analysed more closely to determine their veracity. Earlier reports from the conflict areas document attacks against staff of humanitarian organisations and church personnel that date back to 2001 (Rodriguez 2009, p. 33). Similarly, Human Rights Watch reported LRA attacks on World Food Programme vehicles as early as 2003 (HRW 2003, p. 4). Process tracing in NexisLexis has also shown a consistent pattern of LRA ambushes on church and NGO vehicles during the entire conflict.¹² Since attacks against humanitarian organisations have happened before the ICC came into play, it is very difficult to prove that the LRA conducted these attacks in retaliation to the ICC warrants. The attack patterns would have to be analysed with statistical tools in order to offer more reliable results.

3.3 ISOLATION CLAIMS

As described above, the claim that the ICC increased pressure on the LRA and isolated it from international support, thus forcing the group to negotiate, is part of the mainstream narrative of the impact of the ICC investigations in Uganda. When carefully tracing the process that led the LRA to negotiate in 2006, it becomes clear though that several other factors played an important role in bringing both parties to the table. Additionally, some of the processes that led to the Juba talks started long before the ICC became involved in the country.

It is hard to deny that the indictment of the LRA's top leadership brought more international attention to the conflict in northern Uganda. United Nations institutions had been strangely absent from the conflict for nearly two decades until the ICC investigations brought the conflict into the international limelight (Rodriguez 2009, p. 187-188).¹³ The United Nations Security Council had not even debated the LRA conflict once. It finally condemned the attacks carried out by the LRA against civilians in the region on January 27th 2006 by adopting Resolution 1653. In

¹¹ The efforts of national institutions and human rights groups to work for a better human rights record of the UPDF before the ICC investigations started were emphasised during many interviews with people from the human rights sector.

¹² It is not clear whether these attacks were aimed at NGOs and the church or not. A former member of the LRA High Command described in an interview how Kony ordered his men to stop any traffic on roads leading to Gulu, an order that was executed by staging random ambushes along the roads.

¹³ This finding is also based on the LexisNexis analysis.

the same year, the UN Office of the High Commissioner for Human Rights opened offices in Kampala and Gulu. In November 2006, the UNSC even appointed a UN Representative, the former President of Mozambique, Joaquim Chissano, to take part in the Juba peace talks.

It is also fair to say that the ICC increased the pressure on the LRA leadership. Several interview partners that participated at the Juba talks confirmed that the LRA leadership constantly talked about the ICC at meetings in the run-up to and during the early phases of the Juba talks. Apparently the LRA did not understand the nature of the ICC in the beginning and was expecting international Special Forces coming into Uganda to enforce the arrest warrants. The ICC thus in many ways amplified the pressure put to bear on the LRA to get it to the negotiation table. The indictment also contributed to forcing the government to change its hard-line military stance to direct peaceful negotiations, something which had been very piecemeal in the earlier period of the insurgency.

Yet, it would be ingenuous to give all the credit to the ICC as some authors have suggested. The LRA had been under constant pressure by the UPDF in the years before the Juba talks. Even though the UPDF had failed to stop the threat by the LRA militarily, it was slowly getting better at counter-insurgency. Interview partners in the government kept on emphasising that the LRA was already militarily defeated when it started the Juba talks. These claims have to be taken with a grain of salt, as the UPDF and the GoU have constantly been claiming that they are about to crush the LRA rebellion.¹⁴ Yet, there is some truth in them. Some LRA commanders were indeed captured or killed by the UPDF between 2004 and 2006, but it was the combined pressure through military offensives against the LRA in Southern Sudan and the incentives offered by the 2000 Amnesty Act that had their impact on the LRA. The mounting pressure led to a steady trickle of defections, including many mid-level and even some senior commanders during 2004 and 2005 (ICG 2005b, p. 2, UN OCHA 2005, p. 5).¹⁵ Civil society in northern Uganda played a big part in this success by advocating the return and reintegration of LRA soldiers and commanders, inter alia through the local radio station Mega FM.¹⁶

Apart from the effectiveness of military pressure and the calls on LRA commanders to return home '*dwong cen paco*' following the amnesty, local civil society leaders had been advocating a negotiated solution to the conflict for nearly one decade. Especially the Acholi Religious Leaders' Peace Initiative (ARLPI) had been in contact with different LRA commanders for many years and was maintaining contacts with LRA commanders in the bush in order to promote new talks.¹⁷

The ICC came into the picture at a point when these two processes had been going on for years, largely unnoticed to the international public. Due to its high profile intervention at the right time, the ICC reaped much of the credit that the war-affected communities in the north would have deserved for their ongoing struggles to end the war.

¹⁴ Government officials constantly announced new dates when the LRA would be defeated and claimed that certain districts had been rid of the LRA just to see LRA attackers resurface a couple of days later. This pattern has been consistent during the NexisLexis analysis and was particularly pronounced at the height of the conflict when the LRA moved into Lira and Teso.

¹⁵ These findings have been confirmed in the NexisLexis analysis.

¹⁶ This was emphasised by local NGOs in Gulu as well as staff members of Mega FM during interviews.

¹⁷ This was emphasised by local NGOs and religious authorities in Gulu.

The second claim closely connected to the pressure hypothesis is the claim that the ICC investigations isolated the LRA from external support by the GoS. Having lost the backing of its main sponsor, the LRA had no chance but to come to the negotiation table.

Yet again the process of isolating the LRA from external support had begun long before the ICC came into the picture. It can be traced back as far as to the signing of the Nairobi Agreement in 1999 between the governments of Sudan and Uganda in which both sides agreed to stop supporting rebel groups on each other's territories. Some authors claim that the LRA support by the GoS stopped at this point (Neu 2002, Nyeko and Lucima 2002, p. 18-19), and this view was confirmed in an interview with a former top LRA commander who was in charge of the LRA's relations with the GoS. According to the LRA commander, the GoS gave the rebels a generous farewell package, including 20,000 guns and millions in cash. After this date, the LRA only received support through rogue elements within the Sudanese Armed Forces (SAF) or the Military Intelligence.

Even if we discount the testimony of a former member of the LRA High Command¹⁸ and accept the claims of some authors (Atkinson 2010, p. 206-207, HRW 2003, p. 4, Rodriguez 2003) that official GoS support for the LRA continued beyond the Nairobi Agreement, the pressure on the GoS to stop this support continued rising before the ICC came into the picture. In 2002, the US Government included the LRA on its list of terrorist organisations compiled after the September 11th terrorist attacks. This considerably increased the pressure on the GoS to withdraw any official support to the LRA. In March 2004, the pressure had reached a level that made the GoS sign a protocol allowing the UPDF to pursue the LRA on Southern Sudanese territory (Akhavan 2009, p. 643). Then, in January 2005, the GoS signed a Comprehensive Peace Agreement with its southern rebel group, the Sudan Peoples' Liberation Army (SPLA). The interest the GoS had in using the LRA to destabilise the south thus diminished, removing the main motivation for the GoS to support the LRA. There are reports that the LRA still received some weapon supplies and intelligence about UPDF movements during major offensives in Southern Sudan (HRW 2003, p. 12, ICG 2005a, p. 4-5, Rodriguez 2009, p. 41), but it is very much possible that this support came from individuals within the SAF or military intelligence as claimed by the top LRA commander and other sources (ICG 2005b, p. 2, ICG 2006, p. 1).

To sum up, there was already considerable pressure on the GoS to stop support to the LRA when the ICC started its investigations. Even if we accept that some GoS support was still ongoing, it was most probably provided by rogue elements within the SAF and the military intelligence. Undeniably, the ICC made it even more difficult for the GoS to support the LRA as a government policy, and it also increased the pressure on the GoS to crack down on elements within its security agencies that were still supporting the LRA. This becomes clear when considering the ICC investigations that started in Darfur in June 2005. In the early phases of the ICC's Darfur investigations, the Government of Sudan was interested in a limited cooperation with the ICC in order to derail the investigations through deception (Wegner forthcoming). One of Sudan's cooperative gestures was the signing of an agreement between the GoS and the ICC to enforce the arrest warrants against the LRA in October 2005. The agreement was also signed by the Governments of Southern Sudan and the DRC, thereby further isolating the LRA.

¹⁸ Other interview partners questioned about the relations between the GoS and the LRA were only able to provide speculations. There was a consensus that GoS support stopped at some point, but may have resumed recently.

According to some interview partners, the ICC also helped to stop the support the LRA received from elements of the northern Ugandan diaspora in Western countries. After the indictment, those diaspora members supportive of the LRA were afraid to be identified with war criminals by their host governments, most of which were member states to the ICC. Again, it would be wrong to ascribe all the credit of isolating the LRA to the ICC. Rather the ICC reinforced an already existing tendency.

3.4 BLOCKING NEGOTIATIONS CLAIMS

When the LRA agreed to take up negotiations with the GoU in July 2006, the removal of the ICC arrest warrants was one of the first demands put forward by the rebels (Unger and Wierda 2008, p. 270-271). Some authors have claimed that the LRA commanders did not personally take part in the Juba negotiations for fear of being arrested (Eichstaedt 2009, p. 228, Unger and Wierda 2008, p. 270). This view was confirmed during interviews by former LRA commanders and members of the LRA delegation at the Juba talks. This complicated the negotiations considerably as there were permanent doubts whether the LRA delegation truly represented the views of the LRA high command and the fighters in the bush. These doubts were furthered through the abrupt changes of the delegation leadership in February 2008 and again in July 2008.

Despite these obvious weaknesses and some breakdowns during the talks, the negotiations started to render results. On 26 August 2006, the LRA and the GoU signed a cessation of hostilities agreement. In April 2007, item 2 of the negotiation agenda, a comprehensive solution for the conflict, was signed. On 29 June 2007, an agreement on the principles of accountability and reconciliation was signed by the parties. The negotiations now started to focus on the question of accountability for the crimes committed. The LRA again demanded the removal of the ICC warrants and threatened to return to war (Eichstaedt 2009, p. 253). The GoU and the LRA agreed on consulting the opinion of the local population in order to deal with the complicated question. In November 2007, the LRA delegation started a 'reconciliation mission' in northern Uganda, asking people to forgive the LRA for the crimes committed during the conflict (Eichstaedt 2009, p. 251). Additionally, an LRA delegation visited the ICC in March 2008 in order to ask the prosecution to drop the warrants (Eichstaedt 2009, p. 274).

As the negotiations progressed, it became increasingly clear that President Museveni was indeed ready to try to remove the ICC arrest warrants if this could lead to an agreement with the LRA. Museveni had already offered an amnesty to the LRA leadership during the early phases of the negotiations (Eichstaedt 2009, p. 251), and his challenge of the ICC culminated in a February 2008 statement that he would not hand over LRA leader Joseph Kony to the ICC (McGreal 2008).

At the same time, during 2007, the Office of the Prosecutor of the ICC started to change its rhetoric in the case of northern Uganda. Chief Prosecutor Moreno Ocampo aggressively demanded accountability for the crimes of the LRA at a June 2007 speech in Nuremberg (Moreno Ocampo 2008 p. 12-13).

The final sticking point between the LRA and the GoU remained the question of whether the government should request the ICC to lift the arrest warrants before or after the LRA's signing of

the final agreement (Peskin 2009 p. 686). During 2008, LRA Chairman Joseph Kony missed numerous deadlines to sign the treaty.

It would be difficult to argue that it was the ICC alone that led to the failure of the signing of the final agreement during the Juba talks. Interviews with individuals directly involved in the talks revealed that there had been considerable problems in communication between the LRA delegation and the high command in the bush. Some funds flowed from the GoU to members of the LRA delegation which, sowed distrust between the LRA commanders and their representatives at Juba. These rifts even reached the inner circle of the LRA. Joseph Kony had his second-in-command, Vincent Otti, executed for pushing too fast for a signature of the agreement¹⁹ and for being involved in the funding irregularities in the LRA delegation (Akhavan 2009, p. 644, Eichstaedt 2009, p. 272-273, Norris 2010).²⁰

Some interview partners claim that spoilers close to the government or in the Ugandan diaspora misinformed Kony that the signing of the agreement would be a trap. Additional problems named by interview partners included the high number of people involved in the talks as well as personal rivalries between some of the mediators, facilitators, and donors involved.

There are also strong doubts about the commitment of the LRA to really sign the agreement, particularly towards the end of the talks. Reports of the LRA stockpiling weapons and ammunition and refilling its ranks through abductions in the DRC had continuously increased during 2007 (see Akhavan 2009, p. 644, The Economist 2008, Eichstaedt 2009, p. 265, Norris 2010, Otim and Wierda 2010, p. 5, Pham et al. 2007, p. 17). It is impossible to say whether the LRA was ever negotiating in earnest or whether it decided to re-arm since it failed to remove the ICC warrants through negotiations.²¹

Considering all these problems encountered during the Juba talks, it is far from clear that the talks would have succeeded in the absence of the ICC arrest warrants. Still, the case of northern Uganda shows that the ICC warrants are a stumbling block for negotiations and we can probably expect the ICC to be a sticking point in future negotiations, too. The reason for this conclusion is the fact that the ICC potentially undermines security guarantees. The conflict resolution literature is very clear on the fact that credible security guarantees are the most crucial point for peace negotiations to succeed (Simonse et al. 2010, p. 225, Walter 2002). The importance of credible guarantees results from the fact that the implementation phase of a peace agreement initially leaves the party that agrees to disarm worse off than during the fighting (Pearson and Lounsbury 2009, p. 76, Walter 2002, p. 3 & 21). From a point of view informed by conflict resolution theory one could thus not expect the LRA to sign an agreement if the security guarantees are insufficient. Indeed, former LRA commanders as well as members of the LRA and GoU delegations emphasised that Kony's main motivation not to sign was his lack of trust in the security guarantees of the GoU. The ICC played a big role in this as Kony knew that the GoU would be legally required to arrest him under the Rome Statute. Firsthand accounts by people

¹⁹ During a BBC interview in the early phases of the talks, Otti had expressed his will to talk with the government and even to cooperate with the ICC under certain conditions (Allen 2006 p. 190-191).

²⁰ This version of the events was confirmed by both former LRA officers and a former member of the LRA High Command.

²¹ This view was also brought forward by a number of interview partners involved in the Juba talks.

present during the talks convincingly show that Kony and other top commanders were very worried about the ICC. Additionally, former LRA officers claimed that the accountability agreement was not entirely clear to Kony. Indeed, even individuals involved in the drafting of the document have offered different interpretations of its implications for the indicted LRA commanders during interviews with the author. A member of the LRA delegation was of the opinion that the agreement stated that Kony would be subjected to traditional justice only. A member of the GoU delegation stated that the agreement foresaw national court proceedings for Kony, while a second GoU delegation member explained that the agreement called for an alternative justice mechanism to bring the LRA commanders to accountability. This alternative mechanism would have been elaborated in detail at a later point after the signing of the final agreement. Having a closer look at the text of the agreement itself, it is not entirely clear what would have happened to the LRA commanders indicted by the ICC. Point 6.1 of the agreement reads: *'Formal courts provided for under the Constitution shall exercise jurisdiction over individuals who are alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict.'* The section uses the words 'responsibility' and 'most serious crimes' which are criteria used by the ICC to decide whom to prosecute in a particular situation. At the same time it refers to international crimes. One would thus expect that the section means that the LRA commanders indicted by the ICC would be subjected to regular court proceedings. Yet, point 3.1 of the agreement says: *'Where a person has already been subjected to proceedings [...] or has been subjected to accountability or reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct'*. The provision explicitly states that it applies to *any conduct* during the conflict, which does not exclude international crimes under the Rome Statute. It would thus apparently allow the LRA commanders to circumnavigate court proceedings by going through traditional reconciliation mechanisms when returning from the bush. The bottom line is that the agreement leaves some space for interpretation. According to informants close to the LRA, Kony's worries about the security guarantees were increased as he did not fully grasp the meaning of the accountability agreement. He apparently expected some sort of trap. The accountability agreement was a carefully drafted document, designed to meet the worries of the LRA leadership without directly violating Uganda's responsibilities under the Rome Statute. It therefore had to be vague to a certain extent. This in turn fired the suspicions of Kony and made a signature less probable. He specifically asked for clarification on the nexus between Mato Oput and the proposed Special Division of the High Court and with no clear answers forthcoming, he ruled out any signature. Finally, as shown above, the Office of the Prosecutor of the ICC had stepped up its rhetoric concerning the LRA significantly, which might have contributed to Kony's security worries.

4 PROSECUTORIAL DECISIONS AND STAKEHOLDERS PERCEPTIONS

When having a closer look at the claims of prosecution advocates and critics in the case of the ICC investigations in northern Uganda, it becomes clear that the prosecutorial decisions taken at the ICC organs as well as the perception of the investigations by local and international stakeholders are important factors that influence how the effect of criminal investigations play out on the ground. Procedural decisions and stakeholder perceptions are thus important third variables that have an impact on the results international trials can deliver. Even though the impact of these two factors is rather obvious, it has so far not been sufficiently taken into

consideration in the relevant literature. As will be shown below, the procedural decisions taken at the ICC and the stakeholder perceptions seem to be closely related to each other.

The following section will show the importance of the procedural decisions and stakeholder perceptions by analysing the examples of the ICC contribution towards isolating the LRA as well as the role of the ICC in complicating the Juba peace talks.

4.1 PROSECUTORIAL DECISIONS AND LOCAL PERCEPTIONS DURING ONGOING CONFLICTS

When the GoU referred the situation to the ICC in 2003, the Office of the Prosecutor took its first procedural decision in deciding to obtain government cooperation for the investigations and to only prosecute the graver LRA crimes in the first phase of its investigations (Office of the Prosecutor 2006, p. 7). This procedural decision made northern civil society organisations and victim communities doubt the independence of the court; perceptions of a political bias at the ICC thrived, as the majority of the local population wanted both conflict parties to be tried (see Afrobarometer 2008, p. 48, ICTJ and HRC 2005, p. 5). This view was spearheaded by Ugandan NGOs, as well as religious and traditional authorities in Acholiland. It was apparently somewhat less prevalent among the population affected by the conflict according to surveys conducted in 2005 and 2007 (ICTJ and HRC 2005, Pham et al. 2007).

In reaction to these allegations raised by those who claimed to represent the victim communities, ICC Chief Prosecutor Luís Moreno Ocampo invited delegations of the critics to the seat of the Court in The Hague in order to consult them on their views. At the same time, the Registry of the ICC ramped up its outreach activities in order to counter what they saw as misperceptions of work of the Court (Allen 2006 p. 178-179). The civil society organisations invited to the Hague and the Office of the Prosecutor even published a joint statement to the Government of Sudan, asking it to keep up the cooperation with the Court and not to support the LRA (Office of the Prosecutor 2006, p. 17). As a result of these activities, the knowledge about the Court among the local population increased. As some misunderstandings were being addressed, the general approval of the ICC's work increased over time, leading to less perceptions of bias and more support for the Court, which in turn increased the pressure on the GoS and rebel collaborators (see Marion and Paschyn 2010, Pham et al. 2007, Rupiny 2010)²², thus further isolating the LRA.

4.2 PROSECUTORIAL DECISIONS AND PERCEPTIONS IN BLOCKING NEGOTIATIONS

When the Juba talks started in 2006, many people in the north saw the ICC's role in the peace process as unconstructive. Prominent individuals like Betty Bigombe, mediator during the 2004 talks and head of the government delegation during the 1994 talks with the rebels, as well as Pax Christi chief mediator Wesselink, who had played a role in paving the way for the Juba talks, criticised the Court (Anderson 2006). Local civil society organisations, most notably ARLPI, also remained critical (ARLPI 2009), while the local population voiced fears that the arrest warrants for the LRA leaders might disrupt the peace process (Clarke 2009, p. 130-131, Pham et

²² It is important to acknowledge that according to the data the population of northern Uganda still does not want the ICC to endanger reaching a settlement of the conflict. Even if the work of the court is appreciated in general, during the Juba negotiations people were ready to compromise on justice.

al. 2007, p. 5). Aware of these perceptions on the ground, the OTP kept a low profile. Moreno Ocampo had announced in late 2005 that LRA prosecutions might be temporarily stopped under Article 53 of the Rome Statute to make peace talks possible (Peskin 2009, p. 682).

But as mentioned above, the procedural approach towards the LRA started to change in 2007. In June 2007, Moreno Ocampo made clear that he considered a lack of cooperation with the Court and the compromises struck on questions of accountability to be threats to a lasting peace in northern Uganda. He accused the LRA of blackmailing its victims by demanding the warrants be dropped. He concluded that there should be no compromise on questions of accountability (Moreno Ocampo 2008 p. 12-13). According to Victor Peskin, this change of approach came as a reaction to the increasing loss of international support to the OTP, as the international community perceived the ICC to be failing in northern Uganda (Peskin 2009, p. 684). The uncompromising line of the OTP during the later stages of the Juba talks contributed to the security fears of the LRA leadership and played its part in making the Juba talks fail.

CONCLUSION

A diligent analysis of the claims brought forward in the literature concerning the impact of the ICC investigations in northern Uganda shows that the research on international trials in conflicts is still in its early phases. The literature has generated a lot of hypotheses concerning the impact of ICC investigations in conflicts, yet there is a need to scrutinise them carefully. In many cases they are too far reaching, they do not consider the history and dynamics of the conflict before the ICC intervention, or they neglect important third variables.

A closer look at the claims brought forward in the Ugandan context from an on-the-ground perspective delivered decidedly mixed results in most cases. Taking into consideration that the literature on transitional justice in general remains divided between supporters and critics of prosecutions, these findings are a call for a more thoughtful analysis of the possible impacts of prosecutions that goes beyond a black and white approach. It seems that the impact of the ICC on conflicts is much more dynamic and contradictory than the current research would suggest. In the case of northern Uganda, the involvement of the Court has led to the paradoxical situation that the prosecutions helped to generate pressure on the LRA to come to the negotiation table, only to later become a security concern for the rebel side and thus making a successful conclusion of the talks less likely.

The tracing of claims brought forward in the literature has also provided insights into factors that may be of great importance for the impact of the investigations and prosecutions, namely the procedural decisions taken by the ICC organs during the investigation phase, and the way the ICC's activities are perceived by relevant stakeholders, both at the national and the international level. As demonstrated above, both factors influence each other and in combination, they influence the effects of the investigations on the conflict. A careful analysis of the ICC investigations in northern Uganda implies that the investigation and prosecution strategies, as well as the outreach efforts of the Court, should be tailored to closely meet the local needs and consider the local conflict context in order to further positive effects of trials on conflict resolution efforts and to minimise possible negative effects.

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AMBIGUOUS IMPACTS



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