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A Struggle for Power and Sovereignty:
The International Criminal Court and Uganda

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Abstract

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The conflict in Northern Uganda between the Ugandan military and Joseph Kony's Lord's Resistance Army (LRA) raged for fifteen years before the government referred the situation to the International Criminal Court (ICC) in 2003. This case became the court's first case, its test case, and in many ways the outcome of its involvement has harmed its goals of becoming a truly global institution that distributes justice fairly and without bias. The ICC became a part of the Ugandan government's narratives of power, developed between 1997 and 2003, structured in such a way as to attempt to bolster the legitimacy and power of the state-military complex. As the government faced a 1997 crisis of power – the result of a failure to bring peace in the north and threats to an assertive neo-patrimonial state structure – it became necessary to portray various “others” as the true impediments to peace. Each of these methods of maintaining the state's power, however, meant a consequent reduction in the state's sovereignty. Situated within the negotiations of the “layered sovereignty” paradigm currently associated with the international order, it became necessary for the Ugandan state to surrender various elements of his apparent sovereignty. It appears to have quite willingly done so in order to maintain the appearance of its power. The problem arose for the ICC when its formal legal structure demanded that both the sovereignty and, to some extent, the power of the Ugandan state be sacrificed in the pursuit of international justice. The government refused and reclaimed both in a way that to this day leaves the court apparently a paragon of “Western justice” bent upon its imposition upon a “traditional” African culture.

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Introduction

In the last decades, the increasing presence of transnational organizations within the structures of the global community has had significant consequences for the real and imagined power and sovereignty of nations. These organizations now saturate troubled areas of the globe in previously unknown ways, providing valuable services and support. The term “transnational” equates to almost exclusively western-supported organizations and it is also usually the West that generates any influential criticism of these endeavors.¹ The West, therefore, has a long history of developing and critiquing its own aid initiatives, though yet with a weak understanding of the role played by the country in which it is involved. This one-sided perspective on transnational organizations effectively robs the aid community of a complete understanding of its work.

The developing world has a somewhat different relationship with this burgeoning aid practice, which complicates issues surrounding power and both “Westphalian” and “layered” sovereignty in ways that a Euro-centric analysis fails to capture.² In particular, the International Criminal Court’s (ICC) insertion into the ongoing Ugandan struggle against the Lord’s Resistance Army (LRA) in the north of the country between 1997 and 2008 exposes this weakness. Questions remain regarding the government’s role in soliciting foreign aid, negotiations surrounding the perception of state power, struggles over the ceding of sovereign status, and the impact that a developing country may have on the future prospects of this westernized order. These are all questions that this thesis will explore. In particular, this thesis examines the Ugandan state’s representation of power and sovereignty in this period, culminating in the state’s rejection of the transnational ICC. Ultimately, this thesis argues that

¹ See discussion beginning on page 3.

² I explicate the literature surrounding these terms in greater detail beginning on page 3.

the “layered sovereignty” paradigm as a theory for understanding transnational organizations’ interactions with the developing world may no longer serve as the most efficacious model for the future success of the aid “industry.”

The traditional criticism of the ICC in Uganda, and foreign aid intervention more generally, has been that it is an imposition of “western values” in a “traditional” African setting.³ For example, some academics ask whether “the emergent international criminal law movement can provide support for local discourses of justice instead of merely colonizing existing cultural expressions or replacing them with new norms.”⁴ The conception of the ICC as a neo-colonial institution may not be wrong in itself. However, this approach in many ways falls victim to its own criticism of the court, namely that it sees an unequal imposition of Western power. Instead, the active role of the African state in these relationships begs further analysis.

Foreign involvement in Uganda has often functioned as a highly negotiated settlement between the government and the international community, which can serve to benefit the state. While transnationals may be assuming the authority of the African state that does not mean that they are not acting in exactly the way that that state desires. These organizations may pose a problem, not because they re-create a colonial power structure, but because they effectively support the corrupt power structures that profit from their involvement. Thus, instead of a western “imposition” of certain values, it may serve the historian better to examine the African role in negotiating terms within the international apparatus. It is these negotiations that often characterize the “layered sovereignty” paradigm and that can be quite deleterious to organizations like the ICC.

³ Adam Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford: Oxford University Press, 2011); Kamari Maxine Clarke, *Fictions of Justice: The International Criminal Court and the Challenge to Legal Pluralism in Sub-Saharan Africa* (Cambridge: Cambridge University Press, 2009); Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986-2006* (New York: Berghahn Books, 2009).

⁴ Clarke, *Fictions of Justice*: 121.

Struggles between the African state and westernized institutions have characterized the history of the continent for a long time, manifesting themselves in different ways according to the changing world order. During its time as a colony, Britain oversaw Uganda under the authority of “indirect rule,” beginning in the 1920s.⁵ Indirect rule organized people into ethnic groups under the control of “customary” laws and chiefs. At the same time, the British ruled over these “tribes” within a racialized hierarchy subject to Western law.⁶ While colonialism was supposedly an imposed order, this system actually relied upon the collusion of African chiefs who negotiated to cede their sovereign power to the foreign element within their borders.⁷ It is this collusion between African leaders and Western power over the question of sovereignty that continues to characterize transnational aid today.

The rise of transnational organizations within the global community has allowed for a new manifestation of this “layered sovereignty” paradigm in the modern era. “Westphalian Sovereignty,” which excluded “external authority structures from the decision-making processes of a state,” no longer exists in such a distinct form.⁸ Instead, states have consciously ceded some of their sovereignty to the transnational apparatus in exchange for certain protections and services. Thus “layered sovereignty” demands two state concessions in return: responsibility and reciprocity. Responsibility “renders sovereignty conditional. This formulation opens the door to treating nations not as free agents, but as members of an international community who are expected to adhere to that community’s evolving norms regarding what is considered

⁵ Mahmood Mamdani, *Saviors and Survivors: Darfur, Politics, and the War on Terror* (New York: Pantheon Books, 2009): 158.

⁶ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996): 17-18.

⁷ Mamdani, *Saviors and Survivors*: 158-161; Frederick Cooper, *Decolonization and African Society: The Labor Question in French and British Africa* (Cambridge: Cambridge University Press, 1996): 10-11.

⁸ Robert O. Keohane, “Political Authority after Intervention: Gradations in Sovereignty,” in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J.L. Holzgrefe & Robert O. Keohane (Cambridge: Cambridge University Press, 2003): 285.

legitimate.”⁹ “Layered sovereignty” is thus an approach to understanding the means by which an individual state consciously submits itself to the broader community’s decisions and goals.

Compared to responsibility, reciprocity works to the greater advantage of the state, at least initially. While a state is in the “postcolonial” aid phase, as Uganda was in the late-1990s, it mostly receives support from the international community, even though it may not be in a position to respond in kind. However, this aid is supposed to slowly strengthen the developing country to the point where it can give back to the international community as a fully participatory member.¹⁰ This participation might take the form of aid or military contributions, or, perhaps, support for the work of an international court. The question has yet to be answered, however, of what happens if and when that state becomes independent enough to challenge the demands of the international community. Furthermore, we lack an understanding of how and why such a country might decide to reject this reciprocal relationship, as Uganda did in 2008. It will be the goal of this thesis to provide this understanding.

It will also attempt to explain the active negotiating role, which the African state has played within this “layered sovereignty” paradigm and which has in the past mostly received Euro-centric evaluation. Some authors have expressed concerns that transnational organizations serve “as an extension of [the] industrialized country governments,” which fund them.¹¹ Such arguments often lament the shrinking role of the state in the provision of basic services, which

⁹ Amitai Etzioni, “Sovereignty as Responsibility,” *Orbis* (Winter 2006): 72.

¹⁰ Robert O. Keohane, “Sovereignty in International Society,” in *The Global Transformations Reader: An Introduction to the Globalization Debate*, ed. David Held & Anthony McGrew (Oxford: Blackwell Publishing Ltd., 2003): 152; Georg Sørensen, *Changes in Statehood: The Transformation of International Relations* (New York: Palgrave, 2001): 155-8.

¹¹ Joseph Hanlon, “An ‘Ambitious and Extensive Political Agenda’: The Role of NGOs and the AID Industry,” in *Global Institutions and Local Empowerment: Competing Theoretical Perspectives*, ed. Kendall Stiles (London: MacMillan Press Ltd, 2000): 143.

transnationals have increasingly come to provide.¹² The problem with this understanding of transnational-local government relations is that it relies upon a Western perspective of what a state should be. Instead, we need to better understand how this relationship might benefit a recipient state and thus why that state's government might solicit transnational involvement in its internal affairs.

Some understanding of this benefit to the African state may emerge from a discussion of Frederick Cooper's "gatekeeper state." This theory describes a relatively weak state that nevertheless manages to exert a degree of power over movement in and out of its territory.¹³ This movement may take the form of people, material, or aid. One of the tools of the gatekeeper state is the oversight of needed foreign aid to bolster a government incapable of providing for its own. In return, the gatekeeper state can ultimately have "trouble extending [its] power and...command of people's respect...inward" – meaning that any respect an African state may garner within the international community may not translate to similar respect within its own borders.¹⁴ Additionally, in the case of Uganda, the state did not actually enjoy the sovereign status associated with this theory. However, the state's attempts to maintain a perception of power did help it to counteract its lack of real power in light of the endemic weakness of its regime.

In Uganda, as in many countries, the representation of a leader's power requires an understanding of the definition of power itself. The power of the president, much like historical leadership changes in Africa, has often been indivisible and consolidated in a "neopatrimonial"

¹² Ibid, 138; James Ferguson, *Global Shadows: Africa in the Neoliberal World Order* (Durham: Duke University Press, 2006): 101.

¹³ Frederick Cooper, *Africa since 1940: The Past of the Present* (Cambridge: Cambridge University Press, 2002): 5-6.

¹⁴ Ibid, 156-7.

system.¹⁵ This system, in many ways similar to that of a gatekeeper state, describes a weak, yet centralized government. The president resides at the top of a closely linked patronage system and through his family members and trusted political allies is able to distribute state resources to stabilize his regime and strengthen his government.¹⁶ The patrimonial character of rule, however, conceptualizes the president as the “father” of his nation and of his people and demands provision for their basic needs. Uganda’s citizens thus expected certain services, including security, which they associated with the expression of the power of their president, Yoweri Museveni.¹⁷

The lack of material resources in developing countries such as Uganda often makes it difficult for governments to meet these needs, however. They are thus often forced to choose between the provision of basic services with the help of the international community or the preservation of their own sovereignty.¹⁸ The Ugandan state chose the former route, arranging for basic services through the auspices of transnational organizations. This choice in fact often characterizes “layered sovereignty,” as “such organizations [begin] to take over the most basic functions and power of the state,” i.e. the provision of basic services.¹⁹ Because the Ugandan people associated these services with the power of the state, however, the distinctions between state and civil society became blurred, tightly associating the efficacy of the latter with the power

¹⁵ Joshua B. Rubongoya, *Regime Hegemony in Museveni’s Uganda* (New York: Palgrave MacMillan, 2007): 162-3; Michael G. Shatzburg, *Political Legitimacy in Middle Africa: Father, Family, and Food* (Indianapolis: Indiana University Press, 2001): 58-9.

¹⁶ Peter M. Lewis, “Economic Reform and the Discourse of Democracy in Africa: Resolving the Contradictions,” in *Beyond State Crisis? Postcolonial Africa and Post-Soviet Eurasia in Comparative Perspective*, ed. Mark R. Beissinger & Crawford Young (Washington, D.C.: Woodrow Wilson Center Press, 2002): 294-8; Robert H. Jackson & Carl G. Rosbert, *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (Berkeley: University of California Press, 1982): 14-32, 38-47; Alex Thomson, *An Introduction to African Politics* (London: Routledge, 2000): 107-8, 111-2.

¹⁷ Shatzburg, *Political Legitimacy in Middle Africa*: 149.

¹⁸ Christopher Kilby, “Sovereignty and NGOs,” in *Global Institutions and Local Empowerment: Competing Theoretical Perspectives*, ed. Kendall Stiles (London: MacMillan Press Ltd, 2000): 52-3.

¹⁹ Ferguson, *Global Shadows*: 101.

of the former. In this case, therefore, the ceding of sovereignty to the international system actually benefited the state in a way that has yet to undergo effective scrutiny.

Security was also important within this governance system and the president's place at the helm of the Uganda People's Defence Force (UPDF) only served to further highlight the close relationship between the two. Uganda, and the African continent more generally, has a long history of state/military collusion since the end of colonialism. When Museveni himself came to power via a coup, he remained the direct commander-in-chief of the military, thus once again closely linking his own personal power within the state to that of the army. Its central place within the apparatus of the state, however, also served to turn the military into a highly politicized structure.²⁰

There are multiple typical consequences of military coups, such as the one that brought Museveni's regime to power in Uganda. First, the political influence of military figures, coupled with fears of a reciprocal coup, tends to keep military expenditures high. However, when a state relies heavily upon foreign aid, as Uganda has done, donor countries can quickly become uncomfortable with their direct and indirect funding of such a highly militarized state. Military regimes like that of Museveni can therefore have a tense relationship with the aid community. Second, the military remains closely involved with the workings of the government.²¹ This was particularly the case in Uganda, since the leader of the government and the leader of the military were the same man.²² The question remains to be answered in the literature, however, as to how

²⁰ Mark R. Beissinger & Crawford Young, "The Effective State in Postcolonial Africa and Post-Soviet Eurasia: Hopeless Chimera or Possible Dream?" in *Beyond State Crisis? Postcolonial Africa and Post-Soviet Eurasia in Comparative Perspective*, ed. Mark R. Beissinger & Crawford Young (Washington, D.C.: Woodrow Wilson Center Press, 2002): 476-7; Jackson & Rosbert, *Personal Rule in Black Africa*: 32-8.

²¹ Christopher Clapham, *Third World Politics: An Introduction* (Madison: University of Wisconsin Press: 1985): 149, 157.

²² Thomson, *An Introduction to African Politics*: 131-2.

the state might respond to the loss of power if both military might and the ability to provide basic services were to disappear.

Chapter One of this thesis elucidates the crisis of power occurring from just these causes throughout the Ugandan state from 1997 to 2003. The continued flourishing of the LRA rebellion in the north of the country meant that the Ugandan government grew increasingly worried about its own power. The area appeared unstable, and the state/military power complex with it. The military's continual failure to bring the decade-long struggle with the rebels to a close ultimately posed a serious threat to the strength and legitimacy of the regime.

At the same time that the military was suffering failure, the central elements of President Museveni's "democracy" began to come under criticism as well. Under the distinction of "no-party politics," President Museveni had named his National Resistance Movement (NRM) the only political party in the country at the time of his ascension to power. He ostensibly sought elections centering upon individuals and their own personal merit in order to avoid the violent political struggles that had occurred under his country's previous authoritarian regimes.²³ By 1997, this political system had allowed the president to manipulate the political process as he pleased in order to maintain his own power and that of his regime.²⁴ Between 1997 and 2003, however, this system began to come under attack as undemocratic, and popular perceptions of state stability began to suffer. Given the importance of limiting political competition within a neopatrimonial state, these challenges were a threat to Museveni's entire system for ruling Uganda and maintaining his own power.²⁵

²³ Crawford Young, "After the Fall: State Rehabilitation in Uganda," in *Beyond State Crisis? Postcolonial Africa and Post-Soviet Eurasia in Comparative Perspective*, ed. Mark R. Beissinger & Crawford Young (Washington, D.C.: Woodrow Wilson Center Press, 2002): 459.

²⁴ Rubongoya, *Regime Hegemony in Museveni's Uganda*: 141-2.

²⁵ Thomson, *An Introduction to African Politics*: 100-1.

As the military seemed to weaken and the mirage of Uganda as a democratic state began to crumble, the money necessary to maintain Uganda's patronage networks became more difficult to obtain. Budget battles with international donors grew pitched and military resources dwindled. Simply ending the war and/or reducing the budget were not an option, however, because to do so would result in fewer resources to filter through the patron-client links.²⁶ The Museveni government perceived this money as vital to maintaining the "stability and dominance" of the regime through the military.²⁷ In the period from 1997 to 2003, therefore, the Ugandan state faced a serious crisis of representation as a result of these challenges to its authority. It needed to continue to appear powerful, but its usual methods for doing so were falling short.

Chapter Two examines the state's attempt to develop a new narrative method for successfully representing its power during this period. It used Sudan's historic support for the LRA, the concept of internal collaborators, and troubles with transnational organizations and donors as various excuses for the UPDF's continued inability to bring the rebels to heel. Provision of basic services to suffering refugees in the north did improve local perceptions of state power. In fact, the Ugandan government specifically sought the aid of NGOs and other foreign elements, which helped to establish this perception. The NGO presence served to so effectively ameliorate the suffering in the internally displaced person (IDP) camps of the north that some involved in the area even lamented the government's total escape from its responsibilities towards its own people as a result.²⁸ Researchers argue that the lack of distinction between civil society and the government led aid recipients to believe that the former

²⁶ Clapham, *Third World Politics*: 92-3.

²⁷ Rubongoya, *Regime Hegemony in Museveni's Uganda*: 163; Lewis, "Economic Reform and the Discourse of Democracy in Africa:" 294-7.

²⁸ Branch, *Displacing Human Rights*: 90-118.

served as an extension of the latter and that it was in fact their government that had successfully provided basic services to them.²⁹

The negotiations intrinsic to the “layered sovereignty” paradigm, therefore, helped the Ugandan state to maintain the perception of its power through the role of transnational organizations in providing services and indirectly augmenting military power. These organizations also supported the military directly in its war against the LRA. When this relationship began to break down between 1997 and 2003, however, the Ugandan state worked to present foreign donors as the true barriers to peace in the north.

At the beginning of this period, foreign provision of aid was responsible for a significant percentage of the Ugandan state budget. As the poster-child for the International Monetary Fund (IMF) and World Bank’s (WB) program of structural readjustment in the 1990s, Uganda received significant aid to reestablish itself as an effectively functioning state after the wars of the previous decades.³⁰ It was largely this direct form of aid that the state disseminated through its patronage networks and with which it funded the military.³¹ When foreign actors eventually became disenchanted with Uganda’s management of this money and wanted to make funds more conditional on certain military concessions, the state instead reacted with a narrative of foreign opposition to the state’s struggles. It essentially labeled these foreign elements enemies of the Ugandan state.

One already begins to see within this narrative Ugandan state opposition to any relationship with an international entity that would force it to make concessions. The government showed enthusiasm for the “layered sovereignty” paradigm as long as it stayed on

²⁹ Ibid.

³⁰ Stephen F. Burgess, “Structural Adjustment and Economic Reform,” in *Democratic Transitions in East Africa*, ed. Paul J. Kaiser & F. Wafula Okumu (Burlington: Ashgate Publishing Company, 2004): 124-5.

³¹ Thomson, *An Introduction to African Politics*: 110.

the receiving end of its inherent reciprocal relationship. Once that changed and the international community began to demand alterations in the state's behavior, Uganda began to reject any responsibilities that it might have had towards that community.

Chapter Three analyzes the state's new relationship to power and sovereignty in the wake of the 2003 ICC referral and the breaking point for the state's relationships within the paradigm of "layered sovereignty," which occurred in 2008. The state's method for maintaining the perception of its power between 1997 and 2003 made it increasingly reliant upon the support of the international community. Uganda had thus sacrificed any perception of its exclusive sovereignty in exchange for "layered sovereignty." This was a tradeoff that the Ugandan government accepted when it joined forces with the international community, inviting transnational intervention and aid into the northern conflict.

The referral to the ICC, however, eventually began to infringe upon the perception of power towards which the Ugandan state had worked for so long. The ceding of sovereignty was an expected, automatic occurrence once a referral occurs.³² It was when the court began to usurp state power as well that a confrontation resulted between the ICC and the state. This was a problem linked directly to the growing assertiveness of the Ugandan state itself. As Mahmood Mamdani describes it, "expressions of regret" about the ceding of sovereignty to an international community remain common once states develop a greater "capacity to defend national sovereignty."³³ Thus, a state may initially be willing to cede its apparent sovereignty to the international community when in a weakened position and in need of the protections that such membership may confer. As that state becomes more assertive however, as in the case of Uganda in the late-2000s, the active ceding of sovereignty becomes increasingly unacceptable to

³² Benjamin N. Schiff, *Building the International Criminal Court* (Cambridge: Cambridge University Press, 2008): 69.

³³ Mamdani, *Saviors and Survivors*: 276.

the government. It begins to resist such an infringement upon its sovereign status. Given the importance of the “layered sovereignty” paradigm to our understanding of the international community, this resistance comes to symbolize a rejection of the role of the international community in general.

By 2008, the Ugandan state felt itself forced to lay claim to its sovereignty once more. It eventually rejected the role of the ICC and by so doing successfully reestablished the appearance of both power and sovereignty within its borders. This act, however, completely undermined the workings of the ICC, and the international community more generally.³⁴ The effectiveness of these entities depends upon states’ submission of sovereignty to the broader goals of the international system. Uganda’s actions, however, showed other disaffected countries that a state could successfully oppose the forces of that community. Therefore, as a case study in a state’s reaction to the responsibilities of “layered sovereignty,” Uganda’s internal struggle over power and sovereignty between 1997 and 2008 foreshadows problems for the future endeavors of the international system and the fledgling international court.

³⁴ Luis Moreno-Ocampo, “The Role of the International Community in Assisting the International Criminal Court to Secure Justice and Accountability,” in *Confronting Genocide*, ed. René Provost & Payam Akhavan (London: Springer, 2011): 288.

Chapter One: The Crisis

The period from 1997 to 2003 was a turbulent one for the Ugandan state. The continuing conflict with Joseph Kony's Lord's Resistance Army (LRA) in the north, increasing domestic and international opposition to the "no-party" political system, and the growing "third-term" crisis all led to an active questioning of the very nature of state power in Uganda. All of these issues directly impacted President Museveni's self-representation as different from those who had controlled his country in the past. Thus, as the old representational narrative of the regime began to crumble, a new one became necessary in order to ensure the government's political survival.

President Museveni's initial narrative emerged as a reaction to years of ethnically-based bloodshed and upheaval in the post-independence period. This upheaval began almost immediately after Uganda held its first elections in 1961 and officially gained its independence from Britain on October 9, 1962. Milton Obote served as the country's first prime minister. He was ethnically Langi and relied heavily upon his fellow northerners to support his regime, particularly in the make-up of his army. This division between north and south in fact emulated and continued the British practice of drawing its military forces from the north, which served as a counter-weight to the influence of the historically more powerful southerners.³⁵ Thus ethnicity continued to factor significantly into Ugandan politics, even after the withdrawal of the colonial power.

An authoritarian approach to rule also characterized the post-independence Ugandan struggles for power. In 1966, Prime Minister Obote moved to suspend the constitution and consolidate his authority in a bid to stay in power. Instead, Idi Amin overthrew him in a January

³⁵ Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (London: Zed Books, 2006): 28; Branch, *Displacing Human Rights*: 53-6.

1971 coup. Amin's rule was also highly autocratic, marked by serious human rights violations and general economic decline. In an attempt to prevent Obote's northern supporters from overthrowing him, Amin made a point of courting southern support. Towards this end, he even massacred his predecessor's mostly Langi and Acholi soldiers. A number of the survivors later joined with the regime's other malcontents, including Museveni, in Tanzania, where they organized their militant opposition.³⁶

These disaffected elements eventually waged a war of "liberation," with the support of Tanzania, which ousted Amin in April 1979. Elections in 1980 returned Obote to power, the so-called Obote II regime, but Museveni and his followers insisted that the contest was fraudulent. This latter group's decision to once again take up arms against the government as the National Resistance Army (NRA) resulted in an ethnically-based split among the opposition. The northerners once again mostly followed Obote, while Museveni's fellow southerners followed him into rebellion in early February 1981.³⁷

Obote's resumed practice of human rights violations during his second term, however, angered his opponents and proved his downfall. Many northern Acholi in the army came to feel that the regime over-utilized them in the fighting against the rebels due to its favoritism of their fellow Langi soldiers. In 1985, therefore, an army brigade under the command of Lt. General Basilio Olara-Okello and mostly Acholi troops overthrew Obote and proclaimed a military government. Under General Tito Okello, this new regime attempted to negotiate an agreement with Museveni's forces. The two sides did succeed in reaching a settlement, yet the NRA never ceased fighting. It overthrew Okello and seized the capital in 1986.³⁸

³⁶ Allen, *Trial Justice*: 28-9; Branch, *Displacing Human Rights*: 56-7.

³⁷ Allen, *Trial Justice*: 29; Branch, *Displacing Human Rights*: 57-8.

³⁸ Allen, *Trial Justice*: 29-30; Branch, *Displacing Human Rights*: 61.

President Museveni's road to power, however, laid the groundwork for ethnic cleavages to continue into the future. The Acholi in Okello's army felt deeply betrayed by Museveni's failure to honor the negotiated settlement with their government of choice. As a result, many of them fled back to the north and regrouped into various militant opposition groups.³⁹ The first of these rebellions, the Uganda People's Democratic Army, fought a guerilla war against the government until peace negotiations in 1988 that mostly disbanded its leadership.⁴⁰ Concurrent with this group, other former soldiers rallied to Alice Lukwena's Holy Spirit Mobile Forces, begun around August 1986. Lukwena claimed to be possessed by various spirits that guided her actions and military strategy, and she was moderately successful until her defeat a year after her mobilization.⁴¹ The various fragmented elements of this and other similar spiritual and opposition groups eventually coalesced into the beginnings of Joseph Kony's LRA in 1988.

The LRA's foundation in the ethnic politics characteristic of pre-Museveni Uganda meant that the government's continued inability to bring peace had, by the late-1990s, begun to threaten the president's self-representation as a new and different kind of leader for Uganda. While he had waged a guerilla war against the various governments in Kampala, Museveni also began a process of political education for his followers and the Ugandans in the territory under his control. He insisted that he wanted to reorganize the Ugandan way of life and restructure its society to eliminate the historic issues that remained in the aftermath of colonialism.⁴² The two central concerns for Museveni were "sectarianism and socio-economic underdevelopment."⁴³

³⁹ Allen, *Trial Justice*: 30.

⁴⁰ Branch, *Displacing Human Rights*: 65-6.

⁴¹ Allen, *Trial Justice*: 33-6; Adam Branch, *Displacing Human Rights*: 66-8.

⁴² Yoweri Kaguta Museveni, *Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda* (London: MacMillan Education Ltd, 1997): 149.

⁴³ *Ibid*, 187.

In his late-1990s autobiography, Museveni analyzed the consequences of continued sectarianism/ethnicism in Ugandan society and politics. He considered the shameful state of Uganda at the time of his coup to be “a consequence of an incomplete social metamorphosis” towards the goal of a modern society, such as Europe.⁴⁴ He considered ethnicism to be representative of “perpetual backwardness,” and the need to structure society in a different manner as “the process of modernization and overcoming underdevelopment.”⁴⁵ The way to make this change, according to Museveni, was through the development of a modern economic and political system.

Instead of a social metamorphosis, Museveni argued that Africa as a whole had in fact regressed. This reversal produced an “almost exclusively peasant society” that needed to learn to produce for profit and develop commodity relationships outside of its tribal/ethnic affiliations in order to progress.⁴⁶ Museveni’s version of development required modernization of agriculture and education in order to bring Uganda’s citizens into the modern age.⁴⁷ Additionally, Museveni argued for the necessity of representational, democratic government to give a voice to the people and develop national, rather than tribal loyalties. He felt that long-standing tribal identities created an environment too divisive for the successful creation of a stable political structure.⁴⁸ The elimination of any perception of ethnic politics on a national scale was therefore vital to President Museveni’s representation of himself as a break with Uganda’s past.

The second area of focus for Museveni was the country’s socio-economic status at the time of his seizure of power. He emphasized the problems of poor infrastructure and a black

⁴⁴ Ibid, 188-9.

⁴⁵ Ibid, 189.

⁴⁶ Ibid, 188.

⁴⁷ Ibid, 196-200.

⁴⁸ Ibid, 187.

market economy that had become “informal and speculative.”⁴⁹ In 1997, the president praised the role of the IMF and WB in helping to establish a macro-economic approach for addressing Uganda’s economic woes.⁵⁰ In particular, Museveni represented the structural readjustment procedures of “stabilizing the exchange rate and interest rates, increasing the tax portion of GDP, liberalising prices, and...removing marketing monopolies,” in addition to privatization, as important steps towards repairing the Ugandan economy.⁵¹ Museveni’s regime did in fact succeed in making Uganda “a model pupil of structural adjustment pedagogy,” which earned it positive international relationships that equated to significant outpourings of aid for this social revolution.⁵² As of 1997, therefore, President Museveni was still representing his relationship with the international community as strong and beneficial to his continued goals of remaking Uganda.

As the rebellion in the north continued, however, it became more difficult for President Museveni to continue to represent himself as a new brand of African leader who rejected ethnic-based violence and worked for the good of his people. And continue it did. Between 1988 and 2003, the LRA waged a continuous guerilla fight against the government forces of the Uganda People’s Defense Force (UPDF). A member of the Acholi ethnic group himself, Kony’s rebel group also began to inflict a significant number of Acholi casualties, abducting children for use as soldiers and wives, torturing and murdering civilians. While seemingly counterproductive as a strategy to gain local support, many considered these acts a warning not to collaborate with the government’s military forces.⁵³ These tactics also served to showcase the Ugandan

⁴⁹ Ibid, 180.

⁵⁰ Ibid, 180.

⁵¹ Ibid, 182.

⁵² Young, “After the Fall: State Rehabilitation in Uganda:” 460.

⁵³ Adam Branch, “Exploring the roots of LRA violence: political crisis and ethnic politics in Acholiland,” in *The Lord’s Resistance Army: Myth and Reality*, ed. Tim Allen & Koen Vlassenroot (London: Zed Books, 2010): 40-42; Branch, *Displacing Human Rights*: 70-71.

government's seeming inability to protect its own people, which undermined its narratives of power and control in the region.

As a counter-insurgency measure designed to reestablish control, in 1996 the military began to round up civilians and place them in internally displaced persons (IDP) camps. Although allegedly done for their protection, these camps were often themselves the sites of war crimes, which the UPDF perpetrated. The soldiers also often failed to prevent attacks in these locales, whose centralized location made civilians even more easily accessible for the LRA.⁵⁴ Again, the failure to bring peace and protect northern civilians gave rise to a perception of military impotence and belied government narratives against ethnic politics. Many in the north felt that a similarly violent group in Museveni's southern stronghold would never have been allowed to continue for so long.

This strategy for fighting the insurgency not only made civilians easier to target in some respects, it also made living conditions for residents of the camps almost unbearable.⁵⁵ Chris Dolan, Director of the Refugee Law Project at the University of Makerere in Kampala, refers to the conditions in the north at this time as "social torture." Provision of basic services was becoming increasingly difficult the longer civilians remained in the camps and individuals struggled with physical and psychological debilitation. Cultural observances also began to break down as mere subsistence became the central concern of life.⁵⁶ By mid-1998, *The Monitor* was reporting severe food shortages and repeated LRA raiding of protected villages with a disturbing amount of ease.⁵⁷

⁵⁴ Allen, *Trial Justice*: 53-5; Adam Branch, *Displacing Human Rights*: 76-8.

⁵⁵ Carolyne Nakazibwe, "MP talks to Powell over Acholi plight," *The Monitor* (May 29, 2001).

⁵⁶ Dolan, *Social Torture*: 159-188.

⁵⁷ "Protect camps for displaced," *The Monitor* (June 8, 1998).

As living conditions in the camps worsened and LRA and UPDF attacks on the inhabitants became more common, the Ugandan government's control over representations of the violence in the north disintegrated. One reporter even demanded that "President Museveni...justify his continued stay at the helm of the country," due to the continued violence that he appeared to be neglecting.⁵⁸ Reports that the army attacked civilians in these camps only further harmed Museveni's attempts to deny an ethnic narrative of this conflict. A southern president at the helm of a southern military that seemed unwilling to end a northern conflict that was killing northern civilians seemed like business as usual for Uganda's history of sectarian politics.

The government's attempts to control corruption remained troublingly unsuccessful throughout this conflict and helped to feed this perception.⁵⁹ Stories abounded during this period of "junk helicopters, tanks, MiGs, expired food, defective bombs and bullets as well as two consignments of undersized army uniforms...all...purchased under the cloak of 'national security.'"⁶⁰ In addition to such wasteful spending, significant amounts of money disappeared or were misappropriated, as in the case of the "ghost soldiers." In this instance, high-ranking members of the military collected the wages of non-existent soldiers. Such scandals only made the desperate situation of the northern Acholi look like an excuse to disburse government patronage through the network of the military in order to further entrench state power.⁶¹

Another reason for the failure to bring peace in the region was President Museveni's continued dedication to a military solution, rather than a negotiated settlement. This goal often put him at odds with local leaders and negotiators who were desperate to bring peace. This

⁵⁸ Odoobo C. Bichachi, "Museveni should justify himself," *The Monitor* (June 16, 1998).

⁵⁹ World Bank Institute, *Country Data Report for Uganda, 1996-2011* (Washington, DC: The World Bank Group, 2012): 7.

⁶⁰ "Cut the massive defence budget," *The Monitor* (May 27, 2002).

⁶¹ Emmy Allio, "Defence paid Sh300m to "Ghosts,"" *The New Vision* (August 16, 2001).

resistance again brought the president's motivations into question.⁶² Acholi leaders had been pressing for some time to resolve the conflict any way they could. Their negotiations ultimately resulted in the 2000 Amnesty Act for all surrendering LRA soldiers. Even after signing this act, however, President Museveni continued to verbalize his preference for a military solution and dismiss the peace process.⁶³

Throughout the conflict with the LRA, President Museveni still held his rank as a general and commander-in-chief. Thus, the army's failure to bring peace in the north often reflected the personal failings of the president himself. As the *The EastAfrican* suggested in October 1997:

Two years ago it would have been odd to 'wish' fortunes' on Museveni because it was definite that he was going to be around. But since the country seems unable to quiet down, and noises of discontent and guns are being heard loudly in the distance, there is a creeping sense that if it all doesn't stop soon, Uganda could well see Museveni's back.⁶⁴

Eleven years of continuous conflict reflected a certain impotency on the part of the UPDF. The power of the state began to crumble as a result since it had "failed to discharge its primary duty of ensuring the security and safety of all its citizens."⁶⁵ Museveni had once represented himself as different from the rest, with a new vision to lead the country forward into a modern age without the violent politicking of his predecessors. His inability to deliver on these promises threatened his very political life.

President Museveni's "no-party" political system also began to come under threat during the period between 1997 and 2003. This approach to governance had defined the character of Museveni's government and remained central to his own definition of the power of the state. Discontent with the continued mismanagement of the conflict in the north, however, bred a

⁶² Carlos Rodríguez Soto, *Tall Grass: Stories of Suffering and Peace in Northern Uganda* (Kampala: Fountain Publishers, 2009): 91.

⁶³ Allen, *Trial Justice*: 74-8; Carlos Rodríguez Soto, *Tall Grass*: 38-9.

⁶⁴ Charles Onyango-Obbo, "Eyes on Museveni as Gunfire Sounds," *The EastAfrican* (October 15, 1997).

⁶⁵ Okello Lucima, "Museveni failing leadership test?" *The Monitor* (April 5, 2000).

desire for greater political representation and thus a demand for an end to this authoritarian brand of rule. Calls for pluralistic politics forced referenda in 1999 and 2000. Although the electorate upheld the no-party system until 2005, the mere fact that such a vote took place showed the strain under which the Museveni government was suffering.⁶⁶ The façade of full support from the electorate no longer held up.

The United States, one of Uganda's closest allies, was also pressuring the Ugandan government to allow for more political competition. The US State Department's Human Rights Practices report on Uganda for 1997 gained press attention in the region for condemning "election conditions, including restrictions on political party activities" as leading "to a flawed election process."⁶⁷ Museveni also found himself forced to make negotiating concessions against his own wishes in order to convince voters to rule favorably on the referenda.⁶⁸ In order to try to maintain the no-party system, Museveni had to concede on the subject of amnesty and reconciliation, weakening his perceived military toughness on these issues. The referenda, therefore, became a no-win situation for the president's continued self-representation as integral to strong state/military power.

The "third-term" crisis, which began to arise in the early 2000s, also threatened the legitimacy of the Ugandan state and Museveni's representation of himself to the rest of the world as a beloved and democratic leader. When elected in 1996 under the new 1995 constitution, the president faced a two-term limit. However, after his 2001 reelection, rumors abounded that Museveni might alter the constitution to grant himself a third term. Administration officials publicly urged such action on the president for several years. By early 2003, the state newspaper

⁶⁶ Rubongoya, *Regime Hegemony in Museveni's Uganda*: 187-188.

⁶⁷ Levi Ochoieng, "America Chastises Uganda over Parties," *The EastAfrican* (May 27, 1998); U.S. Department of State, *Uganda Country Report on Human Rights Practices for 1997* (January 30, 1998).

⁶⁸ Ssemuffu Ibrahim Nganda, "Amnesty Law: Just a Campaign Trick?" *The Monitor* (January 10, 2000).

quoted the president's press secretary asserting "calls by some people, that, he as a person, should run for a third term of office is inappropriate, but the question of removing restrictions of two consecutive terms to a president, can be considered so that the matter of who leads the country is subject to a popular vote [sic]."⁶⁹

While framed in terms of a legal change to the constitution to allow for popular choice, this proposed move was, in effect, blatantly illegal. This constitutional crisis, paired with recent demands for pluralistic politics, threatened to paint Museveni as simply another authoritarian African leader who spoke of democracy, but did not enact it in any meaningful way. These perceptions posed a threat to Ugandan state power and Museveni's self-representation as a leader truly dedicated to the pursuit of democratic institutions.

During this period, the UPDF was often stretched too thin, trying to provide both physical security and basic subsistence for IDP camp residents, and failing at both. The state's solution ultimately involved an explosion of transnational humanitarian aid flowing into the region. Aid organizations from around the world began to provide state services to the inhabitants of the IDP camps, services such as provision of food, water, healthcare, education, etc.⁷⁰ Estimated request amounts, which the state-owned newspaper made public, sometimes ran to the amount of "US\$21.5m in relief aid from donors to support thousands of civilians suffering as a result of increased...LRA rebel attacks in northern Uganda." Such requests, in the face of limited government capacity, included the provision of "cereals (maize meal), pulses, vegetable oil, sugar and salt...transport, storage, handling, direct and indirect support costs. Non-food items include[d] clothes, blankets, cooking utensils, tarpaulins, and plastic sheets...rehabilitation and

⁶⁹ John Kakande, "Third-Term calls inappropriate, says Museveni," *The New Vision* (March 28, 2003).

⁷⁰ Branch, *Displacing Human Rights*: 94-5.

construction of boreholes...soap in bars and educational materials like text and exercise books.”⁷¹

The international community, not the Ugandan government, was clearly providing the essentials of life in northern Uganda during this period. Such demands for help from international donors, however, began to put a strain on their resources, again bringing greater pressure on the government to end the conflict. Additionally, the presence of non-governmental organizations (NGOs) and human rights organizations, as well as international observers, increased attention on the plight of civilians and the crimes that the UPDF was committing against them. International organizations such as Amnesty International began to condemn the state’s role in the north, sparking the negative publicity that harmed Uganda’s relationship with the global community and its attempts to develop a narrative of peace, stability, and control in the region.⁷² Now the whole world fully understood the impotency of the military and the central government in this conflict and Museveni began to lose control of the narrative, as well as a significant amount of state sovereignty.

It was the continued failure of the UPDF to defeat the LRA, however, which finally pushed the Ugandan state into a crisis. Museveni had originally come to power promising peace and an end to ethnic conflict. The continuing struggle in the north undermined the power of both the military and the state and this forced a change in Museveni’s representational narrative. The state became quite adept at redistributing blame in its attempts to maintain its façade of military/state power. The Ugandan government began to make compromises on its sovereignty, drawing attention to the role of Sudan and donor nations in the conflict, while continuing to assert the power of the military in the face of the continued fighting. The next chapter will entail

⁷¹ “Help north, government asks donors,” *The New Vision* (July 23, 2002).

⁷² See Amnesty International, *Uganda: Breaking the Circle: Protecting Human Rights in the Northern War Zone* (March 17, 1999).

an examination of the diverse narratives that developed during this period in order to reassert state power in the face of such significant threats.

Chapter Two: The Reaction

The Ugandan state between 1997 and 2003 was necessarily preoccupied with the establishment of a new narrative of power in the wake of these threats. Ultimately, it could not alter the obvious fact that the military had so far failed to bring the war in the north to a successful conclusion. It could, however, refocus attention from a condemnation of these failures towards one of the many actors in the region supposedly preventing the UPDF from realizing its full power. The representation of the struggle with the LRA thus became one of domestic, regional, and international meddling in Uganda's internal affairs. The Ugandan government presented Sudan, internal traitors and collaborators, and foreign donors as so influential in the midst of this crisis that they held ultimate sway over the success or failure of the UPDF's offensive against the rebels. Each of these narratives walked a fine line between showcasing the influence of these factors while still somehow insisting upon the ultimate power of the Ugandan military. The result, however, was the sacrifice of any perception of remaining state sovereignty.

The central role of the Sudanese state in this conflict remains one of the most influential forces determining the outcome of the struggle in the region. This government began its support for the LRA in 1994 in an attempt to destabilize the Ugandan government. Uganda had for some time been supporting the Sudanese People's Liberation Army, which had been fighting for self-determination in Southern Sudan for half a century.⁷³ At many opportunities of potential LRA defeat the Sudanese government did often bear the responsibility for reanimating the struggle. Sudanese support, however, began to dissipate by the late-1990s. Nevertheless, the Ugandan government continued to represent its neighbor as pivotally responsible for undermining its

⁷³ Amnesty International, *Uganda: 'Breaking God's commands': The destruction of childhood by the Lord's Resistance Army* (September 17, 1997).

efforts to bring peace. Sudanese interference became an important excuse within this narrative for the UPDF's inability to end the conflict.

Throughout this six-year period, government newspapers made constant reference to LRA incursions as coming "from Sudan."⁷⁴ The implication became that the rebel forces lived in and received material support from the neighboring country. These narratives often explicitly represented the UPDF as fully capable of defeating the rebels, if not for the Sudanese. Thus, in 1997, *The New Vision* government paper asserted that the UPDF would have "finished [Kony] by 1993...if he had not been re-equipped and retrained by the Sudanese government."⁷⁵

However, non-governmental press sources, such as Nairobi's *The EastAfrican*, identified the true reason for the rebels' continued freedom of movement as the Ugandan army, which was "anaemic and...lethargic in its campaign" against the LRA.⁷⁶ Within the Ugandan government's representation of the conflict however, Sudan took center stage. The country continually appeared as a potential haven for Kony, a place to retrain and recuperate after his constant near-defeat at the hands of the Ugandan military.

The second aspect of this narrative was the danger that Sudan posed to any peace talks in the region. A number of negotiations between the Ugandan government and the LRA in this period fell through due to issues on both sides. However, one of the common reasons that the former gave for rejecting the possibility of talks was potential LRA rearmament from Sudan. The government newspaper often opposed future talks because the LRA used them to buy time to return to Sudan and prepare itself for another offensive. *The New Vision* thus argued "the government should not repeat the mistake of holding peace talks with Kony...[who] deceitfully

⁷⁴ Vincent Mayanja, "Sudanese army now assisting Kony rebels, says government," *The EastAfrican* (June 23, 2003).

⁷⁵ Editorial, "Time to finish Kony for good," *The New Vision* (September 4, 1997).

⁷⁶ Charles Onyango-Obbo, "Kony war will not be ending soon," *The EastAfrican* (October 29, 1997).

used the breathing space to press gang youth into the LRA and to smuggle them into the Sudan.”⁷⁷ This narrative helped the Ugandan government in two vital ways.

In the first place, Museveni was able to appear willing to negotiate, but portray the LRA as constantly acting in bad faith. This dichotomy allowed the president to dismiss the possibility of talks and continue to insist upon a military solution, not because he was unwilling to negotiate, but because the LRA was. As proof of state power, the centrality of the military was an important aspect of the narrative. Second, the Ugandan government could represent the military as quite capable. Its failures against the LRA became the fault of the Sudanese state and not the UPDF. This approach could be particularly successful whenever such failures occurred around the time of the peace talks that did periodically transpire. Thus, Museveni could continue to insist upon his preferred method of ending the conflict, namely a military solution, and at the same time excuse any military failures as the result of deception, rather than weakness of any kind.

This inflammatory anti-Sudanese rhetoric often served to further subvert relations between the two countries and to make the conflicts in the region more antagonistic. Focus on Sudan took pressure off the military to show progress. Thus, as long as the Ugandan government used Sudanese support for the LRA as a reason to avoid negotiations with the rebels and concomitantly avoid diplomatic relations with its neighbor, there seemed little hope for peace. The international community therefore eventually pressured the two countries into theoretically re-establishing bi-lateral diplomatic relations. In the December 1999 Nairobi Accords, both country’s leaders renounced “the use of force to resolve differences” and agreed to respect “each

⁷⁷ Editorial, “Time to finish Kony for good,” *The New Vision* (September 4, 1997); also, Editorial, “Time to finish Kony,” *The New Vision* (June 11, 2002).

country's sovereignty and territorial integrity."⁷⁸ The reality of Uganda's violated sovereignty in this proxy war with Sudan was thus very clearly accepted, but perceptions of power remained more pressing.

While this agreement was meant to eliminate each country's support for the other's rebels, Ugandan rhetoric continued to lambast Sudan for its material support for "terrorist groups" such as the LRA.⁷⁹ As early after the accords as February 2000, President Museveni declared that he was "not satisfied with Sudan's implementation of the Nairobi peace accord."⁸⁰ The Ugandan Minister of State for Defence also blamed "the porous nature" of the "border with Sudan" for the LRA's continued action in Uganda.⁸¹ After the very publicly negotiated peace between these two countries, the LRA continued to wage its conflict in the north. In response, the Ugandan state continued to showcase a representation of the ongoing struggle as Sudan's fault. This narrative served to divert attention from the failure of the military to quash Kony and allowed the illusion of the power of the Ugandan military to remain intact.

Such representations of UPDF power often paralleled those of Sudanese complicity. Thus, in the aftermath of the Nairobi Accords, the UPDF threatened to "attack Kony rebel camps in Sudan to rescue abducted Ugandans if the Sudan government did not secure their release."⁸² The President himself threatened that, "if they don't do something to solve this problem soon, then we shall do it even if it means reaching Sudan."⁸³ These examples, like many others, portrayed Sudan as the intransigent party and the Ugandan military as quite capable and willing

⁷⁸ "Uganda, Sudan sign peace pact," *Panafrican News Agency* (December 9, 1999); The Nairobi Agreement: Agreement between the Government of Sudan and Uganda," December 8, 1999.

⁷⁹ Sebidde Kiryowa, "Museveni, Bashir to end war," *The New Vision* (December 9, 1999).

⁸⁰ "Museveni unsatisfied with Sudan over Nairobi peace accord," *Panafrican News Agency* (February 1, 2000).

⁸¹ Alfred Wotoyide, "Dusk nearing for Museveni's NRM?" *The Monitor* (February 16, 2000).

⁸² Justin Moro, "UPDF to follow Kony to Sudan," *The New Vision* (February 24, 2000).

⁸³ James Oweka & Dennis Ojwee, "Museveni warns Sudan on LRA rebels," *The New Vision* (May 25, 2000).

to invade Sudan in order to protect the people of northern Uganda. This representation was never put to the test.

After the Nairobi Accords it did become more difficult to blame Sudan for the continued conflict in the north of Uganda. International pressure had been successful in curbing Sudan's support for the LRA and thus producing certain incredulity in the north towards Uganda's attempts to assert otherwise. The government thus introduced into its narrative the possibility of internal collaborators and traitors who lent their support to the LRA and undermined the UPDF's efforts in the north. After Sudanese President Omar al-Bashir announced a complete withdrawal of Sudanese support for the rebels in August 2001, the government-owned paper *The New Vision* reacted with a new government narrative. It argued "what is left now is for the countries concerned [i.e. Sudan] to pursue policies that make internal rebellion unnecessary. Otherwise, given the porous borders in Africa, rebellion can be fertilized by collaborators in the neighboring states even if the government does not condone it."⁸⁴ The new position within the Ugandan government therefore became the possibility that Sudan could continue to support the LRA through internal collaborators over whom Khartoum had no control. The reference to "porous borders," on the other hand, implied that Uganda could no longer effectively protect the sovereignty of its own territory.

In addition to warning Sudan to clamp down on rebels and terrorists pouring into northern Uganda, Museveni had also started to make moves against supposed internal threats as well. These internal collaborators and traitors began to take Sudan's place in the representational narrative as the uncontrollable force impeding the UPDF's efficacy in the war against the LRA. In 2002, an army spokesman assured the public that the UPDF would definitely end the war, but that this outcome was "being made difficult by collaborators in the civilian population, some of

⁸⁴ Editorial, "Peace in our time," *The New Vision* (August 22, 2001).

whom are prominent politicians.”⁸⁵ The government newspaper also alleged in 2001 that elimination of collaborators was the only remaining step to “wipe out insurgency in northern Uganda.”⁸⁶

Without releasing any details and only making allegations about the presence of internal terrorist collaborators, the Ugandan government retained complete control over the production of this narrative. It was free to represent anyone as a traitor and the military as fighting valiantly against these individuals for as long as the war continued. The alleged presence of collaborators throughout Ugandan society and beyond could remain a continuous hindrance to peace in the north. The military could continue to appear powerful against the rebels but undermined by collaborators without anyone having the information to know otherwise.

By early 2001, the government of Uganda was publicizing the acquisition of “lists of Kony collaborators” and was threatening “a crackdown,” which actually seemed designed to attack political opposition within Uganda at the time.⁸⁷ The internal affairs minister for Uganda warned that such “collaborators are sitting amongst us. Others are in Kitgum, Lira, Kampala, London and other places.”⁸⁸ Interestingly enough, the reference to “London and other places” implied that these “collaborators” were not only domestic, but were also receiving foreign support for their work.

However, while the government may have been announcing the presence of internal traitors everywhere and that it would be addressing the issue, it absolutely refused to release any names. The effect, therefore, was to create an environment of fear – fear that one’s neighbor, relation, or friend was giving aid to the enemy. It also, however, gave the government

⁸⁵ Michael Wakabi, “Uganda rebel raids defy peace-making attempts,” *Daily Nation on the Web* (August 14, 2002).

⁸⁶ Alfred Wasike & Justine Moro, “Government gets list of Kony collaborators,” *The New Vision* (April 11, 2001).

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

significant authoritative leeway to threaten any enemy of the regime that it so desired. By late 2001, the aftermath of the September 11th terrorist attacks in the United States further enabled the Ugandan government to act in a more concrete way to counter the “collaborationist threat.”

In 2001, the United States added the LRA to its “Terrorist Exclusion List” for the first time. This designation aimed to stigmatize and isolate the rebels and anyone who supported them.⁸⁹ This act allowed the government of Uganda to move against the LRA and its alleged collaborators as “terrorists” with complete US support. As early as December 2001, Uganda was developing an anti-terrorism bill aimed to suspend due process and judicial procedure in cases of terrorism. It was also to “be upon the suspect to prove that he or she is not a terrorist, a collaborator or a sympathizer of terrorists,” and named the LRA one of the associated terror organizations.⁹⁰

It became common to hear President Museveni accuse his political opponents of collaborating with the LRA, including the still independent paper, *The Monitor*.⁹¹ One of the most common accusations occurred against Colonel Kizza Besigye, a former member of the NRM and a candidate who ran for president against Museveni in 2001 and 2006. In 2002, President Museveni first linked Besigye with the LRA and urged him to return from exile – into which he had fled due to fears for his life – to answer allegations “linking him to terrorists.”⁹² All accusations against Besigye were at that point unproven. President Museveni, however, was apparently already using these “anti-terrorism” laws to threaten, intimidate, and besmirch the reputations of his political opposition. Pluralistic politics posed a threat to the regime’s

⁸⁹ Philip T. Reeker, “Statement on the Designation of 39 Organizations on the USA PATRIOT Act’s ‘Terrorist Exclusion List,’” Press Statement (December 6, 2001).

⁹⁰ Sheila C. Kulubya, “What terrorism bill says,” *The Monitor* (December 10, 2001).

⁹¹ Emma Mutaizibwa, “President Museveni warns Sudan against aiding the Lord’s Resistance Army,” *The Monitor* (September 10, 2003).

⁹² Okello Jaweli, “Museveni links Kony to Besigye,” *The New Vision* (April 23, 2002); “Besigye can come home – Museveni,” *The New Vision* (May 17, 2002).

exclusive hold on state power and these accusations seemed designed to keep a serious political change at bay.

It also became dangerous for an individual to even suggest a different way forward in the war effort from that of President Museveni. The president's preference for a military solution to the exclusion of negotiations had been common knowledge for some time. A number of powerful church and political leaders in the north, however, favored peace talks, which sometimes put them at odds with the Ugandan government and military. In 2003, the president gave an interview about the war in which he again refused to negotiate and "derided those who tried to convince him to negotiate and came near to calling them collaborators."⁹³ Later the next year, the Minister for Defence spoke even more plainly when he "urged those in contact with the rebels to always alert security or else they would be deemed collaborators... anyone who tries to have contact with the LRA is labeled as a terrorist and a collaborator."⁹⁴

Unfortunately, those individuals, particularly Catholic priests, working to effect peace in the north did just that. They often possessed contacts within the LRA or received calls from individuals within the organization offering to meet and talk. Such open communication often hinged on these activists not reporting every rebel contact to the government. The new action against such "collaborators" therefore effectively hindered any continued attempts at establishing peace talks in the north. It also seemingly forced the only solution that Museveni ever wanted – a military one.⁹⁵ Such rhetoric against "collaborators" thus helped to further ensure a continuation of the president's own definition of military/state power.

⁹³ Professor Dani W. Nabudere, "Kony good excuse for Movement holds on power," *The Monitor* (August 11, 2003).

⁹⁴ John Eremu & Jacki Wananda, "State to probe LRA rebel collaborators – minister," *The New Vision* (April 10, 2004).

⁹⁵ For more on efforts at northern peace, see Carlos Rodriguez Soto, *Tall Grass: Stories of Suffering and Peace in Northern Uganda* (Kampala: Fountain Publishers, 2009).

The third factor that the Ugandan government represented as a threat to its war effort in the north was donor pressure to reduce defense spending in the country. From 1997 to 2003 transnational and foreign aid provided for more than half the Ugandan budget, almost 2% of which went to defense spending.⁹⁶ As the war dragged on, defense needs increased, and no victory appeared imminent, this donor community grew increasingly disenchanted with the demands placed upon it. Every year, when Uganda needed to seek approval for its budget from donor countries, these countries demanded cuts, and Ugandan increases, in the military sphere.

These struggles posed a direct threat to Ugandan state power. Without budget approval, international donors would have pulled all of their support. Agriculture makes up 80% of the Ugandan economy and thus revocation of this support would have virtually crippled the state's capabilities. Distinct from military needs, donor funds provided "free primary education, free basic health care, and infrastructure rehabilitation and maintenance" in Uganda.⁹⁷ These services allowed the Ugandan state to maintain a semblance of power and control in the provision of basic services to the Ugandan people. The ceding of sovereignty that such negotiations represented made the continued power and operations of the Ugandan state possible. Without them, the state might cease to function in any practical way.

Beginning in 1998, Uganda secured permission to allocate a significant portion of its budget to defense needs because the international community recognized "the problem of insecurity in parts of the country." Donors were also willing to provide the funds because of improved action against corruption and towards accountability within the military apparatus. In

⁹⁶ Andrew Mwenda, "Foreign Aid and Weakening of Democratic Accountability in Uganda," *Foreign Policy Briefing* 88 (Washington, D.C.: CATO Institute, 2006): 1.

⁹⁷ *Ibid.*, 2.

addition to the very real need for military funds to secure the country, the government's better balance of defense and social spending also helped to convince donors to support the budget.⁹⁸

Criticism was already beginning to grow, however. By September 1998, the World Bank found it necessary to defend Uganda's defense expenditures as regrettable but necessary, due to "the current security threat." The United States, however, supposedly a significant friend and supporter of Uganda at this time, still "sent a team from Congress to investigate why the insurgency has persisted."⁹⁹ Concerns arose throughout the late-1990s that Uganda had too much money going to defense at the expense of needed social programs and that donor funds were becoming useless thanks to corruption and misappropriation of the budget. Donors were uninterested in funneling money to a government that seemed unable to end the conflict in the north or even function. This attitude created a tense relationship for future negotiations about the possibility of donor aid to Uganda.

By 2002, significant increases to Uganda's defense budget had become commonplace. The next year's budget included a 66 billion Ugandan shilling increase over the next two years, "bringing it to Shs. 238 billion or more than 20 percent of Uganda's total revenue earnings."¹⁰⁰ Although President Museveni assured the public that his government "had 'finally settled our differences with our donor partners on the need to increase defence spending,'" tensions continued to mount.¹⁰¹ Donors' earlier focus on the need for balance between military and social spending meant dissatisfaction with these November 2002 numbers. The government "slashed

⁹⁸ James Kigozi, "Govt to spend large budget allocation on military," *The EastAfrican* (June 3, 1998).

⁹⁹ Levi Ochieng, "World Bank backs Uganda on increased defence cash," *The EastAfrican* (September 7, 1998).

¹⁰⁰ Editorial, "Cut the massive defence budget," *The Monitor* (May 27, 2002).

¹⁰¹ Alfred Wasike, "International arrest order out for Kony," *The New Vision* (October 10, 2002).

up to 20% of the budgets for ministries to cater for the increase in defence expenditure,” arguing necessity in the face of continued conflict with the LRA.¹⁰²

It did not take the Museveni government long to begin representing the donor community’s attitude as a betrayal of the war effort and a major impediment to the conflict’s resolution. In August 2003, President Museveni laid out the five main reasons that he thought the northern conflict was continuing, including “under-spending on defence.”¹⁰³ Of course, to Museveni’s way of thinking, the donor community held the responsibility for this continued under-spending and was thus undermining the war effort. When the Ugandan government sought additional monetary support from the US in September 2003, the president’s senior advisor on media and public relations argued that the request did not indicate the impotency of the UPDF. Instead, he classified the war effort’s “greatest problem” as the fact “that donors interfere with our budget by insisting that we should not spend more than 2% of our budget on defence.”¹⁰⁴ In addition, the army had “over the years struggled to squash the rebellion without success due to poor funding,” for which “the donors” were at fault.¹⁰⁵

This supported the Ugandan government in two ways. First, it created an image of a military that struggled valiantly for the protection of the Ugandan people, doing so much with so few resources. This representation was one of a powerful military that merely lacked badly needed supplies, a narrative to which I will shortly return. Second, this narrative presented a potential scapegoat for the continued fighting, a responsible party other than the government.

¹⁰² Editorial, “Peace talks better than a big army,” *The Monitor* (November 10, 2002).

¹⁰³ Professor Dani W. Nabudere, “Kony good excuse for movement holds on power,” *The Monitor* (August 11, 2003).

¹⁰⁴ Daniel K. Kalinaki, “Government asks USA for arms to fight Kony,” *The Monitor* (September 4, 2003).

¹⁰⁵ Emma Mutaizibwa, Sheila C. Kulubya & Henry Ssali, “American to mediate in Kony war,” *The Monitor* (November 29, 2003).

The impact of the anti-donor rhetoric ultimately had to do with power. The Ugandan government was successfully painting a picture of itself battling the donor community for every bit of aid that it could possibly get for its people, fighting their fight. As *The New Vision* put it in August 2002, “the UPDF guns will continue blazing in defence of the innocent people of northern Uganda” until told to do otherwise in the wake of negotiations.¹⁰⁶ Ultimately, this representation implied that any victory in the northern conflict occurred thanks to the resolve of the military and the willingness of the Ugandan government to go to bat for its people. Any loss, however, the Ugandan state and military could then blame upon a lack of resources and the lack of true support and engagement on the part of the international donor community. However the war progressed, therefore, the aim was that the military would only get credit for the successes and the donors the credit for the failures.

The other noteworthy point to make here is the almost immediately negative reaction from the Ugandan government as soon as it was forced to make concessions to the international community. The monetary support of that community was not unconditional. The responsibility inherent in “layered sovereignty” meant that the Ugandan government was expected to compromise with the international community on the question of military spending. As soon as Uganda felt its own power threatened, however, it attacked the international community as an opponent. A crucial foreshadowing of what the state’s reaction would be if forced to make power concessions to the international community in the future.

In the meantime, the result of each of these narratives of fault surrounding the war in northern Uganda – Sudanese interference, LRA collaborators, and donor restrictions – served to reduce perceptions of state sovereignty, but increase those of state/military power. As the war dragged on, the stories of individual UPDF victories or narratives that the LRA was just

¹⁰⁶ “Museveni’s heart for Acholi people,” *The New Vision* (August 23, 2002).

moments away from defeat dominated the state's representation of this struggle in the state-owned paper, *The New Vision*. The following are just some examples of what readers were seeing:

- ❖ “rebel remnants...scattered into three groups due to mounting pressure from heavy ground and air bombardment by the UPDF” (September 1997)¹⁰⁷
- ❖ “Kony is desperate” and “Kony is cornered,” thanks to “the current heavy deployment and better coordination of the UPDF” (June 1998)¹⁰⁸
- ❖ “no area is vulnerable now. The north is under strict control. Kony may still be a force by abducting and killing people, but he's not to worry about” (December 1999)¹⁰⁹
- ❖ “the UPDF was very strong and had the capacity to finish up the war in the north very quickly” (March 2000)¹¹⁰
- ❖ “[Kony was] no longer a threat and had no capacity to withstand the pressure from the UPDF troops” (March 2002)¹¹¹
- ❖ “[the UPDF has] totally reduced [Kony's] capacity...captured most of his weapons....It's not possible that the rebels can gain an upper hand” (August 2002).¹¹²

The overall message of this narrative centered on the power of the UPDF to bring the LRA to its knees at any time and in any manner that it might choose.

While this continuous narrative of near-LRA defeat may have left a number of people jaded about their chances for peace, the state's attempt to insert it into the mainstream had an important purpose. *The New Vision* continued to report throughout this six-year period the

¹⁰⁷ Emmy Allio, “UPDF scatters Kony fighters,” *The New Vision* (September 3, 1997).

¹⁰⁸ Editorial, “End Game!” *The New Vision* (June 7, 1998).

¹⁰⁹ Katamba G. Mohammed, “UPDF deploys heavily in north, west,” *The Monitor* (December 21, 1999).

¹¹⁰ “Utilise amnesty act, Museveni tells Kony,” *The New Vision* (March 7, 2000).

¹¹¹ Dennis Ojwee, “Museveni on morale-boosting visit to Gulu,” *The New Vision* (March 9, 2002).

¹¹² Alex B. Atuhaire, “We won't talk to Kony-Defence minister,” *The Monitor* (August 8, 2002).

imminent UPDF defeat of the LRA, the latter's fear of the former, and the fundamental weakness of the LRA itself as an enemy. The state represented the military as powerful in the face of opposition in the north and fully capable of bringing an end to the conflict at any time that it chose. Since the UPDF presumably had all the power in the midst of this conflict, it made sense that there had to be some other reason for the continued struggle. The role of Sudan, internal collaborators, and donors within the state narrative helped to fill this need.

The power of the military/state, however, came at the expense of the sovereignty of Uganda. The influence of Sudan and external donors, and the apparent infiltration of LRA collaborators into the state itself weakened the argument for Uganda as a sovereign state capable of holding its own borders. This tradeoff between power and sovereignty continued with Uganda's referral to the ICC in 2003. Something changed four years later, however, when President Museveni reversed his previous narrative about the ICC presence in Uganda. This decision ultimately represented an attempt to retrieve sovereignty and still hold on to power in the post-2007 era. It was a reaction against a 1997-2003 period when power trumped sovereignty in the national representational narrative.

Chapter Three: The Solution

While these factors continued to influence the Ugandan narrative about the north, the end of 2003 introduced a new thread. In December of that year, President Museveni referred the LRA to the International Criminal Court, at the time a clear continuation of his policy of favoring the appearance of state power over that of sovereignty. Things began to change, however, towards the end of 2006. The war was coming to a close and President Museveni had less of a need for the transnational community to help bolster the appearance of his power in the north. Thus, as the ICC tried to force Uganda to give up more and more power, the government began to strike back.

The ICC was the latest step in a long history of attempts to ensure accountability and eliminate impunity for violations of international human rights laws. In fact, these efforts date back to the founding of the International Committee of the Red Cross's (ICRC) parent group in 1863. Over the next century, although there was interest in the foundation of an international court for trying perpetrators of genocide, crimes against humanity and war crimes, the 1990s saw more localized expressions of this idea. The International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) established a template of what such a court might look like. They also showed the international community that such prosecutions could work in practice and not just in theory. In 1989, the UN had charged the International Law Commission with investigating the possibility of such a court. In 1993, that commission proposed a draft statute, which an NGO Committee of Experts further edited and the UN General Assembly debated in 1994. It was at this point that the General Assembly began the preparations for a final negotiating session in Rome in 1998.¹¹³ The negotiators at the Rome Conference were then able to develop a final draft that led to an unopposed vote in its favor. The Rome Statute of the

¹¹³ Schiff, *Building the International Criminal Court*: 37-39.

International Criminal Court then came about on July 17, 1998 and entered into force on July 1, 2002 with sixty ratifications.¹¹⁴ Uganda, for its part, signed the treaty on March 17, 1999 and ratified it on June 14, 2002.¹¹⁵

The latest atrocities and the lessons of the ICTY and ICTR helped give momentum to the vision of the various international and civil society proponents of the court and bring about the eventual success of this initiative. The ad hoc tribunals that the international community had been putting together to address individual conflicts were becoming expensive and burdensome. They required significant disbursements of aid and a lot of diplomacy to keep them fully funded and operational in politically delicate situations. There was thus a call for one global court that could address all such situations without the need for a separate mandate.¹¹⁶ It would also enjoy the kind of government support and funding that would come with such a standing order, without being subject to constant renegotiation. This awareness among the international community of the tribunals' operational weaknesses also translated to some important differences in the way that it expected the ICC to work.

One of the most important innovations dealt with the court's relationship with the governments in whose countries it would function. While the tribunals were often at odds with or completely separate from local governments, the ICC was expected to work in a complementary manner in order to accomplish its task. Thus, while the court or the UN General Assembly could instigate an investigation into a human rights atrocity, the involved governments were also themselves encouraged to bring conflicts to the attention of the ICC. The court would

¹¹⁴ United Nations Treaty Collection, *Rome Statute of the International Criminal Court* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en (accessed July 23, 2012).

¹¹⁵ The States Parties to the Rome Statute, *Uganda* <http://www.icc-cpi.int/Menus/ASP/states+parties/African+States/Uganda.htm> (accessed July 23, 2012).

¹¹⁶ Schiff, *Building the International Criminal Court*: 56-8.

also only be allowed to function in situations where the government was unable or unwilling to act on its own, thereby allowing governments to supersede the court in the event of their own investigation.¹¹⁷

Another problem with the ad hoc tribunals was their formation under the authority and oversight of the UN General Assembly. This oversight made their processes highly political and in particular at the mercy of the five permanent members of the Security Council and their veto power. The ICC therefore was designed to be as independent from these structures as possible, with a referral process and operations almost entirely outside of the purview of the General Assembly. The flipside of this decision, however, has been opposition from the US, one of those permanent members of the Security Council. The US is leery of the independent authority of the ICC and fears its potential to hold more powerful states such as itself to account as well.¹¹⁸

The court was designed to operate as an independent international human rights organ for punitive justice. It may investigate crimes of genocide, war crimes, crimes against humanity, and, once a definition can be agreed upon, crimes of aggression. It targets only those most responsible for the crimes in question, leaving prosecutions of lower level perpetrators to domestic organs. It intervenes only when a state is unable or unwilling to investigate and/or prosecute such a situation itself or when the UN Security Council decides that its intervention is warranted. It only maintains jurisdiction over crimes committed after its entry into force on June 14, 2002.¹¹⁹

The Ugandan government's December 16, 2003 referral of the conflict with the LRA to the ICC represented the court's first case. A number of international organizations rejoiced that

¹¹⁷ Ibid, 77-80; Luis Moreno-Ocampo, "The Role of the International Community in Assisting the International Criminal Court to Secure Justice and Accountability:" 281.

¹¹⁸ Schiff, *Building the International Criminal Court*: 55-58.

¹¹⁹ United Nations Treaty Collection, *Rome Statute of the International Criminal Court*.

the court would finally have a test case for its mandate. A major concern from the start, however, revolved around the UPDF's alleged crimes against humanity directed at local civilian populations. Many involved in the aid community worried that a government referral meant that the court would necessarily ignore this aspect of the conflict. The court, in fact, did just that.

The referral launched an automatic process that, once begun, could not be stopped. The ICC's chief prosecutor, Luis Moreno-Ocampo began a preliminary inquiry into the international human rights violations occurring in Uganda. The goal was to identify the most culpable in order to hold them accountable for their crimes. He opened his formal investigation on July 29, 2004 and applied to the Pre-Trial Chamber for arrest warrants on May 6, 2005. The Chamber issued sealed warrants on July 8th and the prosecutor's office released them on October 13, 2005.

In his statement regarding the issuance of the warrants, Moreno-Ocampo tried to reassure the international community about the UPDF's crimes. He insisted that the original referral's specific mention of the LRA meant nothing and that his office had already informed the Ugandan state it would be investigating *all* crimes in the region.¹²⁰ He envisioned an impartial investigation that would theoretically consider the allegations against government forces. However, at no point were any warrants issued against anyone affiliated with the government.¹²¹

According to the Chief Prosecutor the reason for this focus upon the LRA was also the reasoning behind the specific individuals and crimes that he chose to target – gravity. His office identified the gravest manifestations of war crimes and crimes against humanity to list in the charges and the most egregious perpetrators of these acts to charge with them. This led to

¹²⁰ An indictment of the UPDF's crimes never did transpire and, given the resolution of this issue before 2007, there is no indication that it was a fear of ICC warrants against his military that influenced President Museveni to react negatively to the court's presence in his country.

¹²¹ Office of the Prosecutor, *Statement by Luis Moreno-Ocampo, Prosecutor of the International Criminal Court* [The Hague: The International Criminal Court, October 14, 2005]: 2.

warrants for five individuals for six major attacks.¹²² The warrants “sought the arrest of top LRA commander Joseph Kony on twelve counts of crimes against humanity and twenty-one counts of war crimes, Kony’s second in command Vincent Otti for eleven counts of crimes against humanity and twenty-one counts of war crimes, and three other members of the top LRA command, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen.”¹²³ Raska Lukwiya has since died and been removed from the case.

Reactions to the referral in Uganda were always mixed. Human rights and humanitarian organizations tended to see the court as a government stooge. Many of those in the north who were looking for a negotiated settlement criticized the ICC as a lasting impediment to the possibility of peace. Still others in the region and in the political arena welcomed the change of pace in a war that had lasted for too long. The government itself held a number of different opinions at different points in the process, but always sought the protection of its power in the relationship above all else.

Initially, these narratives portrayed President Museveni as the one retaining ultimate power over the court’s function in the region. Even before the referral, in 2002, the government-controlled *The New Vision* newspaper reported that “President Yoweri Museveni [in his own words] is soon to issue international arrest warrants for the leader of the Lord’s Resistance Army, Joseph Kony, other terrorists and their collaborators....”¹²⁴ The Ugandan president certainly did not possess this level of control over the international justice process. However, it was this narrative of power, the idea that the international system acted at the behest and pleasure of the president, which characterized this period. By speaking thus, the president effectively linked his own political future with the success of international justice, in 2003 promising “an international

¹²² Ibid, 2-4.

¹²³ Schiff, *Building the International Criminal Court*: 204-205.

¹²⁴ Alfred Wasike, “International arrest order out for Kony,” *The New Vision* (October 10, 2002).

warrant of arrest for the top leaders of the group,” the LRA.¹²⁵ He was making this announcement, however, several months before he even officially involved the ICC in December. The state’s representation of this matter from the start, then, placed Uganda’s president in a firm position of power from which he was supposedly free to direct the actions and decisions of the ICC.

In early 2006, the Ugandan parliament “passed the Amnesty Amendment Bill (2003), which excluded...Joseph Kony and his top commanders from being eligible for amnesty under the Act.”¹²⁶ President Museveni never liked the idea of amnesty in the first place and only enacted it under great political pressure from those seeking a negotiated peace. The ICC indictments of these very same Lord’s Resistance Army commanders, therefore, allowed him to alter the amnesty in a fashion more to his liking. Conveniently enough, it would seem, this action also undermined the ultimate efficacy of the overall amnesty. These commanders’ defensive reaction to the warrants and the revocation of amnesty caused them to resist a negotiated peace. The president could thus make this outcome an even more distant possibility than before, leaving his preferred military solution or a forced deal on his exclusive terms as the only potential outcomes.

The president was quick to represent such decisions about the end of the conflict as exclusively within his own discretion, instead of those of the court. Instead of the narrative in which the ICC controlled the aftermath of the issuance of the warrants, the narrative became one of state power to control all aspects of this form of justice. By the time that the court seemed close to issuing arrest warrants in 2005, those social elements in the north committed to a negotiated peace were criticizing the ICC presence for impeding the peace process. As a result,

¹²⁵ “Museveni announces December as end to LRA amnesty period,” *The New Vision* (September 17, 2003).

¹²⁶ Apollo Mubiru & Cyrian Musoke, “Kony denied amnesty,” *The New Vision* (April 20, 2006).

President Museveni began to assure these people and the LRA that he had the power to withdraw the arrest warrants at any time, provided the rebels cooperated in negotiating peace.

In a typical statement on the subject, in 2006, the government announced that, if Kony “got serious about a peaceful settlement, [it] would guarantee him safety.”¹²⁷ In effect, therefore, the president began to use the warrants, and the ICC, as bargaining chips in order to bring the LRA to heel.¹²⁸ The problem, however, was that the president had no control whatsoever over the actions of the court or the warrants, once issued, and the ICC responded angrily when it learned of Museveni’s new position on the matter.¹²⁹ This disagreement over which institution, the ICC or the Ugandan state, held the power in this situation ultimately led to the government’s split with the court.

This strategy towards the LRA worked for the Ugandan government, however. The threat of international prosecution once the warrants were issued finally brought the rebels back to the peace table, seemingly with good intentions and in a weakened negotiating position. In July 2006, the Ugandan government agreed to enter into talks with the LRA, in direct contravention of the government’s duty towards the court and its warrants.¹³⁰ In the words of President Museveni’s information minister, “If [LRA leader Joseph] Kony has announced his intention for peace. That’s his problem [sic]. It is not a problem of the international community. The Hague [ICC headquarters] is not under our control and we are not under its control. Each can act independently.”¹³¹

¹²⁷ “Museveni gives rebels ultimatum over northern war,” *IRIN* (May 17, 2006).

¹²⁸ Frank Nyakairu & Grace Matsiko, “Kony fears world court prosecution,” *The Monitor* (January 6, 2005).

¹²⁹ Frank Nyakairu, “International Criminal Court opposes Museveni peace offer to Kony,” *The Monitor* (May 19, 2006).

¹³⁰ Michael Wilkerson and Frank Nyakairu, “Museveni offers Kony amnesty,” *The Monitor* (July 4, 2006); “LRA leader must be arrested, ICC insists,” *IRIN* (July 5, 2006); Frank Nyakairu, “Museveni amnesty to Kony illegal – ICC,” *The Monitor* (July 6, 2006).

¹³¹ “Gov’t, LRA to hold talks despite ICC indictments,” *IRIN* (July 3, 2006).

With one statement, the Ugandan government was effectively undermining the entire basis for an international court such as the ICC. This assertion by the state was meant to emphasize its power to deal with the court and the rebels as it saw fit with no deference towards any external entity. The fact is that the Ugandan government made Kony and the LRA the problem of the ICC and the international community when it referred the conflict in the first place. By so doing, the government had declared its inability to deal with the situation itself and ceded its sovereignty in order to obtain the help of the court. In exchange for international justice for its people, the Ugandan state was indeed surrendering its right to “act independently” and placing itself under the purview, if not the control, of the ICC. By 2006, however, the Ugandan government was rejecting all of this. This July statement instead proved to be the opening volley in the government’s campaign to take its sovereignty back from the court.

It remained unclear, however, whether the government would ultimately follow through on its threat to undermine the court’s jurisdiction. Instead, as peace negotiations continued and looked likely to succeed, President Museveni actually supported the ICC’s indictments. He argued that the warrants issued against the LRA’s leadership had helped to bring the rebels to the negotiating table and keep them there. He insisted that *he* would only lift the indictments as “a reward for their [the LRA’s] signing of the agreement.”¹³² For him “the ICC [was] actually very good for us (Uganda) because it [made] the terrorists (rebels) come up to seek peace and end impunity.”¹³³ Here lay the crux of the issue. The ICC’s involvement provided President Museveni with ultimate power of life or death over the LRA’s leadership and a strong negotiating position to force the outcome that he wanted. This was all about power. It was the

¹³² “ICC indictments against rebels should stay, says president,” *IRIN* (September 21, 2006).

¹³³ Solomon Muyita, Grace Natabaalo, & Emmanuel Gyezaho, “Museveni insists on Kony ICC arrests,” *The Monitor* (October 28, 2006).

ICC's refusal to agree that the Ugandan government had the power to overrule the court that led to an ultimate showdown over sovereignty as well.

Various understandings of the ICC's "complementarity" principle came to be at the heart of this conflict. Complementarity, in this case, means that "the ICC can only assert jurisdiction over a crime when it has been established that the State who has jurisdiction is unwilling or unable to investigate and prosecute the alleged crime." Also, the court only prosecutes the worst offenders, leaving the punishment of others to the discretion of domestic institutions.¹³⁴ The court was designed to work in concert with, instead of against, domestic organs of justice. The spokespersons for the Ugandan government at this stage, however, began to invoke the term "complementarity" to mean something entirely different from the ICC's definition.

The peace agreement that Uganda concluded with the LRA included arrangements for domestic prosecutions, and the state insisted that this new process made the international court irrelevant. Uganda's defense minister thus insisted that "the ICC is just a complementary court to the local legal system...we agreed with ICC that it would intervene when Uganda has proved it has ignored to prosecute the rebel leaders and have no institutions to try them [sic]."¹³⁵

Another government spokesman tried to insist that the peace agreement did "not in any way alienate the ICC. On the contrary, it promotes the principle of complementarity of national and international justice systems."¹³⁶ With such declarations, the government was effectively attempting to turn the clock backwards and insist that its new decision to prosecute the rebels itself meant the court's presence would be irrelevant. In fact, because Uganda had already called

¹³⁴ Wenqi Zhu and Binxin Zhang, "Expectation of Prosecuting the Crimes of Genocide in China," in *Confronting Genocide*, ed. René Provost & Payam Akhavan (London: Springer, 2011): 184-6.

¹³⁵ Chalres Kazooba, "ICC may lift Kony indictment," *The New Times* (September 10, 2007).

¹³⁶ "LRA, Govt sign pact," *The New Vision* (February 19, 2008).

the court in, the state's decision to prosecute required proof of capability before it could overrule the ICC's jurisdiction.

Without this proof, the ICC refused to accept the Ugandan government's new stance. In reaction to this continued infringement of its power, the state retaliated against the court. The Ugandan government signed its agreement with the LRA, in which it would prosecute the rebels itself, and refused to even admit that this deal represented a violation of international law. Instead, the state insisted that it had the power to reassert its sovereignty, that, under the Rome Statute, it had no obligations that it was not honoring.

The seeming end of the war in the north in 2006 also helped the Ugandan state to reject the ICC. Beginning in that year, the LRA began to withdraw to neighboring countries, leaving northern Uganda to begin the process of recovery. IDPs began to trickle back to their homes and socio-economic factors began to improve.¹³⁷ Museveni's military and government were back in a position to provide for their people without as much reliance upon transnational support. The president was slowly getting his country back under his own control and his need for the ICC's involvement was reduced. The result was hardline negotiations with the LRA and a refusal to give up any more power to any more foreign organizations.

Although the deal with the LRA ultimately fell apart due to the LRA's distrust of the potential outcomes, the damage to the ICC was already done. In the struggle between power and sovereignty, which had continued throughout the conflict with the LRA and the consequent international presence in the region, the Ugandan government finally refused to give up either. This retrieval of the sovereignty that it had ceded to the ICC within the "layered sovereignty" paradigm gave the government even more power in the region to do whatever it chose. It could

¹³⁷ Tim Allen et al., "Postscript: a kind of peace and an exported war," in *The Lord's Resistance Army: Myth and Reality*, ed. Tim Allen & Koen Vlassenroot (London: Zed Books, 2010): 270-288.

choose between a military solution or a negotiated peace, domestic or international prosecutions, without outside consultations. This choice on Uganda's part helped it to reestablish its power, but had longer-term consequences for that of the ICC.

Conclusion

This thesis has argued that the negotiations intrinsic to “layered sovereignty” can cause harm to organizations like the ICC when they fail to adequately account for the power/sovereignty debate within a state’s internal affairs. The form that transnational aid takes by definition involves a recipient country’s voluntary subversion of its sovereign status. These organizations also often provide support that serves to enhance the power of a government. The problems occur when sovereignty and power clash, resulting in a struggle for both between the state and the transnational. Instead of attacking the actual source of that government’s reduction in power, namely whatever situation has caused the need for aid in the first place, the state will strike back at the foreign element. In the case of Uganda, that element was the ICC. As a result of its time in Uganda, the court may never become effective on the African continent, or within the international community.

The credibility of the ICC is predicated upon its assertion of sovereignty over its member states’ governments and this suffered in the wake of the Ugandan case. Uganda started a process of undermining the court’s inclusive narrative and portraying it as an institution imposing a Western brand of justice in an African cultural context. It created a mentality of us vs. them, African tradition vs. Western imposed justice, which crippled the court’s attempts to appear non-regionalized and inclusive of all traditions. During his government’s last fight with the ICC over peace talks with the LRA, President Museveni insisted that “they [the ICC] can’t make us violate our culture.”¹³⁸ He was referring to the court’s attempts to force the Ugandan government to surrender the LRA leaders whom it had indicted. The president thus attempted to establish a paradigm within which the international organization to which his government had pledged its support in fact became anathema to all that it meant to be Ugandan, or even African.

¹³⁸ Michael Wilkerson & Frank Nyakairu, “Museveni offers Kony amnesty,” *The Monitor* (July 4, 2006).

Once an enemy of “traditional justice mechanisms,” a controversial topic in themselves, in 2006 the Ugandan government actually began to champion these methods over the court’s approach.¹³⁹ While Museveni for a time insisted that these methods aligned with the ICC’s goals of bringing justice and challenging impunity, this discussion was irrelevant. With the 2005 issuance of the arrest warrants for the LRA leadership, the method for bringing the LRA to account was no longer up for debate. Legal justice was the only way forward. President Museveni’s various attempts to negotiate terms with the court where no room for negotiation existed ultimately portrayed the court as rigid and foreign, lacking a true understanding of Ugandan/African traditions and instead seeking to impose its own brand of justice. Through its ultimate refusal to consider the ICC as an African-supported or truly global institution, the Ugandan state has instead forced the court into the role of a stereotypically “Western” institution.

The court’s creators did have concerns about such an outcome, that an international court for international justice would become an exclusively Western construct. They thus strove to include all voices from throughout the world in order to make this a truly *international* court. The African continent itself played a very prominent role in the process of drafting the Rome Statute and in its aftermath. A vast proportion of African states ratified the statute— 31 out of 113 ratifications- and 5 out of the 18 judges that served the court in 2010 were African. In addition, many African countries enthusiastically undertook extensive prep work in order to successfully establish the court.¹⁴⁰ The extent of African involvement in the development and practice of the court seemed to indicate that the ICC was as much an African-driven organization

¹³⁹ Felix Osike & Cyprian Musoke, “We won’t lift Kony arrest yet – Museveni,” *The New Vision* (July 20, 2007); Yasiin Mugerwa, “Museveni, ICC ‘heading for confrontation,’” *The Monitor* (March 15, 2008).

¹⁴⁰ Max du Plessis, *The International Criminal Court that Africa Wants* (Pretoria: Institute for Security Studies, 2010): 5 – 11.

as any other. President Museveni managed to undermine this history that his continent had with the court and its hopes for efficacy in its work there.

Analysts in the mid-2000s were already predicting the harm that President Museveni's narrative would impart to the court. In 2007, the former chief prosecutor for the ICTY and ICTR told the *Guardian* newspaper that "it would be fatally damaging to the credibility of the international court [ICC] if President Yoweri Museveni was allowed to get away with granting amnesty."¹⁴¹ The negotiations between the LRA and the Ugandan government directly undermined the ICC's judicial approach in this case. Credibility remained the central consideration for whether or not the court would be able to succeed at its mission. This success required state-level enforcement and Uganda showed the world that enforcement might never happen.

Concurrent with the LRA, the ICC also investigated the Sudanese government for its actions in Darfur and, in July 2008, applied for an arrest warrant for Omar al-Bashir, the President of Sudan. This decision occurred just as Uganda was reasserting its sovereignty towards the court and rejecting its involvement with the peace process. Almost immediately, Sudan imitated Uganda by rejecting the authority of the ICC and asking its African neighbors to do the same. Museveni's government decided to "not join the chorus of African leaders calling for the International Criminal Court to suspend charges against Sudanese leader Omar el-Bashir" at that time, mostly due to the still-antagonistic relationship between the two countries.¹⁴² The African Union, however, went ahead with a resolution against the warrants for Bashir.¹⁴³ A number of African states have since refused to condemn or arrest Bashir as he travels around the

¹⁴¹ Paul Redfern, "Truce between LRA and Uganda govt still overshadowed by ICC warrants," *The EastAfrican* (January 23, 2007); Yasiin Mugerwa, "Museveni, ICC 'heading for confrontation,'" *The Monitor* (March 15, 2008).

¹⁴² Rodney Muhumuza, "We can't condemn ICC over Bashir – Museveni," *The Monitor* (August 3, 2008).

¹⁴³ Scott Stearns, "African Union says ICC Prosecutions are Discriminatory," *Voice of America* (July 4, 2011).

continent, another instance of African states asserting their sovereignty in their relationships with the ICC.

In many ways, therefore, Uganda's struggle over power and sovereignty between 1997 and 2008 weakened any hope the ICC had of being effective in the region. As the court's first case, its test case, Uganda's behavior set the standard for future states that might do business with the court. As soon as the Ugandan state made brutally apparent what it meant for the court to have no enforcement mechanism, the ICC became impotent in many ways. While not every state may choose to reject the authority of the court, its treaty obligations now seem optional in many ways. This perception leaves the ICC unable to obtain justice where the state finds it inconvenient. The court thus needs to find a way to maintain a mutually productive relationship with its member states. However, as long as the ICC must ask these states to surrender a part of their sovereignty and more importantly their power in order to accomplish its task, it may ultimately be facing an uphill battle.

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