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# **LET'S MAKE A DEAL**

## Leverage Needed in Northern Uganda Peace Talks

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ENOUGH Strategy Paper #6  
August 2007

## INTRODUCTION

Peace talks between the Ugandan Government and Lord's Resistance Army, or LRA, turned one year old on July 14, a milestone marked with little fanfare in Uganda and empty seats at the negotiating table in Juba, southern Sudan. Negotiations had taken yet another one month recess.

Since talks resumed on April 26, the parties have signed basic agreements on two agenda items: "comprehensive solutions to the conflict" and "reconciliation and accountability." LRA rebels in the southern Sudan state of Eastern Equatoria, who have been divided and pinned down by military pressure, crossed the Nile and assembled at the LRA's base near the Congo-Sudan border.

While these achievements should not be discounted, they are also shallow, ambiguous, and problematic. Neither comprehensive solutions nor reconciliation and accountability have actually been concluded. The former perpetuates the fiction that peace talks in Juba with the LRA are an appropriate forum to deal with the complex issues that northern Uganda faces, while the latter lays out an array of options to choose from but delays difficult decisions. In both cases, the weak and isolated LRA may be primarily interested in using broad agreements on principles as a cover to buy time, build strength, and gain undue legitimacy by rebranding themselves as representatives of marginalized northern Ugandans.<sup>1</sup>

To ensure that the plodding peace process doesn't stretch out for another year, five steps are immediately necessary:

- *Conclude the agreement on reconciliation and accountability:* A genuine, credible consultation process with victims must be followed rapidly by final negotiations on specific justice mechanisms.

- *Deal with the key people on the core issues:* Addressing the LRA military leadership's security and livelihood is the neglected heart of this peace process and is best handled by directly engaging LRA leader Joseph Kony.
- *Insert discipline into the Juba process:* The LRA's prime strategy is to gain strength and options by securing time, space, supplies, and an improved image. Donors and mediators must prevent peace talks from enabling the LRA to stall and rebuild through tight time frames, extensive oversight, and clear financial constraints.
- *Develop leverage by devising a fallback regional security strategy:* Both a clear carrot and a strong stick are necessary to bring Kony out of the bush, and the current process lacks both a credible backup plan to apprehend the LRA leadership should talks collapse.
- *Prepare for a follow-up consultative process in northern Uganda to address long term issues of resettlement, redevelopment, and reconciliation:* A broad-based, inclusive forum within northern Uganda, not Juba, is the only way to build a sustainable peace capable of breaking the cycle of conflict that has ensnared the area for 20 years.

The United States has a crucial role to play in helping to create the conditions for peace. The new appointment of a "senior advisor" with a vague mandate and a Washington address will not move the process forward unless the job is re-focused on supporting the peace process and is based in Uganda. The United States could provide important support to efforts to broker a security deal between Kony and Ugandan President Yoweri Museveni, could lead efforts to develop a Plan B military strategy in case the LRA undermines the peace talks, could

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1 For more elaboration, see ENOUGH Strategy Paper #3, "[The Answer to the Lord's Resistance Army](#)," June 2007.

support Disarmament, Demobilization, and Reintegration (DDR) efforts to reintegrate LRA ex-combatants, and could marshal the UN Security Council to choke off sources of material support to the LRA. Ultimately, the United States could provide the peace partner that President Museveni needs, and could give Kony the reassurances he needs that he won't be hunted as a criminal or terrorist if he signs and implements a peace deal.

### SHINING SUCCESS OR SHIMMERING MIRAGE?

When talks resumed in Juba on April 26 after a three-month hiatus, expectations were understandably low. In southern Sudan, both security and patience steadily declined during the break in negotiations as the LRA continued to attack and abduct civilians. The Juba-Nimule road, a vital commercial artery that feeds southern Sudan's emerging market with Ugandan goods, was choked by attacks from suspected LRA rebels. Roving bands of rebels were bold enough on January 25 to attack an UN convoy in the state of Eastern Equatoria, killing one Indian peacekeeper.

In Juba, the LRA delegation seemed more interested in prolonging the process with unrealistic demands while padding their wallets with increased daily allowances. Most of the new regional observers had yet to arrive, the cessation of hostilities monitoring team was not fully assembled and deployed, and both UN Special Envoy Joaquim Chissano and Uganda's chief negotiator, Internal Affairs Minister Ruhkana Ruganda, departed within days of the talks' resumption.

Yet despite bleak prospects for more plodding and dithering, the next three months produced a flurry of activity:

#### a) Cessation of Hostilities Agreement (Agenda Point 1<sup>2</sup>)

At the end of May and beginning of June, a core nucleus of committed LRA combatants who had been cut off and under pressure in Eastern Equatoria crossed the Nile and moved to the rebels' jungle hideout west of Garamba National Park in DRC. The first wave of LRA broke a pledge not to attack civilians, looting villages north of Lainya and near Tore, where they also abducted several villagers and killed one woman. Subsequent groups, however, passed peacefully. LRA Deputy Commander Vincent Otti has admitted to people close to the talks that up to 100 fighters remain in Eastern Equatoria. Otti claims these are small pockets of rogue rebels; skeptics suggest the LRA may be keeping these fighters in reserve as a small insurance policy and intelligence collection unit. Similar token forces may also lurk in northern Uganda and the Central African Republic.<sup>3</sup>

The LRA's shift improved security in southern Sudan, created a greater buffer between the rebels and northern Uganda, and removed a stubborn thorn in the side of talks. However, it may be a short-term success with long-term negative consequences.

The LRA are not adequately monitored or contained in their present location. AU monitors who joined the cessation of hostilities monitoring team when talks resumed have not been based full-time at Ri-Kwangba as originally planned and

2 Originally signed on August 26, 2006, the cessation of hostilities agreement between the Ugandan government and the LRA removed most rebels from northern Uganda, ushering in unprecedented security. However, the LRA refused to assemble in designated areas and continued to attack civilian in southern Sudan.

3 Technically, the LRA still have not fully complied with the assembly requirement of the cessation of hostilities agreement, first signed on August 26, 2006. The LRA are required to assemble in Sudan within a 15 km radius of Ri-Kwangba, a southern Sudan village of about 5 km from the Sudan-Congo border. The LRA's main current position is within 15 km of Ri-Kwangba, but on the Congolese side of the border.

announced. The monitoring team is only allowed to operate in Sudan and Uganda, even though the vast majority of LRA are actually located in Congo. Working through NGOs, donors are currently providing enough food for 5000 people in Garamba, although many observers believe the number is much lower. If there is excess food being provided, the LRA could be getting stronger through stockpiling or selling the supplies.

Though the army of the Government of the Southern Sudan, or GoSS, recently deployed two battalions near Ri-Kwangba, the LRA could still easily resume raids against civilians in southern Sudan, receive supplies from foreign sources, or slip into the Central African Republic. "It was wrong militarily and politically to allow the LRA to assemble at one point," one security source told ENOUGH in Juba. "You would have much more leverage over the LRA if their fighting force remained divided."

### **b) Comprehensive Solutions (Agenda Point 2)**

After months of chest-thumping demands to reshape the economy, military, and political institutions of Uganda, the LRA signed an agreement on "comprehensive solutions to the conflict" on May 2 that merely recycled vague, broad principles already found in Uganda's Constitution and its Peace, Recovery, and Development Plan, or PRDP. The document that was signed was largely the same one that the LRA bitterly rejected in December, suggesting a new realism and willingness to compromise within the LRA delegation.

On its surface, the deal is a mostly harmless attempt to avoid complex issues that the brutal LRA has no right to shape. However, it may come back to haunt the talks. First, the final clause calls for the parties to translate the agreement's ethereal principles into a tangible "implementation protocol" prior to the conclusion of a final comprehensive peace deal. People close to the mediation efforts told ENOUGH that they believed the LRA could but ultimately

would choose not to resurrect their ambitious demands and bog the entire process down yet again. Their faith is misplaced. The implementation protocol was obviously important to the LRA: It is the only difference between the deal rejected by the LRA in December and the one signed in May. Soon after the signing, Otti made statements to the press that the LRA leadership should ultimately receive senior government positions, and members of the LRA delegation proudly told ENOUGH staff that they were well on their way to negotiating a "CPA" for northern Uganda, a reference to Sudan's Comprehensive Peace Agreement. LRA delegates have also asked to have a large stakeholders' conference near Ri-Kwangba to discuss comprehensive solutions as well as reconciliation and accountability. Moreover, the LRA have demonstrated a repeated desire to prolong and stall talks, and are unlikely to pass on this opportunity. The LRA may have only made a tactical retreat, delaying but not dropping their previous demands.

Second, the agreement calls for the creation of a toothless stakeholder's conference after the signing of a final peace deal to "sensitize" northern Ugandan leaders about the provisions of the agreement. Under this arrangement, victims become spectators rather than active participants at the center of peace building, and key decisions that will guide their future will be made in Juba rather than Uganda. The power to craft policies to rebuild northern Uganda risks being placed in the hands of an illegitimate rebel group that is the prime perpetrator of abuses against innocent civilians. The LRA must not be given undeserved power and prominence at the expense and exclusion of more legitimate representatives of marginalized northern Ugandans.

### **c) Reconciliation and Accountability (Agenda Point 3)**

The agreement on reconciliation and accountability signed by the parties on June 29 is stronger and sounder than the one on comprehensive solutions.

Like agenda point two, this agreement sets out a broad framework of principles that will guide future negotiations on this contentious issue. The LRA moved drastically from their initial position while receiving little new in return. Initial proposals by the LRA called solely for traditional justice mechanisms, while the final agreement calls for a combination of informal mechanisms and formal domestic legal action against people who have committed grave atrocities. The parties agreed to take a one month recess to begin a consultation and preparation before reconvening at the end of July for difficult negotiations over the exact reconciliation and accountability mechanisms to be used.

Consultation is a key—yet undefined—ingredient in the mix. Unless there is a genuine, representative process of consultation that enables the parties to forcefully argue that victims' interests have been incorporated, the final detailed agreement is unlikely to withstand the scrutiny of either Kony's victims or the judges at the International Criminal Court, or ICC. The agreement does not say how consultation will work, nor does it make the results binding on the parties.

The LRA's initial proposal for consultation was not encouraging: A shotgun stakeholder's conference with 500 Diaspora figures, local leaders, and victims ferried to Ri-Kwangba for several days of discussion presided over by Kony. Next, the LRA demanded \$2 million dollars to travel to South Africa, Sierra Leone, and Argentina to conduct comparative research and preparation on how other post-conflict societies have addressed accountability and reconciliation. Fortunately, these ill-conceived circuses have so far stalled due to issues over funding, logistics, and participation.

Problems of political will and personal commitment also plague the deal. First, it is one thing for the LRA delegation in Juba to sign a piece of paper saying that Kony will come out and submit to a local trial. It is an entirely different matter, however,

for Kony to actually leave his jungle sanctuary and place himself on the dock. Kony's mistrust of Ugandan President Yoweri Museveni and paranoia over the ICC are major hurdles yet to be leaped.

Second, several recent surveys have indicated that the people of northern Uganda strongly want some kind of truth-telling mechanism to promote reconciliation. Getting either the Ugandan government or the LRA to agree to a Truth and Reconciliation Commission that provides victims a forum to discuss crimes committed by *all* parties throughout the entire course of the conflict will be an uphill battle.

Finally, the LRA are adamant that accountability mechanisms set up by the agreement do not simply single out atrocities by the rebels but also look at crimes by the Ugandan Army. The Ugandan government is willing to hold separate court-martials for accused Ugandan soldiers, but not to put them through the same judicial processes as the LRA. The LRA's demand for equal accountability and equal punishment is likely to present a significant future obstacle.

## DEALING WITH THE DEVIL IN THE DETAILS

Substantive issues cannot be skirted forever. The Juba peace process will remain immature, underdeveloped, and fragile until the parties confront and work through basic elements of a final agreement. Satisfying the security and livelihood needs of Joseph Kony and his close circle of commanders remains the critical yet unmet challenge of the talks.

### a) Justice

Kony needs to know that he will not be arrested and hauled off to The Hague, home of the ICC, as soon as a deal is penned and the LRA leave the bush. At the same time, the Court's core principles—that impunity is not consistent with peace and that accountability is necessary for individuals who have committed mass atrocities—truly reflect the desire of Kony's victims. The challenge is to craft strong

accountability and reconciliation mechanisms that will meet local needs and international standards, but will not scuttle a peace agreement that could end a generation of terror in northern Uganda.

The first step is to have a genuine, representative process of consultation with victims in northern Uganda. To ensure that any ultimate agreement reflects the long-term needs of the community and not the short-term survival interests of the LRA, the voices of victims must be heard and heeded. Rather than an unwieldy conference in Garamba, the Ugandan government's recent proposal to have a series of small-scale but broad-based consultation meetings throughout the war-impacted northern districts and Kampala is the right answer.

Ultimately there is no single, simple solution to the justice question. Multiple mechanisms, flexible options, and difficult decisions are unavoidable. Clearly, the toughest nut to crack will be what to do with Kony, Otti, and the other ICC-indicted LRA commanders.

The agreement on reconciliation and accountability calls for formal legal processes against individuals responsible for the most serious crimes, which means that Kony will have to face trial if he decides to return to Uganda. The Ugandan government is exploring the possibility of creating a special domestic tribunal empowered to provide an array of punishments, all the way from mandatory participation in traditional justice to potential life imprisonment. The Ugandan government could then challenge the case's admissibility in The Hague under the "complementarity principle," which requires the ICC to defer to genuine national proceedings consistent with the court's core principles.

The ICC is meant to be a court of last resort that complements, not supplements, national governments. If the court can promote sustainable peace by acting as a catalyst for domestic accountability

mechanisms, which its presence and pressure clearly has in northern Uganda, then the court has met its mandate and should let the parties handle the rest themselves. However, it remains highly doubtful that Kony will trust Museveni enough to submit to a trial in Uganda, and third country asylum in a country that is not a signatory to the Rome Statute may be the most realistic option.

A complementarity challenge also provides a way to crack a chicken-and-egg problem that bedevils prospects for implementation of an agreement. The LRA refuse to leave the bush unless the ICC's arrest warrants are lifted, and the ICC cannot do anything about the warrants until the LRA have left the bush and participated in credible domestic accountability mechanisms. However, as soon as either the Ugandan government or the LRA lodge a complementarity challenge with the court, all obligations to execute the arrest warrants are suspended until the pre-trial chamber has made its final decision. The LRA would be able to come back to Uganda and undergo a local trial free of fear that they would be nabbed and shipped off to The Hague. It is important to note that the decision about whether a peace agreement passes the complementarity test is made by judges at the ICC's pre-trial chamber, not Chief Prosecutor Luis Moreno-Ocampo. If the LRA needs additional assurances, the Security Council could also intervene and pass a resolution requiring the ICC to defer its investigation for renewable one-year increments.

For the rank and file LRA, reconciliation and reintegration are most important.

Dealing with Kony and his handful of henchmen is not enough. For victims, a formal truth-telling mechanism (such as a Truth and Reconciliation Commission) should be given serious consideration if it is strongly and broadly demanded by victims in northern Uganda.

## **b) Redevelopment and Rehabilitation in Northern Uganda**

Building a sustainable peace in northern Uganda involves both defusing the LRA security threat and dealing with the structural inequalities that will continue to create a climate conducive to conflict if they remain unaddressed. Juba is the wrong place and Joseph Kony is the wrong person to address these problems. Instead, there must be a process led by the Ugandan government and internationally supported after Juba to enable northern Uganda's victims and leaders to forge a practical, comprehensive strategy for the future.

To that end, there should be preparations for a parallel track following any deal struck with the LRA that would include a wide array of stakeholders in northern Uganda and focus on some of the essential issues that matter to the people of the region, such as resettlement, redevelopment, land rights, and protection from armed cattle rustlers in the nearby district of Karamoja.

## **c) Security and Livelihoods**

After a year, the Juba peace talks have yet to directly engage Kony on his key security and livelihood concerns. Kony has spent the last 20 years living a life of raw power in the bush, treated as a revered and feared prophet, and he will want assurances that a peaceful life is possible. "Peace comes with a price," one senior GoSS official close to the negotiations stressed to ENOUGH, "and we don't know yet what the LRA will demand." Kony will finally quote his price once the parties conclude the issue of reconciliation and accountability and move on to DDR. "These negotiations are going to be difficult," the same GoSS officials said. "The LRA are not fools, and they are keeping their ammunition for the final round."

Negotiations over DDR must be conducted primarily with the LRA military leadership. Kony had little

interest in the negotiations over comprehensive solutions or complex legal issues, and left these largely to a LRA delegation mostly composed of Diaspora figures disconnected from the conflict. What Kony cares about, and what only Kony can truly speak about, are his personal security and livelihood demands. Shuttle diplomacy through a respected intermediary like Chissano is necessary to break the logjam in Juba and cut straight to the source in Juba.

When ENOUGH staff asked large groups of internally displaced persons in February whether they would prefer to see Kony come home or relocated to a third country, a sea of hands voted near unanimously for the latter option in every camp we visited. Mistrustful of Museveni and fearful of revenge attacks by the people that he has terrorized for decades, Kony probably recognizes that he will live in a state of perpetual fear if he returns to Uganda. Third country asylum in a country that is not a signatory to the Rome Statute may be the best way to reconcile the victims' interests and Kony's security concerns. The Security Council could then intervene and pass a resolution requiring the ICC to defer its case for one year, renewing the resolution indefinitely so long as Kony continues to comply with the deal's terms.

## **THE MISSING LINK: LEVERAGE**

The LRA are not yet convinced that a peace agreement is their best and only option, and there is nobody involved in the talks that can provide the kind of pressure and persuasion necessary to push them to this conclusion. The Government of South Sudan, Chissano, the regional observers, and the U.N. branches supporting the process have all played an important role, but none has the ability to create disincentives for stalling and incentives for a signing a final agreement. "These agreements are like the Ten Commandments," one interna-

tional official in Juba ironically<sup>4</sup> told ENOUGH staff. “Good to have, but difficult to enforce without any clear, immediate sanctioning mechanism.”

While the UN peacekeeping mission in the Congo, or MONUC, has taken hesitant steps to heighten the priority of dealing with the LRA, sour relations between Kampala and Kinshasa stifle any meaningful progress in developing a regional security strategy to apprehend the ICC-indicted military leadership, cut off and contain the LRA, and divide the leadership from the rank and file.

In July, MONUC deployed 80 Moroccan peacekeepers to protect Indonesian engineers rehabilitating an airstrip in Dungen, a town in DRC south of the LRA’s base that could be potentially used as a staging ground for military action against the LRA. More MONUC troops may be deployed to Dungen by the end of the year if military action more likely.

However, Uganda recently pulled out the Intelligence Fusion Cell, a U.S.-initiated regional effort to share information and analysis about the threat of foreign armed groups in Congo. The Fusion Cell had been crippled since its inception by weak commitment and tensions among the participating states—initially Congo, Ugandan, Rwanda, and Burundi. In March, Congolese delegates at a conference in Burundi unsuccessfully attempted to have top Ugandan army commanders, including President Museveni’s brother, placed on the Fusion Cell’s list of terrorists. Later, the LRA and Allied Defence Forces, a rebel group responsible for terrorist acts in Uganda in the late 1990s, were removed from the Fusion Cell’s list of terrorist groups. Lastly, during a June 1 meeting, member states of the Fusion Cell rejected Uganda’s demand to add the shadowy Peoples Resistance Army to the list of terrorist groups.

With the death of the Fusion Cell, attempts to bring Uganda and DRC together by creating a joint platform to discuss a shared security threat suffered another serious setback. The United States needs to spearhead a new regional initiative to bring all LRA-affected countries together to create a credible backup military plan that will produce clear consequences if Kony continues to drag his feet or undermines the peace process.

Ultimately, there needs to be a Plan B that involves targeting the LRA leadership militarily, financially, and diplomatically if it blocks progress at the peace talks. The United States and member states of the European Union that are strong backers of the ICC should jointly consider military options to apprehend the ICC indictees. Kony needs to know his days of complete impunity are numbered in order for real progress to occur at the negotiating table.

## THE CRUCIAL—AND MISSING—U.S. ROLE

The United States remains on the sidelines in the quest for peace in northern Uganda. After a push from a number of members of Congress and activist groups for a special envoy or senior official to focus on the peace process, the administration decided to appoint a “senior advisor” based in Washington, D.C. who will deal with vague issues of longer-term development and reconciliation in northern Uganda.

In its communication on the appointment with members of Congress, the administration claimed that politicians and civil society actors in northern Uganda were opposed to a higher visibility role for the United States in support of peace. Nothing could be further from reality. In ENOUGH’s travels throughout the north, it is clear that Ugandans are strongly supportive of a more active role for the United States in support of a peace deal. The

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<sup>4</sup> Kony’s twisted philosophy is grounded in his belief—or delusion—that he is acting out God’s will to impose the Ten Commandments to a society that is blind to his vision.

administration's opposition to direct support for or involvement in peace talks once again leaves the United States in a position of irrelevance, with large reserves of unutilized leverage sitting on the sidelines. In order for peace to have a chance in northern Uganda, this must change.

The United States must refocus the senior advisor position to support a peace deal and base the person in the region, not in the bureaucratic haze of Foggy Bottom's Africa Bureau. The United States can be particularly influential in a few areas:

- Contributing to direct talks between President Museveni and Kony over security and livelihoods by providing a real negotiating partner for the president and allaying Kony's fears that the United States will hunt him even if he signs a peace deal because he remains on a U.S. terrorism list
- Supporting efforts to develop a Plan B military strategy for apprehending the ICC suspects should the LRA leave the peace talks
- Resourcing DDR strategies designed to support re-integration of rank and file LRA ex-combatants
- Working in the UN Security Council to squeeze off sources of support for the LRA internationally through strengthening the Sanctions Committee

## CONCLUSION

When asked about the slow pace of the talks, one person close to mediation efforts told ENOUGH, "As long as the LRA continue to talk and the people of northern Uganda enjoy improved security, then it really doesn't matter if negotiations go on for years." This is the wrong approach. It makes talks an end in themselves and neglects the dangers of allowing the LRA to remain in the bush indefinitely. The LRA continue to cast a long, dark shadow over northern Ugandan and southern Sudan, blocking

urgently needed resettlement and redevelopment. A recent assessment by the Kampala-based Refugee Law Project found that only 1 percent of internally displaced persons (IDPs) in primary conflict-impacted districts (Gulu, Amuru, Kitgum, and Pader) have actually returned home. Instead, the vast majority have shifted to satellite decongestion sites whose conditions are often only a marginal improvement over the original squalid IDP camps. The LRA will continue to hold northern Uganda hostage until a final agreement is signed.

Moreover, the LRA still pose a real threat to regional security. For the better part of the year-long peace process, the LRA have continued to loot villages and attack civilians in southern Sudan. Khartoum clearly has a strong interest in keeping the LRA in reserve as a proxy force to destabilize southern Sudan and undermine implementation of the Comprehensive Peace Agreement between Khartoum's National Congress Party and the Sudan People's Liberation Movement. The LRA can easily expand into the Central African Republic if talks collapse, easing access to supplies from Khartoum and potentially opening up a new theater of operations for the LRA in Darfur.

The LRA have gotten more out of the process than they have given. The LRA are militarily stronger, and have made progress in improving their image. After one year of meandering, uncertain progress, it is time to get down to details, provide the leverage and structure to create a disciplined process in Juba, and cut a deal that will finally allow northern Ugandans to awake from their 20-year nightmare and remove the specter of the LRA as a regional security threat.

With the right level of international engagement, supported by strong U.S. leadership, the current peace process could succeed soon. The elements of a deal are clear. Only leverage and political will are lacking.

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