NORTHERN UGANDA:
THE ROAD TO PEACE, WITH OR WITHOUT KONY

Africa Report N°146 – 10 December 2008

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Juba peace process, intended to bring closure to the northern Uganda conflict and disarm Joseph Kony's Lord's Resistance Army (LRA), is failing. On 29 November, Kony failed again to appear at the Ri-Kwangba assembly point to sign the Final Peace Agreement (FPA). Since April, armed actions attributed (not always accurately) to the LRA resumed in Sudan's Western Equatoria state and the Bas Uélé district of the Congo (DRC). The LRA menace has moved out of Uganda, but the north does not yet have the certainty of sustainable peace. The government's reconstruction, development and oil exploitation policies will only bring peace if joined to a credible process of consultation over benefits and of reconciliation and measures to address the region's marginalisation from national institutions. Additional negotiations on insufficient aspects of the protocols, under a new format and supported by a military containment strategy, are also needed to disarm and reintegrate LRA fighters. For all this to happen, donor governments must adopt a more critical view of government intentions and performance.

The Juba process was initially hailed as historic for good reasons. Started in June 2006, it produced five signed protocols in 21 months, designed to conclude 22 years of conflict and guarantee the disarmament and reintegration of one of the worst human rights abusing insurgencies ever. The relative speed with which the agreements were negotiated and signed, however, indicated their weaknesses. Key issues such as northern Ugandan grievances over marginalisation and victimisation by the National Resistance Movement (NRM) government, genuine processes of reconciliation based on accountability for all crimes, including those committed by the army and leading to fair reparations, and a credible disarmament incentive for Kony and his men have not been resolved. Kony does not represent them, but until the legitimate grievances and feeling of marginalisation of northern Uganda's communities are genuinely addressed, LRA fighters remain a possible vehicle for the expression of northerners' frustrations.

No military solution is realistic, but a credible national alternative to the International Criminal Court (ICC) indictment of Kony and four others was not provided in sufficient detail to draw the LRA leaders from their lair. Moreover, Juba's disarmament and reintegration provisions are irrelevant for key movement combatants. Since its transfer to Sudan in 1994, the LRA has committed innumerable mass atrocities, notably recruited and abducted Sudanese civilians, who now are probably the majority of its fighters. They have no interest in Uganda-focused negotiations and want their own disarmament concerns addressed. To the extent they care about political issues, it is those of their homeland, not Kony's. Indeed the reclusive leader may have lost much of his importance. Whether he comes out of the bush to sign a peace agreement is less relevant to avoiding an eventual new revolt in northern Uganda than whether the government makes serious efforts to keep its promises to that region. And the Sudanese influence in his organisation probably means that while Kony is still feared, he no longer absolutely controls his forces.

The LRA's old patron, Sudan's ruling National Congress Party (NCP), and Khartoum's army have been kept out of the talks, even though their guarantee of implementation is probably necessary for the agreement's success. The Government of Southern Sudan (GoSS) Vice-President and chief mediator of the Juba talks, Riek Machar, consistently refused to address the Sudanese dynamics behind the LRA's last fourteen years of insurgency, so as to hide his own responsibility in originally recruiting it as a proxy force by Khartoum.

The LRA is now entrenched in a large territory at the common border between the Congo, Sudan and the Central African Republic (CAR). It is terrorising communities of Bas-Uélé and Western Equatoria, while doing business and protecting others, and joining in the illegal exploitation and trade of gems, gold and ivory. It is available again as a proxy if Khartoum wants to disrupt the 2009 national elections, Southern Sudan's 2011 referendum or restart war on the Sudan People's Liberation Army's (SPLA) southern flank.

Kony might never sign the FPA, but closure of the long conflict should not be hijacked by him or by the NRM leadership's economic interests. The stakeholders conference announced in one of the Juba protocols should be used to organise the consultations needed to establish a strong, independent Truth and Reconciliation Commission and a credible Equal Opportunities Commission. Donors involved in funding the stakeholders conference should become the guarantors that its resolutions will be implemented and provide the necessary leverage to hold the government to its commitments.

To foster LRA disarmament, the additional negotiations need a new format. The UN Security Council and the African Union (AU) Peace and Security Council should jointly mandate the special envoy for LRA-affected areas (currently Joaquim Chissano, the ex-Mozambique president) to negotiate directly with Kony and his commanders, assisted by Sudan's NCP/Sudan People's Liberation Movement (SPLM) government of national unity. Machar, who has little influence with Khartoum or Kampala, should be consulted in this shuttle diplomacy but leave the UN/AU special envoy to manage this last round of negotiations. If Chissano does not want to take up this new responsibility, his replacement should be a senior official from the region, with detailed knowledge of Sudan and a strong military background.

If backed by a focused final round of negotiations, the national judicial process outlined at Juba, including formation of a special division of the High Court and elements of traditional justice, has some prospect of satisfying the Security Council and the standards of the Rome Statute, so that the ICC case against the LRA leaders can be suspended. But Kony and his senior people will need further assurances about the process, that their trials will be fair and not controlled by the government, and they will not be sent to The Hague. For example, they might be given promises that international judges would join the trial panel and that the proceedings would be conducted at the premises of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, so as to guarantee maximum independence for the proceedings and increased security for accused and witnesses alike.

Simultaneously, the special envoy would have to negotiate a disarmament and reconciliation chapter specifically for the Sudanese combatants and Sudanese victims of the LRA, as well as credible provisions for assembly areas for LRA combatants in both Southern Sudan and the Congo. Troops from the AU's regional standby forces or other African states should be considered as an alternative to the SPLA and the Congolese army, both to protect the assembly points and, if negotiations fail, to implement a containment strategy to hinder LRA movements along the Sudan/CAR/Congo borders and increase civilian protection in the area.

RECOMMENDATIONS

To the UN Security Council and the AU Peace and Security Council:

1. Give the special envoy for LRA-affected areas a joint mandate to negotiate the following between the governments of Uganda and Sudan and the LRA leadership:
   a) additional conditions within the agreed framework of the Juba protocols for the disarmament and reintegration of Joseph Kony and other LRA commanders against whom there are ICC indictments, to persuade them they will be physically safe and receive fair national (Ugandan) trials, possibly to include provisions respecting a security detail and the holding of their trials by a special division of the Ugandan High Court in Arusha (Tanzania); and
   b) conditions for the disarmament and reintegration of the LRA's Sudanese commanders and combatants, tailored to their distinct interests with the help of the South Sudan Peace Commission and the South Sudan Disarmament, Demobilisation and Reintegration (DDR) Commission, including the terms for a reconciliation and reparations process between the LRA Sudanese and their Sudanese victims; as well as to
   c) impress on Kony and others under ICC indictment that they can only be relieved of those indictments by Security Council or ICC decisions and that these decisions are only possible if they disarm and submit to trial in a credible national judicial process satisfying international standards.
2. Initiate joint contingency planning to deploy in LRA-affected areas of Sudan, the Congo and CAR an African force, consisting of AU standby units and/or AU member state contributions, as a credible and impartial mechanism for disarming/containing the LRA and protecting civilians.
3. Appoint a panel of experts to investigate the external sources of support provided to the LRA and propose adequate sanctions against individuals facilitating the continuation of the conflict.

To the Government of Uganda:

4. Hold the planned stakeholders conference with substantial representation from northern Ugandan communities, civil society (including women's

associations) and the diaspora, so as to produce genuine consultations and appropriate recommendations for speedy implementation of measures to establish:

a) a strong, independent Truth and Reconciliation Commission, empowered to investigate all crimes committed in northern Uganda since 1986, protect witnesses, summon army personnel of all ranks and government officials and decide appropriate reparations for victims of both LRA and government human rights abuses;

b) a revised and credible Equal Opportunities Commission as provided in the constitution and the protocol on comprehensive solutions, composed of technical experts and civil society representatives and legally empowered to address northern Ugandan claims of marginalisation, disempowerment and regional disparities in allocation of public offices and benefits from national resources; and

c) institutional checks and balances for management of reconstruction funds so as to increase transparency in their allocation, guarantee they will not be used to support pork-barrel politics ahead of the 2010 general elections and minimise risks of bureaucratic paralysis and corruption.

5. Declare a moratorium on alienation of communal land for commercial or industrial purposes, until the internally displaced (IDPs) are peacefully resettled and promote the access of women and children – the primary war victims – to secure land holdings.

6. Support appointment of a joint UN/AU special envoy mandated to negotiate terms for the disarmament and reintegration of Joseph Kony and his Ugandan commanders, including additional guarantees relating to their trials by a special division of the High Court, and for the LRA's Sudanese elements.

7. Withdraw all troops from Southern Sudan to build confidence in the last phase of the negotiation process.

To Joseph Kony and the LRA Commanders:

8. Stop all attacks against civilians, engage with the joint UN/AU special envoy to negotiate disarmament and reintegration and accept that trial by the special division of the High Court is the only alternative to ICC prosecution.

To the Sudanese Government of National Unity, NCP and SPLM leaders, and the Governments of the Congo (DRC) and the Central African Republic (CAR):

9. Support implementation of the UN/AU special envoy's mandate, accept deployment of AU forces in LRA-affected areas as a disarmament and containment mechanism and use all available direct means of communications to convince the LRA leadership that there is no alternative to disarmament.

To the Government of Southern Sudan (GoSS):

10. Task the South Sudan Peace Commission and South Sudan DDR Commission to:

a) support the AU/UN special envoy in negotiating disarmament and reintegration of the LRA's Sudanese combatants;

b) craft a credible reconciliation process between them and their Sudanese victims;

c) address political and economic grievances of Eastern Equatoria communities towards the GoSS and the SPLM so that they cease cooperation with the LRA; and

d) engage with Mbororo tribal leaders to end association with the LRA.

11. Intensify efforts to increase security in LRA-affected areas of Equatoria by disciplining and transferring rogue SPLA personnel who prey on local populations and improving roads and other communication resources of isolated communities.

To Donors for Uganda and Sudan:

12. Support politically and financially the northern Uganda stakeholders conference and implementation of its resolutions – pressuring the government if necessary – the AU/UN special envoy's mandate and deployment of an AU force as a credible mechanism for LRA disarmament and containment.

Nairobi/Kampala/Juba/Brussels,
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I. INTRODUCTION

The final signature that should bind the Lord's Resistance Army (LRA) and the Uganda government to the agreements negotiated in Juba has become elusive.[1] The endorsement of the final three protocols during the January-February 2008 round had set the stage for the signing of the Final Peace Agreement (FPA) by the rebel leader, Joseph Kony, at the Ri-Kwangba assembly point on 10 April, and then by President Yoweri Museveni four days later in Juba. But Kony never turned up and has since postponed signature several times, saying that he needed further clarifications on the protocols. The fragile ceasefire seemed to collapse in July and August, with increased incidents attributed (and partly misattributed) to the LRA in southern Sudan, eastern Central African Republic (CAR) and north-eastern Congo (DRC), and associated looting, destruction and abductions.

The conflict has in effect ended in northern Uganda since the LRA shifted to Congo and Sudan safe havens several years ago. Over one million internally displaced persons (IDPs) have returned to their areas of origin since initially the cessation of hostilities agreement and then a permanent ceasefire were signed in February 2008, bringing hope that the generation-long insurgency was close to a finish. Sustained and successful peace has yet to be reached in LRA-affected areas, however. Although the Ugandan government has already begun to implement part of the Juba protocols, there are no firm guarantees that northern Ugandan grievances will be addressed sufficiently to bring closure to the old conflict and prevent conditions that could eventually produce a new one. Meanwhile, the LRA remains a regional problem that requires a lasting solution.

Making the most of the peace process requires complementary initiatives: using the Juba protocols to reach closure in northern Uganda and provide guarantees that the government will indeed make all efforts to integrate the Acholi people into the national polity; and negotiation by the UN and the African Union (AU) with the regional countries of a containment and disarmament strategy to deal with the LRA's remaining capacity. This report analyses the Juba process and suggests how to implement such initiatives.

[1] For details on Juba's five-point agenda and the peace process generally, see Crisis Group Africa Briefings N°46, *Northern Uganda Peace Process: The Need to Maintain Momentum*, 14 September 2007, and N°41, *Peace in Northern Uganda?* 13 September 2006; and Africa Report N°124, *Northern Uganda: Seizing the Opportunity for Peace*, 26 April 2007.

II. JUBA ENDS

A. JANUARY-FEBRUARY 2008: TOO RAPID PROGRESS?

The death of the deputy LRA commander, Vincent Otti, on 8 October 2007, confirmed by Riek Machar, the chief international mediator and the Government of Southern Sudan's (GoSS) vice president, on 23 January 2008, and the subsequent sacking of the LRA delegation head, Martin Ojul, initially appeared ominous for the Juba talks. Otti had become the public face of the LRA, perceived as a guarantor of the rebels' commitment to the peace process. He was a frequent voice on the local Uganda station, Mega FM, regularly updated the public on the progress of the peace process from LRA point of view and communicated regularly with the mediation team. His death raised the risk of a breakdown of communication between negotiators and the senior military command in the bush. The talks resumed at the end of January, however, and within four weeks, the last protocols were signed.

Between June 2006 and July 2008, therefore, the parties agreed on the five main items of the agenda:

1. comprehensive solutions to the conflict, including special attention to the economic recovery of the north, positions for northerners in the government and a fund to pay reparations to conflict victims;
2. accountability and reconciliation, including mechanisms for creation of a special division of the High Court to try the most serious crimes and promotion of truth telling and traditional justice mechanisms;
3. a permanent cessation of hostilities agreement;
4. disarmament, demobilisation and reintegration (DDR) principles for processing and resettling former combatants in Uganda; and
5. an agreement on implementation and monitoring mechanisms, requiring the government, after the FPA is signed and during a transitional period in which the LRA is to fully assemble, to ask the UN Security Council to adopt a resolution deferring all investigation and prosecution of LRA leaders by the International Criminal Court (ICC) for up to a year.

The last round of talks went particularly fast. Between October 2007 and January 2008, Machar withheld confirmation of Otti's death, partly to avoid a crisis in the negotiations and suspension of donor funding, partly to prepare possible next steps. After the sacking of Ojul, he finally confirmed the death and threw his weight behind Dr David Matsanga, a member of the LRA delegation, who had proclaimed himself an ICC expert and was thought able to break the deadlock with Kony on the indictments.[2] The rebel leader reportedly confirmed Matsanga's appointment as the new head of delegation in a mid-January 2008 telephone conversation, although it was never independently verified.

Ojul was a not very articulate former taxi-driver with little formal education.[3] The new delegation was more promising than its predecessors and expected to elevate the level of debate. Four lawyers and a doctor were added, among them Jane Anywar, an international humanitarian lawyer who had prosecuted two suspects before the International Criminal Tribunal for Rwanda, and Caleb Alaka, a criminal lawyer who negotiated a peaceful settlement for members of the defunct Uganda National Rescue Front (UNRF) II rebel group in 2001.[4]

The level of diplomatic engagement and resources was also raised by the participation of observers from the U.S., European Union, EU member states, Canada and Norway. Technical experts on DDR and legal and women and children issues also joined. An extension of the cessation of hostilities agreement was agreed first and a negotiation schedule prepared, despite allegations of LRA attacks in Kajokeji County, Central Equatoria, on 31 January 2008, where four persons were killed. Machar kept the focus on the timetable and the goal of reaching a final peace agreement by the official end-date of the talks, 30 March.

The round initially took up the agenda item on comprehensive solutions. The LRA delegation revived demands, including that people from Uganda's northern and eastern regions be assured 35 per cent representation in military, government and ambassadorial posts and

[2] David Matsanga is a Mugisu from eastern Uganda. He worked for the government from 1980 to 1985 before he moved to the UK, where he has lived in exile since. He was the LRA spokesperson in the 1990s, at the height of the insurgency's worst atrocities in the north. He probably had close links with Kony in the past, but these are now uncertain. Crisis Group interviews, former LRA members and Ugandan political analysts, Kampala, June-July 2008.

[3] Crisis Group interview, senior government official, Kampala, July 2007.

[4] Caleb Alaka built his reputation as a legal adviser during the UNRF II negotiations. He subsequently handled high-level political cases, for example defending opposition leader Dr Kizza Besigye who was accused of sedition and rape prior to the 2005 general elections. The LRA negotiations were a good public relations opportunity for him, though he had no prior link to the movement.

that a "golden handshake in cash and in kind" be paid to LRA negotiators following a peace deal.[5] It is hard to say whether the delegates were talking for the LRA, but many seemed primarily to be seeking a deal that would facilitate their comfortable return to Uganda.[6] The government rejected the proposals.

After a discussion on the character of the armed forces and security agencies, Machar suggested that recruitment into these bodies and their composition reflect national numbers. The government agreed to establish a "diaspora desk" in the foreign ministry[7] and accepted the principle of supporting reintegration of LRA combatants after surrender. The parties agreed on a number of other issues, such as facilitation for resettling IDPs and land ownership, but not on a statutory increase of northerners' representation in state institutions, an issue the government delegation insisted be handled by its Equal Opportunities Commission.[8]

The parties also agreed in the "implementation annex" for the agenda item on "accountability and reconciliation", that traditional justice mechanisms would supplement the national justice system, and the combination would serve as an alternative to ICC proceedings. Completing the consensus on the most controversial aspects of negotiations that had already lasted nineteen months, they accepted that those affected by the conflict should receive reparations.

Signature on 23 February of the permanent ceasefire, perceived as the real end to the war, brought particular jubilation in Juba. It was followed five days later by endorsement of the DDR and implementation protocols, though there was no solid confirmation that Kony had been briefed and agreed to them before the head of delegation signed, purportedly on his behalf.[9] According to some former delegates, the February 2007 cessation of hostilities agreement was the only agreement on which the delegation had fully briefed Kony and his fighters.[10] Despite the uncertainties, Machar pushed forward the closing of the talks and scheduled the FPA signing by Kony. Concerns began to arise, however, after LRA representatives visited the ICC in The Hague in early March to seek assurances on the procedures for deferring and ultimately ending the ICC prosecutions of the LRA leadership. The LRA apparently was not confident that a realistic way out had been found on the critical justice and accountability issue.

B. NO FPA SIGNATURE

President Museveni felt that a joint ceremony with Kony was unacceptable, as it would put him at the same level with the LRA leader,[11] so he was to sign on 14 April in Juba, in the presence of regional heads of state. But four days earlier Machar, Joaquim Chissano, the former Mozambique president who is the UN Secretary-General's special envoy for LRA-affected areas,[12] and other senior stakeholders, including Acholi cultural and political figures, gathered in Ri-Kwangba to witness what was expected to be Kony's signature. Kony's close relatives were also waiting for him. Security sources at Nabanga, six miles away on the Sudan-Congo border, confirmed that the Control Altar Brigade, which protects the LRA leader, had arrived at the clearing point, signalling that he was in the vicinity, but he never appeared.[13]

Kony explained by telephone to Obonyo Olweny, a former LRA spokesperson, that he no longer trusted the mediators, because they were pro-government, complained of government interference, corruption and bribery, particularly during track-two meetings in Kenya (Mombasa) in 2007, demanded that IDP camps in Acholi areas be disbanded and the people returned to their lands and added that a meaningful peace agree-

[5] "LRA demand 35% of top UPDF jobs", *The Monitor*, 6 February 2008, at www.monitor.co.ug/artman/publish /news/LRA_demand_35_of_top_UPDF_jobs.shtml.

[6] Crisis Group interview, former members of the LRA delegation, Juba, March 2008.

[7] "LRA Peace Talks: The Inside Story", *The Monitor*, 9 February 2008, at www.monitor.co.ug/artman/publish/news/LRA_peace_talks_The_inside_story.shtml.

[8] "Full statement of new govt-LRA Implementation Protocol of the Agreement on Comprehensive Solutions signed on May 2nd 2007", *The Monitor*, 23 February 2008, at www.monitor.co.ug/artman/publish/news/Full_statement_of_new_govt-LRA_deal.shtml; and "Government, LRA sign", *New Vision*, 22 February 2008, at www.newvision.co.ug/D/8/13/613038.

[9] Some reports confirm that the LRA delegation did not see Kony when it went to Ri-Kwangba in May 2008 to brief him on the agreements, particularly DDR provisions that involve his own security and the livelihoods of the combatants.

[10] "We met with Kony and explained this agreement to him in detail in Acholi. It is the only agreement that was fully discussed with Kony. He has not been briefed by his delegation on the details of the other agreements, and you can see why he is not happy with the other agreements even though he has not violated the ceasefire agreements. There have been no attacks in northern Uganda since it was signed". Crisis Group interview, former LRA delegate, Nairobi, April 2008.

[11] Francis Nyakairu, "ICC lawyer refuses to meet Kony's men", *The Monitor*, 5 March 2008, at www.monitor.co.ug/artman/publish/news/ICC_lawyer_refuses_to_meet_Kony_s_men.shtml.

[12] Chissano is also a member of the Crisis Group Board.

[13] Machar camped in Nabanga for several days. Kony fired Matsanga and said he would name a new delegation. Crisis Group interviews, former LRA delegate, Nairobi, April 2008.

ment should be signed in Uganda, not a foreign land, and by both protagonists at the same time with the world as witness. The part of the FPA calling for prosecution of LRA leaders by a special division of the High Court, he said, was unacceptable; since he was prepared to make peace, the government should not prosecute him and his commanders.[14]

The LRA leader also denounced the large Ugandan army presence in Southern Sudan and an alleged pact with the latter's military (the SPLA) to hunt him down. He condemned the threat of using other foreign forces – Congolese and UN (MONUC) – to help. President Museveni, he claimed, had not sufficiently demonstrated that he accepts all Ugandans, particularly the Nilotes of the north, as equal citizens, with full social, economic and political rights. While it is impossible to know whether all these issues were indeed raised by Kony, or were attributed to him by Olweny, they at least give an indication of his dissatisfaction with the Juba protocols.

A workshop was held on 10-13 May 2008 with the LRA delegation and Kony's wives, for the purpose of updating the suspicious leader and discussing LRA judicial concerns. Northern cultural, political and religious personalities, led by Rwot Achana, and Machar spoke again afterwards with Kony, who reiterated his commitment to peace but, despite reassurances, failed to turn up in Ri-Kwangba for several subsequent signing sessions.[15] Machar and Chissano have continued to urge further engagement with the LRA to obtain Kony's signature and embark on implementation.[16] The government has shown impatience, threatening the LRA and closing the door to formal reopening of the negotiations.[17] President Museveni questioned the validity of the talks.[18]

The resumption of attacks suggests that the LRA may have definitively withdrawn from the peace process and is trying to reinforce itself and expand its area of operations in Southern Sudan and the Congo. Attacks directed at the Congolese-Southern Sudan military outpost of Nabanga, which is also the food distribution centre for the rebels, on 5 June claimed 24 lives, including nine SPLA and the garrison commander.[19] Mid-September attacks on Sakure, an SPLA position at the Western Equatoria border with the Congo, and on the Congolese villages of Duru, Nambia, Nakalme, Bitima, Bayote, Kiliwa and Bangadi reinforced the notion that the LRA seeks to clear out the local population and establish its own long-term presence. They also suggest that Kony may have been using the Juba negotiations primarily to buy time.[20]

[14] Crisis Group interview, Obonyo Olweny, Nairobi, May 2008.
[15] Kony also reiterated his commitment to peace on 12 June 2008, in his first interview with the international media – Radio France Internationale (RFI) – in twenty years and confirmed this by telephone on 19 August to Chissano. Crisis Group interview, member of the special envoy's team, Kampala, October 2008. Those who have talked with him about signature say he discusses unrelated issues, asks whether his people are being taken care of at the assembly point and sounds distant. Other sources say his health is poor, including a mouth infection and tuberculosis, he trusts no one and is unsure of his next step. Crisis Group interview, Juba talks international observer, Nairobi, June 2008.
[16] Cf. "Report and recommendations of the chief mediator of the peace process between the Government of the Republic of Uganda and the Lord's Resistance Army", report to the observers of the Juba Peace Talks, GOSS/VPO/J/I.A.S./ 2008, 16 June 2008.
[17] "Joseph Kony again failed to show up", *New Vision*, 1 December 2008.
[18] Rodney Muhumuza, "Museveni was never interested in Juba talks, says ex-UN chief", *The Monitor*, 27 May 2008, at www.monitor.co.ug/artman/publish/news/Museveni_was_never_interested_in_Juba_talks_says_ex-UN_chief.shtml.
[19] "LRA kills 24. GoSS ponders next move", *The Juba Post*, 9 June 2008.
[20] "Ugandan LRA rebels attacked military base in Southern Sudan", BBC, 20 September 2008; "LRA rebels attack a locality in eastern DRC", MONUC press release, 21 October 2008; and "Sudan: LRA rebels put Congo civilians to flight", IRIN, 22 October 2008. In the Bangadi attack, up to 90 women and children were abducted, and churches, houses, schools and grain stores torched.

III. REALITY CHECK ON JUBA

Do the Juba protocols offer a genuine chance for disarmament and demobilisation of the LRA and closure of the Northern Uganda conflict? Kony's signature would certainly reassure the IDPs and encourage their return and resettlement. Even a signed final agreement, however, would leave a question whether the document was good enough to definitively end the conflict.

A. THE AGREEMENT ON COMPREHENSIVE SOLUTIONS

1. General commitments

The Comprehensive Solutions Agreement signed on 2 May 2007 and its implementation protocol of 22 February 2008 are intended to address northerners' claims of marginalisation and disempowerment. They contain general promises to promote more equitable economic development, more regionally balanced resource allocation, inclusive participation and fair representation,[21] but except for pledges to implement fully the existing constitution and legislation are short on detail. The Equal Opportunities Commission, planned in the 1995 constitution but yet to be established by parliament, is described as the main body to be responsible for identifying and remedying regional or ethnic imbalances and disparities.

The government committed – again without detail – to strengthen rule of law in the north and promote access to justice in LRA-affected areas.[22] The principal of proportional representation of all regions of the country in the army and other security services was reaffirmed, as well as the rights of LRA fighters to be integrated into the army and children of LRA fighters to receive universal primary education; the government promised that the police would eventually replace the army in the affected districts.[23] Last but not least, it promised to make available the money needed for reconstruction and to facilitate IDP return through a fast-track Northern Uganda Peace and Recovery Development Plan (PRDP).[24] Rapid replacement of lost livestock and the importance of district land boards confirming communal Acholi land rights were reaffirmed, as was the principle of fair compensation for all who were displaced by the army or the government during the conflict.[25]

The implementation protocol did not add specifics or credible guarantees to the many promises. Perhaps the most original and concrete provision is for a stakeholders conference, intended to inform and sensitise political, civic, religious and traditional leaders about the agreement and their role in its implementation, including to educate the grassroots.[26] Provided it receives adequate international and national support, it could be used to create a realistic roadmap for carrying through the government's commitments. The conference is supposed to convene only after signature of the FPA, however.[27]

2. Representation

The lack of specifics to address marginalisation and disempowerment is the first challenge to the credibility and validity of the Juba protocols. Northeners have regularly accused President Museveni of ethnic chauvinism. The opposition politician Betty Kamya has been one of his strongest critics.[28] Members of the diaspora, mainly the Acholi networks, and remnants of the Obote and Okello regimes, who fled to Europe and North America in 1986, are also vocal about ethnicity in contemporary Uganda, which they describe as unfairly controlled by Western and Southern Ugandan interests (Banyankole and Bakiga communities associated with the Baganda).[29]

Beyond the partisan accusations of political parties and the diaspora excesses, the latter of which are often completely disconnected from the realities of the country, regional imbalances and disparities in access to public office and allocation of resources have been documented and show that the National Resistance Movement (NRM) regime has favoured the western

[21] See "The Government shall take necessary measures to bring about balanced development of different areas of Uganda and between the rural or urban areas"; and "The Government shall take special measures in favour of development of the least developed areas". "Agreement on Comprehensive Solutions between the Government of the Republic of Uganda (GoU) and the Lord's Resistance Army/Movement (LRA/M)", Juba, 2 May 2007, Articles 2.1.d and 2.1.e.
[22] Ibid, Articles 7.1 and 7.2.
[23] Ibid, Articles 8.2-8.4.
[24] Ibid, Article 10.1.1.
[25] "Agreement on Comprehensive Solutions", op. cit., Article 14.5.
[26] Ibid, Article 17.
[27] A meeting organised mid-November in Kampala without representation from Northern communities cannot be regarded as a proper stakeholders conference proposed by the Juba protocol. A proper stakeholders conference has to be held. Cf. "Museveni reaffirms commitment to Uganda peace process", *Sudan Tribune*, 8 December 2008.
[28] Betty Kamya, "Where is Museveni's heart?", *The Daily Monitor*, 28 January 2008.
[29] John-Jean Mbaria, "Is NRM government most sectarian?", *The Independent*, 25 January 2008.

region.[30] People from there reportedly hold 44 per cent of all top public appointments, although the region contains only 26 per cent; the Baganda – just 17 per cent of the population – have 30 per cent of such positions.[31]

Westerners also occupy 74 per cent of the army's top command positions, while northerners are almost completely absent from top public offices.[32] Western ministers have the portfolios with the most resources and, together with the permanent secretaries from that region, have de facto control of 71 per cent of the national budget. Western Ugandans are also managers of public sector organisations that receive 70 per cent of all the resources allocated to such institutions.[33] Ministers from the north control but 4 per cent of the national budget, while only 5 per cent of the value of road projects in the 2007/2008 budget went to their region. The Equal Opportunities Commission will need to take an activist role once it is set up if it is to come to grips with such regional differences.

Likewise, no political trends suggest governance is improving[34] or that there are, or are likely to soon be, countervailing powers to the NRM government and the NRM-dominated parliament that can help correct the situation. The courts are unable to curtail widespread corruption at the highest levels.[35] Attacks on civil liberties,[36] a history of extensive electoral rigging[37] and the president's declared intention to stand for yet another term are all warning signs that Uganda is evolving towards perpetuation of defacto single party politics, dominated by the group that took power in 1986 and enjoys almost complete impunity for abuses.

Realistically, the Juba talks were never intended to radically change Uganda's political system and give opposition parties by negotiation what they could not obtain through elections. The argument that the LRA and its supporters have no genuine political agenda was a leitmotiv of the talks from the beginning, so that it became virtually impossible to examine whether the insurgents had or reflected any legitimate grievances. The government used propaganda and the media effectively to depoliticise the war.[38] Yet, explaining the insurgency solely in terms of Kony's messianism misses some of the underlying reasons for the conflict in the north and provides an inadequate explanation of why some northern leaders and members of the diaspora and opposition used the LRA as a vehicle to express their own political grievances.

The LRA is connected to an intricate network of anti-NRM militants in the diaspora, who use it to undermine the government. The delegation in Juba was mainly composed of such diaspora members, who live in Europe or Nairobi. Some of these were officials in the regimes of Milton Obote or Tito Okello and now serve as intermediaries and broker deals with the LRA's external backers, such as the ruling National Congress Party (NCP) in Khartoum.[39] Kony maintains direct contact with some of them and seeks their political advice. The government accordingly often accuses diaspora members of sustaining the war; civil society leaders in the north recently called them "spoilers" of the peace process. The 13 May 2008 Nabanga communiqué from northern civil, political and religious leaders among others blamed certain diaspora figures for Kony's failure to sign the FPA on 10 April.[40]

Northern leaders visited the U.S. and UK and met with some diaspora members, as well as development partners, in an attempt to deal with the 10 April disappointment.[41] This was useful, because unless there is a dialogue with those in the diaspora who hold political

[30] Andrew Mwenda, "Does Museveni favour Bahima kinsmen?", *The Independent*, 22 February 2008.
[31] Andrew Mwenda, "National cake: who eats the chunk, who picks the crumbs ?", *The Independent*, 8 February 2008.
[32] Andrew M. Mwenda, "The beast of tribalism", *The Independent*, 25 January 2008.
[33] Mwenda, "National cake", op. cit.
[34] Cf. Andrew M. Mwenda, "Personalizing Power in Uganda", *Journal of Democracy*, vol. 18, no. 3 (July 2007); and Andrew M. Mwenda and Roger Tangri, "Patronage politics, donor reforms, and regime consolidation in Uganda", *African Affairs*, vol. 104, no. 416 (2005), pp. 449-467.
[35] "Global Integrity Scorecard: Uganda", Global Integrity Report, 2007, at http://report.globalintegrity.org/reportPDFS/Uganda.pdf.
[36] Ibid.
[37] Ibid.
[38] The government spends considerable money to improve its public image. A U.S. lobbying firm, run by Rosa Whitaker, was paid $300,000 quarterly in 2008. In February, the LRA delegation alleged that it received $750,000 merely for drafting a letter to the U.S. government on improving trade ties. See Charles Kazooba, "PAC probes Open over $0.75m PR project", *The East African*, 7 November 2008, at www.theeastafrican.co.ke/news/-/2558/488314/-/view/printVersion/-/m2ai/-/index.html. A UK-based firm, Hill and Knowlton, is paid £1.2 million a year. See "Western PR company to sell Uganda", BBC News, 19 May 2005, at http://news.bbc.co.uk/1/hi/world/africa/4563909.stm. Crisis Group interview, LRA diaspora, London, July 2008.
[39] Crisis Group interview, LRA observer, Nairobi, August 2008.
[40] "Communiqué issued by a delegation of political, cultural, religious, opinion leaders and elders from the greater north", Nabanga, 13 May 2008. The communiqué was transmitted over the radio by Mega FM on 22 May 2008.
[41] Crisis Group communication from observer of the May and June meetings, June 2008.

grievances (real or imagined),[42] external support is likely to continue to flow to the LRA or any individual willing to organise an armed group in the north. Confidence-building in the government's intentions is absolutely essential to ensure sustainable security in the north and address the issue of buried arms caches and unexploded ordnance and landmines scattered throughout the north. Some LRA fighters, with the tacit agreement of those in the bush, have accepted the government's amnesty and returned but buried weapons across the region. The plan is to have the means to resume fighting available in the main theatre of operations, if the government does not keep its promises.[43]

If the protocols are not to be another missed opportunity for closure of the northern Uganda conflict, it is essential that two instruments identified as key to improving governance – the stakeholders conference and the Equal Opportunities Commission Act – be brought into existence so as to genuinely respond to Northerners' sentiments of marginalisation and disempowerment. The government's intended tactic of "pumping donors' money" into the region under the PRDP [44] will not be sufficient to address the underlying causes of the conflict and so produce genuine security.

3. Peacebuilding, reconstruction and access to natural resources

Although the FPA was not signed, the government has said it will unilaterally implement the PRDP. Launched in October 2007, that initiative is designed as a three-year strategy for providing emergency relief, revitalising health-care and education services, strengthening the judiciary and police and other measures to assist IDP return and resettlement. The establishment of power-generating dams and sugar factories and construction of two railway lines to Southern Sudan are also part of the ambitious plan, estimated to cost at least 3 trillion USh ($900 million) overall.[45] It is a potentially promising framework for peacebuilding and reconstruction but has also been criticised as geared toward satisfying the NRM political agenda, but not necessarily fostering peace and reconciliation.

Conflict-affected areas have traditionally been strongholds of the opposition Uganda Peoples Congress (UPC) and Democratic Party (DP). Although President Museveni received 69 per cent of the vote in the last election to the 27 per cent of his major rival, Dr Kizza Besigye, he did much poorer in the north, which includes 37 per cent of the electorate. In view of the president's reduced popularity in Buganda and the south east, and controversy over a fourth term candidacy in 2011, which might require yet another constitutional amendment, the NRM will be tempted to use PRDP largesse to co-opt northern leaders into its patronage system.[46] Donor money should not serve NRM pork-barrel politics.

The government is yet to specify the institutional framework and financing mechanisms for efficient, speedy service delivery to IDPs and returnees, so there are also concerns the PRDP will primarily benefit politically connected contractors and employees of government agencies and rely excessively on expensive foreign consultants. Efforts to coordinate northern reconstruction under the Ugandan Social Action Fund since 2003 have been marred by duplication of efforts, bureaucracy and corruption, so the indicated expansion of that agency under the PRDP does not augur well for the process. Nor does creation of the Northern Uganda Data Centre (UNDAC) to centralise all implementation information appear to answer the need for greater transparency and accountability.[47]

The cessation of hostilities agreement (CoH) led to significant security improvements. Over half the 1.8 million IDPs have returned home or moved to nearby transit sites. Nevertheless, uncertainty over peace prospects, unease with military deployments and concerns for rising criminality and inadequate police presence stop many from leaving the camps. The government tries to push IDPs out, even when it has not provided sufficient health and education services and the means for basic livelihoods.[48] A significant number of IDPs in camps or transit sites may prefer communities where basic services such as schools and clinics are available, rather than return to their land.[49] Child prostitution and child labour by conflict victims are exploding in Gulu, the North's major town, which has become a key stop-over for truck drivers on their way to South-

[42] Some diaspora members, for example, tend to hyperbole, with references to genocide in the north and concentration camps for IDPs; see Olara Otunnu, "Secret Genocide", *Foreign Policy*, July/August 2006.
[43] Crisis Group Briefing, *Northern Uganda Peace Process*, op. cit., p. 10.
[44] Crisis Group interviews, civil society representatives Kampala, June and September 2008.
[45] "President launches Northern Uganda development plan", *State House News*, 15 October 2007.
[46] "Museveni's road to the 4th term", *The Independent*, 16 May 2008.
[47] "Doubts over Recovery Plan", Institute of War and Peace Reporting (IWPR), Africa report no. 182, 12 August 2008.
[48] "From Emergency to Recovery", Oxfam briefing paper no. 118, September 2008.
[49] "Northern Uganda: Give displaced people real options", Refugees International Bulletin, 22 July 2008.

ern Sudan.[50] At the same time, access to their land is uncertain for many northerners, especially households headed by women or children.[51] Though parliament has discussed it and a national land policy is in place, the government has been slow to articulate a protection plan.[52]

The problem is the more complex because local governments are under-resourced, and powerful interests are seeking to obtain land for large-scale commercial farming, such as the controversial Madhvani sugar project in Amuru.[53] A crucial first step, frequently emphasised by Acholi parliamentarians, cultural and other civil society organisations and personalities and local government leaders, would be a moratorium on alienation of communal land for "investment" or "development" until people are peacefully resettled.[54] Acholi communities fear industrial developments in the north will mainly benefit businesses and leaders of other communities and their Asian or foreign partners, while they will find themselves deprived of benefits derived from their own natural resources.

Discovery of oil in the north raises concerns about how the new wealth will be shared. Tullow Oil's drilling indicated that 500 million barrels of high-quality oil could be drawn from a site in Hoima district, south of the LRA-affected areas, and that there are significant additional deposits in Arua, Pakwach and Nebbi districts: 100 million to 300 million barrels in a single area that is just 6 per cent of the exploration region. So far only a few test wells have been drilled, one of which produced up to 12,500 barrels daily. Oil exploitation in the north is an incentive for the government to pacify the area, but there is a risk that as in Chad, Angola, Gabon, Congo-Brazzaville and Nigeria, it may benefit the holders of central government power more than local communities.[55]

The West Nile electrification project the government began in 2004 draws similar concerns. Though it aims to provide reliable hydro-electric power to the towns of Arua and Nebbi and beyond to eastern Congo, Southern Sudan and Rwanda[56] and is thus a further incentive for peace with the LRA, there has been little effort to coordinate with the north. This exacerbates the fears of economic alienation and disempowerment of Acholi and other communities and increases distrust of government intentions. Kampala's chance to rebuild confidence is to use the stakeholders conference to create mechanisms that ensure northern inclusion in its larger development plans. Women parliamentarians and civil society leaders have been at the forefront of encouraging a more transparent financing mechanism for the PRDP. Their initiatives should be more strongly supported by both donors and the government.

B. THE ACCOUNTABILITY AND RECONCILIATION PROTOCOLS

The accountability and reconciliation protocols were meant to solve one of the peace process' most contested issues – justice for the LRA's victims – without jeopardising peace chances, against the background of the war crimes and crimes against humanity indictments of five LRA leaders, including Kony, by the International Criminal Court (ICC).

1. Accountability

The 29 June 2007 agreement repeats broad principles in the constitution and provides general commitments from the parties to respect them. The 19 February 2008 annex contains specific proposals intended to bridge accountability and reconciliation. For the purpose of the former, it proposes establishment of a special division of the High Court "to try individuals who are alleged to have committed serious crimes during the conflict".[57] It would have its own investigation unit to "identify individuals who are alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians … and who shall be prosecuted as well as those who are alleged to have committed grave

[50] "Uganda: Children eke out a living on the streets", IRIN, 10 October 2008.
[51] "Uganda: Returnees caught up in land disputes", IRIN, 1 October 2008.
[52] Sverker Finnstrom and Ronald Atkinson, "Building a Sustainable Peace in Northern Uganda", *Sudan Tribune*, 6 May 2008.
[53] Sarah Adongo-Gulu, "Land minister Omara Atubo put to task over Amuru land give away", Uganda spotlight, 23 April 2008, at http://ugandaspotlight.wordpress.com/2008/04/23/lands-minister-omara-atubo-put-to-task-over-amuru-land-give-away/; and "Sugar Barons' Investment Approach in Acholi is Risky", *The Monitor*, Kampala, 16 September 2008.
[54] Crisis Group interview, Makerere University, August 2008.
[55] Angelo Izama, "Is Uganda's Oil a Curse or God's Blessing?", *Alexander Oil and Gas Connections*, vol. 12, no. 12 (September 2007); and "The Ugandan bargain: oil for peace", www.thefirstpost.co.uk/2538.
[56] "International Rivers Comments on the West Nile Electrification Project (Uganda)", *International Rivers*, 10 May 2002, at http://internationalrivers.org/en/global-warming/carbon-trading-cdm/international-rivers-comments-west-nile-electrification-project-ug.
[57] "Agreement on Accountability and Reconciliation", 19 February 2008, annex, Article 7.

breaches of the Geneva conventions".[58] The government has committed in parallel to examine the most appropriate mechanisms for traditional justice, such as *Mato Oput*, in Acholi and communal clan courts. Military courts are excluded from the process, thus appearing to bar in effect trials of army personnel.[59]

The government has committed, once the FPA is signed, to seek a deferral from the UN Security Council of the ICC prosecutions based on Article 16 of the Rome Statute.[60] If granted, that would provide a year, with the possibility of renewal, to bring Kony and the others who have been indicted to national justice.[61] Once these national mechanisms are in place, the government or the individuals subject to the warrants could apply to the ICC for a ruling that the case is inadmissible before it, based on the Rome Statute principle that the ICC is complementary to national criminal jurisdictions.[62] Kony, however, appears to be demanding further assurances on the exact process, most importantly (and unrealistically) that the Security Council deferral be obtained before he signs the FPA and presents himself for disarmament and national prosecution.

Soon after the annex was signed, the government established a 50-member working group chaired by Justice Ogola of the High Court and involving all government stakeholders[63] as well as civil society representatives and Acholi elders.[64] It has five sub-committees (court/legal mechanisms; traditional justice mechanisms; truth-telling body; budget/finance; harmonisation between instruments) and began by considering the legal and administrative preparations for setting up the special division of the High Court. That institution is to be created by the attorney general's office, without parliamentary involvement, and to be composed of a minimum of three Ugandan judges, with a possibility of expansion to five to include foreign colleagues.

The main challenge for a national justice process will be to satisfy international standards, so as to convince the ICC that atrocity crimes committed in northern Uganda since July 2002, when ICC jurisdiction begins, will be prosecuted, and to ensure that crimes committed before that time, by rebels or the Ugandan army, are addressed through effective accountability mechanisms. Many questions still have to be answered by the working group if the national process is to be a credible and effective alternative to ICC prosecution. The special division will have its own registry and be independent financially from the rest of the High Court, but Uganda has known gross political interference with past High Court proceedings, including the storming by soldiers of the High Court in March 2007. Legal practice and procedure do not always conform to international fair trial standards, including torture of detainees, admission of evidence obtained by torture and inadequate guarantees for disclosure of relevant material to the defence.[65]

From the LRA's point of view, there are some genuine additional uncertainties. The working group is using the Rome Statute and the Geneva conventions to iden-

[58] Ibid, Article 13.
[59] Ibid, Articles 20, 23. *Mato Oput* is a traditional reconciliation ceremony, which requires a perpetrator to admit guilt voluntarily, ask for forgiveness and pay compensation to the clan of an identified, wrongfully killed victim. Reconciliation is complete only if the victim's clan accepts the plea for forgiveness. Crisis Group Briefing, *Peace in Northern Uganda?*, op. cit.
[60] Article 16 provides: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions".
[61] Sealed warrants were issued in July 2005 for five leaders and unsealed in October 2005. Joseph Kony and Dominic Ongwen are still alive; Raska Lukwiya and Vincent Otti are confirmed dead. Okot Odhiambo's fate is uncertain. The ICC terminated proceedings against Lukwiya in July 2007.
[62] Under Article 17 of the Rome Statute, a case is inadmissible before the ICC if it "is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution". Thus, the ICC cannot proceed with a case if national courts undertake credible prosecutions. On 21 October 2008, the Pre-Trial Chamber of the ICC took the unprecedented step of initiating its own proceedings under Article 19 of the Statute, which governs challenges to admissibility. Referencing the June 2007 agreement on accountability and reconciliation and the February 2008 annexure establishing the special division of the High Court, as well as submissions by the Ugandan government on the status of the arrest warrants, the judges appointed counsel for the defence and invited the ICC prosecutor, the government, defence council and victims to submit their observations on admissibility. Those submissions are available at www.icc-cpi.int/cases/UGD/ /s0204/s0204_doc.html. The Pre-Trial Chamber has not yet issued any decision.
[63] This included the internal affairs and defence ministries, the attorney general's office, the Amnesty, Law Reform and Human Rights Commissions and representatives of the police and prisons.
[64] Crisis Group interview, Justice Ogola, Kampala, 30 September 2008.
[65] See "Benchmarks for Assessing Possible National Alternatives to ICC Court Cases against LRA leaders", Human Rights Watch (HRW), first memorandum on justice issues and the Juba talks, May 2007; "Particular challenges for Uganda in Conducting National Trials for Serious Crimes", HRW, third memorandum, September 2007; and "Analysis of the Annex to the June 29 Agreement on Accountability and Reconciliation", HRW, fourth memorandum, February 2008.

tify and define the relevant crimes. But the NRM-dominated parliament will have to pass a law either to incorporate those treaties or produce its own definitions, as well, most importantly, to determine the period and scope of investigations and the sanctions applied for each crime. Juba only decided that there would be no capital punishment. This means, in effect, that Kony and other commanders are being asked to put themselves in the hands of the NRM before they receive legal assurances that what was worked out at Juba will be respected in practice.

If the Juba bargain is to be credible, there may also be need to more clearly define the scope of domestic accountability mechanisms in relationship to the ICC process. The LRA leaders could be charged for many different crimes committed over the years, and the ICC prosecutor could yet apply for further indictments against those most responsible for crimes within the ICC's jurisdiction. Until recently, all combatants were given amnesty if they submitted to disarmament regardless of whether they had been involved in atrocity crimes. *Mato Oput* would generally provide a similar process, but it remains to be determined for which crimes, for whom and at what level of responsibility it or the special division of the High Court would be responsible and whether this mixed system will satisfy the ICC prosecutor and judges and the affected communities.[66]

Kony has told those close to him that he prefers to be tried under traditional justice, but he is not ready to go back to his home in Odek, where he feels his physical and financial security are not guaranteed. He might ultimately participate in a signing ceremony even without full guarantees the ICC indictment will be dropped, but he will not disarm or release women and children whom he considers to be under his protection unless he is certain what is and is not in the deal. There are still significant ambiguities in the prospective national process to be resolved, in other words, if it is to offer a possible way through the difficulties of the accountability issue.

2. Reconciliation

To foster reconciliation, the government agreed to pass a law establishing a body to analyse the history of the conflict, inquire into its manifestations, including human rights violations committed during it, hold hearings, protect witnesses, promote truth-telling, preserve memory and gather information on the disappeared.[67] It is to resemble a truth and reconciliation commission, though it will not have that name or be as strong since it will lack a judicial mandate. It will, however, be able to recommend modalities for reparations and prevention of a new conflict and publish its findings. Its members – "individuals of high moral character and proven integrity" – are expected to be appointed by the government. It is further required to "give precedence to any investigation or formal proceedings instituted" by the government.

This body is likely to be the single most important tool for reconciliation and should be empowered accordingly, but neither the government nor the LRA really wanted a genuine truth and reconciliation process that might reveal the history and reality of the suffering both inflicted on northern Ugandans over 22 years. They reluctantly agreed to a mostly toothless body with an imprecise mandate.[68]

The imbalance in the judicial process envisaged for atrocity crimes committed in Northern Uganda presents a great challenge to reconciliation, however. The ICC prosecutor's office has not sought warrants for atrocity crimes committed by the army,[69] and the government insists that it has already dealt with these by courts martial and consequent executions.[70] This is not satisfactory. The lack of judicial follow-up for army crimes,

[66] For example, as noted above, *Mato Oput* (as do other traditional justice mechanisms) normally provides that perpetrators should give reparations to victims. That appears unlikely in this situation.

[67] "Agreement on Accountability and Reconciliation", 19 February 2008, annex, Article 4.

[68] During the consultation process that took place countrywide in Uganda on the accountability agreement, the government and LRA delegations both avoided discussion on atrocities, the former with respect to army conduct, the latter with respect to the situation in the 1990s, when the LRA began a violent campaign against the local population.

[69] Since the government referred the situation in northern Uganda to the ICC in December 2003, the first country to make such a referral, the prosecutor has made some efforts to counter perceptions that prosecutions would be limited to the LRA. In October 2005, he reported that investigators had analysed crimes committed by both the LRA and Ugandan forces, and found that those committed by the LRA were "much more numerous and of much higher gravity than alleged crimes committed by the UPDF". See Luis Moreno-Ocampo, "Statement by the chief prosecutor on the Uganda arrest warrants", The Hague, 15 October 2005. The prosecutor has since stated that his office is seeking information from the government regarding alleged crimes by the army. Luis Moreno-Ocampo, "Address to the Assembly of States Parties,", New York, 30 November 2007.

[70] The head of the government delegation, Dr Rugunda, and the government spokesman at the Juba talks, Captain Magezi, confirmed that 22 soldiers have been hanged. Crisis Group interview, Kampala, May 2008.

coupled with the fear of victims to report them[71] and the exclusion of military courts from the judicial mechanisms listed by the Juba protocol amount to guaranteed impunity for the senior military, even if common soldiers were quietly court-martialled and executed. Transparency of the judicial process and review of chain-of-command responsibility is necessary if possible war crimes and crimes against humanity are to be dealt with adequately.

The only remaining chance to obtain a degree of closure for the terrible violence committed in the north is for the truth-telling body to establish the full responsibility of both LRA and army in atrocity crimes. If this is to happen, it will require the confessions of both victims and perpetrators. Particulars of what happened will need to be provided by those who committed the crimes and those who ordered them, whether government or rebel. Guarantees of army participation in the process should be included in the body's enabling law. And to be credible, the body's composition must strongly reflect victim participation.[72]

The Juba protocols acknowledge that atrocity crimes have been committed against women in Northern Uganda. However, the practical difficulties that victims of such gender-based violence can experience if they testify against the perpetrators, whether they be from the LRA or the army, will have to be taken into account and special protections devised. Women should be directly consulted and involved in the design and implementation of transitional justice mechanisms to ensure procedures adequately meet the needs of all victims.

Lastly, crimes have also been committed outside northern Uganda. Over the past fourteen years, the conflict has largely been conducted in Southern Sudan, and lately the LRA has been abusing civilians also in the CAR and the Congo. The South Sudan Peace Commission, an entity established by Sudan's 2005 Comprehensive Peace Agreement, should be involved in the stakeholders conference, so as to propose concrete modalities to foster a credible reconciliation process and adequate reparations for LRA victims. The new body should make specific recommendations to the governments of both Sudan and Uganda with reference to financing reparations and also address the possible need for international legal proceedings to seize bank accounts and repatriate assets of diaspora members involved in funding the conflict over the years.

C. THE CESSATION OF HOSTILITIES AND DDR AGREEMENTS

Many violations of the CoH agreement have been reported in the past two years and cited as a negative indicator of the involved party's credibility and commitment to the process. The evaluation of these incidents does provide a reality check on a party's alternative plans, as well as on the environment in which disarmament and demobilisation is supposed to occur. DDR requires a minimum of trust from Kony and his commanders that they will not be killed or captured when they present themselves for FPA signature or disarmament and that the government's reintegration promises will be kept.

Despite their denials, both the army and the LRA have violated the CoH agreement since its first element was signed on 26 August 2006. Nevertheless, the CoH was renewed four times, until April 2008, and the level of violence in LRA-affected areas has generally decreased. For almost two years, the CoH provided for LRA combatants to receive food at agreed assembly areas. These were initially Owiny Kibul on the eastern side of the Nile and Ri-Kwangba at the Congolese-Sudan border, and from May 2007, when the LRA requested and was granted permission for all its forces to cross the Nile to put additional distance between themselves and the army, Ri-Kwangba only. Though Caritas provided the food, the LRA never kept its promise to assemble and be registered and counted for aid distribution, and it refused to let women and children come under the care of humanitarian agencies. Food for 3,000 to 5,000 combatants was thus given without real control and in violation of CoH terms, raising criticism from NRM officials and the ICC prosecutor that donors directly aided the insurgents without guarantees on use of the supplies.[73]

The LRA's reluctance to assemble can be explained partly by a lack of genuine commitment to the process but also by its lack of trust in the security environment on the ground. The CoH provided that the Southern Sudan army (SPLA) would be the sole guarantor of assembly area security. The LRA could not fully trust this in view of that military's close ties with its Ugan-

[71] "Uprooted and Forgotten", HRW, 2005.

[72] "Submissions on the Prospect of Peace in Uganda", Conciliation Resources' submission to the UK Parliament's International Development Committee, July 2007, at www.c-r.org/our-work/practice-policy/submissions_July07.php.

[73] Each consignment contains several thousand kilograms of food, including flour, rice, beans, oil, coffee and milk. The journey takes a week, and once the food is in Ri-Kwangba, mediators from the Juba talks fly in to oversee the transfer. Crisis Group interview, Caritas, Nairobi, June 2008.

dan counterpart and specifically the willingness of some of its Dinka leadership to forcefully eliminate the LRA.[74]

The main challenge has been verification of responsibility for the ceasefire violations. The agreement's monitoring team (CHMT), tasked with investigating and reporting attacks, produced hardly any detailed reports and had minimal capacity to carry out genuine field investigations. Comprised of SPLA, Ugandan army and regional military observers of the five African nations brought in by Joaquim Chissano, it received very limited support from the UN Mission in Sudan (UNMIS)[75] and faced serious coordination challenges between its members who, due to separate chains of command, did not work well together. Some critics also have alleged that the team leader, Colonel Wilson Deng, would only investigate and report on violations that fitted the agenda of chief mediator Machar.[76]

Verifying responsibility for attacks over such a broad geographic area of three states (Sudan, the Congo and CAR) is, moreover, particularly difficult and would have required a serious intelligence-gathering capacity. Like all armed groups in the region, and after successive waves of abductions from local communities, LRA combatants speak regional vernacular languages as well as Arabic. Other armed groups, whether or not affiliated to the SPLA, the Khartoum government's army or the Ugandan army, can also easily carry out attacks in the name of LRA, including the all too common practice in the region of abductions. The LRA is an ideal scapegoat for the wider insecurity.[77]

The Uganda government tends naturally to attribute all attacks to the LRA. The Kakokeji incident in Southern Sudan, reported at the beginning of the last Juba round, however, was subsequently shown not to be an LRA responsibility, since those involved, unlike its members, lacked discipline, spoke Swahili, smoked and drank. Machar confirmed that the Kakokeji attacks, which resulted in the death of a trader, were the responsibility of the Ugandan army. In a 23 June 2008 verification report sent to Dr Rugunda, the head of the government delegation, Machar also said the ceasefire monitoring team had confirmed that 14 June incidents in Pageri Payam, Southern Sudan, which resulted in the killing of a civilian, were probably carried out by Ugandan army elements masquerading as LRA.[78]

Undisciplined, badly supplied Ugandan government troops have been notorious for holding civilian populations at ransom, particularly when deployed abroad (the Congo, Southern Sudan). During Operation Iron Fist in 2002, local communities reported their conduct and often noticed their presence around alleged LRA attack areas.[79] The opening up of the Juba-Nimule and Juba-Torit roads has enhanced trade from East Africa, making the routes attractive for robberies. Machar's 3 July ultimatum that the Ugandan army pull out of Southern Sudan was based on community complaints against its troops.

SPLA soldiers are equally undisciplined, being known to loot civilians, particularly when disgruntled over non-payment of their salaries, and when the communities involved are not their own.[80] In Sudan, the LRA has blended into a highly militarised environment marked by recurrent violence from a variety of armed groups and in which the fragmented, sometimes privatised SPLA forces do not qualify as a neutral party able to credibly guarantee the security of assembly areas and disarmament operations.

Reports have also emerged that the DDR agreement was shared with junior LRA commanders but not Kony.[81] The single most important piece of the Juba negotiation – LRA disarmament and demobilisation – has not in fact been negotiated with Kony or his senior officers. The Juba protocols contain general statements about good treatment and fair process but no real guarantees on the security environment; no external peacekeeping force is planned to build confidence in the process. The end result, consequently, remains largely dependent on Ugandan government and SPLA goodwill. Although the government's track record on DDR is not bad, the reintegration of LRA combatants remains particularly difficult in view of the atrocities

[74] The LRA and SPLA fought each other during the Sudanese civil war; the LRA has had close ties with other Khartoum proxies which integrated into the SPLA after the CPA was signed. The July 2008 attacks in Nabanga caused particularly Dinka casualties in the SPLA ranks and led to suspicions that the LRA now includes members of other former proxy forces who have become disgruntled at the integration process. Crisis Group interview, leading Sudanese Journalist, Juba, October 2008.

[75] For example, three days are generally needed to obtain clearance and a helicopter from UN headquarters in Khartoum for travel to the assembly point.

[76] Crisis Group interview, South Sudan official, Juba, October 2008.

[77] See Mareike Schomerus, "Violent Legacies: Insecurity in Sudan's Central and Eastern Equatoria", Small Arms Survey, Geneva, June 2008.

[78] Badru Mulumba and Peter Eichstaedt, "South Sudan Falls Out with Uganda", IWPR, 10 July 2008.

[79] Crisis Group interview, Catholic Bishop, Juba, May 2008.

[80] See Schomerus, "Violent Legacies", op. cit.

[81] The Matsanga-led delegation said it met Kony in Nabanga, but it apparently saw only very junior commanders. Crisis Group interview, U.S. embassy official, April 2008.

they committed.[82] The fact that the process was not discussed directly with Kony and his top people and lacks third-party guarantees makes its implementation unlikely. Moreover, the weaknesses of the DDR chapter of the Juba agreement also relate, as discussed below, to a little acknowledged fact: what has become the substantial Sudanese identity of the LRA.

1. Conflicting Sudanese agendas

Facilitation of the Juba process, led by Riek Machar, has been an important factor in demonstrating the capacity of the new Government of Southern Sudan (GoSS) to address insecurity on its territory. The NCP, the long-time ruling party in Khartoum and the LRA's most significant external partner, was never brought into the negotiations, however, and Machar avoided the history of the insurgency's Sudanese ties, since he helped introduce it to Khartoum when he was allied with the NCP. During the fourteen years since the LRA essentially relocated to Sudan, significant elements have become Sudanese, through kidnapping or more normal recruitment. Ignoring these multiple Sudanese connections creates a serious obstacle to LRA disarmament. The NCP needs to be associated with an agreement to close the door to possible future support, and a negotiation is needed to give Sudanese LRA members, particularly commanders, an incentive to accept a deal hitherto essentially crafted with only Ugandan considerations in mind.

The Equatoria region of Southern Sudan has often hosted groups opposed to Museveni's NRM government. Both Tito Okello and Alice Lakwena's movements retreated to this area in the 1980s.[83] During Sudan's 1983-2005 civil war, Equatorians, including Acholis, regarded the Sudan People's Liberation Movement (SPLM) and its army as Dinka-dominated. Although some joined it, most went into the Equatorian Defence Forces (EDF) a regional militia. The EDF and Sudanese Acholis fought against the SPLA and the Ugandan army alike during the war and alongside the LRA, which in time became a proxy force for Khartoum.[84] Acholis in Uganda and Sudan consider themselves one community, and despite souring relations, Acholi populations in Eastern Equatoria still feel a tie to the LRA and sometimes seek its protection against the Ugandan army, the SPLA and other armed groups.[85]

The LRA's presence in Sudan also has a direct link to Riek Machar. In 1991, the SPLM split; Machar's faction – SPLM-United – moved to Eastern Equatoria and in 1992 signed a cooperation agreement with Khartoum. Machar broke with SPLM-United to form the Southern Sudan Independence Movement (SSIM) in 1994, which allied with the EDF and later the LRA against the SPLM. The EDF and SPLM-united commander, the late William Nyuon Bany, who was working with Machar, facilitated the first LRA-Khartoum contact.[86]

Not least because of this embarrassing history between Kony and Machar, the Juba talks have generally treated the LRA as purely a Ugandan phenomenon, with little attention to the changes since 1994. The move to Sudan, however, progressively changed the composition of the movement. Kony incorporated new abductees from local communities, mainly Acholi, Azande, Madi and Mari, who are now regrouped under the Mary Brigade, which is led by a Sudanese commander, known only as Santino, who wants the fate of the LRA's Sudanese component to be included in the agreements.[87] Some sources say two clear groups have emerged: "LRA Uganda" and "LRA Sudan".

Most of the LRA who raided the western bank of the Nile in 2006-2007 were reportedly not Ugandan. This "LRA Sudan" is most likely an Acholi militia integrated into the insurgency but with some autonomy from Kony's command. It is reportedly working closely with ex-EDF personnel commanded by a southern Sudanese based in Juba and supported by President Bashir's NCP.[88] Although Kony is feared, he does not have absolute authority and must balance his interests

[82] Cf. Anna Borzello, "The Challenge of DDR in Northern Uganda: The Lord's Resistance Army", Conflict, Security and Development, 7:3, October 2007.
[83] See Schomerus, "Violent Legacies", op. cit.
[84] Ibid.
[85] Crisis Group interview, Sudanese Acholi leader, Juba, May 2008.
[86] In 1995, Machar became leader of the SSIM/A, and Lam Akol took the SPLM/A-United name for his west-central Upper Nile faction. In April 1996 Machar signed a deal with the government, and the SSIM/A merged with other rebel factions which signed the April 1997 Khartoum peace accord. Machar was named chairman of the government's Southern States Coordination Council and assistant to Bashir that year and formed the United Democratic Salvation Front (UDSF). He left the government in 2000, recreated an army in the south, the SPDF, and merged it with the SPLM/A in 2002. Mareike Schomerus, "The Lord's Resistance Army in Sudan: A History and Overview", Small Arms Survery, no. 8 (2007).
[87] Crisis Group interviews, Southern Sudanese official, regional analysts and journalists, Juba, June 2008.
[88] Crisis Group interview, Western Equatorria officials, Yambio, October 2008.

with those of his commanders. If the Juba agreement is unsatisfactory to them, he is unlikely to go along with it, even if he wishes.[89] The Sudanese elements of the LRA are probably responsible for killing Otti, whose repatriation-to-Uganda agenda did not interest them.[90] One cannot ignore their capacity for mischief within the movement while pursuing the peace process.

2. The LRA's plan B

Whatever its wishes for the CoH agreement, the LRA also seems to have a fairly coherent, well-conceived and executed plan to establish itself at the common borders of three weak states, where no army is likely to pursue it. The movement's remaining military capacity to destabilise Northern Uganda is limited, and such destabilisation seems to have disappeared at least from its short- to mid-term agenda. Its new operational space is along the borders of Sudan (in the South), the DRC and CAR. With its main rear base in the Congo's Garamba National Park, it has a safe hide-out. In effect, Kony is continuing to toy with the possibility of prolonged peace negotiations, with the help of traditional Acholi leaders who are strong advocates for dialogue so as to assure stability in northern Uganda, while he secures the LRA's movements over a large territory stretching from south-eastern CAR to north-eastern Congo and weighs his options.[91]

After the CPA ended Sudan's North-South war in January 2005, Khartoum reduced its support for the LRA; in the middle of that year, the ICC issued warrants for the top LRA leaders. In this more hostile regional and wider international environment, the LRA chose to negotiate. Recurrent tensions between the NCP and the SPLM and the possible collapse of the peace agreement, however, means the LRA retains value as a potential proxy force for Khartoum in Southern Sudan. Moreover, since the SPLA has been rearming heavily in preparation for a possible new conflict over the 2011 secession referendum, the Khartoum military has a strategic interest to maintain the LRA on its old rival's flank.[92] The NCP might wish to use the movement as early as 2009 to disrupt the 2010 elections in the SPLM's Western Equatoria stronghold.[93]

The LRA's transfer to Garamba in 2006 was not random. According to some sources, a senior minister in the former UNLA government of Uganda and diaspora member encouraged it, so it could receive supplies air dropped by the Sudanese military or through the Mbororo nomads. The Mbororo have been accused in the past of being used by Khartoum to create havoc in SPLM areas, as part of a strategy to prevent the SPLA from concentrating all its forces on the North-South border.

Movements to the CAR in 2006 followed the same logic. The south east there is a relatively safe hide-out, which permits discreet supplies through CAR and Chadian rebels supported by Khartoum. The exploitation of aquamarine gemstones, sold to Lebanese traders around Radom, Boro and Katta, provides some income.[94] Attacks on Duru and Dungu and reports of new LRA bases seemed to indicate a plan to open a safe corridor for movements westwards and to dominate the Sudan-Congo border area.[95] The Congolese administration and permanent settlements were specifically targeted.[96] Reports from LRA defectors confirmed that the movements to the CAR were not meant to build an alternative permanent base but rather to resupply and, by new abductions, to fill out the ranks.[97]

From an operational point of view, the LRA is a much harder force to disarm now than a few years ago. It has secured an extensive logistical corridor, via a limited number of targeted attacks to displace civilians and reduce the risk of intelligence gathering by any of the three concerned states. Knowing exactly where Kony and his commanders are has never been more difficult. Victims of recent attacks in the Congo and Southern Sudan point to the targeting of officials and priests, granaries, churches and dispensaries, and report claims by the fighters that they were taking possession of the territory. In effect, the LRA has been securing such control for a half dozen bases along the border, where it establishes its authority over local populations but also tries to blend in.[98]

[89] Crisis Group interview, LRA observer, Nairobi, June 2008.
[90] Crisis Group interview, Southern Sudanese official, October 2008.
[91] Crisis Group interview, church representative, Juba, October 2008.
[92] Crisis Group interview, Western Equatoria official, Yambio, October 2008.
[93] Crisis Group interview, former administrator, Yiba County, October 2008.
[94] Crisis Group interview, South Sudanese journalist, Juba, June 2008.
[95] In Lindimbia, Nakanga, Kiliwa and Limbwele. See "Ugandan LRA rebels attacked military base in Southern Sudan", BBC, 20 September 2008; "Sudan: LRA rebels put Congo civilians to flight", IRIN, 22 October 2008; and " Des incursions, incendies, pillages, enlèvements et exactions perpétrées par les éléments de la LRA", Carita-Dungu, 6 October 2008.
[96] "Des incursions", op. cit.
[97] Excerpts from LRA defector interview, communicated to Crisis Group, August 2008.
[98] Crisis Group interviews, local community leaders, Western Equatoria, October 2008.

In the Bas Uélé district of north-eastern Congo, the LRA is perceived as a nuisance, against which there is little capacity to resist and with whom some have decided to collaborate. In Dungu, the LRA leaders have reportedly engaged the support of a local youth gang to organise ivory raiding parties and the control of gold-digging sites. In parts of Sudan, the local environment is different. Sudanese Acholi in Eastern, Azande in Western and Mari in Central Equatoria do not necessarily feel integrated into the SPLM's project for Southern Sudan and say they have received few CPA peace dividends.[99] They also say the SPLM could do more to help Acholi in Uganda resolve the LRA insurgency, as they share the experience of discrimination and marginalisation by a central government.[100]

Local communities are less favourable to the SPLM, and the LRA may even offer protection against rogue SPLA elements and other armed groups. Depending on circumstances, fighters may also operate with fair independence from Kony's command, while coming back to it at any time.[101] All things considered, the LRA thus finds itself in too comfortable a situation to consider disarmament its only option. Not only are the negotiated agreements not particularly attractive, but it is under no military pressure to give up and has secured access to a large, mostly empty area of operation where it can sustain itself through violence or by doing business with local communities.

3. Government military options

The government has always preferred the military option; the NRM core leadership accepted the Juba process only reluctantly, on the SPLM's request and as long as it could earn political credibility from it. President Museveni's preferred approach has consistently been the LRA's containment, or alternatively surrender and dismantlement, whether through corruption or force. The collapse of the 1993 talks led by presidential special envoy Betty Bigombe, after Museveni threatened the LRA militarily on the eve of a signature, was one of the strongest suggestions that the government may be more comfortable with the continuation of a low intensity conflict, which can be used to justify an oversized, non-transparent defence budget,[102] than with a negotiated settlement.[103] The permanence of the conflict has also provided a convenient rationalisation for the marginalisation and disempowerment of which northerners complain: "when there is war, it is normal that people suffer".[104]

Upon request from the SPLM leadership, the government went reluctantly to Juba to discuss its enemy's surrender, not comprehensively talk peace. Confronted with the LRA delegation's comprehensive agenda and international attention, it was eventually compelled to adapt its strategy and treat negotiations as an opportunity to transform its war-like image in the region.[105] Kampala now wants acknowledgement for its commitment to the talks. It says it "put up" with the process and spent several months patiently waiting in Juba while the LRA delegation transformed the talks into a business. It presents a picture of goodwill peacemaking, though behind the scenes, some initiatives – like the February-March 2007 Mombasa meetings – contradict the image. While these reached some key understandings, they were designed to broker a deal with Vincent Otti that would create an opportunity to eliminate Kony and divide the LRA, after which deserters would receive amnesty and DDR packages, and, it was thought, the LRA problem would be solved. The same tactics had been employed with ADF and UNRF II rebels.

Dividing Otti and Kony was key to the government's strategy and led to the former's assassination. The attempt to corrupt LRA delegates was systematic. Martin Ojul, the former delegation head and cousin of Otti, had his expenses covered during the talks. On 11 April 2008, David Matsanga was arrested at Juba airport carrying $20,000 in cash. On 26 June, eight members of LRA's negotiating team denounced Kony and announced their withdrawal from the process, in part because Kony had re-appointed Matsanga, who they believed had cheated them. "Matsanga got this money from Museveni. $10,000 was meant for the delegates, while the other half was for organising the signing ceremony", said Kony's lawyer, Caleb Alaka. Dr Obita, the number two in the delegation, sought a personal soft landing. He had fled Uganda in 1987 after his accounts were frozen, and a government offi-

[99] Crisis Group interview, Western Equatoria officials, Yambio, October 2008.
[100] "The Concern for Sudanese Acholis", press release, Sudan Acholi intellectuals, at www.sudantribune.com/spip.php?article20569.
[101] Schomerus, op. cit.
[102] Roger Tangri and Andrew M. Mwenda, "Military corruption and Ugandan politics since the late 1990s", *Review of African Political Economy*, no. 98 (2003), pp. 539-553.
[103] Billie O'Kadameri, "LRA/Government negotiations 1993-1994", www.c-r.org/our-work/accord/northern-uganda/negotiations-1993-94.php, and Crisis Group Africa Report N°77, *Northern Uganda: Understanding and Solving the Conflict*, 14 April 2004.
[104] Crisis Group interview, senior government official, Kampala, October 2008.
[105] Crisis Group interview, Uganda defence ministry official, Kampala, June 2008.

cial confirmed ongoing talks in which he was offered a post, the unfreezing of his accounts and the amnesty that he eventually received at a public ceremony in Kampala in early August.[106]

There were also constant threats of a military attack. The army chief, General Aronda Nyakairima, and the permanent defence secretary, Ruth Nankabirwa, continued to advocate a military solution, however improbable. The military option was discussed by Uganda, the Congo and CAR, and Museveni and his Congolese counterpart, Joseph Kabila, agreed to joint operations on 8 September 2007, during a Tripartite Plus meeting in Tanzania, facilitated by the U.S. Although their agreement was meant to respond to bilateral tensions over the oil belt around Lake Albert, including western Uganda, Museveni insisted on a provision for "apprehension, disarmament and demobilisation of negative forces including LRA within 90 days".[107] In a follow-up Tripartite Plus meeting convened by U.S. Secretary of State Condoleezza Rice in December 2007, the parties called on the LRA to leave Garamba by 31 January or face a regional military offensive.

Museveni and the UN special envoy, Joachim Chissano, met separately with the CAR president, Francis Bozizé, to discuss a possible joint military operation.[108] Three Congolese army (FARDC) battalions from the presidential guard began a containment deployment in late August at Dungu, around the Garamba Park, but this had little effect.

Regional military operations are unrealistic, however. The Congolese army (FARDC) is neither willing nor able to act robustly in the huge Garamba area or elsewhere in the Uélé region. Its priority is the Kivus. UN forces in the Congo (MONUC) also lack a capacity for major actions there and are still smarting from the killing of eight Guatemalan peacekeepers by the LRA in Garamba in January 2006. Though keen to reduce Western Equatoria's insecurity, the SPLA is divided over the issue. The majority of commanders would like to see all Ugandans – LRA and government troops – out of Southern Sudan, but the government units still provide intelligence training to the SPLA. Also, the Southern Sudan force remains generally reluctant to lead military operations against the LRA, due to its own weaknesses and its pessimistic assessment of the chance for success. An offensive would likely jeopardise the security of the Juba-Nimule road, which though occasionally hit by the LRA, is a lucrative trading route, vital for the movement of goods and services to Southern Sudan.

The GoSS also has more pressing security priorities in Bahr el Ghazal and Abyei, while the UN mission in Sudan (UNMIS) lacks capacity and mandate to help.[109] Attempts by regional forces (the Ugandan army or the SPLA) to eliminate the LRA, in other words, would not only be extremely risky for civilian populations in the area but also unlikely to bring any result. The unleashing of a Ugandan army "hit squad" against Kony would require his precise location to be determined and the units to be pre-positioned far from their bases, which would be unlikely to happen smoothly and with the required secrecy in the relatively hostile environment of Southern Sudan.[110]

D. IMPLEMENTATION WEAKNESSES

The implementation and monitoring mechanism (IMM) protocol provides for two key organs: the Joint Liaison Group (JLG), an expanded version of the CHMT monitoring team, and the Oversight Forum, which is to have broad participation, including donors and the LRA. Machar is to chair these groups, but he is deeply mistrusted by the government and has virtually no access to President Museveni. He accused the Ugandan army of sometimes masquerading as the LRA, and after the CHMT confirmed such an incident in June (Pageri Payam), he ordered the troops out of Sudan. Salva Kiir, the head of the SPLM (and national vice president) reversed the order, and several senior SPLA officials were quoted as distancing themselves from Machar, after that demonstration of his lack of authority vis-à-vis both his own movement and the Ugandans.[111] That weakness is probably the biggest obstacle to implementation credibility, but no mecha-

[106] "Money in the Juba Talks", *The Independent*, August 2007.
[107] Ngurdoto-Tanzania Agreement between the Democratic Republic of the Congo and the Republic of Uganda on Bilateral Cooperation", Annex to the letter dated 24 September 2007 from the permanent representative of Uganda to the United Nations addressed to the President of the Security Council, Ngurdoto Tanzania, 8 September 2007, S/2007/564.
[108] Crisis Group interview, regional analyst, Kampala, October 2008; and "UN Envoy to northern Uganda holds talks with regional leaders", United Nations Information Center in Nairobi (UNIC), 23 August 2008.
[109] Crisis Group interview, senior UN official, Juba, June 2008.
[110] Ugandan special forces have reportedly been trained by the U.S. army for the past two years with the specific aim of targeting Kony. Locating Kony precisely and reliably has proved impossible, though, since the LRA leader knows he is a potential target for an air strike or special forces operation and uses up to eleven different satellite phone sets to communicate with his commanders or the outside world. Crisis Group interview, regional analyst, Kampala, October 2008.
[111] "UPDF Free to Stay in Sudan", *New Vision*, 23 July 2008.

nisms have been identified for resolving disputes as they arise either.

Machar's management of the negotiations was also erratic enough to raise doubts about his qualifications to supervise implementation. He should have questioned delegation changes and sought confirmation from Kony that he agreed to the protocols before they were signed. He wanted to be seen internationally as a peacemaker, in order to build his profile and gain leadership positions within the SPLM. He kept a tight grip on the talks, excluding other SPLM leaders, such as Samson Kwaje, a former movement spokesman and agriculture minister, as well as a representative from the Southern Sudan Peace Commission appointed by Salva Kiir to second him, and probably to address the neglected Sudanese dimension of the insurgency.[112]

Machar promoted speedy signature of general agreements rather than negotiation of credible ones and often used financial incentives to entice the rebels. From the first video showing of him handing over $20,000, the LRA received large sums to carry out one action or another. He gave $40,000 so they would not loot food, and before the April 2008 signing ceremony, distributed $50,000 to LRA commanders to convince Kony to take part.[113]

Similarly, the international community's engagement provides no confidence that either party will come under genuine pressure to fulfil commitments. The only party that may have leverage on Kony, the NCP, was excluded from the talks. Hardly any donor has a track record of keeping close check on the government for abuse of power or deteriorating governance. The UN special envoy, Chissano, helped build confidence in the process and increase support from the UN, neighbouring African countries and the wider international community, but he was hand-picked by Museveni and has no true leverage with him.

The obvious benefits of his presence were the link to the UN Secretariat in New York and the international legitimacy he personified, but on several occasions he annoyed Kony by promising material support which he could not deliver. This resulted in him being snubbed at the assembly point. Chissano had a tenuous relationship with Machar, and the division of labour between them was never clarified, creating further confusion in the process. The UN spokesperson's office went to great lengths to point out that Chissano was a facilitator, not a mediator, and that if the talks failed, it would not be the UN's fault.

A strong ally of Kampala, the U.S. placed the LRA on its list of terrorist organisations but has done little in the past ten years to put pressure on the government about the deterioration of governance in the north or anywhere else.[114] Washington's diplomacy contributed to pull off a quick deal in the Congo's North Kivu with the January 2008 Goma agreement, and it hoped to do the same in Juba. Its presence at the talks was empowering, but, driven by a desire for quick results, it resulted sometimes in additional confusion and the overall sense that the final protocols were rushed. An eight-point, unsigned document titled "Scenarios for Peace and Justice in Northern Uganda" and prepared in late 2007 by Timothy Shortley, the special adviser on conflict resolution for the Assistant Secretary of State for African Affairs, and Martin Ojul, the former LRA head of delegation, for example, caused a stir during the last round of talks.

The EU has patiently supported the process since 2006. Individual European states have also been active. For example, Sweden and non-EU Norway, both strong backers of the ICC, have been consistent both in helping the Juba talks and showing great commitment to northern Uganda reconstruction. In general, though, Kampala-based donors have maintained a government bias, while the African observers have kept a low profile. Their presence was meant to reassure Kony, but none of their representatives have met with him.

[112] Crisis Group interviews, donors and GoSS officials, Juba, April 2008. The talks secretariat was coordinated by James Gony, a Machar aide, and other members of his personal team. Kwaje had little access to information on the talks.

[113] Crisis Group interviews, South Sudan officials, Juba, June 2008.

[114] On donor complacency with corruption in Uganda, see Roger Tangri and Andrew M. Mwenda, "Politics, donors and the ineffectiveness of anti-corruption institutions in Uganda", *Journal of Modern African Studies*, vol. 44, no. 1 (2006), pp. 101-124.

IV. FINISHING THE JOB

Even if Kony never signs a final agreement, the Juba talks have delivered some significant benefits to the peace process in the north. Significant gaps remain to be filled, however, if that process is to succeed, notably on the disarmament and demobilisation of the LRA's Sudanese component, the future of the ICC-indicted rebel leaders, and genuine termination of the movement's relations with the NCP in Khartoum. Simultaneously, the international community needs to vigorously push the government to fulfil its pledges and promote genuine closure for the conflict, and a regional strategy is necessary to contain LRA movements between Sudan, the Congo and CAR and increase the protection of civilians in the border area. With all its imperfections, the Juba peace process has made a difference and is worth reviving so as to be brought to a successful conclusion.

A. FOSTERING GENUINE CLOSURE AND RECONCILIATION IN NORTHERN UGANDA

If the accountability mechanism is to be fair, the Ugandan army needs to undergo scrutiny. The government has been quick to say that the soldiers who deserve punishment have received it, but this seems implausible, since no trial is known for war crimes committed in the north. Independent examination of the conflict years and adequate reparations for the victims through a credible body is the appropriate answer to northerners' grievances and the need to balance the judicial process.

Expectations and speculation already grip the north and affected areas in Southern Sudan over reparations. The government seems preoccupied only with the cost. Reparations should not be framed as a handout. A proper program should convey the sense that reparations are owed to victims as bearers of rights. Moreover, the payments should serve as an occasion for acknowledging past violations and a state share in responsibility for some of them. Victims often cite public acknowledgment of wrongdoing as the most important element of the reparations they seek, but this is frequently absent or overshadowed in debates about sums.

Reparations should be the outcome of a careful investigation by a genuine truth-telling and reconciliation commission, whose mandate, composition and method of operation need to be discussed at the stakeholders conference. The commission should ultimately determine how payment will be handled, including whether individually or collectively. Its mandate will need to be understood and accepted by people in the north, so that expectations are met and any fear of victimisation is removed.

Similarly, provisions to guarantee the efficiency and credibility of the Equal Opportunities Commission should be discussed and adopted at the stakeholders conference and quickly turned into law by the parliament. The conference itself should be followed by appointment of a permanent monitoring committee of civil society leaders from the north mandated to review its decisions. Donors who contribute to the conference should provide leverage to see its decisions implemented and its authority enhanced as a legitimate check and balance on the government's reconstruction policy in the north. The government should declare a moratorium on acquisition of commercial land until all IDP families have been returned and proper consultations carried out with local communities on the implementation of the planned electrical, oil and other industrial development projects in the region.

The government's PRDP and IDP policies cater mainly to rural IDPs in northern displacement camps, but not to slum dwellers in towns. A proper reintegration process is needed for all victims of the war, while army units and commanders notorious for their brutality should be removed from the areas. PRDP implementation will be a challenge if embezzlement, corruption and staff issues are not dealt with. A report to the parliamentary presidential and foreign affairs committee confirms that despite the injection of large sums into the north for reconstruction and development via the Northern Uganda Reconstruction Program and the Northern Uganda Social Action Fund, there has been no tangible impact, and it names those behind massive misappropriation. Bringing embezzlers to book would send important signals to those who handle PRDP funds. Due to poor infrastructure and underdevelopment, trained staff rarely remains in the north, suggesting a need also for incentives and benefits.

The government must show commitment to this process by paying a part of the ambitious budget, but donors should do their part as much by demanding more accountability and better management by funding projects. Complacent support for the NRM will not improve governance in Uganda and in the end will make closure of the northern conflict more difficult.

B. NEW NEGOTIATIONS UNDER A DIFFERENT FORMAT

Negotiation remains the best way to settle the LRA issue, build confidence among affected populations, prevent death of abducted fighters and non-combatants and eliminate the chance of a return to war by Kony or others. New talks are needed to add credibility to the disarmament and implementation protocols in particular, but these should be held under a totally different format.

The negotiation of an addendum to the Juba protocols needs to be handled by a freshly mandated, joint UN/ African Union (AU) special envoy for LRA-affected areas, so as to secure a credible process for rebel disarmament. The delegations do not need to meet again in Juba. Instead, the negotiation should be conducted by discreet shuttle diplomacy between Kampala, Khartoum, Juba, Kinshasa and Garamba, so as to involve the appropriate interlocutors and renew and adapt the CoH. Beyond renewal of the CoH, three assembly areas are needed (two in Sudan, one in the Congo), as well as a UN/AU peacekeeping force to guarantee their security. After the Nabanga incidents of July 2008, the LRA will not assemble in a manner that leaves it at the mercy of the SPLA. Provision of food and other necessities should be resumed, but only if LRA combatants and dependents do assemble and agree to be counted. Supplies should not be provided without a firm commitment to this effect.

The AU/UN peacekeeping force, ideally three brigades (5,000), could be composed of units from regional standby forces (Eastbrig, Westbrig) and/or other contributing countries (Tanzania, Mozambique, Ghana and especially Kenya, which has Luo speakers who can communicate with the Ugandan and Sudanese LRA Acholi combatants). It would support disarmament operations and food distribution, verify CoH violations, secure the perimeter of assembly areas and contribute to protection of civilians by preventing free LRA movement and enforcing weapons-free zones. It would serve both as the main international actor in the voluntary disarmament process of LRA combatants and as a key element of a containment strategy to minimise LRA atrocities against Congolese and Sudanese civilians.

Donors should contribute to costs through the Joint Initiative Fund (JIF) that has paid for the Juba peace process. The object of the special envoy's engagement with the SPLM and NCP in their government of national unity in Khartoum should be to secure a genuine end to support for the LRA and get a message passed through the old support channels to the insurgents that prompt disarmament is their only option.

The final settlement needs to be negotiated as a coherent package that satisfies the requirements of both the peace process (complete DDR) and of justice for the crimes committed. Kony will need to accept that the only courses of action that can relieve him of the weight of the ICC indictments are a Security Council resolution based on Article 16 of the Rome Statute and the superior needs of the peace process, deferring the prosecution for one year (renewable); and a determination by the ICC judges that the case is inadmissible before that court based on their assessment that national judicial proceedings meet international standards.

Those process, through independent, can work in tandem. Temporary suspension of the prosecutions by the Security Council would give the national judicial process time to demonstrate its appropriateness to the ICC judges. Kony will need to accept that the Security Council will not consider a deferral if the LRA remains in its hideaway, a potential regional threat. Having abandoned northern Uganda is not enough. Abductions must stop, women and children must be freed, and the LRA disbanded as a military force. The Security Council is only likely to act, in other words, if the peace process has reached a point of no return and the LRA is no longer a threat anywhere in the region. The ICC judges are only likely to decide that the case against Kony is inadmissible if he submits himself to credible national judicial proceedings.

The special envoy could offer Kony and other top LRA commanders, as incentives for full disarmament, additional guarantees for their security and that they would never be transferred to The Hague.[115] The special division of the High Court might consider arranging for Kony to be detained and tried within the premises of the UN tribunal for Rwanda, in Arusha, Tanzania. In view of the weaknesses of the Ugandan judiciary and its lack of reliable independence from the NRM, it is essential that the special division be a mixed court, of national and international judges,[116] so as to better guarantee minimum standards of impartiality.

The special envoy will also have to negotiate a specific process for the disarmament and reintegration of

[115] For example, if the LRA fully cooperated with the peace process, Uganda might consider including in implementing legislation for the Rome Statute, a provision that any individual who submits to national judicial proceedings that satisfy international standards will not be extradited to face similar prosecution by an international court.

[116] The latter might be from African members of the Commonwealth, to which Uganda also belongs.

the LRA's Sudanese elements, perhaps with the help of the South Sudan Peace Commission and the South Sudan DDR Commission. It will likewise be important for Sudan's government of national unity, including both its NCP president and its SPLM first vice president, to provide active support. Machar should be consulted, but otherwise it would be best for him to remain at a distance and leave the running to the special envoy. In the event Chissano does not want to take up this new responsibility, his replacement should be a senior official from the region who possesses both detailed knowledge of Sudan and a strong military background.

Pressure also needs to be applied on the external financiers of the LRA. The Security Council should mandate an expert group to investigate the issue, though this will be difficult in view of the fact that Uganda will take up a seat on the Security Council for two years beginning 1 January 2009. Such an investigation might reveal uncomfortable facts about LRA dealings in the region, but Kampala, which may be comfortable with the continued existence of the movement as long as it is a distant threat confined in effect to Southern Sudan and the DRC, should not be allowed to dictate the Council's agenda on this point or the special envoy's mandate.

Western countries also need to mobilise their respective intelligence services so that members of the Acholi diaspora based in Europe and North America face the risk of expulsion or judicial prosecutions for subsidising a group whose leaders have been indicted for war crimes and crimes against humanity. It might be logical for surveillance purposes to keep the LRA's satellite communications lines open, but those who are paying the phone bills should be identified and targeted as well as any regional government facilitating their movements.

V. CONCLUSION

Southern Uganda has recovered and grown remarkably since the devastating civil war ended in 1986. Soon after Museveni and the NRM took power in Kampala, however, a new insurgency started in the north, initially led by remnants of the Obote and Okello regimes' armies, then by the prophetess Alice Auma Lakwena, and finally by her nephew, the murderous Joseph Kony. 22 years later, his LRA has moved to Sudan, become largely Sudanese and transformed into a threat to regional stability but no longer to Uganda itself. It would be catastrophic in such circumstances if the government were to squander the opportunity to bring closure to the conflict by not making a full response to northerners' demands for improved governance and genuine reconciliation. Despite its rhetoric, however, there are few signs that its plans to implement elements of the Juba agreement regardless of whether it has Kony's signature and to spread big money around the north means more than business as usual.

Efforts have to be sustained simultaneously by the UN and AU to end definitively the still very real LRA menace in Eastern Africa. The longer the LRA is allowed to entrench itself at the common border of Sudan, the Congo and CAR, the more likely it will contribute to serious destabilisation of one or the other in the near future. Supplementing the Juba peace process through new but narrow negotiation backed by a credible disarmament strategy is a necessity not only for conflict resolution but also for conflict prevention, with Sudan's 2009 elections and 2011 referendum likely to be the most obvious immediate beneficiaries. It is time to push for both final settlement in Northern Uganda and final LRA disarmament. Failure to do so because of international complacency would jeopardise all the benefits of Northern Uganda reconstruction and Southern Sudan peacebuilding.

Nairobi/Kampala/Juba/Brussels,
10 December 2008

APPENDIX A

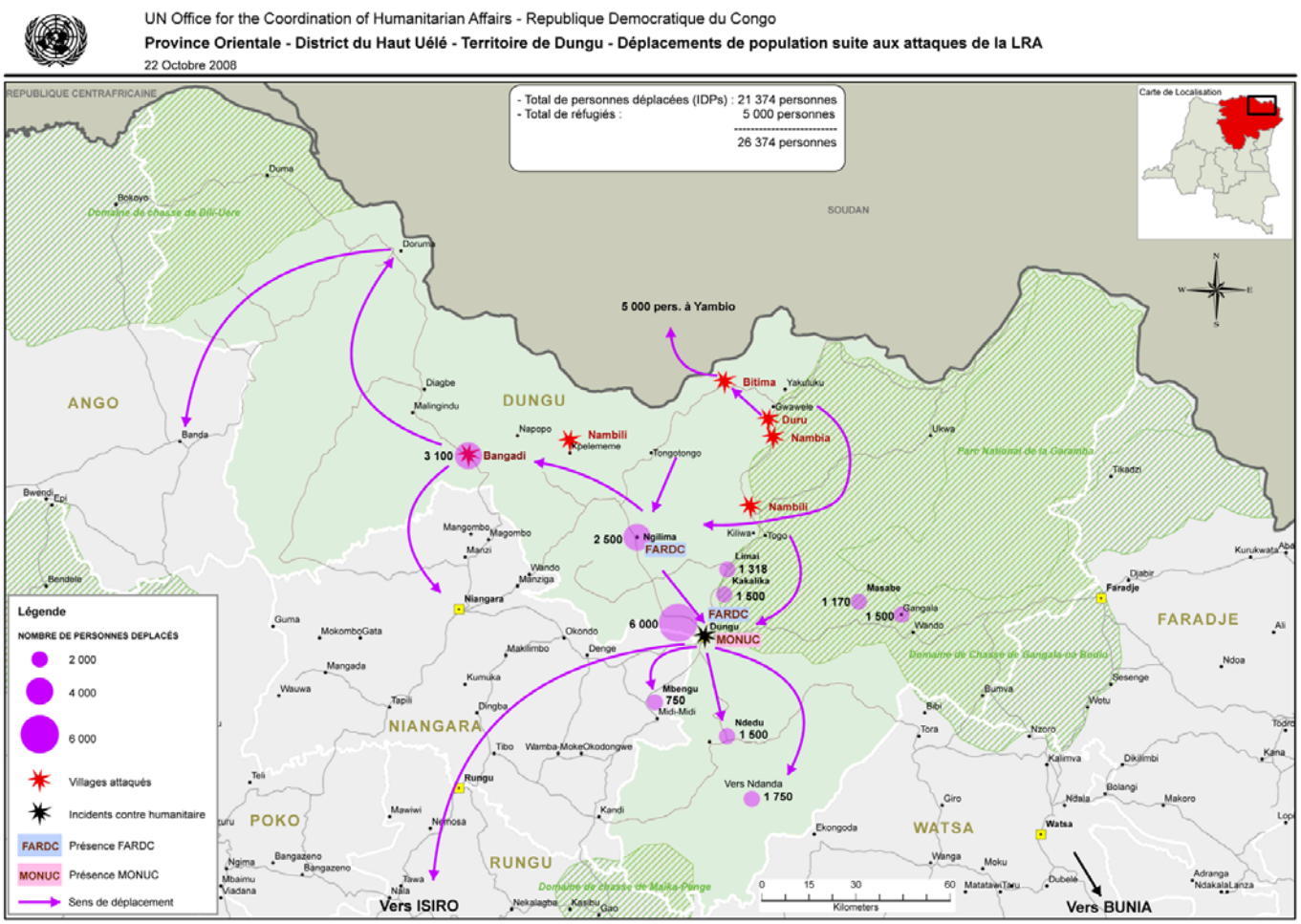
MAP OF UGANDA

Map No. 3862 Rev. 4 UNITED NATIONS
May 2003

Department of Public Information
Cartographic Section

APPENDIX B

MAP OF THE LRA-AFFECTED AREAS



APPENDIX C

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates eleven regional offices (in Bishkek, Bogotá, Cairo, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina, Seoul and Tbilisi) and has local field representation in seventeen additional locations (Abuja, Baku, Bangkok, Beirut, Colombo, Damascus, Dili, Dushanbe, Jerusalem, Kabul, Kathmandu, Kinshasa, Ouagadougou, Port-au-Prince, Pretoria, Sarajevo and Tehran). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Nigeria, Rwanda, Sierra Leone, Somalia, South Africa, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Myanmar/ Burma, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia, Turkey and Ukraine; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia, the rest of the Andean region, Guatemala and Haiti.

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