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WHAT TO DO ABOUT JOSEPH KONY

By John Prendergast

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The fate of a war that has crossed three international borders, displaced nearly two million people, and created the highest child abduction rate in the world hinges on the fate of one man: Joseph Kony, the notorious leader of the rebel Lord's Resistance Army (LRA).

Negotiations ongoing in Juba, southern Sudan, are addressing a wide array of issues, but until there is agreement about how to deal with Kony and his top deputies—all indicted by the International Criminal Court (ICC) for crimes against humanity—there will be no peace deal.

The peace talks in Juba—Uganda's best chance for negotiating a deal since the conflict started—have been on hold for the last three months to allow the Ugandan Government and LRA to consult and prepare for the crucial next stage, negotiations on specific domestic justice mechanisms. The parties will attempt to reach a deal that satisfies both the ICC, given its arrest warrants against Kony and his top deputies, and the LRA's victims, who want both peace and accountability for returning LRA commanders who brutalized northern Uganda for twenty years.

The time to strike a deal is now. President Museveni has issued a January deadline for a negotiated settlement before he would resume military action. Last month, the Ugandan and Congolese governments signed a security agreement that might facilitate this. Furthermore, internal fighting within the LRA and recent high-level defections have weakened the rebels. A credible military option—involving regional states, the UN missions in Sudan and Congo, and governments willing to offer equipment and personnel—combined with a sustained, high-level diplomatic push directed at Kony, might provide the essential ingredient and leverage to get the job done.

Peace with justice for the LRA leadership is ideal, but serious obstacles remain. To satisfy the ICC's

high standard, Kony may have to be prosecuted in a Ugandan court. Kony is highly unlikely to accept this option given his mistrust of Ugandan President Yoweri Museveni, his doubt that a fair trial is possible in Uganda, and his aversion to accountability. To return home, Kony would have to live under continual threat or fear of revenge attacks by civilians and submit to traditional justice ceremonies he has consistently rejected in the past. Tough tradeoffs between peace and justice may be the unavoidable and justifiable price of final agreement that can end twenty years of conflict and remove a serious security threat to the region.

During recent informal discussions with Kony, it has become clear that his main concern is finding a credible way to guarantee his own future. The Juba peace process must address these security and livelihood concerns. Unfortunately, negotiations in Juba have spent the better part of a year talking with other people about different issues. Kony should be presented with three clear, credible choices:

- **Accountability:** if Kony wants to come back to northern Uganda, he must face serious domestic justice mechanisms that meet international standards and local needs. Prosecution in a special tribunal will be necessary, but alternative sanctions and traditional justice may be incorporated as punishments in place of lengthy imprisonment.
- **Asylum:** in the interests of peace and to allow northern Uganda to finally awake from the twenty year nightmare of LRA terror, relocating Kony to another country may be the best solution. The United Nations Security Council has the power to defer the ICC's investigation for renewable one-year increments, allowing such an arrangement to remain conditional on Kony's continued compliance with the agreement. This could be presented as an exile scenario so that it can be part of the accountability efforts being crafted in a possible peace deal.

- **Arrest:** a coordinated regional strategy to apprehend Kony should the peace talks collapse is necessary both as contingency planning and as negotiating leverage. Kony will only accept local accountability if the alternative is lifetime imprisonment by the ICC in The Hague.

The U.S. and EU have important roles to play in each of these options. U.S. and European leadership in the Security Council may be necessary if a local accountability package falls short of the ICC's standards or if asylum becomes necessary. The U.S. should make clear that the LRA will be taken off the State Department's Terrorist List if Kony signs and implements a peace agreement. Furthermore, the U.S. and EU can provide useful intelligence and logistical support for attempts to arrest Kony if the peace process does not yield an agreement. Finally, the U.S. could provide the peace partner that President Museveni needs, and could give Kony the requisite reassurances that he will not be hunted as a criminal or terrorist if he signs and implements a peace deal.

Ultimately, there is a solution. Third country asylum or exile will remove Kony from the scene of the crimes against humanity, and his calculation as to whether to accept asylum can be influenced by a credible multilateral military strategy aimed at his arrest if he chooses not to make a deal. Negotiations can continue around local accountability mechanisms, but it is highly unlikely that Kony will accept such a fate, given his unshakeable mistrust of the Ugandan Government. Quickly devising a security and livelihoods package for the LRA leadership in a third country, leveraged by the option of the use of force to apprehend the leadership if they do not agree to a deal, will yield the best opportunity for a solution that the people of northern Uganda have seen in twenty years.¹

I. JUSTICE AND JUBA

On June 29, the Ugandan Government and LRA signed an agreement on reconciliation and accountability, the third of five agenda points at the Juba peace talks. The agreement sets out a basic framework of principles to guide future negotiations on specific justice mechanisms for individuals who committed serious crimes and grave human rights abuses during the twenty-year conflict in northern Uganda. While allegations against the Ugandan Government and Army will be pursued through existing judicial processes, top LRA commanders are to be held accountable through specially created courts that will incorporate alternative sanctions and traditional justice. The parties agreed to consult with local victims, then reconvene to negotiate an annex filling in the details of how exactly this local justice system will work.

This agreement is an attempt to reconcile one of the most difficult aspects of the Juba talks: the simultaneous pursuit of justice and peace. The catalog of Kony's crimes is as long as it is brutal: over 60,000 northern Ugandans abducted, and tens of thousands of children forced to fight as parties of Kony's messianic campaign of murder, rape, mutilation, and sexual slavery. The ICC issued arrest warrants against five top LRA commanders—Joseph Kony, deputy commander Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya.² While the ICC's investigation unnerved the LRA leadership and created an incentive to negotiate, Kony and Otti have repeatedly said that they will not leave their jungle hideout near Garamba National Park in the Democratic Republic of Congo (DRC) until the ICC's warrants are removed. While the ICC's investigation helped spur the current peace process, the warrants will potentially smother the talks if a way to balance the interests of peace and justice is not found.

¹ Of course, for a sustainable, comprehensive peace to emerge, much more will have to be done to deal with the economic and political issues that have helped to perpetuate conflict in the North. But such a peace will not be possible until the immediate security threat posed by the fate of the LRA leadership is not addressed squarely.

² Lukwiya was killed by the army in northern Uganda in August 2006.

The population of northern Uganda, 1.5 million of whom are still internally displaced and living in squalor despite improved security during the last year, also clearly want the LRA leadership to be punished if they return home. In a recent survey conducted by the Human Rights Center of the University of California Berkeley, the Payson Center for International Development, and International Center for Transitional Justice (ICTJ), 70% of northern Ugandan responded that they wanted to see individuals guilty of serious crimes and grave human rights abuses held accountable. 29% stated that the ICC was the best mechanism for accountability, 28% said local Ugandan courts, while traditional justice only received the support of 3% of those surveyed.³

While impressive in principle, the agreement raises more questions than it answers. The deal is devoid of details, which are left for subsequent negotiations. Consultations with victims are called for, but the process is not specified and the results are not binding on the parties. The nature of the formal court proceedings is vague, as are the sanctions and the relationship with traditional justice mechanisms. In short, the parties agreed on the need for accountability, but failed to define what accountability means.⁴

The LRA's commitment to accountability is equally uncertain. A planned one month hiatus for consultations has turned into a sprawling three month delay with no firm date for the talk's resumption. The LRA delegation demanded over \$2 million dollars for a consultation process that would include a 500-person stakeholder's conference along the DRC/Sudan border and a tour of South Africa, Sierra Leone, Liberia, Chile, and Argentina to collect information on how other post-conflict countries have addressed the issue of accountability. The LRA's demands fit a well-worn pattern of foot-dragging and fuel speculation that their main interest is stretching the peace process out for as long as possible.

Beyond the LRA's basic commitment to the process, there are several major obstacles to the signing and implementation of a final agreement with strong accountability standards. First, under the Rome Statute's complementarity principle, the ICC can only defer to a genuine domestic prosecution of the indicted LRA leadership. The gravity of the crimes committed by the LRA, coupled with a strong desire to avoid setting a precedent which could undermine the Court's ability to pursue prosecutions in other cases like Darfur, mean that the ICC will set an imposingly high standard for suspending arrest warrants against the LRA.

Second, Kony and other top LRA commanders have repeatedly shown little genuine interest in participating in any meaningful accountability mechanisms. Top LRA officials often speak of not falling for the same fate of Charles Taylor or Saddam Hussein. Kony has apologized to southern Sudanese leaders for LRA abuses in Sudan, but has refused to do so to northern Ugandan leaders. From Kony's perspective, it is President Museveni and the Ugandan Army that should be apologizing for crimes committed in northern Uganda, not the LRA. The rebel leadership is very wary of placing themselves at the hands of a Ugandan court system that they fear will be a forum for manipulation and victor's justice by President Museveni.

The LRA has consistently rejected previous calls by local chiefs and religious leaders to go through traditional justice ceremonies like *mato oput*. "*Mato oput* would not be a good thing," Otti told ENOUGH in a phone interview. "I know very well what *mato oput* is, even more than the paramount chief and the other chiefs. What they are doing is very wrong." Kony blames the chiefs for the war, claiming that they blessed his rebellion in the late 1980s and then stabbed him in the back by cursing him in the early 1990s.

3 Berkeley-Tulane Initiative on Vulnerable Populations, "New Population-Based Data on Attitudes about Peace and Justice," August 2007.

4 The agreement on Agenda Item 3 is still very important for reintegrating the vast majority of LRA fighters, despite its ambiguity on the leadership.

Third, the LRA leadership's safety in northern Uganda may be impossible to guarantee. Numerous surveys and reports have concluded that capacity for forgiveness among the Acholi of northern Uganda is romanticized and the desire for revenge underappreciated. According to Norbert Mao, a prominent northern Ugandan politician, all of Kony's brothers who were living in his home village of Odek have been killed by the local population or the Ugandan Army. Most of the LRA commanders who have returned to northern Uganda live in army barracks and must travel with armed escorts. One was recently beaten in the main town of Gulu when he took the risk of traveling alone.

During a recent meeting between ENOUGH and a group of several hundred IDPs in a camp near Gulu, the vast majority said that they would prefer to see Kony live in another country. During a town hall meeting in another camp, ENOUGH staff were repeatedly told by traditional chiefs and elders that Kony would be forgiven by the community once he submitted to traditional justice. Walking back to their squalid camp, a young man who was in attendance but remained silent during the discussion approached ENOUGH staff and said, "It would be much better if Kony never came back." LRA deputy commander Vincent Otti personally commanded an attack on his own village of Atiak where nearly 300 civilians were killed. In Odek and Atiak, the memory of these kinds of massacres is still potent. For LRA leaders like Kony and Otti, there may be no home to which to return.

II. KONY'S OPTIONS: ACCOUNTABILITY, ASYLUM, OR ARREST

Dealing with Joseph Kony is the central dilemma of the Juba peace talks. Kony will likely kill any deal that trades his life of power and status within the rebel ranks for a trial and potential prison cell in Uganda. Regardless of whether they submit to a formal trial or informal traditional justice, Kony

and the other top LRA commanders will always be fleeing the shadow of their crimes in northern Uganda. After twenty years of atrocities, there is no easy path to peace for Kony.

The case for bringing Kony to justice is strong, but the case for bringing peace to the people of northern Uganda and the region is stronger if a tradeoff between the two becomes necessary. Resettlement and redevelopment in northern Uganda remains fragmentary and shallow as long as the LRA lurks on the horizon. 1.5 million northern Ugandans remain displaced, despite improved security. Thousands of abducted women and children continue to be Kony's hostages and human shields. The ambiguity of the June 29 agreement serves the LRA's interest in prolonging the negotiations to gain more supplies, strength, and options on the ground. The LRA's value as a proxy for Khartoum to destabilize southern Sudan and undermine implementation of the Sudan's Comprehensive Peace Agreement (CPA) increases as the LRA stalls. Time is a luxury that neither this process nor the civilians of northern Ugandan and southern Sudan can afford.

The Juba peace process is the last best hope for a negotiated settlement. To keep the process focused and moving forward, three options should be presented to Kony:

a. Accountability

If Kony wishes to return home despite the dangers, he must be prosecuted in a Ugandan court to satisfy the ICC's complementarity standard if he wants to ensure that the ICC indictments are removed. Kony will have to be tried for similar crimes as charged by the ICC. Since the ICC only requires a genuine prosecution and does not specify the exact kinds of sanctions required, there most likely is some flexibility in the types of penalties a special court could impose on Kony. However, it is clear that traditional justice alone would not be sufficient to meet the Court's standards.

As an incentive to accept this option, the Ugandan Government should offer a more generous security and livelihood package to Kony if he participates in genuine local justice processes. The international community, led by the U.S. and EU, should also make clear that they will actively support the Ugandan Government's attempt to have the ICC's arrest warrants suspended if Kony accedes to this option, including a Security Council resolution requiring the ICC to suspend its investigation if necessary. At the same time, the U.S. and EU should express their commitment to support Kony's arrest if the rebel leader demonstrates questionable commitment to a negotiated settlement.

b. Asylum

Strong accountability mechanisms that meet international standards and local needs may face overwhelming obstacles that will doom the peace process. If, despite international pressure, Kony refuses to accept local accountability, asylum may need to be pursued as an alternative in the interests of peace. Kony may not want to return home, and his presence will not be desired by the community. If this holds true, Kony would join a list of Ugandan leaders and rebels—Idi Amin, Milton Obote, Alice Lakwena—who were relocated to another country.

Previous peace processes pursued the asylum option seriously. ENOUGH interviews in northern Uganda suggest that there may be widespread support for asylum. The Security Council could exert political oversight of this unpalatable arrangement by making deferment of the ICC's investigation conditional on Kony's compliance with the terms of a peace deal. By working within the Rome Statute, asylum administered by the Security Council may be better than watered down accountability mechanisms that satisfy neither the ICC nor Kony's victims. Furthermore, the asylum option could be presented as an exile scenario so that it can be part of the accountability efforts being crafted in a possible peace deal. It would also be important for international

guarantees against a Charles Taylor scenario as long as Kony and his deputies would abide by the terms of the peace deal and its asylum provision.

c. Arrest

While the ICC's investigation provided crucial pressure on the LRA, the Court's leverage is blunted by the lack of independent enforcement mechanisms to execute the arrest warrants, and the unwillingness so far of states or the UN to build a military strategy necessary to execute the warrants. The arrest warrants created an incentive to talk, but Kony won't see a reason to cut a deal unless there is a realistic possibility that he will be arrested if the Juba peace process fails.

The U.S. and EU—along with the African Union—must work with regional militaries and UN missions in Congo and Sudan to develop a strategy for apprehending the ICC-indicted LRA leadership. The local forces lack capacity and intelligence resources, and need effective international leadership to coordinate their activities. Apprehending Kony will be a challenging task because the LRA are in a stronger position than they were at the start of the talks. The LRA are relatively secure in their jungle hideout in the DRC and have used the talks as an opportunity to increase their numbers while amassing food and other supplies. The LRA will need to be contained by the Congolese Army and MONUC on the DRC side of the border and the SPLA and UNMIS on the Sudan side of the border, while a unit of specially trained soldiers will have to nab Kony.

III. CONCLUSION

"Peace comes with a price," one senior Government of Southern Sudan minister close to the talks told ENOUGH. "The LRA leadership hasn't yet named their price, and the Ugandan Government hasn't yet said what it is willing to pay." When talks finally resume in Juba after the current break for consultations, the parties will finally have to move

beyond basic principles and confront the core issue of negotiating a specific security and livelihood package for Kony and his top commanders.

The main challenge for the Juba peace process is to provide Kony with a clear set of choices for a peaceful settlement and credible consequences for failing to take advantage of this opportunity. Despite its successes and momentum, the Juba process is still all carrots and no sticks. Government of Southern Sudan mediators, UN Special Envoy Joaquim Chissano, and AU observers have all played a productive role. But they are limited by being able to provide the LRA with incentives but no signifi-

cant pressures. Until this equation becomes more balanced and countries with leverage—particularly the U.S.—become more directly engaged,⁵ Kony will see little reason to make the kind of compromises and sacrifices necessary for a deal.

The best chance for getting such a deal is through a credible package of security and livelihood guarantees in a third country asylum arrangement for Kony and his top deputies. Without Kony as the central part of the package, peace in northern Uganda will remain an elusive dream and the people of northern Uganda will continue to suffer the consequences.

5 The U.S. naming of Tim Shortley as Special Advisor on African conflicts, with a particular emphasis on northern Uganda, is an important first step and occurred in large part because of unrelenting advocacy by key members of the U.S. Congress.



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1333 H Street, NW, 10th Floor
Washington, DC 20005
Phone: 202-682-1611 Fax: 202-682-1867
www.enoughproject.org