

Shock Therapy for Northern Uganda's Peace Process

I. OVERVIEW

The peace process aimed at ending the eighteen-year old conflict in Northern Uganda is in critical condition because neither the Ugandan government nor the insurgent Lord's Resistance Army (LRA) appears fully committed to a negotiated solution.¹ After the LRA increased its atrocities against civilians in February 2005 and ignored a request to demonstrate its good will, the government decided not to extend its unilateral, limited ceasefire and re-focused on a military solution. The mediator, former Ugandan State Minister Betty Bigombe, needs to obtain a new, more comprehensive government proposal and then test the rebels' willingness for peace by travelling to southern Sudan to put it directly to their leader, Joseph Kony, if the chance to end an extraordinarily brutal conflict is not to be lost. Neither is likely to happen without more international engagement.

The LRA is reorganising for intensified conflict. Its attacks on civilians are becoming more frequent and are conducted by larger units. Joseph Kony, its single real decision-maker, has still not responded to any government proposal. Kampala appears to be losing patience with the mediation effort, putting priority instead on a military solution and expanding efforts to target LRA leaders. The process of reintegrating former LRA fighters into their communities is proceeding poorly, thus negatively affecting the calculations of LRA fighters who are still in the bush.

The International Criminal Court (ICC) is prepared to issue warrants against LRA leaders suspected of committing crimes against humanity, a step that if not handled carefully could drive the rebels definitively out of the peace process. However, the ICC is well aware of the risk and is undertaking a series of activities which have increased mutual understanding with Northern Ugandan civil society.

Bigombe continues to speak on the telephone with Vincent Oti, her designated LRA contact, and may

meet with him soon. Reportedly, the insurgents are considering some gesture, perhaps even proclamation of their own unilateral ceasefire. However, new procedures and new substance are required if the peace process is to be given a decisive push. Since the lack of direct, persistent engagement with Kony is a critical handicap, *Bigombe should seek agreement and help from the Ugandan government to travel to southern Sudan, where Kony is located, in order to take up face-to-face negotiation.*

This would also need the active assistance of the Sudanese government and its new peace partner, the formerly insurgent Sudan People's Liberation Movement (SPLM), as well as key diplomats in Kampala, Khartoum, and Nairobi.

Kony will not agree to a ceasefire that does not address the LRA's two central concerns -- post-settlement physical security and livelihoods. Therefore, *the ceasefire-first approach the government has been following² should be replaced by a proposal for a comprehensive settlement that includes guarantees for Kony and other LRA commanders, international monitoring in all aspects of implementation to counter corrosive distrust that could potentially spoil the deal, and a peace dividend to help rebuild war-ravaged communities.*

Given the attitudes of the parties, none of this is likely without more vigorous and sustained international support, most particularly from the U.S., which has considerable influence with Ugandan President Yoweri Museveni and whose reserve causes LRA leaders to doubt it supports a negotiated peace. Unfortunately, Washington is preoccupied with events in Sudan, even though the viability of the recently signed peace between the Sudanese government and the SPLM is partly intertwined with the fate of the southern Sudan-based LRA.

A European troika of Norway, the UK and the Netherlands is working hard but it would benefit from more direct American reinforcement; *all four countries should appoint senior envoys to lend their efforts more credibility with the parties.*

¹ For more background on the LRA insurgency, see Crisis Group Africa Report N°77, *Northern Uganda: Understanding and Solving the Conflict*, 14 April 2004.

² Crisis Group Africa Briefing N°22, *Peace in Northern Uganda: Decisive Weeks Ahead*, 21 February 2005.

II. MOTIVATIONS OF THE PARTIES

A. THE LRA

The LRA has been hurt over the past six months by:

- improved performance of the Ugandan armed forces (the UPDF³);
- reduced Sudanese government support; and
- pressure from the ICC investigation.

Many LRA rear bases in southern Sudan have been overrun, and key supply lines have been disrupted. Both commanders and rank and file fighters have defected or been captured in meaningful numbers.⁴

However, as Crisis Group has warned, reports of the insurgency's death are greatly exaggerated. Kony and his followers have resumed their horrific violence against the Acholi⁵ civilian population. Far from splintering, as some Kampala-based analysts have reported, the LRA is reorganising its leadership and overall structure and adjusting its tactics to offset the improved performance of the Ugandan military.⁶ This is consistent with its history: when its back has been against the wall, it has always emerged stronger, more focused, and more blood-thirsty than ever.⁷

Recent Crisis Group interviews indicate that Kony and most of his commanders have moved further up into southern Sudan, where they have established a new base for rest and re-supply with the support of some elements of Khartoum's army. This tactical retreat has created operational complications for the UPDF.⁸ The LRA looting raids into Northern Uganda that marked the

³ Ugandan People's Defence Forces.

⁴ Crisis Group interview, Uganda Military Officials, in Kampala, 22 March 2005.

⁵ The Acholi are an ethnic group in the Northern Ugandan districts of Gulu, Pader and Kitgum and the most affected by the LRA insurgency. They belong to the larger Lwo linguistic group that originates from the Bahr al-Ghazal region in southern Sudan and are spread in many parts of Uganda and Kenya.

⁶ Crisis Group interviews in Uganda, March and April 2005.

⁷ See Crisis Group Briefing, *Peace in Northern Uganda*, op. cit.

⁸ Under the existing protocol with Khartoum, the Ugandan military's Operation Iron Fist is not allowed to penetrate beyond the vicinity of Juba in southern Sudan. The latest information available to Crisis Group indicates that Kony and most of his commanders have moved north of the Juba-Torit road. To attack positions in this area, the UPDF must go through the slow process of seeking new permission from Khartoum. Crisis Group interview, Ugandan military officials in Kampala, 22 March 2005.

second half of 2004 have given way to a more aggressive campaign of abductions, mutilations, and raids on arms depots.

Although the LRA respected the geographical boundaries of the limited ceasefire the government declared unilaterally from 4 to 22 February 2005, it increased attacks on civilians outside that zone during the same period. Since President Museveni's decision not to extend that limited ceasefire, LRA atrocities against Acholi civilians have continued to rise in number and viciousness, regardless of location but especially in Gulu, Kitgum, and Pader districts.⁹ There has been increased killing and abduction of civilians from villages and IDP camps, increased numbers of night commuters (children seeking safety from LRA kidnappings on a nightly basis in northern urban centres) and increased livestock raiding.¹⁰ Marauding units are also reported to be larger, no longer four to eight fighters but from ten to as many as 50.¹¹ This resurgence repeats another pattern: whenever the rebellion is declared to be on its death bed, particularly by the Ugandan government, it responds with extreme violence.

At the same time, more reports are coming in of human rights violations by the Ugandan military against civilian populations, including arbitrary arrests and beatings of IDPs suspected of collaboration with the LRA.¹²

Illustrative of the sharp increase in murder, mutilation and kidnapping in February and March 2005:

- on 21 February, an estimated 50 rebels attacked Alokulum Internally Displaced Persons (IDPs) camp/trading centre, about six kilometres southwest of Gulu town in an attempt to kill the mother of Onen Kamdulu, the former LRA chief of operations, who surrendered on 4 February 2005;¹³
- on 23 February, the LRA attacked and cut off the lips of eight women returning from fetching

⁹ Crisis Group recommended in its briefing published on 21 February 2005, op. cit., that the ceasefire be extended to allow further time for negotiation. On 22 and 23 February, however, President Museveni received new reports of extremely brutal LRA attacks on civilians outside the ceasefire zone and failed to obtain a gesture from the LRA indicating its support for a diplomatic solution. Crisis Group interviews. See also Section III below.

¹⁰ Crisis Group interviews in Uganda, April 2005.

¹¹ UN Office for the Coordination of Humanitarian Affairs (OCHA), "Uganda Humanitarian Update Report for February 2005", 18 March 2005.

¹² Crisis Group interviews in Uganda, April 2005.

¹³ "Army Kills Six Rebels in Gulu", *The New Vision*, 26 February 2005. Additional information is in OCHA, op. cit.

water from a well in Ngomoromo village, Lukung sub-county in Kitgum;¹⁴

- on 9 March, the LRA attacked Mgbere, approximately twenty kilometres south of the Sudan border in Adjumani district; wielding axes, machetes, and hoes, they killed seven people, including four women and a two-year-old girl;¹⁵
- on 18 March, the LRA cut off the lips, ears and breasts of three women who were fetching firewood and abducted several others in Patiko in Kitgum;¹⁶
- on 28 March, twenty LRA fighters attacked and looted a village 25 kilometres north of Nimule in Eastern Equatoria, southern Sudan, killing two suspected soldiers aligned with the SPLM movement, a woman and a child, and shooting at two commercial passenger vehicles, injuring five civilians. As a result of increasing LRA activity in the area, the UN has restricted humanitarian operations to within five kilometres of larger towns;¹⁷
- on 29 March, 25 to 30 fighters attacked a village south of Pageri, southern Sudan, approximately ten kilometres from the border, and killed at least ten civilians, injured ten others and looted houses in the village.¹⁸

Another alarming trend is the emergence of younger commanders, many of whom have likely grown up in the ranks and are desensitised to this extreme violence. According to Crisis Group sources in Uganda, they are "proving their worth" and "demonstrating their skills" through these mutilations.¹⁹

Assessments of LRA troop strength remain difficult but the most credible, based on interviews with defectors, put it at approximately 3,000.²⁰ Defectors and freed captives also report that the LRA maintains hidden caches of weapons; however, it often has difficulty recovering these due to UPDF success in

killing those who know the location or finding them with the help of defectors.²¹

Although Sudanese government support for the LRA has diminished drastically, some links remain. Indeed, recent reports from defectors indicate that the LRA may once again be obtaining arms through Sudanese channels.²² For hardliners in Khartoum who opposed the peace deal with the SPLM, the LRA remains a willing and eagerly capable of undermining southern Sudanese stability. Kony clearly feels comfortable enough in southern Sudan, despite the recent UPDF pressure. A sign of this is that he has asked three times to see Bigombe there.²³

While Kony's calculations could be affected by a general dwindling of resources, including the loss of manpower through defections and UPDF successes, his most immediate problem with operations in Northern Uganda is food supply. Persistent shortages in the region are believed to have had a negative impact also on LRA morale.²⁴

Many LRA fighters who have come out of the bush to accept the government's proffered amnesty are experiencing significant difficulties reintegrating into their communities.²⁵ Eighteen years of LRA terror tactics have psychologically scarred the Acholi with the result that ex-rebels face a good deal of anger and violence.²⁶

¹⁴ "LRA Gangs Cut off Eight Women's Lips", *The New Vision*, 26 February 2005.

¹⁵ "Ugandan Rebels Kill Seven in Attack on Village", Reuters, 11 March 2005.

¹⁶ "LRA Chops off Lips, Breasts", *The New Vision*, 21 March 2005.

¹⁷ Crisis Group correspondence, 29 March 2005.

¹⁸ Crisis Group correspondence with diplomatic sources, 30 March 2005.

¹⁹ Crisis Group interviews, March 2005.

²⁰ Crisis Group interviews in Uganda, February and March 2005.

²¹ Crisis Group interviews, March 2005.

²² Crisis Group interviews in Uganda, March 2005.

²³ Bigombe has been involved in past efforts at peacemaking with the LRA, though none that progressed as far as the current initiative, which she has been authorised to pursue by President Museveni. She went to southern Sudan in June and July 2004 but Sudanese military intelligence would not allow her to see Kony despite prior arrangements and pledges. Between July and November 2004, she worked at making new contact in Uganda. This developed with Sam Kolo, a Kony deputy, in November, and the Ugandan government subsequently declared a unilateral ceasefire.

²⁴ According to the U.S. Agency for International Development (USAID) Famine Early Warning Systems Network (FEWS NET), "Food security remains fragile in Northern Uganda, due mainly to civil insecurity....The area of land cultivated remains small and does not enable [internally displaced persons, IDPs] to produce sufficient food for their own consumption, and they remain largely dependent on World Food Program's food assistance program". Available at <http://www.fews.net/centers/innerSections.aspx?f=ug&m=1001525&pageID=monthliesDoc>.

²⁵ Crisis Group interview in Uganda, March 2005.

²⁶ Compounding the Acholi misery is the discrimination they face from some elements of the Ugandan government. Some within the government consider virtually all Acholi as LRA supporters and use this as justification for marginalising them. For more history of the unhappy relations between the Acholi and governments in Kampala, see Crisis Group

Some have even been lynched. At the least, they find themselves out of touch with Acholi culture due to years in the bush and LRA brainwashing.²⁷

B. THE GOVERNMENT

Despite the government's stated simultaneous pursuit of military victory and negotiations, most diplomats in Kampala and Crisis Group interlocutors in Northern Uganda believe it prefers the military track and that some of its actions are making the diplomatic option less viable.²⁸ The UPDF's improvement at counter-insurgency has reinforced the tendency of many senior officials to believe a military solution is possible and produced over-confidence that is leading to devaluation of the peace process.

Much suspicion surrounds the timing and role of the government in the February 2005 defections of Sam Kolo, the LRA's chief mediator, and Kamdulu, its former chief of operations. These indeed hurt the LRA militarily but also increased its paranoia, sparked an escalation of the fighting²⁹ and undermined the political processes of confidence building and peace negotiation that offer a more lasting prospect for not only ending LRA violence but also stabilising the whole of Northern Uganda. UPDF efforts directed against LRA leaders who are engaged in negotiations make Bigombe's mediation more difficult.

The Ugandan government further hurts the peace process with dismissive public statements about the insurgency. LRA attacks are often direct responses to inaccurate UPDF claims about its imminent demise.

III. THE PEACE PROCESS

The opportunity for a negotiated settlement is slipping away. The LRA has yet to demonstrate in any concrete way that it is serious about the mediation, and the government is at least losing patience. The rainy season, which has just begun, is traditionally a time of greater violence, as the guerrillas gain tactical advantage from increased vegetative cover. In the wake of the already cited renewed pattern of attacks and mutilations designed to terrorise civilians, Ugandan officials are close to

concluding, if they have not already, that only a military solution can end the conflict.

After Kolo's defection, Bigombe established contact with Kony's second-in-command, Vincent Oti, who insisted that the LRA remains committed to the peace effort. He said he needed time, however, to get Kony on board. During the first week of April, Bigombe spoke directly by phone with Kony, urging him to rejuvenate the peace process and emphasising that the LRA must cease the mutilations and other atrocities if the talks are to resume.³⁰ President Museveni is known to be reluctant to continue with the process as long as such atrocities are being committed.³¹

Kony reportedly is interested in a ceasefire that would be unlimited with respect to both area and time but is unwilling to accept the government's more limited proposal.³² If Bigombe and Oti were to make some progress in narrowing differences over the technical aspects of a ceasefire, hardliners on both sides could still be expected to undermine their exercise.

Kampala is believed to be insisting on an arrangement much like that it has pressed for since late in 2004.³³ President Museveni declared a first ceasefire on 14 November but restricted it to the regions of Patiko, Atyak, Atanga and Palabek and required that LRA fighters assemble in those areas before peace negotiations could begin. Moreover, hostilities did not fully end. Although Museveni suspended the UPDF's standing orders to kill Kony and other LRA commanders on sight within the ceasefire zone, the old rules applied elsewhere. And while the UPDF continued operations outside the ceasefire zone, including in southern Sudan, the government condemned LRA activity outside the zone as ceasefire

Briefing, *Peace in Northern Uganda*, op. cit., and Crisis Group Report, *Northern Uganda*, op. cit.

²⁷ Crisis Group written communications with sources in Uganda, March 2005.

²⁸ Crisis Group interviews, January-March, 2005.

²⁹ Crisis Group interviews, March 2005.

³⁰ "Betty Bigombe Phones Kony", *The New Vision*, 6 April 2005; Crisis Group interviews, April 2005.

³¹ Crisis Group interviews, April 2005.

³² The government has proposed that assembly points be established for LRA fighters prior to the start of substantive negotiations. This idea appears to have unnerved the LRA leadership, which likely interprets it as an effort to pen their forces within a fixed geographic location where they would be vulnerable to attack. A Western diplomat familiar with the process said: "It is easier to assemble when you have negotiated and agreed on something. But here we are talking of assembly before even talks. The rebels certainly fear for their security in a situation where no commitments have been made. Supposing you disagree completely, what happens to your fighters even if there are observers in a situation where the UPDF has deployed throughout southern Sudan and are keen on surrounding you?"

³³ See Crisis Group Briefing, *Peace in Northern Uganda*, op. cit.

violations.³⁴ All this suggested to some observers that the strategy was less to maximise the chance for a settlement than to advance a military decision.

Despite the inadequacies of this ceasefire and its successor in early February, it appears that Museveni was prepared to declare another at the end of that month if Otií had indicated the LRA was willing to take some tangible step towards final resolution. That did not happen, and the ceasefire expired.³⁵

The transition from Kolo to Otií as principal LRA interlocutor has been difficult. Many observers began to lose confidence in the peace process when Kolo defected since Otií is generally perceived to be much more hard-line.³⁶

Otií is completely different from Kolo. Otií is afraid of going back to his community in Northern Uganda, psychologically hardened by years of atrocities, knee deep in the warlord power that he gets from being in the bush, and well aware of the ICC.³⁷

In early March 2005, the Civil Society Organisations for Peace in Northern Uganda (CSOPNU) denounced the return to fighting as a betrayal of the work done by the peace team over the preceding months.³⁸ On 1 April, they called upon the government to offer the LRA a new ceasefire to encourage a return to talks.³⁹

The peace team itself remains largely ad hoc and in need of serious strengthening. Without a proper secretariat to assist the mediator and both broader and more senior international support, it is hard to see how Bigombe can succeed. The lack of more meaningful U.S. support -- such as could be provided by a special envoy -- is particularly debilitating.

³⁴ The American Non-Governmental Organisations' Coalition for the International Criminal Court, "The current investigation by the ICC of the situation in Northern Uganda", unpublished paper dated 3 December 2004.

³⁵ As explained above (fn. 10), President Museveni also received at this time reports of new and horrific LRA attacks on civilians outside the ceasefire zone, which reportedly affected his decision.

³⁶ Crisis Group interviews in Uganda, March 2005. In interviews following his defection, Kolo blamed Kony and Otií for not embracing the peace process and accused Otií of attempting to kill him. Crisis Group interview, February 2005.

³⁷ Crisis Group correspondence with an analyst in Northern Uganda, March 2005.

³⁸ CSOPNU is a coalition of more than 40 Ugandan and international NGOs that work with those affected by the conflict. *The New Vision*, 2 March 2005.

³⁹ "Coalition calls for renewed Uganda Ceasefire", Reuters, 1 April 2005.

IV. THE ICC

The ICC has already had a positive impact on the peace process by sobering the LRA and influencing Khartoum to reduce support. Because of increased contact between Acholi leaders and ICC officials, including Prosecutor Luis Moreno-Ocampo, a spirit of cooperation has replaced suspicion in Northern Uganda about the Court's intentions.

Further investigation of the most serious crimes committed after 1 July 2002,⁴⁰ including murder, torture, rape and the forcible recruitment of children, serves notice that those most responsible for atrocities will be held accountable.⁴¹ In addition to many victims, including freed abductees, ICC investigators were able to interview recent LRA deserters and captured fighters. By early 2005, the Prosecutor signalled readiness to make the case before the Pre-Trial Chamber for the issuance of arrest warrants against the most senior suspects.

The speed and efficiency of the investigation have heartened human rights advocates looking for evidence of the ICC's relevance to accountability worldwide. However, the apparent imminence of indictments alarmed the mediator as well as many Acholi, who feared this would drive the LRA out of the peace effort. In late February 2005, a widely publicised statement by Bigombe that she would end the mediation if the Prosecutor pursued arrest warrants for Kony and other senior LRA commanders was seen as unnecessarily provocative by the ICC.⁴²

The Court risked becoming the target of recriminations from humanitarian groups and Acholi community associations, whose overriding interest was to give negotiated peace a chance, even at the cost of justice. Spokespersons for Northern Ugandan civil society groups, traditional leaders, local politicians and religious leaders argued in a joint statement that, "the ICC should suspend its investigation and refrain from planned issuance of arrest warrants until peace is achieved in Northern Uganda".⁴³

⁴⁰ The Rome Statute that established the ICC sets 1 July 2002 as the earliest date for crimes over which the tribunal can exercise jurisdiction.

⁴¹ The Ugandan government formally referred jurisdiction to the ICC in December 2003. Available at http://www.icc-cpi.int/pressrelease_details&id=16&l=en.html. The ICC investigation, which has benefited from the full cooperation of the Ugandan government, was formally launched in July 2004.

⁴² Crisis Group correspondence, April 2005. "Attacks mark end of Uganda truce", BBC, 23 February 2005.

⁴³ "Current position of civil society groups, traditional leaders, Acholi politicians, religious leaders, and community in

Instead, they suggested, "the ICC must first engage in a public information program to create awareness and to popularise their role among the local community in Northern Uganda and the whole country . . . so as to be better understood".⁴⁴

The Office of the Prosecutor responded constructively with a campaign to improve understanding of the ICC among the concerned communities and groups. It invited a search for common ground around a more comprehensive and collective response to the conflict, received a delegation of Acholi traditional, religious and civil society leaders and local politicians at The Hague in mid-March and expects to receive another large delegation of local officials in April.⁴⁵

In a communiqué issued at the end of the March meetings, delegation members said they had acquired a better understanding of the Prosecutor's position, mandate and independence and also his constraints. They pleaded with him to be mindful of Acholi traditional justice and reconciliation processes⁴⁶ as well as of the peace process and asked that ex-LRA fighters who had already benefited from government amnesty not be investigated or prosecuted by the ICC.

This dialogue has offered the Prosecutor an opportunity to explain the ICC's responsibility under the Rome Statute to investigate and prosecute serious international crimes, taking into account the interests of victims and justice. By indicating that the investigation is concentrated

on those senior commanders who bear the greatest responsibility, he acknowledged that traditional and national reconciliation and justice processes also have a vital role to play in achieving accountability.⁴⁷ The open discussion of concerns, responsibilities and limitations that is now underway with communities throughout Northern Uganda appears to be resolving initial misunderstandings and can produce a better coordinated, mutually reinforcing accountability effort.

The ICC has not set a deadline for the issuing of arrest warrants, thus relieving some pressure on the peace process. However, ICC officials point out that even after warrants are issued, the peace process can continue. They note that the investigation could still be suspended at any time in the interests of justice.⁴⁸ In the meantime, the ongoing collection of evidence serves notice that the ICC remains active and justice will be served.

V. RESCUING THE PEACE PROCESS

The next month could be decisive in determining whether negotiations will end the LRA insurgency, but only a bold diplomatic gambit can break the impasse. Bigombe will need to go to southern Sudan in order to meet with Kony, the main source of the difficulty. But if such a trip is to revive the process and provide some prospect for a negotiated solution, a new strategy is needed that allows her to present a comprehensive package rather than merely a ceasefire proposal.

Northern Uganda on ICC intervention", unpublished paper, Kampala, dated 25 February 2005, and in Crisis Group possession. A report by the Refugee Law Project, which operates autonomously within the law faculty of Makerere University, Uganda's leading university, warned that "the strength of feeling against the ICC should not be read as an indication of either civilian support for Kony, or as support for impunity". Rather, it suggested concern for the impact on the peace process and fear that the LRA would respond with indiscriminate attacks on civilians that the government would be unable to provide protection against. Refugee Law Project Working Paper No. 15, "Whose Justice? Perceptions of Uganda's Amnesty Act 2000: the Potential for Conflict Resolution and Long-Term Reconciliation", Kampala, February 2005, unpublished monograph, on file at Crisis Group.

⁴⁴ "Current position of civil society groups", op. cit.

⁴⁵ Crisis Group correspondence, April 2005. The first delegation was led by Rwot David Onen Acana II, the paramount chief of the Acholis, and included Catholic Archbishop John Baptist Odama, Protestant Bishop of Gulu Diocese Onono-Onweng, the Hon. Jane Akwero Odwong (Member of Parliament, Kitgum), Colonel Walter Ochora and the Hon. Jacob Oulanyah (Member of Parliament, Omoro County).

⁴⁶ For a description of those traditional justice and reconciliation processes, see Crisis Group Briefing, *Peace in Northern Uganda*, op. cit.

⁴⁷ See "Statements by ICC Chief Prosecutor and the visiting delegation of Acholi leaders from Northern Uganda", The Hague, 18 March 2005, No.: ICC-OTP 2005.042-EN. Following the dialogue with the Prosecutor, one participant told Crisis Group: "We feel that if there is any kind of hostility to the ICC, then it is out of ignorance. Informed people cannot be hostile to a well-established international institution and it is up to the ICC to go out and be specific about their activities". Crisis Group interview, March 2005.

⁴⁸ Crisis Group interviews, April 2005. Article 53 of the Rome Statute provides that: "...4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information". Further, Article 53 provides that: "...2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because: (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime, the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion".

Travelling to southern Sudan for a face-to-face meeting with Kony is risky -- not so much substantively, because there is little to lose in the present state of negotiations, but physically. There would need to be hands-on involvement from the Sudanese government, which has provided a safe-haven and lifeline to Kony for the last decade. The U.S. and others with influence in Khartoum would have to lean hard on the Sudanese.

Senior Sudanese as well as Ugandan officials should accompany Bigombe to ensure her safety and a secure environment in which she and Kony could talk. Khartoum should send someone the LRA would be unlikely to attack, such as Salah Abdallah Gosh, its security chief. Kampala should send a senior UPDF officer close to President Museveni to guarantee against any Ugandan military action. Diplomats from select countries⁴⁹ could also accompany the delegation to give the initiative greater prestige.

A. A COMPREHENSIVE PACKAGE

Implementation of a ceasefire such as the government still proposes and about which Bigombe and Otii are in contact would require good faith and confidence between the parties that simply does not exist. Bigombe needs to work with the government to develop a more extensive proposal that she can present on its behalf and that would go to the heart of what are believed to be the problems Kony and other senior LRA figures have with the current limited offer. This means putting on the table a comprehensive settlement that focuses on security and livelihood guarantees for both LRA commanders and rank and file. "Almost everything boils down to these two things", said a person closely involved in the process. "Fear for their safety and their economic future are the two things wearing on the LRA".⁵⁰

1. Security guarantees

The overwhelming imperative for a negotiated settlement will be to guarantee the security of returning LRA, especially Kony and his top commanders. Violations by LRA members of the terms of the agreement should leave the offenders fully exposed to judicial mechanisms. Beyond that, however, they will have to be protected in some manner and degree from actions of the ICC, the Ugandan government, and aggrieved Acholi communities.⁵¹

With regard to Kony himself and others of his inner circle who bear direct command responsibility for truly horrific atrocity crimes, one option would be for ICC prosecutions to proceed, but for those senior leaders to be assured that if they cooperate in negotiating and implementing a settlement, the Ugandan government and other governments active in the peace process would request the Prosecutor and the Court to take due account of such constructive behaviour and exercise their discretion at appropriate stages of the judicial process, either in suspending prosecution⁵² or in passing sentence.

2. Peace dividend

The second priority is the provision of alternative livelihood opportunities for LRA fighters, whose guerrilla skills and expertise in terror tactics will not be relevant to rebuilding a shattered society. A demobilisation, disarmament and reintegration (DDR) program can provide enormous incentives for at least lower and middle level LRA commanders as well as the rank and file to lay down their arms and return to civilian life. The "R" in "DDR" is particularly crucial. Programs in other countries have often been crippled by a lack of support for reintegration. Investment in this should come from non-governmental foundations as well as donor governments.

Available World Bank funds have been disbursed only very slowly.⁵³ Although the money has been available for nearly two years, the Bank began to release it for DDR only in March 2005.⁵⁴ Due in part to these delays, the World Bank and the Ugandan government have thus far failed to create a viable program, despite the Bank's well-publicised verbal support for its own Amnesty

not be subjected to extradition or other measures from the U.S. government as a result of the organisation's inclusion on Washington's terrorism list.

⁵² Under Article 53.2 (c) and 53.4 of the Rome Statute; see fn. 48 above.

⁵³ Other than nearly \$100,000 spent to finance assessment missions. Figures denoted in dollars (\$) in this Briefing are in U.S. dollars.

⁵⁴ To date, the World Bank has released \$450,000 of the \$4.2 million required by the Amnesty Commission to pay resettlement packages to ex-combatants. The remainder of the money is available but the Ugandan government must fulfil several conditions before it can be released. A key condition -- only just met -- is the recruitment of a credible financial management agency acceptable to the bank. Although other conditions have not yet been met, the Bank is now willing to release funds in instalments, based on the Commission's new project implementation plan, in order to satisfy urgent needs associated with the re-integration backlog of over 10,000 returnees and 3,000 more ex-LRA expected to reintegrate. Crisis Group interviews, March 2005.

⁴⁹ Specifically, U.S. diplomats might join the troika of Norway, the Netherlands, and the UK in accompanying Bigombe to southern Sudan.

⁵⁰ Crisis Group interview, March 2005.

⁵¹ LRA leaders will also want assurances that its leaders will

Commission, the entity charged with overseeing the effort. With cooperation between senior World Bank and Ugandan government leadership, a credible DDR program could be constructed quickly, thus providing a real confidence building measure for the LRA.

In conjunction with the DDR program, some form of help must be given to two other groups. First, government-sponsored militias in Northern Uganda such as the Arrow Boys also should be demobilised and reintegrated. Secondly, serious new resentments would build if the LRA received significant assistance while its victims continued to languish. Recognising this, the government has launched a new national policy to ensure that IDPs receive equal treatment under the constitution with all other Ugandans.⁵⁵ Donors should work for its full implementation.

3. International monitoring

For the peace process to have any chance of success, substantial international monitoring will be required. In the earlier and intermediate stages, monitors will be needed for the ceasefire and for the points at which LRA fighters would eventually assemble. If a full-fledged settlement results, serious support will most likely be essential for its implementation. The UN Security Council should accordingly be prepared to authorise peacekeeping forces.⁵⁶

B. A STRONGER MEDIATION TEAM

The mediation needs greater international support in three areas in order to maximise chances for success. First, if sustained negotiations are to take place, the mediator, who has until now operated with minimal backup,⁵⁷ will need a considerably beefed-up secretariat to facilitate her efforts. Such a team should include military analytical capabilities, which might most simply and expeditiously be provided by secondment of the British and American defence attachés in Kampala; technical drafting skills; and expertise in communications and in public diplomacy in order to put together and implement a public information

strategy for informing local Acholi communities and the wider Ugandan public about the peace process. A regular security detail would also be important.

The troika of diplomatic missions in Kampala that has sought to facilitate the mediation -- Norway, the UK, and the Netherlands -- should work closely with Bigombe to put together such a secretariat. The presence in it of diplomats and other third country nationals might go some way toward building LRA confidence in its relative impartiality.

Secondly, while the three European countries have been active in offering assistance, the U.S. has been relatively disengaged, seemingly uncertain about the extent to which it should encourage the Ugandan government to pursue a settlement with an insurgency that is on its own list of terrorist organisations and in any event much more interested in the peace process next door in Sudan. Washington should recognise that as distasteful as the LRA is, a settlement would save Uganda from much additional suffering and also help smooth implementation of the Sudanese peace deal. Indeed, the recent LRA attacks have spilled into southern Sudan; a resurgent LRA could spoil the landmark peace agreement reached between Khartoum and the SPLM in January 2005.⁵⁸

The U.S. has special standing to help in three specific ways: persuading the Khartoum government to cooperate; persuading the LRA that if a deal is reached to end the insurgency it will not pursue further action against its leaders; and persuading its friend, President Museveni, to give Bigombe a more comprehensive proposal with which to work.

Finally, it would be useful for Washington as well as the members of the European troika to name senior envoys to reinforce the push for a negotiated end to the conflict. In the U.S. case, such a prestigious complement to the work of its embassy in Kampala would send an unambiguous signal to both President Museveni and the LRA that the Bush administration supports peace.⁵⁹

⁵⁵ "Uganda launches first IDP policy", *The New Vision*, 25 February 2005

⁵⁶ It is premature to comment on specifics of such a mission's mandate since the shape of a settlement is still so uncertain; its size and complexity, however, would likely be considerably less than those of currently authorised peacekeeping missions in the Congo (DRC) and Sudan.

⁵⁷ At present, the core of the mediation team consists of Bigombe and three support staff: a finance/administrative officer, a security specialist, and a humanitarian adviser. The team also receives from some Western diplomats in Kampala.

⁵⁸ On 9 January 2005, the Government of Sudan and the SPLM signed a Comprehensive Peace Agreement (CPA) ending 21 years of civil war. The diplomatic partnership of the U.S. and European countries, in particular Norway, the UK and Italy, had an important share in bringing the parties to the negotiating table and keeping them there until they reached agreement with the facilitative assistance of the regional organisation, the Intergovernmental Authority on Development (IGAD).

⁵⁹ While a senior U.S. envoy to advance the peace process would primarily operate as an interlocutor with President Museveni, the fact of the appointment might help lessen LRA paranoia about Washington's intentions. For further discussion

The trend on the ground and the direction in which both the Ugandan government and the LRA leadership appear to be moving suggest that a briefly promising peace process could soon crumble. Northern Uganda would then be condemned to a great deal more violence as the government in Kampala put all its efforts into yet another search for a military decision. Before that happens, Uganda's friends should engage on behalf of Bigombe's last ditch diplomacy. Both bold action and a sense of urgency are required.

Kampala/Brussels, 11 April 2005

