

FICTIONS OF JUSTICE

The International Criminal Court
and the Challenge of Legal Pluralism
in Sub-Saharan Africa

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CAMBRIDGE
UNIVERSITY PRESS

CHAPTER 3

MULTIPLE SPACES OF JUSTICE: UGANDA, THE INTERNATIONAL CRIMINAL COURT, AND THE POLITICS OF INEQUALITY

PROLOGUE: REINSTATING CULTURAL COMPLEXITIES

In an article titled "A Pluralist Approach to International Law," Paul Berman (2007) examined the culturalist work of Robert Cover and his emphasis on decentering the role of the state by examining "norm-generating communities" rather than nation-states, as well as the work of Myres McDougal, Harold Lasswell, and Michael Reisman in their attempts to pay homage to different forms of actors engaged in what he described as norm-generating processes. This focus on social processes came to represent the groundwork for what is known as the New Haven School of International Law, which foregrounded the importance of processes and micropractices central to the production of cultural norms. Berman's intervention set the stage for the successors of the core insights from earlier interventions and turns its focus to the work of Harold Koh and others who insist that a *new* New Haven School is important to effect legal practices in an increasingly complex world (2007a:304). Such a discussion outlines the need for moving from state-centered models to processes that open analytic spaces for understanding changing legal consciousness in a pluralist world.

Coined by Harold Koh, among many, as *law and globalization*, this new New Haven School has taken on the work of Robert Cover. Berman indicates: "Koh again invoked Cover to explain how an epistemic community was formed around a specific interpretation of the Antiballistic Missile Treaty and the ways in which this community successfully pushed the internationalization of its preferred

interpretation into U.S. governmental policy" (2007a:310). However, as we can see from Koh's work on the domestication of international law (1997) and his publications on transnational legal processes (e.g., 1996) – in which, says Berman, he combines "the process and policy orientation of McDougal... et al. with Cover's emphasis on multiple norm-generating communities" (2007a:310–11) – Koh's presumptions are centered on the supremacy of international law as the key modality to be expanded and exported globally to transform vernacular approaches and practices so that they are in keeping with new treaty norms. Thus, for Koh, building on Lea Brilmayer among others, it is human rights treaty integration as a horizontal process of incorporation, along with new norm incorporation as a "vertical" process of cultural change, that is critical in the progressive development of human rights principles and rule of law institutions.

Berman, however, in his review of this literature – and in the spirit of redefining the new New Haven School to attend more accurately to legal pluralism – dances lightly around Koh and the new New Haven School's agenda to devernacularize local practices but does not accept it. Thus, Berman, is committed to exploring the cultural complexities enabled through legal pluralist models and willing to work alongside vernacular legal forms that do not necessarily look the same.

With the goal of producing, as he says, "an ever-deepening pluralist orientation" (2007a:311), Berman's interventions point to the multiple ways that various epistemic communities are engaged in various forms of law creation. Accordingly, the work of legal pluralism is playing an increasing role in articulating more precisely the meaning and enactment of legal mandates in local contexts as they relate to how people differently understand justice and rights (Dezalay and Garth 2002). Indeed, legal pluralism has its value. Understanding the politics of postcolonial African states and the various ways that law is deployed differently and produced as legitimate is certainly a good starting point for examining the ways that legal concepts and meanings are imported, as well as the making of justice in transnational contexts. However, transnational legal studies, or global legal pluralism as articulated by Berman (2007b), must move beyond legal pluralism to attend to the complexities of power at play and the ways that force and power cut through even pluralist constellations. These pluralism interventions have often articulated law in quite conventional ways – ways that do not always reflect the workings of structural inclusions, yet cultural exclusions, that often take for granted that plural

legal orders operate in equal domains of comparison and social interaction.

By not making central the particular preconditions under which law is necessarily structured within hegemonic spheres of inequality, such intersecting explorations of legal cultural production eclipse the space of the political. Approaches that downplay uneven relations in the process of lawmaking or the politics of incommensurability surrounding the basis for deriving justice, undermine the relevance of power and hegemony in shaping the conditions of the possible, in shaping the conditions for imagining "justice."

INTERNATIONAL "JUSTICE" VERSUS SPIRITUALLY DRIVEN RECONCILIATION AS JUSTICE

In relation to the incommensurability of uneven justice-producing domains, this chapter examines the Ugandan situation before the ICC, investigating how international intervention has undercut local victims' attempts to come to terms with the region's violent past. It has done this while exploring the competition over the expansion or restriction of the political sphere within which these interventions are occurring. The particular focus is on conflicting interpretations of justice, the role of various actors (ICC, NGOs, traditional chiefs, perpetrators, and victims) in contests over the ability of the Ugandan state to offer amnesty to its citizens, and the power of the ICC to prosecute Lord's Resistance Army (LRA) perpetrators for war crimes and crimes against humanity.

The Ugandan context raises several important questions for analysts: At what point should the independent prosecutor of the ICC intervene in national contestations? Is national reconciliation alone sufficient? Are judicial interventions appropriate, or are there other ways in which justice for victims might be achieved? In the emergent corpus of human rights-driven international law, the current trend requires states to prevent and punish various crimes against humanity and to restrict the space within which national amnesties can emerge (Laplanche 2007). One consequence of the articulation of justice that advocates international law over national law is that it reduces citizens in Uganda (and elsewhere) to victims whose very exclusion from political life is the necessary condition for political intervention by international legal regimes such as the ICC. The failure to treat Ugandans and other Africans as political agents creates, again, the conditions

for seeing Africans as in need of salvation by a benevolent “West.” The result is an African population characterized by what Agamben (1998) calls *zoe*, or “bare life” – a condition of extrapolitical, absolute victimhood in which life is reduced to the effort required to satisfy only the most basic needs of existence. (Agamben contrasts *zoe* with *bios*: politically or morally qualified life, the form of life found in a thriving community.)

Bare life exists in tension with another necessary project of the international human rights order: the effort to produce in postcolonial African regions political beings (liberal subjects) who are committed to implementing forms of justice that reinforce the domain of international justice. Such processes of subject (de)construction are often complex and contradictory; local refusals to comply with international legal demands and the creation or implementation of alternative forms of governance can result in their being either resisted or reinforced. In Uganda, this is made manifest in the conflict between international criminal prosecution and national–local reconciliation, highlighting the many unresolved issues of the ICC that are being brought to international attention by NGOs on both sides of the dispute.

On one side of this dispute are those who favor a local solution. Following Article 53 of the Rome Statute,¹ a range of NGOs and legal experts in Uganda, as well as elsewhere, argue that in the “interests of justice,” the prosecutor of the ICC should discontinue investigations and arrests in northern Uganda and allow Ugandan peace negotiations to take place. According to this argument, it is only by doing so that moral, legal, and political issues can be effectively addressed in regionally and historically complex situations and that local justice mechanisms can be implemented. On the other side is the lead prosecutor for the ICC and its global institutions, working alongside (now former) United Nations (UN) Secretary-General and various international human rights NGOs, who insist on the refusal of the ICC to comply with national amnesty provisions. Calling amnesties for war crimes and the like an abrogation of international law and even a recipe for disaster – “turning a blind eye to justice only undercuts durable peace”² – advocates of this movement have been central to the fight to maintain prosecution-driven justice. In the middle are the more complex and perhaps cynical positions of those who are intent on using the language of international criminal and humanitarian law instrumentally yet may be doing so in bad faith.

Among these are advocates accused of having mastered the basic discourse of internationalism and rule of law to make a living, although they are ultimately concerned with ethnic and family matters, not peace and justice on a national scale.

In interrogating the meaning of a path to international justice, it is critical to explore how, in the context of international criminal law, various understandings of justice overlay and contradict others. Especially pertinent are those paths to peace or justice that fulfill the immediate needs of victims, whereas the rule of law may cause more suffering long before anything resembling peace will be possible. As the legal anthropology literature has shown, diversity in justice conceptions is vast, ranging from differences in the basis for justice and equality (Bohannon, 1957; Gluckman 1965, 1973 [1955]; Kennett 1968; Greenhouse 1986; Rosen 1989; Wilson 2001; Bowen 2003), to differences in how people conceptualize rights (Mutua 2002), to differences in how they understand the duties of the individual to the state versus individual duties to ethnic, cultural, religious, or family groups (Maurer 2004; Moore 2005; Merry 2006b), as well as related differences in the perceived appropriateness of punishment (An-Na'im 1995, 1999). Given this diversity, we should be asking whether the growing expansion of different meanings of justice provides a new language by which people can defend the persecuted or unrepresented in ways not already available to societies. Following this line, we should also ask whether both the human rights movement and 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.

Beyond the issue of "justice," the larger theoretical question in a context such as northern Uganda, where victims have been living in extreme poverty in camps for displaced people for more than twelve years, is this: What kind of victims does the ICC require northern Uganda's citizens to be? This line of questioning highlights the ways that ICC mechanisms of political control influence Agamben's *bios-zoe* continuum, in which citizens can so easily come to represent bare life. The process of determining the strategy for maintaining life involves delineating political and moral life, managed by the political subjects of power relations, versus bare life, which exists outside of the realm of the political. It is this differentiation that demarcates which lives "matter" in the eyes of the world and that enables the ICC to claim jurisdiction and intervene.

Despite the grim ramifications of the construction and management of *roe* and *bios* categories, the victims of northern Uganda's warfare – who have been otherwise excluded from judicial and quasi-judicial proceedings – are now, through NGOs and governmental initiatives, becoming central players in the justice-making process. This inclusion of victims has taken shape as part of a bid toward reconciliation and the laying of new paths toward "traditional" justice. In this process, chiefs and townspeople alike use the language of "rights" and "forgiveness" and – according to Norbert Mao, chairman of northern Uganda's Gulu district, at the heart of the conflict – insist that "justice does not necessarily mean punishment" but is rather part of "aiming for a higher target of seeking a peaceful and reconciled society" in which Uganda can pursue its own ancient reconciliation rituals to end one of longest wars on the African continent.³ Today, those in sub-Saharan Africa who are victims of violence, refugees of war, and stricken by medical compromises are constantly enmeshed in relational connections that leave them situationally, but never acontextually, vulnerable to change. The Ugandan amnesty approach – rather than treating them as bare-life victims, in the fashion of the ICC – allows them to engage with perpetrators in rituals of reconciliation through which they may reproduce themselves as political beings.

However, as we shall see, whether perpetrators can or should be reintegrated into communities is at issue precisely because victims and their rights have taken center stage. Thus, the dispute among NGOs, the Ugandan government, and the ICC is not simply over the nature of perpetrators and how best to respond to their crimes; rather, it also over the nature of victims and how best to treat them as sociopolitical beings and as sovereign individuals who should be recognized as having the power to decide on the viability of "justice" in their own contexts. This includes whether Ugandans, members of a postcolonial African state, should be able to exercise the power of constitutional self-government to apply the constitutional terms of their Amnesty Act.

THE UGANDAN AMNESTY ACT AND THE DIFFICULTIES OF COMPLEMENTARITY IN ACTION

The Acholi-speaking people of Uganda are from the Luo ethnic group from the districts of Gulu, Kitgum, and Pader in northern Uganda. Popular and local lore describe them as having traveled to northern Uganda from the southern Sudan. By the end of the seventeenth century, they

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had settled in northern Uganda and set up chiefdoms headed by rulers known as *rwodi*. By the mid-nineteenth century, sixty small chiefdoms existed in eastern Acholiland. During Uganda's colonial period, the British encouraged political and economic development in the south of the country, but the Acholi and other northern ethnic groups supplied the south with manual labor and military might. This military power peaked with the July 1985 coup d'état staged by Acholi General Tito Okello of the Uganda National Liberation Army, ousting President Milton Obote. It ended six months later with Okello's defeat in a military coup led by Yoweri Museveni, the leader of the National Resistance Army, one of several forces that had been engaged in a five-year guerrilla war following Obote's purportedly rigged election in 1981 (Kasfir 1976; Mamdani 1988; Oloka-Onyango 1991).⁴

President Yoweri Museveni, having assumed power nondemocratically in a country fraught with ethnically motivated conflict and political struggle, offered pledges both to restore peace from ethnic strife and to rebuild Uganda's economy. Three successive presidential elections in 1996, 2000, and 2006 confirmed his rule and ushered in a period of relative economic stability.⁵ Violence persisted throughout the late 1980s, 1990s, and into the twenty-first century, however, and has continued to affect the northern region. For example, the LRA, formed in 1987 as a popular resistance movement against Museveni's National Resistance Movement government and transformed into a rebel paramilitary group, engaged in a violent campaign across northern Uganda, often spilling over into parts of southern Sudan. A series of cease-fires has been arranged through peace talks that commenced in July 2006.⁶

The LRA, a Ugandan rebel group of predominantly adult militia as well as more than ten thousand child soldiers,⁷ emerged from several splinter groups of the former Ugandan People's Democratic Army. It consists of predominantly ethnic Acholi who were displaced by Museveni's 1986 seizure of power and who were angry at what they saw as unfair governance. The leader of the LRA, Joseph Kony – a spirit medium who emerged after his initial success with the growing Holy Spirit Movement – has characterized its goal as replacing Museveni's parliamentary government with an administration that would enforce the biblical Ten Commandments (rather than a national constitution).⁸ One UN official in 2003 classified the contemporary violent struggles in Uganda as the “biggest forgotten, neglected humanitarian emergency in the world today,” blaming the conflict, which included regular attacks against civilians in northern Uganda, for the deaths

of tens of thousands and the displacement of 1.3 million.⁹ The LRA has been accused by members of the national and international communities of attacking and abducting some twenty thousand children; looting and destroying civilian property; killing civilians; and torturing, raping, and mutilating girls forced to serve as concubines for senior commanders.¹⁰

Responding to international pressure to end the northern violence and establish political and economic stability, Uganda signed the Rome Statute on March 17, 1999, and ratified it on June 14, 2002,¹¹ thus becoming the sixty-eighth member state of the ICC. In December 2003, President Museveni referred the jurisdiction for investigating criminal offenses allegedly committed by the LRA to the prosecutor of the ICC, Luis Moreno-Ocampo.¹² This occurred at a time when the Ugandan government was also drafting a legislative bill to implement the terms of the Rome Statute into national law. Moreno-Ocampo expressed concern that because of a conflict with Uganda's national Amnesty Act, the ICC was unable to investigate effectively LRA crimes committed by the five top commanders in Uganda after July 1, 2002.¹³ On July 29, 2004, however, he nonetheless determined that there was sufficient basis to start planning the first investigation of the ICC with the hope of pursuing jurisdiction over the case.¹⁴ In the summer of 2005, indictments for crimes against humanity were prepared by the ICC against LRA leader Joseph Kony and his top five commanders, and arrest warrants were issued under seal on July 8, and unsealed on October 13, 2005.¹⁵

These indictments have spawned a range of challenges concerning Uganda's sovereign right to resolve the conflict in alternative ways, as well as the right to postpone international proceedings until peace has been achieved. The former is particularly relevant given the parallel and largely irreconcilable reconciliation process that was evolving on the national scene while the ICC investigation was under way. The bill implementing the Rome Statute, submitted to the cabinet for approval on June 25, 2004, failed to remove governmental immunities and amnesties, including the Ugandan Amnesty Act passed by Parliament in January 2000.¹⁶ In late 2005, a Ugandan high court judge issued a ruling pronouncing that amnesty under local law remained available to all LRA rebels, including those indicted by the ICC. On April 18, 2006, the Ugandan Parliament passed an amendment to the 2000 Amnesty Act that excluded LRA leader Joseph Kony and his top

commanders from the amnesty.¹⁷ However, on July 4, 2006, Museveni announced that Uganda would grant LRA leader Kony total amnesty as long as he responded “positively” to the Southern Sudan–mediated peace talks and abandoned “terrorism”; the LRA, about to engage in those talks, rejected this offer.¹⁸ Museveni’s affirmation of state primacy came after the president, originally an ICC ally, criticized both the United Nations’ and the Democratic Republic of Congo’s government for failing to capture Kony in the Garamba National Park of Congo and to initiate peace talks with the LRA.¹⁹

In a country with a violence-ridden past, amnesty has come to be seen by some Ugandan citizens as the best way to rebuild the nation. Especially in the Acholi region, most heavily hit by the recent warfare, the various traditional reconciliation processes of *mato oput* have been seen as complementing the amnesty pardons offered by the state. This path to justice, however, is hardly complementary to that of the ICC.

AMNESTY AND THE “TRADITIONAL” ACHOLI PATH FOLLOWED BY UGANDA

An earlier amnesty bill had been introduced by the Ugandan government in 1998 in an attempt to use pardons for insurgents so as to end what looked like an intractable conflict.²⁰ Prior to that, *de facto* and *de jure* amnesties under the governmental National Resistance Movement had already been offered to various parties and groups/movements that had engaged in rebellion (notably the Uganda People’s Democratic Movement/Army [UPDM/A] and the Uganda People’s Front/Army [UPF/A]).²¹ Regarding the Amnesty Statute of 1987, a landmark in this history, Ugandan lawyer Barney Afako has noted:

[It] was passed by the National Resistance Council (NRC) [and was] professed to encourage various fighting groups and sponsors of insurgency to cease their activities. In particular, the statute targeted “Ugandans in exile who are afraid to return home due to fear of possible prosecution.” Under the statute, four offences – genocide, murder, kidnapping and rape – were considered too heinous to be included under the amnesty. Similarly, the subsequent 1998 Statute also sought to exclude certain offenders from amnesty.²²

Nonetheless, the 1998 Statute reflected the view held by many Ugandans that subjecting all LRA members to formal prosecution would not offer a valid or effective path toward peace.

Building on the tradition of the Amnesty Statutes of 1987 and 1998, the government adopted a reformed Amnesty Act in January 2000 for Ugandans involved in "acts of a war-like nature in various parts of the country."²³ The 2000 Act provides that

an Amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986[,] engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by (a) actual participation in combat; (b) collaborating with the perpetrators of the war or armed rebellion; (c) committing any other crime in the furtherance of the war or armed rebellion; or (d) assisting or aiding the conduct or prosecution of the war or armed rebellion.²⁴

The amnesty depends on individual application to the authorities for a "Certificate of Amnesty," along with a statement that the person concerned "renounces and abandons involvement in the war or armed rebellion."²⁵ The Act defines amnesty as "pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State."²⁶ The granting of amnesty for insurgency-related offences confers an irrevocable immunity from prosecution or punishment within the borders of Uganda (but not outside it). This immunity is underwritten in the Ugandan Constitution and has been established by the Ugandan Amnesty Commission (UAC).²⁷ Crucially, the 2000 Act promotes "appropriate reconciliation mechanisms in the affected areas."²⁸ In fact, forgiveness and reconciliation are said to be at the center of traditional Acholi beliefs. Many Acholi believe in the world of the "living-dead" and receive guidance on moral behavior from *jok*, gods or divine spirits, and ancestors. When a wrong is committed, these divine spirits are believed to send misfortune and illness to the community until appropriate actions are taken by the offender and leaders of the clans. Thus, the living-dead are said to play an active role in the world of the living, and an individual's actions can have consequences for the broader community. Thus, justice in this cosmology is a means of restoring social relations. Individuals are encouraged to accept responsibility for their actions voluntarily, and forgiveness, rather than revenge, is stressed.

In the Ugandan Acholi language, *amnesty* is usually translated as *kica*. The term resonates with historically embedded practices. Many people in that region see the mediation of the "traditional" chiefs (*rwodi*) as a particularly appropriate means to resolve disputes in the "traditional ways." The *mato oput*, as it is popularly known (the phrase

means “drinking the bitter root” in Acholi), is an Acholi reconciliation ceremony that is performed between two clans following the killing, whether accidental or intentional, of one clan member by another (Finnström 2004; T. Allen 2006).²⁹ It is the final stage to bring peace between the two clans and follows a period of separation, mediation, and negotiation led by the clan elders.

Beyond the goal of attaining peace between the living clans, the *mato oput* ceremony also has a key spiritual function, that of appeasing the spirit of the person who was killed.³⁰ Ancestors are often revered and feared in the traditional Acholi religion, therefore efforts must be made to keep them at peace. When a person is killed, the widespread belief is that they are unsettled and may seek revenge on the individual, the clan, and those surrounding the one who killed them. Some believe that the angry spirit may also be vengeful toward the person who finds their deceased body. The Acholi name this type of spirit *cen*, which must be appeased through ritual and ceremony to restore peace in the lives of the killer and those surrounding him or her. The *mato oput* ceremony is an essential practice to make this happen and is presented as a ceremony of the clan group, especially its inner family, in which the perpetrator acknowledges his or her wrongdoing and offers compensation to the victim.³¹

The ceremony is conducted in a variety of different forms, but common characteristics include the exchange of a slaughtered sheep (provided by the offender) and goat (provided by the victim's relatives), and the drinking of the bitter herb, *oput*, by both clans. The ceremony is moderated by elders of the opposing clans, in which a consensus is reached about the event in question, and an appropriate compensation is negotiated for the victim or victim's family. The ceremony culminates in both parties drinking of the bitter herb, which “means that the two conflicting parties accept ‘the bitterness of the past and promise never to taste such bitterness again.’”³²

It is said that “many Acholi believe [*mato oput*] can bring true healing in a way that formal justice system cannot.”³³ The point is not to be punitive but to restore social harmony within the affected community. Because of the perception of the ritual's effectiveness as a local form of justice, *mato oput* ceremonies are being supported and institutionalized by governmental as well as nongovernmental organizations throughout the northern region as an alternative path to national and international justice.³⁴ Since 2001, the district of Kitgum in northern Uganda has regularly earmarked funding for elders to carry out similar atonement

rituals elsewhere. Ceremonies have taken place in Pabbo, Gulu district, and others have been planned for different parts of the Acholi region. For example, in a project supported by the Belgian government, the *rwodi* of all the Acholi clans were reinstated and the *lawi rwodi* (head chief) was elected by the other *rwodi* in Pajule. A group *mato oput* ceremony was held in November 2001, which involved roughly twenty LRA combatants, recently returned to the community. The ceremony was intended to demonstrate the support of the wider Ugandan community and was attended by representatives from NGOs and churches, as well as Acholi returnees and government officials, the amnesty commissioners, and senior army commanders.

Many LRA combatants have been forcibly abducted, displaced, or victimized themselves. As a result, there are limitations as to how the formal justice system can recognize these nuances in legal and moral guilt. The traditional Acholi process of reconciliation has been promoted as an alternative to retributive justice and is seen as a means to end the war and reintegrate communities torn by conflict.³⁵ It was clear from the observations of our research team that the traditional ritual of *mato oput* has been adapted for conflict-related crimes. The ceremonies have incorporated aspects of the justice process, such as truth telling and symbolic compensation. Some people we interviewed spoke of high levels of moral empathy among the Acholi people to explain the need for traditional ceremonies such as *mato oput*. Over the course of our team's travels to document these ceremonies, it was clear that the ceremony was the final act of a long process leading up to reconciliation that culminates in the sharing of the symbolic, bitter drink from which the ritual takes its name.

The first phase involves the separation and suspension of all communications and relationships between the two clans, which acts as a "cooling off" period. It is also intended to prevent any escalation of the conflict. During this period, necessary steps are taken to abide by the legal aspects of committing the crime, such as filing reports with the police. The elders of each clan are also informed of the crime at this time. Initial talks may begin between the clans; however, if they become too heated and unproductive, they are delayed until a later time. Once negotiations begin, the two clans meet to discuss compensation and how to move forward to achieve full reconciliation. This phase may finish quickly; however, in some cases it may last for years. After all the conditions for peace have been agreed on, a date is set for the *mato oput* ceremony.³⁶

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A *New York Times* feature article welcomed the recourse to “traditional justice” in seeking reconciliation through *mato oput*:

The other day, an assembly of Acholi chiefs put the notion of forgiveness into action. As they looked on, 28 young men and women who had recently defected from the rebels lined up according to rank on a hilltop overlooking this war-scar[r]ed regional capital, with a one-legged lieutenant colonel in the lead and some adolescent privates bringing up the rear. They had killed and maimed together. They had raped and pillaged. One after the other, they stuck their bare right feet in a freshly cracked egg, with the lieutenant colonel, who lost his right leg to a bomb, inserting his right crutch in the egg instead. The egg symbolizes innocent life, according to local custom, and by dabbing themselves in it the killers are restoring themselves to the way they used to be.

Next, the former fighters brushed against the branch of a pobo tree, which symbolically cleansed them. By stepping over a pole, they were welcomed back into the community by Mr. [David Onen] Acana [II, head chief] and the other chiefs.

“I ask for your forgiveness,” said Charles Otim, 34, the rebel lieutenant colonel, who had been abducted by the rebels himself, at the age of 16, early in the war. “We have wronged you.” (Lacey 2005)

Not only *mato oput* but also individual cleansing rituals have taken place whenever former LRA members have returned to the community. These rituals involve both the political and spiritual domains of engagement. Through rites of reintegration, then, victims are reunited with ex-combatants both politically and spiritually. Nevertheless, there are many objections toward the use of these traditional methods of reconciliation for conflict-related crimes. Our extensive interviews, conducted in the Acholi regions of Amuru, Gulu, Kitgum, and Pader, yielded three central criticisms of these traditional methods. As also argued by Kevin Ward (2001) and Erin Baines (2007) despite the attractiveness of local justice mechanisms, the following reservations exist:

1. A large number of the crimes committed are outside the jurisdiction of Acholi traditional laws, and the younger generations involved are beyond the reach of traditional customs.
2. The Acholi traditional judicial domain tends to be male-dominated, and thus inadequate for addressing domestic problems related to husbands and wives.

3. The role of Christianity is an important channel for understanding Acholi self-expression of traditional beliefs (Ward 2001) and cannot be understood in its absence.

During our 2007 field visits in the Acholi area, what further complicated our understandings of these “local justice” methods was the precarious role of Christianity in reinventing particular forms of reconciliation rituals. Churches were present throughout the region, especially in the internally displaced persons camps and towns of Acholiland in ways that were unparalleled by any other religious organization. It is clear that the Anglican Church has used traditional beliefs both to explain Acholi grievances to the government and to facilitate the community’s own understanding of its suffering (Ward 2001:209–10). And as such, Christian leaders have emerged as a voice for indigenous religious values and have quite seamlessly applied the ideas behind Acholi theology – ideas regarding reconciliation, forgiveness, and truth telling – to the principles of the Ten Commandments (Ward 2001).

A range of organizations is actively participating in ensuring that these revived rituals are integrated into the reconciliation process. As noted by Janet Anderson of the Institute for War and Peace Reporting:

Northern Ugandan religious leaders and peace negotiator Betty Bigombe, a politician and former international diplomat, have been calling for the ICC to back off in order to give local peace initiatives, based on traditional reconciliation methods, a chance to end the war. The religious leaders, including local Roman Catholic Archbishop John Baptist Odama, allege that the ICC’s decision to get involved in northern Uganda’s tragedy has undermined their own efforts to build the rebels’ confidence in peace talks.³⁷

Acholi reconciliation traditions are becoming popularized as a result of the efforts of international development organizations, NGOs, news reporters, and Western researchers sympathetic to local struggles. My findings have also shown that talk of forgiveness is part of a larger discursive process that notably intersects with cultural familiarity and ethnic celebration in the midst of ethnically related violence. When given a choice between Acholi traditions and international displays of ‘justice,’ most choose that which is familiar, despite their aspirations for intervention from outside. Interestingly, only 2 percent of the five hundred people interviewed seemed optimistic about the peace process.

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However, they feared that it would not be successful if derailed by the presence of the ICC.³⁸

I am raising these alternative reconciliation methods neither to romanticize traditional forms of justice as reconciliatory in nature nor to suggest that social-healing rituals reflect the totality of people's understandings of justice. Rather, I do so to highlight how the contest over the jurisdiction of LRA crimes is indeed reflective of the politics of friction, in Tsing's sense in understanding competing social practices that exist alongside ICC justice mechanisms. Yet in detailing the ideological – spiritual and secular – differences that shape the power struggles among *mato oput*, Uganda's Amnesty Act, and the ICC with regard to jurisdiction, it is the politics of incommensurability and the inability of competing sides to recognize the conceptual relevance of the others that necessarily divide people's measure of the efficacy of the different justice approaches.

Acholi traditional justice mechanisms represent ritualized public expressions of wrongdoing and corrective measures toward reconciliation that have adapted symbolic meanings to contemporary social circumstances. Although these various justice-making mechanisms provide alternatives to international legal regimes, they are also likely to perpetuate inequalities as well (Nader 2002), especially as increasing numbers of victims – disenfranchised and impoverished – gain access to the political sphere. I met people in the region who have been disillusioned by social rituals that lack judicial power or who were wary of the ability of local people to render fair judgments to women. Some of these were individuals from afflicted villages and communities who argued that some ex-combatants, especially those who do not believe in the power of spiritual redemption, cannot be reconciled using traditional justice mechanisms. Those favoring international and national juridical paths to justice argued that the old systems of traditional justice no longer work in Uganda's contemporary context of "senseless violence."

Others who remain skeptical of the efficacy of traditional justice mechanisms – international NGOs such as the ICC-oriented Victims' Rights Working Group, for example – have lobbied for victims' interests to be taken into account through the exercise of judicial mechanisms, both international and national. This has meant rebutting those advocates like Betty Bigombe who call for peace at all costs. These NGOs have argued that only judicial paths will achieve sustainable peace. For them, the absence of law is the absence of justice and, as such, it will

undermine victims' rights and dismiss their suffering as unimportant. As their literature indicates,

impunity might serve as a quick, short-term solution, but it cannot root out the seeds that led to the conflict nor deter future crimes. Indeed, denying justice can lead to further human rights violations. For example, reports from northern Uganda indicate that amnestied rebels continue to mete out abuses on victims even when they have been released from captivity in the bush. . . . International obligations to ensure justice for crimes under international law should be upheld.³⁹

Not surprisingly, various international NGOs, such as Amnesty International and others that are part of the Coalition for the ICC (CICC), support this position and are working alongside the ICC to block local attempts at amnesty. The net result is that Ugandan pro-peace advocates see themselves as facing the political challenge of having to convince international institutions to respect its chosen path toward peace, while having to put in place processes of justice-based accountability.⁴⁰

Thus, on July 21, 2006, under the guardianship of the government of Southern Sudan, the LRA and the Ugandan government began peace talks in Juba, Southern Sudan.⁴¹ This effort to end the war in northern Uganda reflects a path toward reconciliation that has been seen by all parties as being long overdue. From the start, the Ugandan government demanded that the LRA meet all four of the following conditions: "Renounce and abandon all forms of terrorism[.] Cease all forms of hostilities[.] Dissolve itself, and hand over all arms and ammunition in its possession together with their inventory[.] Assemble in agreed locations where they will be demobilised, disarmed and documented." The Ugandan government then offered, "upon successful conclusion of the talks," to reintegrate ex-combatants into "civilian productive life"; assist with their educational and vocational training, as well as with their resettlement into civilian life; and provide "cultural, religious leaders and all stakeholders" with the resources to allow ex-combatants to engage in social rituals and traditional justice mechanisms, such as *mato oput*, in order to reconcile with their communities.⁴²

CHALLENGES AND CONTESTATIONS TO THE ICC IN UGANDA

At the heart of the disagreement between the Ugandan government and the ICC are questions concerning the primacy of international law

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over national law. For in the case of Uganda, civil war in the north and the economic, social, and cultural rights of its IDPs (internally displaced persons) and its various urban populations remain central to the national debates over appropriate jurisdiction and the ways that governmental action should proceed. Uganda's Amnesty Act, extended to 2010,⁴³ offers rebels and liberation activists amnesty if they end their violence and engage in the brokering of peace. Some working on behalf of the ICC find themselves at odds with its positions or those of CICC or other rule of law organizations, not always agreeing with their recommendations for action in view of the local implications.

Given Uganda's nationally legislated amnesty, the international court has been condemned by many African NGO advocates, mediators, and academics for intervening in a fragile regional peace process in a way that is bound to make Ugandans even more vulnerable to an LRA backlash. Supporters of the ICC movement, including a number of Ugandan parliamentarians as well as various legal advisors to the president, concerned that the Ugandan Amnesty Act would compromise the ICC's ability to exercise jurisdiction, drafted the Rome Statute compliance bill for treaty implementation to be presented before the Ugandan Parliament in December 2004.

The network of Ugandan NGOs working on treaty compliance, with the help of international experts, in turn developed an advocacy campaign to comment on the draft compliance bill being presented by the parliamentarians. In addition, various international human rights groups commented on the draft bill, highlighting its problems; some did not consider the Ugandan NGOs' strategies for the review of the draft compliance bill to be timely or strategic enough to produce the appropriate results. To present its own analysis, a prominent NGO actively engaged in the CICC produced a twenty-page document that raised concerns about Uganda's International Criminal Court Bill 2004.⁴⁴ A later report, offered in the spirit of ensuring the most effective implementing legislation, detailed several criticisms of Uganda's draft bill (as well as those of other states), the most important being in regard to Uganda's Amnesty Act, which the document predicted was bound to cause jurisdictional problems. Other issues included:

Weak definitions of crimes; unsatisfactory principles of criminal responsibility and defenses; failure to provide for universal jurisdiction to the full extent permitted by international law; political control over the initiation

of prosecutions; failure to provide for the speediest and most efficient procedures for reparations to victims; inclusion of provisions that prevent or could potentially prevent cooperation with the Court; failure to provide for persons sentenced by the Court to serve sentences in national prisons; and failure to establish training programmes for national authorities on effective implementation of the Rome Statute.⁴⁵

The organization not only released its Uganda report to its vast membership but also posted it on its Web site and made a published version available to various Ugandan government offices. This posturing of absolute morality by many international human rights NGOs is not atypical of their commitment to the spread of the rule of law project and actually highlights the perceived hierarchy of agendas in these international contexts.

The Committee on Legal and Parliamentary Affairs, a Ugandan parliamentary commission charged with the task of researching and analyzing the Rome Statute compliance bill, solicited input from various Ugandan NGOs, assembled its facts, and submitted its report to the relevant parliamentary committee on December 14, 2004. Outlining the goals of the bill and identifying problems in it, yet affirming the ICC as the answer to "justice" in postwar Uganda, the committee called on the Ugandan Executive to "give the force of law in Uganda to the Statute of the International Criminal Court" and to "promote universal rights" for all.⁴⁶ However, writing with the realities of war in their backyards and the urgency of economic and cultural attention to the most appropriate paths to "justice," the report's authors also acknowledged disagreements over which strategy was best for Uganda's transition from war to peace.

My research into these disagreements revealed that there were three primary, although not entirely mutually exclusive, camps represented in the debates over the ICC–Uganda contestations: those who questioned whether ICC intervention should proceed at all; those who believed that the alternative of the Ugandan Amnesty Act – in which the perpetrators of crime would be offered a pardon, thereby ending the war immediately – might be a better strategy; and those who felt that it was not possible for Ugandans to be objective and, thus, that it was critical for ICC intervention to proceed. Notwithstanding its acknowledgment of the debate over how to proceed, the committee's report endorsed the jurisdictional integrity of the Rome

Statute but warned that the draft bill did not provide for a legally binding procedure for the “harmonisation of the Ugandan national system of laws and procedures, and the traditional reconciliation mechanism, with the Rome Statute.”⁴⁷ As a result, it proposed several amendments to the effect that the prosecutor for the ICC must not disregard national and traditional mechanisms of justice and must consider processes that were under way before the commencement of the investigations. In short, the existing national mechanisms, based on the existing legal framework and traditional customs, must inform and guide the prosecutor in his decision whether to prosecute. The report also recommended that a new program should be introduced in the bill to provide for alternative accountability procedures that would still meet the standards of admissibility outlined in the Rome Statute.

The differing advocacy approaches of and analytical conclusions reached by domestic NGOs, international organizations, and Ugandan legislators – particularly their disparate levels of respect for culturally shaped and politically relevant justice mechanisms – highlight some of the typical controversies surrounding the ICC and CICC “paths to justice,” and their incommensurability in addressing seriously the realities of war and violence, economic displacement, and inequality in the Ugandan landscape. These differences speak, in part, to contradictory agendas between those NGOs committed to working within local contexts and those dependent on international donor imperatives that delimit the power that their own vernacular knowledge forms can have in shaping solutions.

For the ICC and its supporters, the challenges ahead include creating the conditions through which its legal primacy can be established and charting considerations of victims that are in the interests of justice. At the heart of the contestations in Uganda are questions concerning whether the prosecutor for the ICC should pursue investigations and arrests prior to the end of the war in northern Uganda, or whether, “in the interests of justice,”⁴⁸ he should deem his findings inadmissible and instead support Ugandan President Museveni’s bid for peace.⁴⁹ This would enable the Ugandan government to apply its national legislation, the Amnesty Act, and grant amnesty to the perpetrators of crimes against humanity – some of whom were also victims of war – while also applying traditional justice mechanisms to Ugandan paths to justice.

In "the Interests of Justice": The Rights of Victims versus the Rights of the State

As discussed in Chapter 2, one of the greatest innovations of the Rome Statute is the central role accorded to victims. As noted in one of the reports from the Office of the Prosecutor (OTP):

For the first time in the history of international criminal justice, victims have the possibility under the Statute to present their views and concerns to the Court. . . . The experience of the Court to date proves that understanding the interests of victims in relation to the decision to initiate an investigation is a very complex matter. While the wording of Article 53(1)(c) implies that the interests of victims will generally weigh in favour of prosecution, . . . The Office will give due consideration to the different views of victims, their communities and the broader societies in which it may be required to act.⁵⁰ . . . Understanding the interests of victims may require other forms of dialogue besides direct discussions with victims themselves. It may be important to seek the views of respected intermediaries and representatives, or those who may be able to provide a comprehensive overview of a complex situation. . . . The OTP's activities in relation to Uganda exemplify this approach. The OTP has conducted more than 25 missions to Uganda for the purpose of listening to the concerns of victims and representatives of local communities.⁵¹

Since the release of the first set of ICC-related arrest warrants, there have been several discussions about the meaning and possible interpretation of Article 53 of the Rome Statute in which considerations of the clause "in the interests of justice" have become a central factor in the admissibility of a criminal case. Article 53, titled "Initiation of an Investigation," describes the substantive rules for an investigation and prosecution of crimes under the subject matter jurisdiction of the ICC. In detailing the initiation of a prosecution, it indicates that "the Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute." It then outlines the considerations for deciding whether to initiate an investigation.⁵² If the prosecutor determines that there is no basis on which to proceed, then he or she is expected to inform the Pre-Trial Chamber of that decision. The prosecutor is then expected to inform the inflicted state of the findings from the investigation and the reasons for such a conclusion. In determining whether there is sufficient basis for a prosecution,

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Article 53(1)(c) refers to inadmissibility if there is a determination that proceeding with the prosecution is not “in the interests of justice.” However, deciding what is and what is not in the interests of justice remains one of the most underdeveloped and contested concepts in the statute. This is primarily because the concept of acting in the interests of justice extends well beyond the exercise of criminal justice: it extends into political and moral arenas, thereby including many considerations and purposes.

What particular notion of “victim” seems to inform the OTP’s commitment to “the interests of justice,” and how does the OTP – and international organizations more generally – seem to conceive of the role of state sovereignty? In June 2006, the OTP, responding to questions about the court’s political motivations, circulated to various international NGOs and consultants two draft documents that further expanded on the OTP’s selection criteria for judicial investigations and clarified the criteria being used by the OTP in pursuing cases. The determinations for cases were described as being shaped by four guiding principles: independence, impartiality, objectivity, and nondiscrimination; however, the most critical were the justifications of decisions to proceed or not proceed with judicial action in “the interests of justice.”⁵³ These determinations require legal analytic tests guided by the purposes of the court as well as larger political determinations that are connected to victim’s justice. The legal tests include ending impunity while also guaranteeing respect for international justice and, in so doing, justifying further action that balances the interests of justice in relation to both the gravity of the crime and the interests of the victims to end violence. These tests highlight the considerations for weighing the terms for justice.

In the Uganda case – that of *The Prosecutor v. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen* – the OTP reported that it had conducted more than twenty missions to hear the concerns of representatives of local Ugandan communities.⁵⁴ These meetings provided increased awareness of the differences among victims and their notions of justice and drew investigators’ attention to the “dangers” of alternative justice mechanisms. Accordingly, the OTP has continued to express sensitivity to the deep scars that victims of the conflict have endured. Nevertheless, it has insisted that “only in exceptional circumstances will they conclude that an investigation or a prosecution may not serve the interests of justice.”⁵⁵

THE OBLIGATION OF STATES TO UPHOLD INTERNATIONAL LAW VERSUS THEIR RIGHT TO RESOLVE DISPUTES IN THEIR CHOSEN WAY

Many developments in the past fifteen years or more point to a consistent trend in establishing the duty of states to prosecute crimes of international concern committed within their jurisdiction.⁵⁶ This trend is also manifest in the language of the Preamble to the Rome Statute, in which members recognize that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" (para. 6). This understanding of the responsibility of states that have ratified the Rome Statute appears to be supported by the UN Commission on Human Rights, which has incorporated it in adopting an updated set of principles for the protection and promotion of human rights.⁵⁷ As argued by the OTP, the interpretation of the concept of "the interests of justice" should be guided by the objects and purpose of the statute. Accordingly, the pursuit of those (such as LRA perpetrators) who are responsible for crimes under the jurisdiction of the court, subject to Article 17 of the Rome Statute, is warranted.⁵⁸ One of the aforementioned OTP draft documents makes it clear that respect for victims in relation to the "degree of legitimacy and the extent to which serious efforts had been made to respect the rule of law would be among the important factors the Prosecutor may take into account in considering national approaches."⁵⁹ In other words, the OTP will seek to work with various persons to ensure the maximum impact.

Human Rights Watch, among a range of other international NGOs, has agreed with the OTP position:

International law rejects impunity for serious crimes, such as genocide, war crimes, crimes against humanity and torture. International treaties, including the U.N. Convention against Torture, the Geneva Conventions, and the Rome Statute of the International Criminal Court, require parties to ensure alleged perpetrators of serious crimes are prosecuted. Uganda has ratified each of these in addition to numerous other human rights treaties. . . . The creation of the International Criminal Court and other international criminal tribunals to prosecute genocide, war crimes, crimes against humanity or other serious violations of humanitarian law illustrates the strong international commitment to justice for serious crimes.⁶⁰

Regarding amnesties, Richard Dicker, director of Human Rights Watch's International Justice Program, asked, "How long can a peace

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based on this kind of deal last?"⁶¹ To supplement investigation and prosecutions by the ICC, Human Rights Watch recommends that

Uganda also should conduct meaningful prosecutions in its own courts. . . . [T]he Ugandan government should establish a truth commission or another truth-telling process that would allow people in northern Uganda a forum to speak about the human rights abuses that occurred during the war. This process could work alongside traditional reconciliation measures in which those affected wish to participate.⁶²

In questioning amnesty and other traditional justice mechanisms, various representatives from Amnesty International's New York office have argued that amnesties as solutions for peace and reconciliation only lead to undercutting durable peace. A range of local Ugandan NGOs, however, have insisted that the ICC's 2005 indictment of five LRA leaders should not preclude these peace talks from taking place nor obstruct amnesty as one of many "paths to justice." The intervention by a number of international organizations such as Amnesty International and Human Rights Watch is often interpreted by Ugandan NGOs as undermining the local NGO authority. They feel that these differences in strategies and approaches are typical of the micropolitics of collaborations with international NGOs. Various people with whom I developed a close relationship insisted that "this was not unusual."⁶³ Many argued that one of the ways that Africa has been pathologized in world history has been through the implicit assumption that African societies are unable to address their own problems and are therefore in need of Western interventions. They see this intervention as symptomatic of this bias, highlighting the way that African organizations are often made to comply with the strategies promoted by leadership from the United States and Western Europe.⁶⁴ Arguing that international law recognizes Uganda's sovereign right and obligation to resolve conflict peacefully and to address alleged offences, Zachary Lomo, then the director of the Refugee Law Project, and James Otto, director of Uganda's Human Rights Focus referenced the UN Charter as "uphold[ing] the principle of self-determination of peoples."⁶⁵ They have also pointed out the "Rome Statute's principles of complementarity and admissibility [through which] Uganda also has a right to assume responsibility for dealing with criminal charges." As they conclude:

Ugandan efforts to address the tensions between peace and justice are clearly embodied in the Amnesty Law of 2000, an instrument which involved

considerable democratic consultation, was enacted by the Ugandan Parliament, and long pre-dates the ICC's intervention in 2004. Drawing from national procedures and local traditions, the people of Uganda are seeking to complement the Amnesty by developing accountability mechanisms compatible with the twin goals of peace and justice. Further procedures that integrate fact-finding, victim participation, and reconciliation are being actively pursued.

After twenty years of conflict, northern Uganda has an opportunity to work towards a non-violent resolution, an outcome which would allow displaced communities to finally go home and workable accountability options to be brought into focus. In the interests of victims and in the interests of justice, therefore, we urge the ICC and others concerned about northern Uganda and the neighbouring regions to give peace a chance.

Note that on both sides of the debate are questions about what is actually in the interests of victims (or those so deemed). The answer to these questions is central to the reconfiguration of sovereignty today. In the absence of monarchs and absolutist states, and given that we have moved beyond the period of noninterventionist state sovereignty of the early twentieth century, it is clear that the new (transnational) sovereignty must consider "victims" as central.

Victims, the State of Exception, and the New "New Sovereignty"

In *The New Sovereignty* (1995), Abram Chayes and Antonia Handler Chayes argue that the exercise of sovereignty by states in the late twentieth century was characterized by membership in good standing to various international networks. By dismissing approaches to sovereignty that focus on a model of coercive enforcement, they proposed a new "managerial model" (1995:3) of treaty compliance in which the new sovereignty could be described as an "elaboration and application of treaty norms" (Ibid., 123). Accordingly, membership in the international system is made possible through compliance with treaty obligations. Cast this way, the continuing dialogue between international officials and nongovernmental organizations generates much pressure to resolve problems of noncompliance. Chayes and Chayes argue that the new sovereignty no longer "consists in the freedom of states to act independently in their perceived self-interest, but in membership in reasonably good standing in the regimes that make up the substance of international life" (p. 27). Contending that to be competitive and relevant in the world economy, nation-states must submit to impositions of the international system and, in so doing, are accepted into a complex

web of regulatory agreements, the authors suggest recasting the language of sovereignty in more complex terms that articulate the growing networks of obligation connected to international membership.

Although membership in the international order is certainly a critical consideration for how and why national states act, it is also important to recognize that definitions of compliance are no longer being managed solely by the state alone. Complex and undecided relationships between the international and the national (including constitutional provisions and legal norms) characterize the new regime, especially postcolonial African states within it. The struggles it generates over state and international authority are controversial. Multiple international and supranational organizations compete to set the parameters of decisions related to the sovereign decision of how the terms for maintaining life should be established. The inequalities between refugee status and those in positions of privilege are theorized by what Giorgio Agamben (1998, 2005) has referred to as the "state of exception," in which constituent power (the actual power to create government) is seen as being outside of the judicial order and in the realm of an extraordinary state that operates beyond the law.

State of exception describes the authority to suspend the law in the name of an emergency. In the context of ethnic violence, that emergency might be one in which citizens use paramilitary coups to condemn fellow citizens to the status of bare life, using police, army militia, or death squad resources to reduce life to death. The state of exception is also reflected in the power of individuals working through global institutions to manage international justice mechanisms and suspend national-level processes. This is directly relevant to the competition between the ICC and national-level strategies for justice in Uganda because it relates to the power to decide when and with respect to whom the law does or does not apply. For the ICC relies on states to implement its laws by eliminating national laws that conflict with them. This expectation of international supremacy points to the relative power of international courts in relation to states. Although the 120 states that initially signed the Rome Statute of the ICC participated in its development, its writing, and the passing of amendments, cloaked in the universalist language of the ICC are relations of dominance that have privileged particular norms of juridical justice over others. This is because the conditions for inclusion in the ICC already presuppose particular presumptions about the supremacy of international law over quasi-judicial mechanisms. During the UN Assembly of States Parties

meetings and the UN-based General Assembly in which the provisions of the Rome Statute were established,⁶⁶ politically “weak” states were rarely in positions to overpower “stronger” states. As such, the relations between different types of nation-state and international institutions derive from contests over the power of authority – the power to decide to claim universal jurisdiction and form alliances with international institutions or to implement amnesty laws and defer to state sovereignty.

The path to international justice has thus come to cloak an unequal distribution of power in a language of jurisdiction and membership. This new form of governmentality, in which states in the Global North control the terms of judicial and social compliance for states in the South, highlights what Suárez-Orozco (2005:6) has referred to as the *hyper-presence* and *hyper-absence* of the state – a concept that I articulate here with reference to the ultraexpansion of the statecraft, but not necessarily the state, as a result of the change in governance mechanisms based in networks of international, national, and local spheres of individual and institutional power. Crucially, these networks do not themselves constitute sovereignty. Rather, they work with states and operate through such institutions as international courts and human rights agencies, through which the coordination and determination of new disciplinary principles are mobilized in strategic relation to each other.

Various extranational tribunals have become forums for the development of new paths to justice in African postcolonial state contexts. The management of contemporary forms of violence can no longer be understood as operating through single forms of sovereign power that reflect one path or one hegemonic notion of justice. Rather, the modernity of international criminal law – alongside the work of NGOs that propel human rights imperatives – represents a range of forces that interact with each other and produce hybrid articulations of justice. As discussed in Chapter 1,⁶⁷ this supranational sphere of governmentality is being propelled through the legal advocacy of elite cosmopolitans operating within discrepant orders complicated by persisting postcolonial histories of deeply entrenched social divisions. The paradox of sovereignty, therefore, is its ability to make real the notion of the universal in a way that in fact perpetuates the exclusion of certain groups from equal consideration and participation.

Such an approach locates sovereignty not in the realm of everyday people, wherein sovereignty is diverse and diffuse, but in the realm of those who participate in the decision-making process within which

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suspect rights can be suspended and that process accorded legitimacy.⁶⁸ These forms of power lay in the realm of international court regimes, the powers of which represent extensions of some of the most influential nation-states. Moreover, postcolonial state sovereignty does not always trump international legal regimes, which are increasingly forming the model for regulating the contemporary governmental axis. Yet in the process, what we see is the ability of the law to abandon human suffering – to enable the continuation of bare life.

This bare-life status, the reality of those in the modern concentration camp – the refugee camp, the shanty town, the IDP camp – and of those awaiting capital punishment, constitutes the life that exists outside of the law but that international law needs (and claims) to protect. As Agamben (1998) reminds us, in ancient Roman law, the *homo sacer* was someone who could be killed with impunity but whose death had no sacrificial value. This figure, we know, offers the key to understanding political power and explains the “paradox of [Carl] Schmitt’s concept of sovereignty” as actually being the *essence* of sovereignty. In that construct the sovereign was the person “who decides on the state of exception,”⁶⁹ thereby maintaining a relation to the exception and, in so doing, constituting itself as a rule. Agamben’s notion of sovereignty does not move from the domain of the imperial territorial state, and imperial Europe is a trope for understanding sovereignty everywhere (Agamben 2005).

The international criminal law regime reproduces a relation of exclusion in which these various institutions for the production of justice serve as conduits for the normative categories of victim and perpetrator in sub-Saharan Africa.⁷⁰ According to this position, “victims” are represented through the jurisdictional claims of the ICC as a category of individuals to be saved by global rule of law institutions. This process, in which international organizations take on concerns on behalf of victims for the purposes of humanitarianism, reflects the limits of international cooperation, highlighting the relegation of victims’ agency outside of the political sphere. For in the local realm, victims are included and central to reconciliation and, at times, are part of the state criminal adjudicatory process. In the international realm, however, it is through their very exclusion as political agents, or at least agents whose participation is circumscribed in particular ways, that they are included in victims’ protection and compensation programs. They are incorporated into the international political process only by virtue of their symbolic power as dispossessed agents in need of aid.

Although many scholars of sovereignty studies have heralded this age of globalization as an age of international cooperation and respect among different actors – the state, NGOs, and victims – the space for the inclusion of victims and postcolonial sovereignty has not in fact produced the possibility for a new immanent form of genuine justice making. The path to international justice has not surpassed what Partha Chatterjee calls a “public rhetoric of moral virtue” (2005:491) in which a specific set of techniques for the production of democratic consent are deployed to ensure the expansion of the international force of law. As explored in Chapter 2,⁷¹ victims are not expected to interpret or exercise legal power in their own right, other than by testifying in legal proceedings when called on to do so. To some extent, the same can also be said of “perpetrators”: they are not expected to exercise the sovereign right to negotiate terms of the peace accords or the type of justice regime they prefer. The new sovereignty represents the power of an international body to declare the exception through the moral imperative of justice and the authority to take on (or take over) the tasks of “educating, disciplining and training” (Chatterjee 2005:496), as well as to determine the terms of punishment.

Even as this new model of international justice is on the rise, a range of new national punishment approaches in the Global North have combined both *retributive* justice models (in which the punishment imposed is seen as repayment or revenge for the offense committed) and *rehabilitation* models (in which society assists the accused in changing his or her behavior), generating new forms of *restorative* justice that emphasize the harm done to persons and relationships rather than the violation of the law (Orentlicher 2007).⁷² These approaches, like that of the traditional justice mechanisms in Uganda, focus on both the survivors of crime and the offenders (Pain and Madit 1997; Rachels 1997). They suggest the possibility of enabling the offender to recognize the injustice he or she has committed and to participate in negotiating restoration through community involvement. Many such notions of restorative justice as practiced in the “West” have historically been shaped by Christian values of personal salvation and peace-making, forgiveness and healing. Secularized in the 1980s and 1990s, these principled approaches have been incorporated in judiciaries in the United States, Canada, and parts of Europe, and they echo a range of nonsecular legal contexts, such as that of Uganda, in which traditional justice is being used to compensate for a failed judicial system. My point here is not that only such restorative justice mechanisms

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are viable in contexts in which civil war and ethnic hatred have led to the decimation of communities but that the choice of rebuilding and supporting Uganda's judiciary alongside its various traditional restorative justice mechanisms is one that should be considered in the interests of justice as well as peace. The reality, however, is that to speak of the new sovereignty today is to speak of the movement of the force of law, its techniques of coercion and disciplinary mechanisms, but not the foundations that may make a new world order possible. Such a reconfiguration of sovereignty as global and national equality would involve the erasure of various structural violences closely aligned with neoliberal capitalism. This type of liberatory approach to sovereignty opens up for scrutiny new sites of power in which the rule of international law, by suspending the possibility of national jurisdiction (in Uganda this means the application of amnesties), is allowed to determine the relevancy of alternative justice mechanisms. In doing so, the rule of international law too often denies local responses to injustice and treats victims as docile agents in need of salvation. Its moral universals disregard difference and enable the perpetuation of exclusion.

As a far from neutral project, international justice does not operate in an explicitly heavy-handed way through mechanisms blatantly forcing people to submit to its teachings. Rather, the contemporary effectiveness of international criminal law lies in its alluring promise to transcend injustice while obliquely, but effectively, subverting the very inclusions it in fact seeks to protect. These justice hegemonies work alongside a growing regime for the universal establishment of rule of law and represent new pressures toward the supranational management not only of crime but also of new reporting mechanisms that require international organizations to document, account for, and manage the human body in particular ways, in accordance with carefully crafted treaty laws and regulations (see, e.g., the missions of the World Health Organization or the International Labour Organization). The new sovereignty provides rationalities intended to celebrate the utility of contemporary democracy as a viable form of government in the late twentieth and early twenty-first centuries, and their trajectories point to what international law needs to reshape the biopolitical subject outside of the parameters of state institutions.

Through the moral and political force of humanitarianism, invocations of justice as universal contribute to establishing a new moral economy according to particular human rights principles, always clarifying what is legal and illegal, acceptable and unacceptable, and, as

such, participating in maintaining notions of the “good life,” within “normal” spheres of life relations – the building of a home environment free of violence, the possibility of food and economic resources to sustain education, and the valuing of certain kinds of family life. Such conditions also mark membership in and belonging to the prestige of the global, in which there exists a geography of rights that is already allied with particular global hegemonies.

Today, institutions such as the ICC and its complex web of interlocutors are constituted by the interaction of states, institutions, international and national NGOs, victims, and even rebel groups vying to participate in shaping the law under which they will submit. These various segments represent the new governmentalities central to new paths to international justice and the rule of law. However, the nexus of conflict among social actors and institutions represents a domain in which law is not simply imposed but rather mediated by power relations. As such, it is productive of exclusions that undermine the exercise of the power to choose amnesties versus international adjudication.

The complexities of Uganda’s relationship to the ICC bring into focus the power of international law to separate political beings from “victims,” thus making the latter the subjects of the court’s political control. I end here with a proposition for a general rethinking of core conceptions of sovereignty that would clarify various key paths to international justice by locating these paths as the production not only of justice itself but of the indirect and direct control of the terms by which decisions are made, naturalized, and controlled.

Although national and international contests over lawmaking seem to hold the potential of negating each other, thereby suspending their norm-generating capacities, the reality is that postcolonial African states and African people are engaged in uneven competitions with international legal bodies whose dominance is upheld by those UN member states most powerful on the world scene. In the midst of such uneven social relationships, the ICC does not represent justice in and of itself; rather, it represents the shifting of the locus of the “real” by choreographing processes within which new norms of justice making are reinforcing a dual presence and absence of governance within global spheres of power. This move from the absolute jurisdictional authority of nation-states to the jurisdictional reconfiguration of international bodies to adjudicate international grievances reflects new sovereignties of the twenty-first century but does not constitute their totality. This is because the central issues, and the ones I explore here, are

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not limited to contests of the rituals of reconciliation versus the rituals of international adjudication over how to treat perpetrators of the worst crimes against humanity. Rather, the central struggles are contests over the place of victims and how best to treat them as sociopolitical beings.

By claiming to work on behalf of child soldier victims – bare-life survivors whose continued existence in that condition is ensured by virtue of their exclusion as political agents – international law claims the power of the decision over what constitutes the life that is to be excluded from the political sphere (the polis). The exercise of this power indexes the true site of sovereignty. It is the new exercise of the force of law – its techniques of coercion and disciplinary mechanisms – that makes possible the new world order of justice and politics. This new sovereignty is not historically constituted from a political authority but presents itself as democratic through the language of international membership and universalism. However, the reality is that it operates through a particular order in which the force of law gains its power through a spectacular theater of humanitarianism.⁷³ As such, this new sovereignty, super-political and brought into being through the politics of virtue and human rights missionization, both creates and preserves a condition – bare life – that it is dedicated to eradicate. It thus represents suffering that it claims to root out.

Of course, human rights–rule of law work continues to be an important ideal in the achievement of global rights and protections against those who take the lives of others in their own hands. However, we need to think more precisely about the meaning and enactment of justice and politics in local contexts – how it should work, whom it should include, and whom it excludes. We must rethink the conditions within which we envisage justice in the first place and expand the basis on which we locate political beings. For it is limiting to assume that “the law” – rule of law, criminal law, national law – is the only way that justice can be achieved, especially because justice itself is not a thing but a set of relations through which people establish norms of acceptability. Following Jacques Derrida (1992:241), the possibility of achieving justice implies the exercise of a performative force and, therefore, the production of an “interpretative violence that in itself is neither just nor unjust.” It is a force that places value on or makes legitimate the power to kill, the power to punish, the power to classify crime, and the power to determine who is subject to the law and under what conditions. As such, it is important to examine the mutual-engagement aspects of

putting in place enforceable actions that are seen either as legitimate or illegitimate. The "paths to justice" can represent a process rather than an open clearing, and making justice involves incorporating – or else clear-cutting – practices that are circumscribed by particular values, and as a result, are sometimes incommensurate. For these reasons, it is crucial to examine, as I have begun to do here, the struggles over defining "legitimate" paths to justice and the politics of power that make them tenable.

As we shall see in Part Two of this book, the micropractices engaged in the production of the rule of law movement are fundamental to all forms of governance and formal lawmaking. Whether in explicitly religious-based spheres or human rights and rule of law domains, micropractices work to circulate particular principles and norms that set the groundwork for context-relevant "moral economies." By rethinking the relevance of various approaches to rights in other vernacular forms – from those micropractices in northern Uganda, to "NGO justice," to the focus on Islamic moral principles – justice is represented by the ability to produce the truth regime within which its embodiment, often times spectacular, can be enacted as ordinary, as mundane.

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coltan – continue to plague conceptions of Africa’s potential, including its youth.

43. See, e.g., Chapter 1, § “Extraction and the ‘Public Good.’”
44. This document, ICC-ASP/1/3, is online at <http://www.icc-cpi.int/about/Official.Journal.html> (accessed November 1, 2007).
45. On these formations, see Chapter 1, § “Biopolitics and Necropolitics.”
46. Based, clearly, on Derrida’s (1992) notion of the “mystical foundations of authority,” described in the Introduction, § “Limits to the Models.”
47. Here I am referring to the specter of victims whose death haunts legal proceedings.

Chapter 3

1. United Nations, Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, July 17, 1998 (hereinafter Rome Statute), art. 53; online at <http://untreaty.un.org/cod/icc/statute/rome.htm> and <http://www.icc-cpi.int/about/Official.Journal.html>.
2. Richard Dicker, director of Human Rights Watch’s International Justice Program, quoted in [Hannah Gaertner,] “Uganda: No Amnesty for Atrocities,” *Human Rights News*, July 28, 2006, online at <http://hrw.org/english/docs/2006/07/27/uganda13863.htm> (accessed February 12, 2008).
3. Daniel Wallis (for Reuters), “Uganda Aims to Formalise Peace Rites, Boost LRA Talks,” August 6, 2006, online at <http://en.epochtimes.com/news/6-8-6/44657.html> (accessed September 11, 2008). This was excerpted by the Coalition for the ICC and cited as <http://www.alertnet.org/thenews/newsdesk/L06749187.htm> in “Uganda (Part 2): Parliament to Discuss Reconciliation; Kony Shifts,” online at <http://www.iccnw.org/?mod=newsdetailnews=1898> (accessed December 5, 2007).
4. Tim Allen, “War and Justice in Northern Uganda: An Assessment of the International Criminal Court’s Intervention,” London: Crisis States Research Centre, Development Studies Institute, London School of Economics, 2005, online at <http://www.crisisstates.com/download/others/AllenICCRReport.pdf> (accessed September 15, 2008).
5. A particularly unique aspect of Museveni’s democracy was the prohibition of party campaigning, put in place in 1986 to avoid political-party building along ethnic lines. However, this provision seems to have resulted in disadvantaging contenders to the presidency – a result to which a range of groups objected. Under the nonparty democratic system, candidates for both presidential and parliamentary elections were expected to campaign as individuals, not as representatives of a party, although parties could exist. In this context, candidates were not to commence their electoral campaign by engaging as a permanent opposition party;

rather, once potential candidates succeeded in achieving nominations, they could compete in the elections. This and other aspects of governmental policies inspired violent resistance struggles against the Museveni government. After nineteen years, the nonparty system was replaced by a multiparty one through a constitutional referendum held on July 28, 2005. “Uganda Backs Multi-Party Return,” *BBC News*, August 1, 2005, online at <http://news.bbc.co.uk/2/hi/africa/4726419.stm> (accessed February 13, 2008).

6. The intermittent talks, held in Juba – the capital of what since 2005 has been the autonomous region of Southern Sudan – are still ongoing as of this writing (September 2008).
7. For in-depth statistics and further context regarding the abduction of Ugandan youths, as well as their return to and “reintegration” into society, see Jeannie Annan, Christopher Blattman, and Roger Horton, “The State of Youth and Youth Protection in Northern Uganda: Findings from the Survey of War Affected Youth – A Report for UNICEF Uganda” (September 2006), online at <http://www.sway-uganda.org/SWAY.Phase1.FinalReport.pdf> (accessed April 13, 2008). The report, which focuses on abductees and the needs of those who manage to return, notes that “the UN has estimated that 20,000 to 25,000 children have been abducted” (p. 55) but also that “Youth not only face a significant risk of abduction into the LRA, but also forcible recruitment into the Ugandan army as well. . . . Once with the LRA, not all abductees become fighters, and relatively few are forced to kill” (p. vi).
8. The suggestion that if the LRA was in power, religion rather than law would represent the new order is part of a larger rhetoric strategy being used by various spokespeople. However, there is widespread agreement throughout the country that such articulations of Christianity point to the political and not spiritual motives of LRA leaders.
9. Agence France-Presse, “War in Northern Uganda World’s Worst Forgotten Crisis: UN,” November 11, 2003, online at <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/e1f176894430fdeec1256ddb0056ea4c>. See also Jeffrey Gettleman and Alexis Okeowo, “Ugandan Rebels Delay Peace Deal,” *New York Times*, April 11, 2008, online at <http://www.nytimes.com/2008/04/11/world/africa/11uganda.html> (both accessed September 11, 2008).
10. Human Rights Watch, *Abducted and Abused: Renewed War in Northern Uganda*, Uganda 15.12(A) (New York: HRW, July 2003), online at <http://www.hrw.org/reports/2003/uganda0703/> (accessed February 13, 2008). It is worth noting that, following its section on “Human Rights Abuses by the Lord’s Resistance Army,” the report has another on “Human Rights Violations by Ugandan Government Forces.” See also Foundation

- for Human Rights Initiative, *The Bi-annual Human Rights Reporter*, 2004, Kampala, Uganda.
11. "Assembly of States Parties: Uganda (African States)," online at <http://www.icc-cpi.int/asp/statesparties/countryid=20.html> (accessed February 13, 2008).
 12. "President of Uganda Refers Situation Concerning the Lord's Resistance Army (LRA) to the ICC," online at http://www.icc-cpi.int/pressrelease_detailsid=161=en.html (accessed February 13, 2008).
 13. This is the date on which the Rome Statute came into force and thus the temporal jurisdiction of the ICC commenced. Documentation on Moreno-Ocampo's concern obtained through personal conversation at Yale University on December 6, 2006. Data on file with author.
 14. ICC, "Prosecutor of the International Criminal Court Opens an Investigation into Northern Uganda," July 29, 2004, online at <http://www.icc-cpi.int/press/pressreleases/33.html> (accessed February 14, 2008).
 15. The warrants are available online at <http://www.icc-cpi.int/cases/UGD.html> (accessed February 14, 2008). See also "Warrant of Arrest Unsealed against Five LRA Commanders," ICC press release, October 14, 2005, online at http://www.icc-cpi.int/pressrelease_detailsid=1141=en.html (accessed January 12, 2008).
 16. See "Amnesty Act 2000 (Ch 294)," commenced January 21, 2000 (hereinafter Amnesty Act 2000), online at <http://www.c-r.org/our-work/accord/northern-uganda/additional-keytexts.php> (accessed February 14, 2008) and http://www.saflii.org/ug/legis/consol_act/aa2000294120/ (accessed September 12, 2008). See also Mallinder (2007).
 17. See Apollo Mubiru and Cyprian Musoke, "Kony Denied Amnesty," *New Vision* (Kampala), April 20, 2006, online at <http://www.newvision.co.ug/D/8/13/494054>, and "UGANDA: LRA Leaders Not Entitled to Amnesty – Minister," *IRIN Africa*, April 21, 2006 (both accessed September 12, 2008). See also Mallinder (2007).
 18. See "Ugandan Rebel Leader Kony Offered Amnesty," *Independent* (London), July 5, 2006, online at http://findarticles.com/p/articles/mi_qn4158/is_20060705/ai_n16511071, and Frank Nyakairu, "Uganda: Museveni Amnesty to Kony Illegal – ICC," *Monitor* (Uganda), July 6, 2006, online at <http://www.afrika.no/Detailed/12493.html> (both accessed September 12, 2008). For the quotations, see "Uganda LRA Rebels Reject Amnesty," *BBC News*, July 7, 2006, online at <http://news.bbc.co.uk/2/hi/africa/5157220.stm> (accessed February 14, 2008). The creation of an autonomous Southern Sudan, coming with the official ending of the twenty-two-year-long Second Sudanese Civil War (1983–2005), may also affect the peace process in northern Uganda: "Diplomats in the region say [this] . . . is a 'completely new element in this process, which might successfully push [the Ugandan authorities] into peace talks'." Janet

- Anderson, "World Court Faces Biggest Challenge," Institute for War & Peace Reporting, "Africa Reports," no. 67, June 16, 2006, online at http://iwpr.net/?p=acrs=fo=321675apc_state=henh (accessed January 9, 2007).
19. Nyakairu, "Uganda: Museveni Amnesty to Kony Illegal – ICC." See also Emmy Allio, "Uganda: UN Stalls on Kony," New Vision (Kampala), August 8, 2006, online at http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol01issue14.html (both accessed April 14, 2008).
 20. Bill No. 13. See *Uganda Government Gazette* no. 58, vol. XCL, September 22, 1998.
 21. Barney Afako, "Reconciliation and Justice: 'Mato Oput' and the Amnesty Act," *Accord: An International Review of Peace Initiatives*, no. 11 (*Protracted Conflict, Elusive Peace: Initiatives to End the Violence in Northern Uganda*, ed. Okello Lucima), online at <http://www.c-r.org/our-work/accord/northern-uganda/reconciliation-justice.php> (accessed February 14, 2008).
 22. Afako, "Reconciliation and Justice." The Amnesty Act of 2000 was intended, in part, to "Fill the vacuum left by the expiry of the Amnesty Statute of 1987"; Ugandan Parliament, House, "Second Reading, The Amnesty Bill, 1999," November 30, 1999, online at http://www.parliament.go.ug/hansard/hans_view_date.jsp?dateYYYY=1999dateMM=11dated=30 (accessed September 12, 2008); the bill passed two months later, in January 2000.
 23. See the untitled preamble of the Amnesty Act 2000.
 24. *Ibid.*, Part II, sec. 3(1).
 25. *Ibid.*, Part II, secs. 4(1)(d) and 4(1)(b).
 26. *Ibid.*, Part I, sec. 2.
 27. See the 1995 Ugandan Constitution, art. 25 (10), available for download at http://www.ugandaonlinelawlibrary.com/files/constitution/constitution_1995.pdf (accessed February 14, 2008). The UAC is the statutory body set up by the Ugandan government to give a blanket amnesty to surrendering rebels.
 28. "Amnesty Act, 2000," Part III, sec. 9 (c).
 29. See also Erin K. Baines, "Roco Wat I Acoli/Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reconciliation," Conflict and Development Programme, Liu Institute for Global Issues, September 2005, online at <http://www.erinbaines1.moonfruit.com/#/reports/4516056074> (accessed June 17, 2008); Baines, "Accountability, Reconciliation and the Juba Talks: Beyond the Impasse," Justice and Reconciliation Project, Gulu District NGO Forum, *Field Notes* no. 3 (October 2006), online at <http://northern-uganda.moonfruit.com/#/fieldnotes/4516577115> (accessed June 16, 2008); Baines, "The Cooling of Hearts:

- Community Truth-Telling in Acholi-land," Justice and Reconciliation Project, Gulu District NGO Forum, Liu Institute for Global Issues, 2007, online at http://www.ligi.ubc.ca/sites/liu/files/Publications/JRP/July2007_JRP_CoolingoffHearts.pdf (accessed June 17, 2008); and Stephen Arthur Lamony, "Approaching National Reconciliation in Uganda: Perspectives on Applicable Justice Systems," Uganda Coalition for the International Criminal Court, working paper, 2006, online at http://www.iccnw.org/documents/ApproachingNationalReconciliationInUganda_07aug13.pdf (accessed June 17, 2008).
30. Thomas Harlacher et al., "Traditional Ways of Coping in Acholi: Cultural Provisions for Reconciliation and Healing from War," Kampala, Uganda: Intersoft Business Services, Ltd., 2006, online at <http://www.chrisblattman.org/TraditionalWaysOfCopingInAcholi.pdf>, pp. 78-81 (accessed June 18, 2008).
 31. Ibid., 59-60. "In cases where someone has killed an enemy or a foreigner in a war, the cleansing would typically take place in the form of '*kwero merok*,' an elaborate ritual for 'cleansing the enemy.' If a person has killed someone from a friendly clan, the cleansing would be performed in a '*mato oput*' ritual" (59).
 32. Patrick Tom, "The Acholi Traditional Approach to Justice and the War in Northern Uganda," August 2006, online at http://www.beyondintractability.org/case_studies/acholi_traditional_approach.jsp?nid=6792, quoting from "Uganda: Traditional Ritual Heals Communities Torn Apart by War," *IRIN Africa*, June 9, 2005, online at <http://www.irinnews.org/report.aspx?reported=54858> (both accessed September 12, 2008).
 33. Afako, "Reconciliation and Justice."
 34. This is the case even though the guilt and submission implied by the term *kica* are resented by the LRA.
 35. Afako, "Reconciliation and Justice."
 36. Harlacher et al., "Traditional Ways of Coping in Acholi," 80-2.
 37. Anderson, "World Court Faces Biggest Challenge."
 38. Gulu respondents thought that nothing had changed as a result of the ICC's arrest warrants, but a few Amuru respondents noted that the warrants were causing a stall in the talks.
 39. Victims Rights Working Group, "Ugandan Peace Talks: Victims' Rights Must Be Respected," statement of August 3, 2006, online at http://www.iccnw.org/documents/VRWG_Statement_3Aug06.pdf (accessed February 15, 2008).
 40. Uganda is not the only country in this situation. Rwanda has become famous for its recourse to tradition-inspired *gacaca* courts alongside international and national justice options in its path to reconstruction. *Gacaca* is geared toward facilitating and expediting the trials of the more than a

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hundred thousand people imprisoned since the Rwandan genocide. It is used as a form of "reconciliation and healing." Rather than serving prison sentences, those convicted are being called on to confess before elected judges. In these meetings, entire communities gather to give testimony. The judges are then asked to give testimony to what they saw, heard, and experienced during the genocide. In another example, the African Union has recommended incorporating traditional forms of reconciliation to resolve the Darfur crisis in the Sudan.

41. On February 20, 2008, the two sides signed an agreement that "severe crimes committed by the rebels during the war will be tried under 'a special division of the High Court in Uganda,'" although it did "not mention in which court Mr. Kony could face trial." Reuters, "Rebels and Ugandan Government Agree to Terms of Prosecutions of War Crimes," *New York Times*, February 20, 2008, online at <http://www.nytimes.com/2008/02/20/world/africa/20uganda.html> (accessed September 13, 2008). Four days later, a cease-fire agreement was signed, one that "formalizes a 2006 cessation of hostilities and creates a six-mile buffer zone around rebel territory." Reuters, "Uganda and Rebels Sign Cease-Fire," *New York Times*, February 24, 2008, online at <http://www.nytimes.com/2008/02/24/world/africa/24uganda.html> (accessed September 13, 2008). A final peace agreement, however, has yet to be signed, and the ICC's arrest warrants are proving to be a sticking point: "Mr. Kony... has said he will not surrender until the indictments are lifted. Uganda has said it will not push for the indictments to be lifted until he surrenders. The plan then is to try Mr. Kony in Ugandan courts – if the International Criminal Court lets go of the case. Officials of the International Criminal Court... said this week that the indictments still stood but added that judges were reviewing them." Jeffrey Gettleman and Alexis Okeowo, "Warlord's Absence Derails Peace Effort in Uganda," *New York Times*, April 12, 2008, online at <http://www.nytimes.com/2008/04/12/world/africa/12uganda.html> (accessed September 13, 2008).
42. "Government of Uganda's Position at the Government of Uganda-Lord's Resistance Army Talks," July 19, 2006, online at <http://www.ugpulse.com/articles/daily/homepage.asp?ID=458> (accessed February 15, 2008).
43. Charles Ariko, "Amnesty Act Extended for Two Years," August 6, 2008, online at <http://www.newvision.co.ug/D/8/13/643331> (accessed September 13, 2008). This was the third renewal of this law since its enactment in 2000.
44. Amnesty International, "Uganda: Concerns about the International Criminal Court Bill 2004," AI index no. AFR 59/005/2004, July 27, 2004, <http://www.amnesty.org/en/library/info/AFR59/005/2004> (originally accessed November 19, 2007).

45. Amnesty International, "International Criminal Court: The Failure of States to Enact Effective Implementing Legislation," AI Index no. IOR 40/019/2004, September 1, 2004, <http://www.amnesty.org/en/library/info/IOR40/019/2004> (originally accessed November 19, 2007).
46. "Uganda: Cabinet through with Draft Law on Kisanja," Asia Africa Intelligence Wire, November 23, 2004, online at <http://allafrica.com/stories/200411221726.html> and http://www.accessmylibrary.com/coms2/summary_0286-14585205_ITM (accessed September 13, 2008). The second quotation is from field data collected by the author.
47. Field data on file with the author. It is not unusual that contemporary state legal systems contain parallel and often contradictory internal and international commitments to legal norms and their execution, extending across international, state, and customary law.
48. That is, under ICC guidelines for initiating an investigation; see Rome Statute, art. 53(1)(c).
49. As noted earlier, in April 2008, the ICC stated "that the indictments still stood but . . . that judges were reviewing them"; Gettleman and Okeowo, "Warlord's Absence Derails Peace Effort in Uganda."
50. ICC, Office of the Prosecutor, "The Interests of Justice," September 2007, p. 5, online at <http://www.icc-cpi.int/library/organs/otp/ICC-OTP-InterestsOfJustice.pdf> (accessed April 14, 2008).
51. *Ibid.*, p. 7. A draft, "Internal OTP Discussion Paper" version of this document, circulated in June 2006 (and on file at Yale University, Department of Anthropology), noted: "in practice it is conceivable that . . . the interests of the victims may weigh against ICC action, especially when the victims themselves voice these concerns. . . . There is rarely a homogeneous reaction among victims to atrocities: reactions and priorities vary for many different reasons."
52. Rome Statute, art. 53 (1). The article continues: "In deciding whether to initiate an investigation, the Prosecutor shall consider whether: (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed; (b) The case is or would be admissible under article 17; and (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice."
53. The two OTP documents of June 2006 were ICC, Office of the Prosecutor, "Criteria for Selection of Situations and Cases," draft policy paper; and the aforementioned "The Interests of Justice: Internal OTP Discussion Paper." Copies of these are on file at Yale University, Department of Anthropology.
54. ICC, OTP, Luis Moreno-Ocampo, "Statement by the Chief Prosecutor on the Uganda Arrest Warrants," The Hague, October 14, 2005, online at

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- http://www.icc-cpi.int/cases/UGD/c0105/c0105_pr.html (accessed February 16, 2008).
55. ICC, OTP, "Interests of Justice," p. 3.
 56. See UN Security Council, "Security Council, Following Day-Long Debate, Underscores Critical Role of International Law in Fostering Global Stability, Order," press release, June 22, 2006, on 5474th meeting, <http://www.un.org/News/Press/docs/2006/sc8762.doc.htm> (accessed February 16, 2008): "Touching on another issue highlighted in today's debate, Nicolas Michel, under-Secretary-General for Legal Affairs and United Nations Legal Counsel, said that ending impunity for perpetrators of crimes against humanity was one of the principal evolutions in the culture of the world community and international law over the past 15 years. 'Justice should never be sacrificed by granting amnesty in ending conflicts,' he said, adding that justice and peace should be considered as complementary demands and that the international community should 'consider ways of dovetailing one with the other.'" The trend was confirmed in the statement of that month's president of the Security Council, Per Stig Møller of Denmark, that "the Council intends to continue forcefully to fight impunity with appropriate means and draws attention to the full range of justice and reconciliation mechanisms to be considered, including national, international and 'mixed' criminal courts and tribunals, and as truth and reconciliation commissions" (*ibid.*).
 57. Report by Diane Orentlicher, "Report of the Independent Expert to Update the Set of Principles to Combat Impunity – Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity," UN Economic and Social Council, Commission on Human Rights E/CN.4/2005/102/Add.1, 61st Session, February 8, 2005, online at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=10800 (accessed February 16, 2008). See, in particular, Principle 19, "Duties of States with Regard to the Administration of Justice": "States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished" (para. 1).
 58. ICC, OTP, "Interests of Justice," 5: "In order for a case to be admissible, not only do the crimes have to be within the jurisdiction of the Court, but they must also meet the higher threshold of being of 'sufficient gravity to justify further action' of the Court in terms of Article 17(1)(d)."
 59. ICC, OTP, "Criteria for Selection of Situations and Cases," draft policy paper.

60. [Hannah Gaertner,] "Uganda: No Amnesty for Atrocities," *Human Rights News*, July 28, 2006; online at <http://hrw.org/english/docs/2006/07/27/uganda13863.htm> (accessed February 12, 2008).
61. Ibid.
62. Ibid.
63. Documents on file with author.
64. Documents on file with author.
65. This and the following two quotations are from Zachary Lomo and James Otto, "Not a Crime to Talk: Give Peace a Chance in Northern Uganda," joint statement dated July 24, 2006, Kampala, online at <http://www.refugeelawproject.org/resources/papers/others/press.Juba.pdf> (accessed February 16, 2008).
66. Many of the legal documents generated for the production of the Rome Statute were the result of heated negotiations during the United Nations Conference of Plenipotentiaries (June 15–July 17, 1998), held in Rome. During 1996–8, ten sessions of the UN Preparatory Committee had been held in at the UN headquarters in New York to work on a draft statute that would create the legal authority to establish a permanent International Criminal Court. The UN's International Law Commission had produced a first draft. A working draft followed and was presented and debated by representatives from more than one hundred countries at the 1998 Rome Conference.
67. See the § "International NGOs and the Cosmopolitan Elite."
68. These relations have been further developed through the notion of the *homo sacer* developed in the context of the history of European state formation by Agamben (1998). Thus, the *homo sacer* (see next paragraph in the text) and changing forms of sovereignty can be applied to the new global order to explain struggles between national and traditional jurisdiction over Uganda's LRA in relation to the contradictory ascendance of the victims on the world stage.
69. Agamben (2005:1): "The essential contiguity between the state of exception and sovereignty was established by Carl Schmitt in his book *Politische Theologie* (1922)." The phrase "he who decides on the state of exception" is Schmitt's.
70. See Hansen and Stepputat (2005), and in particular Simon Turner's contribution, "Suspended Spaces – Contesting Sovereignities in a Refugee Camp," in that volume (312–32).
71. See § "Child Soldiers: Specters of International Justice."
72. See also Chris Dolan, "Inventing Traditional Leadership? A Critical Assessment of Denis Pain's 'The Bending of the Spears,'" COPE Working Paper 31, London and Nairobi: ACORD, online via <http://www.acord.org.uk/b-resources.htm> (accessed September 16, 2008).
73. See Introduction, § "Fictions and Specters of Justice."

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