

NGOs and the Globalization of Universal Human Rights: A Do No Harm Approach to
Human Rights Advocacy

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DEDICATION

I dedicate this thesis:

To All those fighting for their freedoms around the world

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TABLE OF CONTENTS

| | Page |
|------------------------------------------------------------------------------------------------------|-----------|
| LIST OF ABBREVIATIONS..... | VII |
| ABSTRACT..... | VIII |
| CHAPTER I: INTRODUCTION | 1 |
| 1.1. Research Topic | 1 |
| 1.2. Human Rights NGOs..... | 2 |
| 1.3. The Concept of Human Rights | 3 |
| 1.4. The Two Fronts in Human Rights Advocacy..... | 5 |
| 1.4.1. <i>The Universalists</i> | 5 |
| 1.4.2. <i>The Cultural Relativists</i> | 10 |
| 1.5. The “Do No Harm” Approach..... | 13 |
| 1.6. Significance of the Research | 17 |
| 1.7. Thesis Outline..... | 19 |
| CHAPTER II: RESEARCH DESIGN & METHODOLOGY..... | 21 |
| 2.1 Introduction | 21 |
| 2.2. Research Question and Assumptions | 22 |
| 2.3. Research Hypothesis..... | 23 |
| 2.4. Research Design and Methodology | 24 |
| 2.4.1. <i>Qualitative Research</i> | 24 |
| 2.5. Data collection..... | 26 |
| 2.6. Data Analysis..... | 27 |
| 2.7. Strengths and Weaknesses..... | 27 |
| CHAPTER III: HR NGOS, THE ICC AND THE CONFLICT IN NORTHERN UGANDA | 30 |
| 3.1. Introduction | 30 |
| 3.2. Origins and the Root Causes of the Conflict | 32 |
| 3.3. The LRA | 34 |
| 3.4. Evolution of the LRA | 37 |
| 3.5. In Search of a Resolution..... | 40 |
| 3.6. A “Do no Harm” Approach to Human Rights Advocacy in Uganda..... | 45 |
| CHAPTER IV: AFRICA’S CHANGING POSITION ON THE ICC AND THE CONFLICT IN DARFUR, SUDAN | 52 |
| 4.1. Introduction | 52 |
| 4.2. Brief History of the Conflict in Darfur..... | 54 |

| | |
|----------------------------------------------------------------------------------------------------------------|------------|
| 4.3. NGO involvement in Darfur..... | 56 |
| 4.4. Human Rights NGO Involvement in Darfur | 59 |
| 4.5. The ICC indictment and the Darfur Peace Process | 61 |
| 4.6. Doing harm while doing good in Darfur | 63 |
| 4.7. The Darfur Peace Process..... | 68 |
| 4.8. A “Do no Harm” approach to Human Rights Advocacy in Darfur..... | 69 |
| CHAPTER V: CULTURE, IDENTITY AND SRI LANKA’S RELATIONSHIP WITH NON-GOVERNMENTAL ORGANIZATIONS | 72 |
| 5.1. Introduction | 72 |
| 5.2. Country Profile | 73 |
| 5.3. Sinhalese and Tamils in Sri Lanka: A History of War and Peace | 74 |
| 5.3.1. <i>Formation of Sinhala Nationalism</i> | 76 |
| 5.4. Majority Minority Relations in Independent Sri Lanka | 78 |
| 5.4.1. <i>Formation of a Tamil National Identity</i> | 79 |
| 5.5. Many Failed Attempts at Peace..... | 81 |
| 5.6. Sri Lanka’s relationship with Non-governmental Organizations | 82 |
| 5.6.1. <i>A Brief history of NGOs in Sri Lanka</i> | 83 |
| 5.7. NGOs “Doing harm” while doing good in Sri Lanka | 85 |
| 5.7.1. <i>Security & Sovereignty</i> | 87 |
| 5.7.2. <i>Disaster relief and Development aid</i> | 88 |
| 5.8. Playing by the rules: An Amnesty International Campaign in Sri Lanka | 89 |
| 5.9. A “Do No Harm” Approach to Human Rights Advocacy in Sri Lanka..... | 91 |
| CHAPTER VI: RESEARCH FINDINGS | 94 |
| 6.1. Introduction | 94 |
| 6.2. Focused Case Comparison: Uganda, Sudan and Sri Lanka | 94 |
| 6.2.1. <i>Similarities</i> | 94 |
| 6.2.2. <i>Differences</i> | 95 |
| 6.2.3. <i>Tones and Trends</i> | 97 |
| 6.3. Lessons Learned | 98 |
| 6.3.1. <i>Perpetrators as a root cause</i> | 98 |
| 6.3.2. <i>Victims as Victims</i> | 99 |
| 6.3.3. <i>Dangerous dichotomies as popular perceptions</i> | 100 |
| 6.3.4. <i>Culture as a barrier to finding justice</i> | 101 |
| CHAPTER VII: CONCLUDING REMARKS AND NEXT STEPS | 103 |
| BIBLIOGRAPHY | 106 |

LIST OF ABBREVIATIONS

| | |
|---------|---------------------------------------------------------------|
| AI | Amnesty International |
| ARLPI | Acholi Religious Leaders Peace Initiative |
| AU | African Union |
| AUPSC | African Union Peace and Security Council |
| CNC | Ceylon National Congress |
| CPA | Comprehensive Peace Agreement |
| DNH | Do No Harm |
| DPA | Darfur Peace Agreement |
| EU | European Union |
| FP | Federal Party |
| GOSL | Government of Sri Lanka |
| HR NGOs | Human Right Non Governmental Organizations |
| HRW | Human Rights Watch |
| HSM | Holy Spirit Movement |
| ICC | International Criminal Court |
| ICG | International Crisis Group |
| IDP | Internally Displaced Persons |
| INGO | International Non Governmental Organizations |
| JEM | Justice and Equality Movement |
| KRA | King's African Rifles |
| LRA | Lords Resistance Army |
| LTTE | Liberation Tigers of Tamil Eelam |
| NATO | North Atlantic Treaty Organization |
| NGOs | Non Governmental Organizations |
| NIF | National Islamic Front |
| NRM | National Resistance Movement |
| SLA | Sudan Liberation Army |
| SPLA/M | Sudan People's Liberation Army/Movement |
| SSRC | Social Science Research Council |
| TEC | Tsunami Evaluation Coalition |
| TNT | Tamil New Tigers |
| TULF | Tamil United Liberation Front |
| UDHR | Universal Declaration of Human Rights |
| UNAMID | United Nations-African Union Mission in Darfur |
| UNESCO | United Nations Education Scientific and Cultural Organization |
| UPDA/M | Uganda People's Defense Army/Movement |
| UPDF | Uganda People's Defense Force |

ABSTRACT

NGOs AND THE GLOBALIZATION OF UNIVERSAL HUMAN RIGHTS: A DO NO HARM APPROACH TO HUMAN RIGHTS ADVOCACY

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In recent years, certain advocacy campaigns launched in the midst of on going peace processes by mainstream Human Rights Non-Governmental Organizations (HR NGOs) has created much controversy. HR NGOs that base their advocacy efforts exclusively on international legal frameworks such as the Universal Declaration of Human Rights (UDHR) and legal instruments such as the International Criminal Court (ICC) have been accused by some groups and individuals in protracted conflict situations of slowing down or stopping peace negotiations ignoring the urgency of local populations for resolutions. This thesis examined this controversy in depth through mainstream HR NGO advocacy campaigns in three active conflict zones: Northern Uganda, Darfur region of Sudan and North-East Sri Lanka.

Findings of this research reveal the limitations of the current mainstream NGO approach to human rights advocacy in active conflict zones and suggest a more comprehensive “Do No Harm” approach that has the potential of addressing the many complexities of protracted social conflicts with minimal harm to victims.

CHAPTER I: INTRODUCTION

1.1. Research Topic

This thesis is a contribution to human rights advocacy research and literature. It contributes by exploring a “Do No Harm” approach to human rights advocacy for mainstream Human Rights Non-governmental Organizations (HR NGOs) such as Amnesty International (AI) and Human Rights Watch (HRW). In recent years, the impact HR NGOs have had on the peace processes of volatile conflict situations such as Uganda, Sudan and Sri Lanka have been the subject of much controversy. HR NGOs, along with the legal instruments (e.g. the International Criminal Court (ICC)) they have chosen to promote peace and justice around the world have provoked criticism from some groups and individuals in and outside conflict zones. Among the main criticisms of HR NGO involvement in active conflict zones have been: the prolonging or stoppage of peace negotiations, government restrictions on HR NGOs access to conflict zones/victims and ignoring the needs and priorities of those most affected by conflict.

Underlying this study is a belief that legal instruments HR NGOs have adopted to promote peace and justice have been inadequate to address the complexities of conflicts in Uganda, Sudan and Sri Lanka. As a result of adhering to a strictly legalistic approach to HR advocacy, NGOs have done inadvertent harm to societies plagued with violent conflict. The objective of this research, therefore, is to strengthen and expand human

rights advocacy work by mainstream HR NGOs in active conflict situations by exploring a more comprehensive “Do No Harm” approach to HR advocacy that has the potential of addressing the many complexities of these conflict situations.

This chapter begins by situating the research topic within the broader human rights advocacy literature. The Universalist and cultural relativist approaches to HR advocacy is discussed first as two existing approaches. After a critical analysis of the two approaches, the chapter argues for the need for a “Do No Harm” approach to human rights advocacy. Then the chapter discusses the significance of this research for future human rights advocacy work by NGOs in active conflict situations. Lastly, I provide an overview of how this thesis is structured.

1.2. Human Rights NGOs

Since the end of World War II, Human Rights Non-governmental Organizations (HR NGOs) have become indispensable players on the world stage. The primary founding purpose of HR NGOs was to serve as a counterweight to otherwise all-powerful nation-states. They are idealist minded and known to almost always speak for and work on behalf of the “underdog” in conflict situations. Their founding principles to work as a counter weight to otherwise all powerful nation-states was so impressive, drafters of the Universal Declaration of Human Rights (UDHR), Eleanor Roosevelt and René Cassin assigned them with the task of promoting the newly drafted human rights declaration through out the world (Korey 1998, 2).

HR NGOs did not disappoint the UDHR drafters. In a very short time they became exactly what Eleanor Roosevelt wanted the advocates of human rights to be: a “curious grapevine” that carries the message of the UDHR and its violations through barriers put up by abusive regimes. HR NGOs took their challenge by the horns and transformed the words of the declaration from standard to reality. Initially they worked on standard-setting¹ and fact-finding, then they moved on to serving as an ombudsman intervening on behalf of “prisoners of conscience” or on behalf of the oppressed and finally established their role as “keepers” and promoters of the UDHR by becoming actively involved in the creation of implementing agencies and institutions around the world. In less than two decades, NGOs successfully mainstreamed the idea of universal human rights. The Universal Declaration itself was transformed from a mere moral manifesto into “customary international law” that carries a variable obligatory character (Korey 2). Thanks to their tireless work, universal human rights (as customary international law) are known through out the world today.

1.3. The Concept of Human Rights

Human rights is defined and understood in many different ways by groups and individuals. To most international human rights groups and advocates, it is first and foremost a body of international laws that emerged in the wake of the 1948 Universal Declaration of Human Rights. Amnesty International states in their mission statement: “Our vision is of a world in which every person - regardless of race, religion, gender, or

¹ The establishment of international norms by which the conduct of states can be measured or judged (korey 1998, 2)

ethnicity - enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.”² Human Rights Watch in their mission statement says: “We challenge governments and those who hold power to end abusive practices and respect international human rights law.”³ So the first, contemporary notion of human rights is a legal and political one.

Second is an analytical normativity, one that describes the ways in which the concept of human rights in itself establishes particular rules for behavior and prohibits others (Goodale 2007: 7). Jack Donnelly, a leading advocate of universal human rights says: “human rights are, literally, the rights that one has simply because one is a human being” (emphasizing that they are equal, inalienable rights completely apart from any recognition of them in positive international law) (2003: 10).⁴ Donnelly’s is a more expansive orientation in the sense that it moves away from international legal instruments and texts to consider the most basic ways the concept of human rights can be interpreted. His view is closely related to the human rights concept that is expressed through legal instruments like the Universal Declaration, but it goes on to show that human rights are not circumscribed to legal instruments.

Third is a discursive approach expressed by other leading voices in human rights like Upendra Baxi. There are several features that make this orientation the most

² Our Mission – Amnesty International USA <http://www.amnestyusa.org/about-us/our-mission-and-the-movement/page.do?id=1101178&n1=2&n2=762>

³ About HRW - <http://www.hrw.org/about/>

⁴ Human rights are equal rights: one either is or is not a human being, and therefore has the same human rights as everyone else (or none at all). They are also inalienable rights. One cannot stop being human, no matter how badly one behaves nor how barbarously one is treated. And they are universal rights, in the sense that today we consider all members of the species *Homo sapiens* “human beings,” and thus holders of human rights (Donnelly 2003:10).

expansive framework within which “human rights” is conceptualized, studied and understood. First, it radically de-centers international human rights law. In this approach legal instruments like the Universal Declaration and legal arenas like the International Criminal Court (ICC) are seen as simply different nodes within the power/knowledge nexus through which human rights emerges in social practice (Goodale 2007: 7). Second, this orientation makes human rights normativity itself a key category of analysis. Mark Goodale says that making normativity a category of analysis does not mean that human rights is studied or analyzed as norms, rather, “normativity is understood as the means through which the idea of human rights becomes discursive. It is the process that renders human rights into social knowledge that shapes social action.” (Goodale: 8). Finally, this orientation looks at human rights as a discourse that goes beyond language (legal) to include the full range of social knowledge regimes through which human rights emerges in social practice.

In sum, the concept of human rights is an expansive spectrum, with the conceptual approach of Donnelly at one end and the broadly discursive approach of Baxi on the other. But for most international HR NGOs the concept of human rights hardly go beyond the narrow confines of international law.

1.4. The Two Fronts in Human Rights Advocacy

1.4.1. The Universalists

In the simplest terms, universalists are those that advocate inalienable natural rights of human beings. These are rights that all human beings have by virtue of being human. They give all human beings a legitimate claim to the enjoyment and protection of

basic goods and liberties. Hence these rights apply to all humans, at all times in all situations. Most human rights advocates, especially those in international human rights NGOs base their advocacy efforts on these fundamental rights. They are in many ways an authoritative catalog of rights also set forth in the Universal Declaration of Human Rights. These advocates believe with [good] reason that the successes of human rights campaigns depend on their commitment to these inalienable human rights. While these claims by universalists of a common humanity and unalienable rights are true, it is important to realize that humans have basic rights and some and not all of those can be captured through UDHR type legal frameworks that mainly focus on basic rights.

The rights outlined in the Universal Declaration are politically and legally universal. They have been accepted (at least in principle) by virtually all states, incorporated into their own laws and translated into international legal obligations (Henkin 1989: 10). However, mainstream HR NGOs efforts to assure respect for these universal rights outlined in the UDHR have been difficult and only partially successful. There are several reasons for this limited success.

First is the Universal Declaration's actual and perceived Western origin and orientation. It is true that non-Western states were consulted by UNESCO at the time of drafting the declaration. But the respondents to the questionnaire were mostly Western educated elites of those non-Western nations/cultures. Also of the fifty-one member states of the United Nations at the time, only three were from Africa and eight were from Asia. Furthermore many non-Western respondents to the UNESCO questionnaire asking for reflections on human rights broadly corroborated the existence of human rights in

their own cultural traditions (Avruch 2006: 98) long before they were articulated by the West in the UDHR format, some of them going beyond basic rights to also include duty. So the problem for universal HR advocates in NGOs is not exactly the fact that non-Western states reject the UDHR because it has Western roots; rather it is the implication that Western made, new and narrow UDHR is morally superior to long standing (and culturally relative) HR norms of the non-West.

Second, as discussed earlier legal frameworks such as the UDHR captures only a small fraction of the broad concept of human rights. Hence they cannot support forms of justice that lie outside courtrooms and judiciary proceedings. Due to this, notions such as forgiveness and reconciliation are incompatible with the contemporary HR NGO notion of retribution. Justice to many, especially in Western societies is still synonymous with vengeance or getting even with the enemy. Hence Universalist HR advocates often get preoccupied with disciplining political and legal institutions that do not fit into their contemporary molds, at times at the expense of vulnerable populations in conflict situations. Their assumption is that if they get governments to sign-on to certain international laws, people under those institutional structures will automatically have their basic rights recognized. But this logic hardly works outside Western societies. For example, let's take the affirmative action in the U.S and the abolition of untouchability in India. The African American minority in the U.S can fight for equal rights in most cases because Americans as a society hold the judiciary above all other laws of society and honor the affirmative action that is written into law either willingly or out of obligation. But in India, judiciary is secondary to social norms that have kept a caste system that

keeps a portion of the Indian population in perpetual poverty and oppression for thousands of years. And the abolition of untouchability by law really hasn't meant much to many Indians. They consider it a social system that keeps "order" (different from law & order) in their society. Without the cast assigned roles to individuals for tasks such as picking up trash, washing cloths and cleaning houses the social system in their view will fall apart creating unnecessary chaos. Hence, universalists that work within rigid legal frame works can take HR advocacy only so far.

1.4.1.1. The International Criminal Court (ICC)

In recent years, the International Criminal Court has become one of the main channels leading HR NGOs that adhere to a strictly universalist agenda get involved in conflict situations. The ICC is an independent, permanent court that tries persons accused of most serious crimes of international concerns, namely genocide, crimes against humanity and war crimes which was established by the Rome Statute⁵ of the International Criminal Court on July 1, 2002. The ICC is based on a treaty, joined by 108 countries (30 African States, 14 Asian States, 16 East European States, 23 Latin American and Caribbean States and 25 Western European and other States). ICC is a court of last resort and it is not to act if a case is investigated or prosecuted by a national judicial system. However the ICC is allowed to step in if national courts are unwilling or unable to investigate or prosecute crimes of international concern or when internal proceedings are not [or perceived not to be] genuine. For example, if formal proceedings are conducted

⁵ The Rome Statute is an international treaty, binding only States that formally consent to be bound by its provisions. United States for example is not a signatory to the treaty, hence is not bound by its provisions.

solely to shield someone from criminal responsibility, the court has a right to intervene.⁶ Unlike the International Criminal Tribunals of former Yugoslavia (ICTY) and Rwanda (ICTR), ICC is not a United Nations Security Council Chapter VII enforcement measure binding on recalcitrant states. Rather it is a court of treaty law whose jurisdiction depends on the specific consent of states that are parties to its statute.⁷

The creation and the establishment of the ICC is one of the most significant victories of universal rights advocates/mainstream HR NGOs. Amnesty International began campaigning for the establishment of International Criminal Court in 1993. The organization was very active in drafting the Rome Statute and other supplementary documents, including the Rules of Procedure and Evidence and the Elements of Crimes prepared by the Preparatory Commission for the International Criminal Court between 1998 and 2002. To ensure the success of the Court, Amnesty International continues to campaign for: “all governments to ratify the Rome Statute to ensure that it has the broadest jurisdiction; all governments to enact effective implementing legislation ensuring that they can prosecute the crimes before national courts and cooperate fully with the Court; the Assembly of States Parties made up of countries that have ratified the Rome Statute to provide full support and oversight of the Court; all governments to cooperate fully with the Court in investigating and prosecuting the crimes and the Court to investigate and prosecute crimes in accordance with the highest standards of

⁶ ICC official website, <http://www.icc-cpi.int/about.html>

⁷ Akhavan, Payam. “The Lord’s Resistance Army Case: Uganda’s Submission of the First State Referral to the International Criminal Court,” *The American Journal of International Law*, Vol.99, No.2 9Apr., 2005), pp. 403-421.

international justice.”⁸ Other Human Rights NGOs are also actively involved in creating awareness about the Court, providing information to the Court of human rights violators and serving as a link between Court and victims and witnesses.⁹

Since its establishment, the Court has issued arrest warrants against suspects in four countries, Democratic Republic of Congo, Uganda, Central African Republic and Sudan. Though all warrants remain unexecuted, the Courts exclusive focus on Africa has created some controversy. Most recently, when the ICC prosecutor applied for an arrest warrant for Sudan’s sitting President, the African Union (AU) commission Chairperson, Jean Ping, openly expressed Africa’s disappointment with the ICC. He noted that thirty African countries have ratified to the Rome Statute expecting that the ICC would aid them in the pursuit of justice, but rather than pursuing justice around the world- including cases such as Columbia, Sri Lanka and Iraq- ICC was focusing only on Africa and was undermining rather than assisting African efforts to solve its problems.¹⁰

1.4.2. The Cultural Relativists

In the simplest terms, cultural relativists are those that believe human rights are relative to the cultures they derive from. At first glance, cultural relativists appear as opponents of universalists. But relativists do not deny the existence of fundamental/basic

⁸ The International Criminal Court, Amnesty International, <http://www.amnesty.org/en/international-justice/issues/international-criminal-court>

⁹ International Criminal Court: How Non-Governmental Organizations can contribute to the Prosecution of War Criminals. Human Rights Watch Report, September 2004, Available from http://www.iccnw.org/documents/HRW_iccProsecutions_0904.pdf

¹⁰ De Waal, Alex., Africa’s position on the ICC, Making Sense of Darfur, Posted to the SSRIC Blog on September 23, 2008., Available from <http://www.ssrc.org/blogs/darfur/2008/09/23/africas-position-on-the-icc/>

human rights. Instead with their critiques of universal rights, cultural relativists take human rights beyond basic inalienable rights. So it is important to look at what cultural relativists add to the discussion of human rights advocacy from their perspective.

Since the birth of the NGO concept in the post WW II Era, HR NGOs that advocate universal human rights have greatly outnumbered those that advocate relativist rights. However, there has been no shortage of anthropologists, philosophers, sociologists and academics that support culturally relative human rights. Cultural anthropologists have been the first to challenge the universality of the UDHR type legal frameworks that mainstream human rights NGOs such as Amnesty International and Human Rights Watch work strictly within. Anthropologists have historically opposed the universalist claims of UDHR type UN frameworks on two main grounds. First, on empirical grounds, they reject individual rights as self-evident universals. The 1947 American Anthropological Association “Statement on Human Rights” emphasized that “standards and values are relative to the culture from which they derive” and many African and Asian anthropologists reject the concept of “individual rights” as ethnocentrically Western (Messer 1997, 293). Their second rejection is based on the irony of UDHR type international legal frameworks that entrust the protection of individuals to the very states they claim are the principle abusers of human rights. Over all, many anthropologists object to the human rights implementation structure that sets up international human rights commissions and instruments as arbiters of global morality which places international and national legal formulations above cultural community customs and

values (Messer 294). In addition, the concept of human rights itself is related but not equivalent to justice, the good or democracy (Henkin 1989, 10).

The idea of relativism became part of discussions of culture with the work of Franz Boas. His student Melville Herskovits wrote: “Cultural relativism is in essence an approach to the question of the nature and role of values in culture. Its principle is as follows: Judgments are based on experience, and experience is interpreted by each individual in terms of his own enculturation.” (Avruch 2006: 105) Herskovits’s definition is an important one in “humanizing” human rights for two reasons. One, it is rooted in the life experience of individuals (which varies from culture to culture) unlike state or legal institutions that are not supposed to vary from culture to culture. Second, it questions the existence of any “absolute moral standards” such as the UDHR that is separated from cultural, historic and human contexts. By rejecting “moral absolutes,” cultural relativists refrain from criticizing or interfering with moral systems that are different from their own. As a result they guard themselves from “Western moral superiority” accusations that are synonymous with universalist approach to HR advocacy. Third, in its strong form, relativism gets linked to the value of tolerance, which is an important element missing from the universalist legal frameworks. Value of tolerance coupled with an openness towards trying out things that are unfamiliar to ones own culture, makes the cultural relativist approach to HR advocacy more comprehensive because this approach allows notions such as forgiveness and reconciliation. Of course an extreme level of tolerance that forbids action or critique is counter productive. As there are no moral absolutes to relativists, critiques of relativism worry that relativists will allow mass

atrocities such as genocide to happen because they do not interfere or judge the actions of others. Since the time of Boas, relativists have actively spoken and worked against extreme injustices such as racism and anti-Semitism. So universalists should be assured that relativists are not without common sense.

All in all, cultural relativists add some important missing dimensions to contemporary HR advocacy that is confined to basic human rights and narrow legal frame works.

1.5. The “Do No Harm” Approach

In the simplest terms “Do No Harm” is to not [inadvertently] create harm when doing good. Mary Anderson in her book *Do No Harm: How aid can support peace-or war* says that the general idea behind the Do No Harm principle is that when aid agencies provide assistance the good they mean to do shouldn’t inadvertently undermine local strengths, promote dependency and allow aid resources to be misused in the pursuit of war (1999: 2). Like aid and development NGOs, human rights NGOs mean to do good. But adhering to a strictly universalist agenda that is defined by international laws can at times create harm by undermining local strengths and creating dependencies. Also leading HR NGOs insistence that the societies they work in also adhere to the strictly universalist agenda to find resolution to social conflicts in their countries has often made HR NGOs a barrier to setting priorities and moving comprehensive peace process forward.

A “Do No Harm” approach to HR advocacy is important as it shifts the focus of HR advocacy from a legal/institutional framework towards a more “human” framework, where the oppressed are not mere beneficiaries but also participants in advocacy efforts. After all, having the best interest of the people in mind means both working for and with the people to find best solutions to social problems. But the issue with contemporary HR advocacy is its hesitance to change existing norms. HR activists give a host of reasons for doing things the way they do. First they dismiss cultural relativism as “a screen cynically or hypocritically held up by the tyrants who abuse their people, to shield themselves from the disapprobation of the international community” (Avruch 104). Two important questions emerge from this attitude of contemporary HR advocates. First, who is the international community? If it is the Western HR NGO regime that is based in London, New York, Geneva and Washington DC, we have a problem. For instance, the U.S., a country with one of the highest numbers of human rights advocates (governmental and non-governmental) does not even use the term *Human Rights* domestically.¹¹ It has exclusively set the phrase aside for its foreign policy. Even its congressionally mandated annual report on human rights practices covers every country except the U.S. It is also important to remember that the U.S. movement for civil rights and racial equality developed during the 1960’s without reference to international standards of human rights (Waltz 2002, 443). This double standard, to a certain extent reaffirms the cultural imperialist claims by non-Western States of mostly Western designed and run HR advocacy efforts.

¹¹ Domestic human rights practices are referred to the US Civil Rights Commission; the US government prefers to reserve the phrase human rights for its foreign policy (Waltz 2002, 443)

Second, are the people who are abused by tyrants so incompetent that they need outside "experts" to recognize and dictate solutions to them from above? Don't they have their own mechanisms to deal with abuse? And more importantly "are those mechanisms inherently inferior to Western contemporary methods?" As discussed earlier, people outside the Western world do understand what human rights are. The fact that they haven't come-up with a formal legal document such as the UDHR does not make their understanding of human rights and how to deal with its violations less effective. In fact, given the inadequacies and limitations of UDHR type frameworks, non-Western societies culturally relative and comprehensive methods can be more effective on their unique and individual conflict situations. But what has resulted from sixty years of contemporary HR advocacy is a hindrance of non-Western society's abilities to find solutions to their problems in their own terms. Because every time non-Western societies try to find a holistic solution to an HR crisis, international experts parachute in demanding they follow the Western status quo method (the judiciary) to punish the aggressors. The peace process in Uganda that will be discussed in detail in chapter three is one such example. It has been held up for years by contemporary HR advocates insisting that any resolution that does not include having rebel leader Joseph Kony prosecuted at the ICC is an inadequate resolution to the conflict. One of the long-standing questions in Uganda's peace process has been: How can international demands for justice be balanced with local demands for peace? Humanitarian groups such as World Vision, which has a large presence in Uganda's refugee camps, have argued that the court (ICC) should step aside to allow a peace agreement to take hold across the distressed territory where they work.

The humanitarian groups have argued that it is more important to alleviate the suffering of the people, who are dying of malnourishment and disease in cramped camps, than to prosecute the rebels on an international stage. Ugandan community leaders have proposed several local mechanisms of justice but leading international human rights groups have adamantly opposed to those saying that Uganda does not have a legal system capable of punishing Kony and his deputies, meaning that a waiver of the international court warrants could result in impunity for the rebel army's atrocities. Richard Dicker, international justice program director at Human Rights Watch, has said Uganda would have to amend its legal code to include laws that address crimes against humanity. Amnesty International has expressed similar views.¹² In this sense, contemporary HR advocates have done the most harm to (mostly non-Western) societies struggling to find comprehensive resolutions to conflicts by hindering local capacities to deal with HR violations. In other words, the insistence of contemporary means of retribution by HR NGOs has created dependencies.

Just as sixty years of development assistance has created perpetual dependents and followers of the “poor,” contemporary HR advocacy to a certain extent has created similar dependencies of the “oppressed.” These advocacy efforts have fast taken away oppressed masses abilities and their willingness to help themselves become leaders and find solutions to their problems on their own terms. A “Do No Harm” approach to HR

¹² Ugandan Rebels Reaches Out to International Court: Kony's Legal Team Explores an Exit That Could Seal Peace Pact. By Nora Boustany, Washington Post Foreign Service, Wednesday, March 19, 2008; A12 <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/18/AR2008031803054.html>

advocacy is crucial as it explicitly calls for the respect of local values and critiques creating dependencies that bind war torn societies to continued external support and supervision. However, I am not advocating the local mechanisms in place of or over international legal instruments. Many “either or” options are dangerous; the promise of the Do No Harm approach is its potential to expand the notion of justice and the utility of HR advocacy by adding to the existing contemporary method.

1.6. Significance of the Research

From the beginning, Western Non Governmental Organizations (NGOs) have led the crusade for universal human rights. Over the past sixty years (since the signing of the Universal Declaration of Human Rights in 1948) they have become the “curious grapevine” drafters of the UDHR, Eleanor Roosevelt and René Cassin, had wanted them to become. They have traveled through the walls put up by oppressive regimes to expose crimes against humanity around the world. Amnesty International even won the Nobel peace price in 1977 for its “campaign against torture.” However, adhering to a strictly universalist human rights agenda has limited the utility of HR advocacy work by these NGOs. In countries like Sudan, Uganda and Sri Lanka, HR NGOs insistence that those countries follow their status quo agenda of seeking justice through solely judiciary means have either prolonged or threatened the stability of peace processes and provoked criticism from individuals and groups that wish to see an end to these dire conflicts.

In July 2008, as a response to the continued pressure from leading HR NGOs, the International Criminal Court (ICC) issued an arrest warrant and indictment for Sudan’s

sitting president charged with genocide, crimes against humanity and war crimes in Darfur. This prompted many to become concerned about the adverse effects it might have on Darfur's fragile peace process.¹³ Uganda's peace process has also been held up for years due to contemporary HR advocates insistence that any resolution that does not include having rebel leader Joseph Kony prosecuted at the ICC is short of an adequate resolution to the conflict. The 2007 Amnesty International "play by the rules" campaign made many Sri Lankans of the majority ethnic group take the side of a government that has repeatedly been cited for human rights violations.¹⁴ Scott Appleby in his book *Ambivalence of the Sacred* has shown how Amnesty International became very unhappy with Maha Ghosananda's broad statements of forgiveness during the Cambodian Khmer Rouge trials saying that it was reinforcing Cambodian people's unfortunate tendency to avoid the hard questions of accountability and punishment (2003: 130).

In essence, mainstream HR NGOs do play a vital role by acting as a counterweight to otherwise all powerful nation states by speaking and acting on behalf of the oppressed. The rule of law they advocate has to stand against impunity. But many conflicts around the world, including the once studied here, need comprehensive solutions. While rule of law can address certain issues and hold responsible parties accountable, it can not foster national/ethnic reconciliation or reintegration that are required for sustainable resolutions. In light of the growing controversies above, it is

¹³ Sudan indictment may bring more bloodshed. CBS news, July 14, 2008
http://www.cbsnews.com/stories/2008/07/14/world/main4256898.shtml?source=RSSattr=World_4256898

¹⁴ Angry Sri Lanka blasts Amnesty International for human rights cricket campaign. Associated Press/International Herald Tribune - Asia Pacific, April 3, 2007
<http://www.iht.com/articles/ap/2007/04/03/asia/AS-GEN-Sri-Lanka-Not-Cricket.php>

¹⁴ Sri Lanka: Human Rights is the issue, not Cricket, Amnesty International Press Release, April 12, 2007
<http://www.amnesty.org/en/library/asset/ASA37/010/2007/en/dom-ASA370102007en.html>

important to explore ways to expand the utility of HR advocacy by mainstream HR NGOs so they can not only advocate rule of law but also support other requirements for lasting peace. There are many studies that argue for or against a universalist or cultural relativist approach to human rights advocacy. However, there are few studies that explicitly explore what impacts contemporary HR advocacy by NGOs have on active conflict situations or studies that explore ways to expand the utility of human rights advocacy. This research explores the limitations of the current approach to human rights advocacy by mainstream human rights groups and suggests a more comprehensive, far reaching, human (as opposed to legal/institutional) Do No Harm approach to human rights advocacy that could take the “life saving work” (as Amnesty International puts it) of HR NGOs to the next level.

1.7. Thesis Outline

Chapter two presents the research design and methodology. It discusses the research question, the assumptions that the question is based on, and the hypothesis that provide the framework for the research. It also presents what prompted me to choose this particular subject and my choice of a qualitative method of data collection and analysis. The chapter ends with a discussion of strengths and weaknesses of this research project.

Chapter three discusses the long civil war in Northern Uganda and the very controversial HR NGO involvement in its peace process. Uganda was the first country to refer a case to the ICC. This case was chosen as an example of a State choosing the universalist method but due its inadequacies reverting back to a more comprehensive method to finding peace and justice.

Chapter four discusses the conflict in the Darfur region of Sudan. It also has a pending ICC investigation. The Darfur case was never referred to the ICC by the State but was referred by the United Nations as a direct result of HR NGOs advocacy efforts to have the president of Sudan punished for the alleged crimes he has directly or indirectly committed in Darfur. This case was chosen as an example of as a State forced to comply with the universalist method of retribution by HR NGOs and the controversies and complications it has generated with regards to Darfur's fragile peace process.

Chapter five focuses on culture, identity (national and ethnic) and HR advocacy. It is discussed through an Amnesty International campaign in Sri Lanka. It focuses on the implications of ignoring culture as a "shared common sense among people"¹⁵ of a particular country/region/ethnic group when designing HR advocacy campaigns.

Chapter six presents the research findings through a comparison of the cases presented in chapters 3, 4 & 5. The cases are compared for their similarities, differences, tones and trends. Finally it discusses the lessons learned.

Chapter seven presents the concluding remarks and a way forward.

¹⁵According to Kevin Avruch and Peter Black, culture is not a commodity possessed by every member of a community, or a set of quaint customs to be learned before a trip abroad, rather it should be thought of as a "shared common sense" (Avruch 1997: 12).

CHAPTER II: RESEARCH DESIGN & METHODOLOGY

2.1 Introduction

The intent of this thesis is to explore further the current controversy over inadvertent harm done by HR NGOs in active conflict zones and propose a more comprehensive (as oppose to strictly legalistic) “Do No Harm” approach to HR advocacy. The cases: Uganda, Sudan and Sri Lanka that will be discussed in detail in the next three chapters were chosen for several reasons. First all three countries are home to protracted social conflicts. Second, HR NGOs involvements in all three conflicts have been significant and extensive. Third, some of these involvements have provoked criticism from local and international groups and individuals. The criticisms have ranged from slowing down or stoppage of peace negotiations to ignoring victim priorities. Finally, I am personally more familiar with these particular conflict situations than many other similar situations around the world due to my own work with NGOs that advocate for peace and justice in these particular conflict situations. I am also a citizen of Sri Lanka and familiar with citizen perceptions of HR NGO involvement in that country to a certain extent.

2.2. Research Question and Assumptions

The primary question this research tries to answer is: *How can mainstream human rights NGOs promote international law and not do inadvertent harm to people in active conflict situations?* The assumptions that provided the basis for this research are:

- To date mainstream HR NGOs have followed a strictly universalist human rights agenda that is defined by narrow legal frameworks such as the UDHR.
- Limitations of the legalistic/universalist method adopted by HR NGOs have had some negative impacts on on-going peace processes in several active conflict zones.
- The inadvertent harm done by HR NGOs include slowing down or stoppage of peace negotiations, government restrictions on NGO access to active conflict zones/victims and criticism from some local and international groups and individuals that HR NGOs have ignored their urgency for resolutions.
- There has been a hesitance from HR NGOs that adhere to the universalist method to recognize and accept resolutions such as forgiveness and reconciliation that lie outside the status quo legal frameworks.
- Mainstream HR NGOs have considered human (as opposed to legal/institutional) concepts such as culture mostly antagonistic to their legalistic approach to HR advocacy.
- There is growing resentment towards mainstream HR NGO advocacy campaigns by populations in active conflict situations. However the reasons for this

resentment has less to do with imperialist notions and more to do with the urgency of finding resolutions to conflicts that have lasted for decades.

2.3. Research Hypothesis

The idea behind the research question, together with the literature reviewed earlier; generate three broad hypotheses for this thesis. They cannot be tested and proven through the cases presented (as it would require some HR NGOs to actually adopt a Do No Harm principle, which no mainstream HR NGO has done to date) but they provide a framework for this thesis.

- (1) Human rights advocacy efforts by NGOs will be strengthened and expanded if HR advocates adhere to a Do No Harm principle when working in active conflict situations. A DNM approach will give HR advocates additional means to help societies plagued with protracted social conflict.
- (2) International law, while useful in addressing impunity issues, is an inadequate mechanism to finding comprehensive resolutions to the multi-layered complex conflicts such as the ones studied here.
- (3) A more comprehensive “Do No Harm” approach to HR advocacy has great potential of addressing issues of peace and justice in active conflict zones with less resentment from populations

2.4. Research Design and Methodology

To get the best sense of the need for mainstream human right NGOs to adhere to a Do No Harm principle while working in active conflict situations, this research compared advocacy efforts by leading HR NGOs in three active conflict zones: Northern Uganda, Darfur region of Sudan and Sri Lanka.

2.4.1. Qualitative Research

I chose a qualitative research method for data collection and analysis for this thesis for several reasons:

First, this is an exploratory study. The research question above highlights this exploratory nature of the inquiry into a complex and largely uncharted area in contemporary human rights advocacy. As discussed in chapter one there is a lack of research into how the prominent HR NGO establishment “do harm” to the societies they work in, let alone an inquire into how that harm can be reduce. I wanted to first explore and present how the harm is done through the three cases I present and then search for ways to reduce that harm. Overall, this thesis is an attempt to suggest ways HR NGOs can promote international law (which is important in addressing issues of impunity) and not “Do Harm.”

Second, the underlying controversy this research addresses is based mostly on perceptions of groups and individuals who are committed to finding lasting resolutions to dire social conflicts. And the social and cultural nuances that have shaped these perceptions cannot be captured adequately through a quantitative analysis. Further some

of the legalistic instruments used by HR NGOs like the ICC are fairly new to have generated any statistics and percentages of their negative or positive impacts on protracted social conflicts.

Finally, I wanted to incorporate my personal experiences of working for these very NGOs in the Washington DC area over the past three years into this study. The research question in many ways is a vindication for a dilemma I was suddenly faced with while visiting my home country, Sri Lanka, in 2007. I had just wrapped up a six month work assignment at Amnesty International USA. When I arrived in Sri Lanka my family asked me not to mention my work with Amnesty International to any of our friends and neighbors. When asked why, I was brought up to speed about the Amnesty International “play by the rules” campaign (which will be discussed in detail in chapter 5) during the 2007 Cricket World Cup just a month before and how angry Sri Lankans still were over the incident.

I believe very much in the work I did for one of the world’s leading human rights groups, but was saddened by the unintended anger and frustration it has created through one of its advocacy campaigns to the people of my country. More worrisome was the fact that this incident leading to the government limiting AI and other NGOs access to the troubled regions of the island where most of the victims of government and rebel group violence live. Still, believing in the importance of Amnesty International and other similar NGO work and also understanding the sensitivities of Sri Lankans to the unfortunate campaign, I decided to explore further how HR NGOs can avoid incidents such as “play by the rules” campaign.

I later added the cases of Sudan and Uganda that also came to my attention first through to my work at Amnesty International USA. In terms of history, culture and conflict characteristics, Uganda and Sudan has many similarities with Sri Lanka. Like Sri Lanka, Sudan and Uganda are home to current active conflicts as well as to intense and at times controversial HR NGO activities. The recent ICC involvement in Uganda and Sudan (with full approval and support from HR NGOs has) generated debate among academics, humanitarian groups and HR advocates about the impact external actors have had on these conflict situations. These well documented debates added more substance to my argument that HR NGOs occasionally do inadvertent harm to the societies they work in.

2.5. Data collection

The data was collected mainly from existing literature that included books, journals, newspapers, magazines, and NGO annual reports and other publications. I closely followed the Social Science Research Council (SSRC) internet blog: *Making sense of Darfur* to get an understanding of what those closely involved with the Darfur peace process has to say about the current ICC investigation in Sudan. In addition, I had an opportunity to be involved with the Northern Uganda and Darfur Sudan human rights advocacy campaigns while working for Amnesty International USA from June to December 2006. I have had informal discussions with my family and friends regarding human rights advocacy efforts in Sri Lanka by international human rights groups during a visit to the country in May/June 2007. As mentioned earlier, it was their unease with the

way some human rights campaigns were conducted by leading HR NGOs in Sri Lanka that first prompted me to explore this subject further and write this thesis.

2.6. Data Analysis

I studied HR NGO involvement in each country: Uganda, Sudan and Sri Lanka, within their own, historical, political, cultural and conflict contexts. Next, I compared them with each other to identify the inadvertent harm done and then suggested a Do No Harm approach to arriving at the same positive ends, but through multi-layered (as opposed to solely legalistic) means.

2.7. Strengths and Weaknesses

Human Rights advocacy is a subject that is very near and dear to my heart. Having born and raised in a country torn apart by over two decades of political violence and turmoil, I have experienced first hand the need for stronger human rights standards and practices for countries in active conflict. Through my work with Amnesty International and other NGOs I had the opportunity to experience first hand the inner workings of HR advocacy campaigns. I saw what steps are been taken by these organizations and individuals interested in helping societies in conflict to find lasting peace and justice. But I also saw how their monolithic legalistic approach to HR advocacy is failing to capture certain aspects of social conflicts (e.g. culture, identity, sovereignty, majority ethnic group sensitivities/insecurities) that are crucial to finding lasting peace and justice. Hence, the greatest strength of this study is the way I personally

related to the controversy studied, but due to my interest and understanding in the importance of HR advocacy by NGOs I not only discussed the controversy but also explored a way HR NGOs can correct their mistakes and expand the utility of their “life saving” work.

The biggest weakness of the study is the lack of a tested case. The DNM approach to HR advocacy by NGOs is counterfactual. No mainstream HR NGOs has adopted a DNH principle yet. So I did not have a positive/proven case where NGOs have actually adhered to a DNH principle to compare with the three untested cases I present here. Simply there is no existing case where comprehensive peace and justice has been found in a protracted conflict situation as a result of HR NGOs adhering to a DNH principle. The three cases studied here only present the harm done. The resolution is a proposal based on my belief that adhering to a DNH principle might expand the utility of HR advocacy by reducing harm done to societies in active conflict. But it is a suggestion that has potential. Especially given how non-HR NGOs such as the *Community of sant'Egidio* has managed to bring peace and justice to Mozambique without reference to the status quo legalistic mechanisms, what I am suggesting, if adopted by HR NGOs, has great potential of increasing their capacity to bring relief to dire conflict situations with minimal harm to victims.

However, all conflict resolution mechanisms have their limitations. Most involvements by external actors in active conflict zones have the potential of creating harm. The purpose of adhering to a DNH approach is to reduce, not eliminate harm. Further, like the cultural relativist approach to HR advocacy, this comprehensive and

flexible approach might draw criticism from universal inalienable rights advocate as an approach that is prone to manipulation by tyrants that abuse their people. But DNM calls for a deeper more comprehensive understanding of conflict situations that include a better understanding of leaders, majorities and ruling governments that are often accused of oppressing people. This understanding can guard advocates that adhere to DNH from being taken advantage of by violators of human rights. One of the hallmarks of the DNH principle is a comprehensive and in depth understanding of conflict situations. Hence it is reasonable to assume that HR advocates who enter conflict situations with in-depth knowledge of the conflict situations have the ability to recognize instances where it is appropriate for them to be flexible. Ruling flexibility out limits opportunities for peace and justice. Knowing when, where and how to be flexible through a deeper understanding of conflict situations expand opportunities for peace and justice.

CHAPTER III: HR NGOs, THE ICC AND THE CONFLICT IN NORTHERN UGANDA

3.1. Introduction

On July 1st 2002, human rights NGOs around the world celebrated one of the most significant victories of their advocacy work: the creation of the International Criminal Court (ICC). On December 16, 2003, Uganda presented the Court with its first case by referring the situation concerning the Lord's Resistance Army (LRA), a rebel group known for its long insurgency against the Ugandan government, to the ICC prosecutor.¹⁶ The case presented an opportunity for both Uganda and the ICC (and universal human rights advocates). For Uganda, the referral was an opportunity to put the "world's most neglected humanitarian emergency"¹⁷ back on the international community's agenda. For the ICC and human rights advocates, "the voluntary referral of a compelling case by a state party represented both an early expression of confidence in the nascent institution's mandate and a welcome opportunity to demonstrate its visibility."¹⁸ After a year long investigation, on October 13, 2005, the ICC unsealed the arrest warrants for five senior commanders of the LRA, including its leader Joseph

¹⁶ "President of Uganda Refers the Situation Concerning the Lords Resistance Army (LRA) to the ICC." ICC press release, the Hague, January 29, 2004, Available from http://www.icc-cpi.int/pressrelease_details&id=16&l=en.html

¹⁷ In the words of UN under-secretary general for Humanitarian affairs, Jan Egeland, Associated press, October 22, 2004 <http://www.guardian.co.uk/world/2004/oct/22/2>

¹⁸ Akhavan, Payam, "The Loads Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court" *The American Journal of Law Review*, Vol 99, No.2 (Apr., 2005). Pp. 403-421, at 403

Kony.¹⁹ Organizations such as Amnesty International and Human Rights Watch applauded the ICC for taking action, with the latter saying: “the people of northern Uganda have long suffered terrible abuses without any chance of redress, with today’s arrest warrants the ICC has opened the door for justice to be done.”²⁰

However the reaction to the arrest warrants outside the HR NGO community turned out to be mixed. Many involved in the Ugandan peace process argued that the arrest warrants are undercutting their efforts to advance peace initiatives. Soon after the ICC unsealed arrest warrants against the five senior members of the LRA, local chief peace mediator and Ugandan government minister Betty Bigombe said: "It would not have cost them much to wait for two years to give this process [a local peace initiative, based on traditional reconciliation methods and headed by Bigombe] a chance.” “In principle, the ICC is good but the time the ICC came here is wrong. They came during an ongoing war.”²¹ Arch-bishop Odama of the Gulu Catholic Archdiocese agreed with Bigombe’s sentiment, saying: “this is like a blow to the peace process. The process of confidence- building has been moving well, but now the LRA will look at whoever gets in contact with them as an agent of the ICC.”²² Father Carlos Rodriguez probably put it in the simplest terms: “nobody can convince a rebel leader to come to the negotiating table

¹⁹ To ensure the safety of witnesses and victims vulnerable to retaliatory attacks, the warrants had remained under seal since their issuance on July 8, 2005 until adequate security measures could be implemented, Situation in Uganda, Case No. ICC-02/04-01/05, Decision on the Prosecutor’s Application for Unsealing of the Warrants of Arrests, 4-27, Oct 13, 2005

²⁰ ICC takes decisive steps for justice in Uganda: Governments must Cooperate to ensure arrest warrants are served, Human Rights Watch Press release, October 14, 2005
<http://www.hrw.org/english/docs/2005/10/14/uganda11880.htm>

²¹ Apolo Kakaire, “Ugandan Mediator Critical of ICC Indictment” , Global Policy Forum, Institute for War and Peace Reporting, Available at <http://www.globalpolicy.org/intljustice/icc/2006/0415mediator.htm>

²² ICC issues arrest warrants for LRA Leaders, IRIN News, Oct 7, 2005
<http://www.irinnews.org/report.aspx?reportid=56630>

and at the same time tell him that when the war ends he will be brought to trial.”²³

Overall many agreed that the ICC indictment of the rebel leaders stalled progress on the political front. This chapter intends to further discuss the controversy over the ICC involvement in the crisis in Northern Uganda and explore how the ICC and HR NGOs can address the issues that created these controversies and help move the peace process forward.

3.2. Origins and the Root Causes of the Conflict

Like most post-colonial states in Asia and Africa, Uganda has suffered from great political turmoil and violence since its independence from Britain in 1962. There have been many rebel movements, insurgencies, coups and rigged elections in Uganda’s recent history. Almost all political violence in post-independence Uganda however have stemmed from inter-ethnic competition for power in government and military. The conditions for this competition were largely set during the colonial era and have continued through and maintained by post-independence governments dominated by one ethnic group or another.

During the colonial times a North-South divide was created in Uganda by the British for ease of administration. Before the Second World War, Ugandans from both the North and the South were recruited into the British colonial armed forces, the King’s African Rifles (KAR). Due to emerging anti-colonial movements, this policy was radically changed after WWII. Uganda’s anti-colonial struggle started in the South which

²³ M. Cherif Bassiouni, “Where is the ICC heading?” *Journal of International Criminal Justice*, 4 (2006), 421-427 at 424 <http://jicj.oxfordjournals.org/cgi/rapidpdf/mql022v1>

had the greatest concentration of the country's economic and educational elite. Fearing the consequences if that region also had large numbers of trained soldiers, the British began recruiting for the military mainly from the North.²⁴ This resulted in Acholi and West Nile ethnic groups, who are concentrated in Northern Uganda, becoming dominant in the KAR. The power was then balanced between the largely Southern civilian and largely Northern military elites. At the same time the British deliberately reserved the introduction of industry and cash crop production to the South, and the North became a pool of cheap labor for Southern industries.²⁵

These colonial policies created an intractable challenge to building a unified nation-state following independence. The Acholi in particular have been told by their colonial masters that they are born worriers. Over time they have been effectively transformed into a military ethnocracy.²⁶ Upon independence, young Acholi were left with few opportunities besides the military. They were economically and socially marginalized by tribes from other parts of the country. Post-colonial Ugandan leaders like Milton Obote and Idi Amin further exploited this ethnic polarization. When Uganda gained independence in 1962, Obote relied on the Acholi-dominated Army to cement his power. In 1971, Obote was overthrown by non-commissioned army officer Idi Amin. During his brutal eight year regime, hundreds of thousands of Acholi were massacred, because of their support of his predecessor, Obote, and their traditional composition of

²⁴ "Northern Uganda: Understanding and Resolving the Conflict" International Crisis Group Africa report No.77, 14 April 2004, p2

²⁵ Ibid.

²⁶ Ibid.

the army.²⁷ Amin was overthrown by Tanzanian-backed rebellion including current president Museveni in 1979. Obote returned to power through rigged elections in 1980 but was overthrown in 1985 by the Acholi general Tito Okello, who subsequently installed fellow Acholi in supreme political and military positions. When Museveni's National Resistance Movement (NRM) usurped Okello from power only a year later, the Acholi were ousted from power in all domains. In subsequent years, as Museveni consolidated his reign and modernized the country, the Acholi were kept on the margins of Ugandan society and largely denied access to political and economic resources.²⁸ This economic and social marginalization of the Acholi led to the creation of several rebel groups, including the now infamous Lords Resistance Army (LRA).

3.3. The LRA

In 1986, two rebel groups from northern Uganda violently reacted to the Acholi loss of power in government and military. The first was a conventional rebel group made up of disposed Acholi officers called the Uganda People's Defense Army/Movement (UPDA/M) and another a peculiar group called the Holy Spirit Movement (HSM) created under the leadership of Alice Auma Lakwena, a self-proclaimed prophetess. UPDA's emergence was generally accepted across the Acholi region as a means of recapturing power but its operations from a far, with UPDA military wing in Southern Sudan and the political wing (UPDM) in London, it failed to sustain popular support.²⁹ The HSM leader,

²⁷ Conflict History; Uganda, International Crisis Group, http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=111

²⁸ Wairama G. Baker, Uganda: The Marginalization of Minorities, Minority Rights International, 2001 www.minorityrights.org/download.php?id=143

²⁹ *Supra* note 24, at p 4.

Lakwena, in the mean time used her claims to supernatural powers to exhort her followers to overthrow the newly established NRM government for being unjust to the Acholi people.³⁰ She reportedly told her followers that the use of her “Holy Oil” would protect them from bullets, turning them into water and the stones they throw [at NRM forces] would turn into grenades.^{31 32} In November 1987, emboldened with these promises of invincibility, her forces suffered heavy casualties during battle, and Lakwena fled to Kenya. Despite being a peasant cult, HSM managed to attract broader support than the UPDA, extending beyond the Acholi to most tribes in Northern and Eastern Uganda. They even came within 100 kilometers of Kampala before being defeated by NRM forces. While both the UPDA and HSM fell in their original forms in the late 80’s, Joseph Kony, a young man believed to be a relative of Alice Lakwena, also claiming to have similar supernatural powers, managed to fuse the UPDA conventional military tactics with HSM spiritualism to create a ruthless new insurgency called the Lords Resistance Army (LRA).

From its inception until present, LRA has had no coherent ideology. The declared mission of LRA by Kony is that it is to overthrow the NRM government and “install the Ten Commandments” in Uganda.³³ Reports by UN agencies and NGOs have repeatedly cited this lack of coherent message of the LRA. According to the International Crisis Group “the LRA is not motivated by any identifiable political agenda, and its military

³⁰ Alice proclaimed that a spirit called Lakwena (messenger) had ordered her in August 1986 to end her work as a healer and mobilize a force to wage war against the evil that had invaded Acholiland. Ibid.

³¹ Akhavan, Payam, p 406.

³² Uganda’s mystic rebel leader dies, BBC News, January 18, 2007
<http://news.bbc.co.uk/2/hi/africa/6274313.stm>

³³ Akhavan, P., p407

strategy and tactics reflect this. Although it does occasionally evoke Acholi nationalism and emancipation, these are irreconcilable with its violence against the Acholi. It is a self-sustaining war machine, with strong and flexible internal organization”³⁴ This lack of a coherent political ideology may have been the reason it did not receive broad support from the Acholi people it sometimes claim to represent. But LRA has interpreted this lack of enthusiasm by the Acholi as sympathy for Museveni,³⁵ and as a result has violently punished them for their perceived apathy.

Over the past twenty years, LRA had often raided Acholi villages killing, raping and mutilating civilians by cutting their lips, noses and cheeks off. They have looted property and most infamously, abducted children. To date LRA is estimated to have abducted over 20,000 children to be used as soldiers, sex slaves, laborers and human shields in combat. According to some sources 85% of LRA forces are abducted children. They have also displaced over 2 million people, almost ninety percent of the population of Uganda’s three main Acholi provinces, into over-crowded, unsanitary and dangerous internally displaced person’s camps created by the Ugandan government.³⁶ An estimated 100,000 people are reported to have died as a result of prolonged conflict.³⁷ To add to the pains of the Acholi, human rights abuses have also been committed by government

³⁴ ICG, *Supra* note 24, at p 5.

³⁵ Abigail Moy, “The International Criminal Court’s arrest warrants and Uganda’s Lord Resistance Army: Renewing the debate over amnesty and complementarity” *Harvard Human Rights Journal*, Vol 19, spring 2006, p268

³⁶ Jeffrey Krilla, *The Endangered Children of Northern Uganda*, Deputy Assistant Secretary for Bureau of Democracy, Human Rights and Labor, Testimony Before the House International Relations Subcommittee on Africa, Global Human Rights and International Operations, Washington, DC, April 26, 2006 <http://www.state.gov/g/drl/rls/rm/2006/66500.htm>

³⁷ UN Security Council Report S/2006/478 Available from <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Uganda%20S2006478.pdf>

forces: the Ugandan national army and the Uganda People's Defense Forces (UPDF). The Ugandan government has adhered to a forced displacement policy that put civilians in government created IDP camps called "protected villages" to prevent looting and abductions by the LRA. As a result an entire generation of Acholi has been forced to live in IDP camps without access to health care, education and other basic necessities of life. Still, government forces have failed to provide adequate protection to IDP's living in and around these camps.³⁸ Every night an estimated 40,000 children, known to Uganda peace advocates as "night commuters," seek safety from the LRA raids by commuting from their rural homes to urban centers, where they sleep on streets or in bus parks, church grounds and local factories to return home in the morning.³⁹

UN Under-Secretary General for Humanitarian Affairs Jan Egeland has termed the situation among the worst humanitarian disasters in the world.⁴⁰ The Ugandan government that has either defeated or entered into peace agreements with every rebel movement/insurgency that retaliated against it since 1986, has failed to defeat the LRA. There are multiple reasons to why the LRA has been so immune to defeat.

3.4. Evolution of the LRA

Defeating the LRA has been challenging for the Ugandan government due to political, military and social reasons. In terms of tactical difficulties, the LRA operates in a highly decentralized manner that makes them highly resistant to organized government

³⁸ Human Rights Watch, "Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda, September 2005, Available from <http://www.hrw.org/reports/2005/uganda0905/>

³⁹ Jihun Sohn, UNICEF Executive Director, Ann M. Veneman, Highlights the Plight of Children Caught in Uganda's Conflict, UNICEF, July 25, 2005 http://www.unicef.org/infobycountry/uganda_27744.html

⁴⁰ ICG, *Supra* note 27

raids. LRA never established bases inside Northern Uganda, but did so to a small extent in neighboring Southern Sudan. But that has reduced their vulnerability to attack as government forces couldn't pursue them in another country's territory. It constantly moves around, surviving on looted supplies from the villages they frequently attack. They also avoid direct confrontation with government forces, instead prioritizing on survival by focusing on soft targets and ambushes. More importantly, they have a disposable force of child soldiers who are often sacrificed to ensure the escape of top commanders. Besides these clever tactics, there are other unique characteristics of the LRA that makes it remarkably resistant to conventional defeat through force.

Due to linkages to the HSM, LRA possesses an air of spirituality around it. From the beginning LRA supported to follow the Ten Commandments, but Kony cleverly mixed Christianity with traditional beliefs⁴¹ to appeal to more Acholis. There are also attributions of supernatural powers to Kony that have captivated some Acholis, who otherwise would not have supported him or his movement that lacks a coherent message or purpose. In December 2003, a Ugandan official said in an International Crisis Group (ICG) interview "The spiritualism captivates the people."⁴² This control through spiritual and coercive means has proven central to sustaining the otherwise ruthless rebel movement.

Since 1994, the Sudanese government has been supporting the LRA as retaliation for the Ugandan Government's support for the Sudan People's Liberation Movement/Army (SPLM/A) insurgency. Sudanese government has provided safe havens

⁴¹ Uganda's rebels keep the faith, BBC News, July 3, 2002, <http://news.bbc.co.uk/2/hi/africa/2083241.stm>

⁴²ICG, *Supra* note 24, at p5

and arms to the LRA and the LRA has from time to time has helped the Sudanese government recapture cities and towns from SPLA rebels. This support while not crucial has also been a significant factor in increasing the deadliness and sustainability of the LRA.⁴³ Sudan's support to the LRA however diminished in the new millennium with Sudan signing the Comprehensive Peace Agreement (CPA) with SPLA in early 2005, ending that country's 21 year North-South conflict. CPA eased tensions between Sudan and Uganda allowing Ugandan forces to pursue LRA rebels into Southern Sudan.⁴⁴ The Ugandan government launched Operations Iron Fist I in 2002 and Iron Fist II in 2004. These operations managed to significantly weaken LRA military capabilities and force them out of Southern Sudan but resulted in the LRA splitting up into smaller groups and establishing bases in north-eastern Congo, reinforcing its regional dimension.

However, what has really guaranteed the survival of the LRA over the past two decades are the unresolved Acholi grievances themselves that gave birth to the movement in the first place. According to the ICG "although few are willing to say that the LRA is fighting to rectify historical Acholi grievances, these grievances do exist, and many see the LRA, for all its faults, as the only group that is effectively confronting Museveni."⁴⁵ This sentiment has also proven true among members of the Acholi Diaspora who are not directly affected by the atrocities of the LRA but are in a position to support them financially from a distance. Further, many LRA fighters remain with the group because they see it as better than returning to the largely impoverished North with no hope of

⁴³ Ibid., 7

⁴⁴ ICG, *Supra* note 27

⁴⁵ Ibid., p 9

economic betterment.⁴⁶ Simply, though the vast majority of Acholi reject the LRA as their representative, the Ugandan government's failure to address their grievances or adequately protect them from LRA attacks over the past twenty years has created a dangerous ambiguity that has allowed the LRA to continue its operations.

3.5. In Search of a Resolution

Having failed to root out the LRA militarily, the Ugandan government tried its hand at another confrontational approach to solving the problem in December 2003 by referring the case regarding the LRA to the ICC. As discussed earlier, by adopting a justice mechanism that is mostly [understood and] favored by the West, the Ugandan government managed to bring international attention to its national problem. It received praises from international human rights advocacy groups that vowed to help the Ugandan government and the ICC to bring the [LRA] human rights abuses to justice. But like the military approach, the ICC approach to finding a resolution soon turned out to be narrow, flawed and inadequate.

The ICC only has jurisdiction over crimes committed after the Rome Statute's entry into force on July 1, 2002 and LRA atrocities have been happening since 1989. Although crimes committed by the LRA post-2002 is sufficient for the ICC to prosecute the top LRA commanders, other issues relating to the indictment has proven this a not so promising step towards resolving the conflict in the long run. The ICC is suppose to be complementary to national criminal jurisdiction and is to intervene only in instances

⁴⁶ Ibid., 8

where the national courts are unwilling and unable to conduct prosecutions. Despite HR NGO claims that Ugandan courts lack capacity to prosecute LRA commanders,⁴⁷ Uganda is a state that is both willing and able to conduct a prosecution and it voluntarily relinquishing the jurisdiction of its national courts in favor of the ICC has raised questions about the government's motives behind the referral. This is especially significant given President Museveni's efforts to portray the LRA as a terrorist organization following the September 11 attacks. Since the beginning of the United States' war on terror, Uganda has managed to garner increased international support and legitimacy for its actions in Northern Uganda. Museveni even had the LRA added to the U.S list of terrorist organizations in October 2005 and Uganda is now considered to be a strong supporter in the global war against terrorism by the U.S.⁴⁸

Adding to the controversy of the government's motives, ICC is only looking into crimes committed by the LRA, while there were numerous reports of UPDF committing similar crimes. In their efforts to flush out the LRA, UPDF bombed and burned down villages displacing hundreds of thousands of people. Organizations such as the Refugee Law Project, Acholi Religious Peace Initiative and strong ICC supporter HRW⁴⁹ all have documented numerous accounts of rapes and sexual attacks against women by UPDF soldiers.⁵⁰ The ICC prosecutor for his part has said "we analyzed the gravity of all crimes in Northern Uganda committed by the LRA and the Ugandan forces. Crimes committed

⁴⁷ <http://www.amnesty.org/en/for-media/press-releases/uganda-government-cannot-negotiate-away-ICC-warrants-20080220>

⁴⁸ US state department background notes on Uganda, US-Uganda Relations, Available at <http://www.state.gov/outofdate/bgn/u/102979.htm>

⁴⁹ ICC takes decisive step..<http://www.hrw.org/english/docs/2005/10/14/uganda11880.htm>

⁵⁰ Moy, *Supra* note 35

by the LRA were much more numerous and much higher in gravity... We therefore started with an investigation of the LRA.”⁵¹ But focusing only on LRA atrocities [post July 2002] has subjected the ICC to the criticism that it is being biased in favor of the Ugandan government.

The next two controversies created by the ICC indictment are the most relevant to the focus of this chapter. First there is the notion that the ICC imposes a Western notion of retributive justice that clashes with the local traditions that favor restorative justice. Some displaced believe that their tormentors should be put through traditional justice of the Acholi people - a ritual called *mato oput* – a ceremony of clan and family centered reconciliation that incorporates the acknowledgement of wrongdoing, the offering of compensation by the offender and then culminates in the sharing of a symbolic drink.⁵² This mechanism is in line with Acholi traditions of forgiveness and is seeks to break the cycle of violence via a policy of amnesty. Unsurprisingly, human rights advocates have strongly opposed to such mechanisms of forgiveness and reconciliation that bypasses their conventional idea of seeking justice through court proceedings. But there are many complications to pursuing a solely legalistic mechanism to punishing the LRA. For example most perpetrators of violence in Uganda’s conflict are abducted children, who many consider to be the victims and victimizers at the same time. While the ICC and other international legal instruments HR NGOs advocate for is appropriate to punish the

⁵¹ “Statement by the Chief Prosecutor on the Uganda Arrest Warrants,” International Criminal Court, The Hague, 14 October 2005. Available from

http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051014_English.pdf

⁵² Kasaija Phillip Apuuli, Civil Society and Conflict Resolution: The role of the Acholi Religious Leaders Peace Initiative (ARLPI) in the Northern Uganda Conflict, p7, Available from <http://www.istr.org/conferences/bangkok/WPVolume/Kasaija.ApuuliPhillip.pdf>

top leaders, when it comes to say the child soldiers, there is a clear ambiguity of an appropriate legalistic method.

Finally, and most importantly, many believe that the ICC involvement in Uganda has obstructed efforts to find a negotiated settlement to the conflict. In July 2006, perhaps realizing the complications of their confrontational approaches to defeating the LRA, the government of Uganda entered into peace negotiations with the LRA in the Southern Sudanese capital of Juba. In an attempt to offer a peace incentive to the LRA, the Ugandan President distanced himself from the ICC by offering amnesty to Joseph Kony shortly before the talks began.⁵³ In late August 2006, after several weeks of negotiations, the parties signed a cease-fire agreement. But Kony refuses to come out of the bush to negotiate further out of fear of being arrested and delivered to The Hague. The ICG has said that “Juba talks remain the best opportunity in 20 years to end the conflict of Northern Uganda, but outstanding ICC arrest warrants -- remain a stumbling block.”⁵⁴ UN Undersecretary for Humanitarian Affairs Jan Egeland has echoed the ICG sentiment saying “[Juba talks are] the best chance ever to end the war.”⁵⁵

In addition to the Juba talks, there have been ongoing efforts by Ugandan civil society groups to find a negotiated settlement to the conflict. Among the leading voices in these efforts is the Acholi Religious Leaders Peace Initiative (ARLPI). From the outset they too have opposed the ICC involvement in the peace process. According to Bishop McLeod Ocholathe Vice-Chairman of the ARLPI, “the ICC probe is destroying all efforts

⁵³ Jeevan Vasagar, “Lord’s Resistance Army Leader Is Offered Amnesty by Uganda,” *The Guardian*, July 5, 2006, Available from <http://www.guardian.co.uk/world/2006/jul/05/uganda.topstories3>

⁵⁴ ICG, *Supra* note 27

⁵⁵ Museveni ‘to direct peace talks.’ *BBC News Africa*, Thursday September 21, 2006 Available from <http://news.bbc.co.uk/2/hi/africa/5366436.stm>

for peace. People want this war to stop. If we follow the ICC in branding the LRA criminals, it won't stop."⁵⁶ A delegation of more than 20 Ugandan legislators, religious and cultural leaders traveled to The Hague in April 2005 to tell the ICC prosecutor that the investigation is hampering negotiations between the government and the rebels and was counter productive to peace in the North.⁵⁷ Most residents of IDP camps also share this view. A woman in an IDP camp in Northern Uganda has rhetorically asked: "Kony won't come out because of the ICC, so to whom shall we attribute our suffering?"⁵⁸ Katherine Southwick probably summed this up the best when she wrote, the ICC in Uganda is "widely opposed by those groups the Rome Statute is designed to serve: the victims."⁵⁹ However, these remarks by some community/religious leaders and victims doesn't mean that they wish to see Kony and his deputies go free. It simply means that there is urgency for peace; an urgency to leave the IDP camps and return home.

On February 20, 2008 the Ugandan government reached an agreement with the LRA to have its senior leaders tried by Ugandan national courts instead of the ICC. The agreement also provided that lower level perpetrators be tried according to traditional justice mechanisms indigenous to Northern Uganda.⁶⁰ As expected universal rights advocates immediately came out with statements opposing the agreement. Senior Legal Adviser in Amnesty International's International Justice Project, Christopher Keith Hall

⁵⁶ Ibid., p8

⁵⁷ "Uganda: ICC could suspend northern investigations," IRIN News, Monday April 18, 2005, Available from <http://www.globalsecurity.org/military/library/news/2005/04/mil-050418-irin01.htm>

⁵⁸ McConnell, Tristan. "Uganda: Peace vs. Justice." *Opendemocracy*, 14 September 2006. Available from www.opendemocracy.net

⁵⁹ Katherine Southwick, "Investigating War in Northern Uganda: Dilemmas of the International Criminal Court," *Yale Journal of International Affairs* I (2005), 105-119 at 113.

⁶⁰ Scott Worden, "Justice Dilemma in Uganda," United States Institute for Peace briefing, February 2008, p1, Available from <http://63.104.169.51/articles/1011526.977/1.PDF>

said in an immediate press release on February 20, 2008: “It is not acceptable for the Ugandan government and the LRA to make a deal that circumvents international law,”; “At the moment, we have no evidence to suggest that even a new court established in Uganda to deal with these cases would be able and willing to do so in fair proceedings that are not a sham,”⁶¹ But to Northern Ugandans who have lived in IDP camps for decades and have been waiting to go home for just as long, this development has brought some long over due hope.

3.6. A “Do no Harm” Approach to Human Rights Advocacy in Uganda

In their traditional roles as entities that lie between nation states and oppressed and underserved mass, human rights and humanitarian NGOs have done substantial work on behalf of the people affected by the crisis in Northern Uganda. While humanitarian NGOs worked on providing basic needs to millions living in IDP camps, human rights NGOs have organized protests, marches, and lobbied Western governments to raise awareness and funds. Leading human rights NGOs like Human Rights Watch and Amnesty International have especially focused on issues of Justice. Once the International Criminal Court issued arrest warrants against five top commanders of the LRA, HR NGOs started working over time to ensure the enforcement of those arrest warrants. In many ways, the most significant NGO involvement in the crisis in Uganda to date has been their efforts to solve the crisis using international legal mechanisms channeled through the ICC. Over the past five years, HR NGOs have not only lobbied to

⁶¹ Uganda: Government cannot negotiate away International Criminal Court arrest warrants for LRA, Amnesty International Press Release, February 20, 2008, <http://www.amnesty.org/en/for-media/press-releases/uganda-government-cannot-negotiate-away-ICC-warrants-20080220>

get the ICC warrants executed but have also adamantly opposed to all other mechanisms of finding justice, including traditional transitional justice mechanisms and prosecution of the accused through Ugandan national courts.

By adamantly opposing any and all means of finding justice that lie outside the narrow confines of international law, human rights NGOs and advocates have indeed done great harm to the victims of human rights abuse in Uganda. Their insistence on having the LRA top commanders prosecuted at The Hague has kept a peace process that would have brought great relief to Ugandans living in IDP camps from moving forward. While it would be ideal to have the peace process and the prosecutions of perpetrators on an international stage move forward simultaneously, Uganda and most similar situations around the world have shown that just isn't practical. HR NGOs can reduce this harm by being open to a triangulation of justice mechanisms. While the ICC tries the top leaders, they can allow local and national courts try lower level perpetrators. If Ugandans prefer a traditional method to address the atrocities by former child soldiers who fall within the margins of victim-victimizer ambiguity, HR NGOs should not oppose that, because one-dimensional justice mechanisms, be it local or international, cannot address all the justice need of this multi-dimensional conflict that has a wide variety of victims and victimizers.

As discussed earlier, the reach of international law is extremely limited, hence what can be accomplished through advocacy efforts that strictly adhere to UDHR type customary international law, is also limited. The ICC indictments HR NGOs are vigorously advocating in Uganda alone can attest to this. In the 20 year civil-war of Uganda, the ICC only focuses on the last six, among the thousands of perpetrators,

including government forces, ICC focuses only on five senior leaders, among many different means of justice – forgiveness, reconciliation, truth-telling, compensation, retribution – the ICC and HR NGOs have only chosen one, punishment. Realizing these inadequacies of what they are advocating for is a good first step towards reducing harm done through their advocacy work.

However, I am not advocating local justice mechanisms in place of or over international mechanisms. Local courts and traditional means of finding justice such as *mato oput* also have their limitations. For instance traditional and local legal instruments cannot be utilized to hold non-Ugandan perpetrators accountable. There are many responsible for the atrocities in Uganda, besides the LRA and the Ugandan government, they include regional warlords, foreign financial backers (of the LRA and the Ugandan government) and the Ugandan Diaspora. In most cases, ICC, national, local nor traditional justice mechanisms can bring these actors to justice. A DNH approach that calls for a comprehensive method could be expanded in the future to address these issues. In the mean time being open to traditional and local mechanisms when appropriate is a good first step toward building that comprehensive approach. But HR NGOs have grave concerns over allowing other means of finding justice.

Much of the HR NGO resistance to transitional justice mechanisms has to do with their fear of impunity. Richard Dicker, international justice program director at Human Rights Watch told the Washington Post on March 19, 2008, regarding the Uganda case, that "Justice cannot be sacrificed for impunity," "Impunity comes back in worse cycles of

violence, and there will be no lasting peace -- as we have seen in many countries."⁶² But setting priorities does not equal impunity. Many of the problems with the ICC indictment have been about timing. Setting priorities and knowing when to advocate what is another way to reduce harm done to the victims of violence. The situation in Uganda is grave. It now has the world's 3rd largest IDP population. Approximately 200 camps house 1.5 million or more IDPs. The camps are heavily congested, and some house an excess of 60,000 people. Resources have proven insufficient to provide adequate security, water, sanitation facilities, or health care services to the people who live there. Consequently, the IDP camps have high mortality rates (1.54 per 10,000 per day); roughly three times the national average (based on January to July 2005 estimates of 35,000 deaths in Kitgum, Gulu, and Pader). Civilians' freedom of movement outside of camps has been extremely limited by the LRA threat as well as Ugandan government policies.⁶³ Under these circumstances, peace should be the priority. Making peace the priority does not mean that there will be impunity for the perpetrators.

According to Arsajani and Reisman, there are two types of international tribunals: *ex post* tribunals, like the Nuremberg and Tokyo tribunals that are "established after the acute and violent situation in which the alleged crimes occurred has been resolved by military victory or political settlement," and *ex ante* tribunals, "established before an international security problem has been resolved or even manifested itself, or

⁶² Nora Boustany, "Ugandan Rebel Reaches Out to International Court; Kony's Legal Team Explores an Exit That Could Seal Peace Pact," Washington Post Foreign Service, Wednesday, March 19, 2008; A12

⁶³ Jeffrey Krilla, *Supra* note 21

are established in the midst of the conflict in which the alleged crimes occurred.”⁶⁴ ICC is the archetypal *ex ante* tribunal. Like we see in the case of Uganda, *ex ante* tribunals create conflicting pressures on all parties involved and before long produce stalemates. This point was presented most succinctly in a statement by the Catholic archdiocese’s Justice and Peace Commission of Gulu in the Northern Uganda district: “To start war crimes investigation for the sake of justice at a time when war is not yet over, risks having, in the end, neither justice nor peace delivered.”⁶⁵

There is no question that the ICC indictment had some positive impacts on the peace process. It brought international attention to Uganda’s long neglected conflict and sobered the LRA and influenced the Sudanese government to reduce its support to the rebels.⁶⁶ It also inadvertently made the warring parties to try their hand at negotiations again. But it remains that the prospects of being tried in an international court threatens the security of rebel leaders and make them want to keep fighting for as long as they possibly could. The anticipation that peace will lead to their arrest and imprisonment does make warfare and attractive alternative to peace. At this point, the ICC indictment seems to have served its purpose, pushing it further for the sake of a symbolic “spectacle” of having the LRA leaders tried at The Hague, just might result in neither peace nor justice being delivered. If HR NGOs can step aside for a moment and let the Juba talks move forward, there is a good chance that there will soon be a time for peace and in turn for justice through an *ex ante* tribunal.

⁶⁴ Mahnoush H. Arsanjani and W. Michael Reisman, “The Law-in-Action of the International Criminal Court” *American Journal of International Law*, Vol. 99, No. 2 (Apr., 2005), pp 385-403 at 385

⁶⁵ *Ibid.*,

⁶⁶ International Crisis Group, *Shock Therapy for Northern Uganda’s Peace Process* 5 (April 21, 2005) (Africa Brief No. 23)

In addition, the “Do no Harm” principle also calls aid workers and HR advocates to not undermine local strengths and create dependencies. In the Uganda context, HR NGOs have continually undermined local strengths, first by opposing traditional means of finding justice and more recently by opposing local courts from addressing some of the case against lower level perpetrators. After all having the best interest of the people in mind mean both working for and with the people to find solutions to social problems. Undermining local strengths only create dependencies that bind struggling societies to continued external support and supervision. Giving Ugandans a chance to understand and find a solution to at least a part of their unique and individual problems is another way HR advocates can reduce harm done through their advocacy work. It will be beneficial for both HR advocates and the people of Uganda to move away from or at least diversify their approach to finding justice that has been fixated on resolving the problem using a highly incomplete vehicle for justice and peace such as the ICC for a long time.

Finally, it is important to remember that Uganda’s is a complex conflict that does not have a one-dimensional solution. A military-only solution would deal with the immediate manifestation of the problem, the LRA, but will not solve the North-South divide or produce national reconciliation. Negotiations will bring to light the Acholi grievances that lie at the heart of the conflict but will potentially give the rebels a chance to take advantage of cessation of hostilities and regroup and rearm to cause even more chaos. Addressing only the humanitarian consequences will treat the symptoms and not the cause, prolonging suffering of the victims. An effective strategy should “aim comprehensively at achieving a negotiated settlement while maintaining military pressure

to contain the conflict and minimize victims, while at the same time enhancing the prospects of national reconciliation and improving the humanitarian situation.”⁶⁷ The same is true to finding justice for the victims in Uganda. Just as there isn’t a one-dimensional path to peace in Uganda, there certainly isn’t a one-dimensional path to justice. A comprehensive path to justice requires the strengths of both local and international mechanisms. Adhering to a Do No Harm approach to human rights advocacy gives HR NGOs an opportunity expand their notion of justice, value local strengths, not create dependencies and set priorities to make less controversial and more welcome contributions to finding peace and justice in Uganda.

⁶⁷ ICG, Africa Report No.77, p18

CHAPTER IV: AFRICA'S CHANGING POSITION ON THE ICC AND THE CONFLICT IN DARFUR, SUDAN

4.1. Introduction

Africa's largest country, Sudan, has hardly been off a war footing since its independence from Britain in 1956. The most significant conflicts of Sudan till 2003 have been the 1956-1972 and 1983-2005 North-South wars. They were fought mainly over the northern economic, political and social domination of largely non-Arab, non-Muslim southern Sudanese. The Comprehensive Peace Agreement (CPA) signed in 2005 granted Southern rebels some autonomy and brought long over due hopes of peace to Sudan. However, a separate conflict that broke-out in Sudan's westernmost region, Darfur, in 2003 has now become the most significant conflict of the country's recent history. The conflict in Darfur, which is estimated to have killed 200,000-400,000 and displaced over 2 million, has brought an unprecedented amount of global attention to Sudan. It has been compared to the 1994 genocide in Rwanda, the United Nations has called it "the world's worst humanitarian crisis" and the United States has labeled it "genocide."

Since the conflict erupted in mid 2003, countless International Non-Governmental Organizations (INGO's), including leading human rights NGOs have been in the front and center in the fight to save Darfur. Thanks to their tireless efforts, the UN Security Council unanimously passed resolution 1769 on July 31, 2007 authorizing a joint,

26,000⁶⁸ personnel strong, UN-African Union Mission to Darfur: UNAMID. Two years earlier, in March 2005, also as a response to building pressure from NGOs, United Nations Security Council referred the Darfur situation to the International Criminal Court (ICC). ICC issued arrest warrants for Sudanese government minister, Ahmed Harun, and Janjaweed commander, Ali Kushayb in April 2007,⁶⁹ but Khartoum refused to hand over their men and the warrants remained unexecuted. In June 2008 ICC prosecutor Luis Moreno-Ocampo applied for an arrest warrant for Sudan's president Bashir for genocide, crimes against humanity and war crimes committed against the people of Darfur. Leading Human Rights NGOs applauded Ocampo's decision and vowed to campaign for the execution of the warrants if and when the court issues them. But many outside the HR NGO regime wondered what implications the indictment and the arrest of Sudan's sitting head of state would have on Darfur's fragile peace process. Many expressed their concerns saying that if the peace process is derailed as a consequence of these warrants, it could result in the death and displacement of more people. On the outset, actions of HR NGOs, while admirable on one hand seems to have made diplomacy and moving the Darfur peace process forward more difficult on the other. This chapter discusses the short and long term implication of HR advocacy work in the midst of a crisis of the Darfur, Sudan magnitude by international NGOs.

⁶⁸ As of March 2008, only 9,178 uniformed personnel – roughly 35% of the authorized force, have been deployed. Save Darfur Coalition Briefing paper, p7

http://darfur.3cdn.net/46c257b8e3959746d5_ttm6bnau2.pdf

⁶⁹ Conflict History: Sudan. International Crisis Group

http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=101

3 International Criminal Court: Possible arrest warrants against Sudanese officials. Amnesty International <http://www.amnesty.org/en/for-media/press-releases/international-criminal-court-possible-arrest-warrants-against-sudanese-o>

4.2. Brief History of the Conflict in Darfur

Darfur constitutes about one fifth of Sudan's land. Of the 41 million Sudanese, 7.6 million (about 19%) live in Darfur. They belong to many tribes and claim either an Arab or an African decent. Practically all people in Darfur follow Islam and share similar physical characteristics. Many are subsistence farmers and are mostly settled along the few reliable water sources of the largely arid, sandy plateau region and grow tobacco, millet and fruit. The rest are nomadic or semi-nomadic herders. The herders in the North tend camels while those in the South tend cattle. Herders and farmers have feuded for decades, among themselves and with each other over grazing rights and water.⁷⁰ However the war that broke out in 2003 has deeper and more complex roots.

Anglo-Egyptian forces captured Sudan's capital Khartoum in 1889 following the collapse of the loose Ottoman-Egyptian Empire in the 1880's and established a jointly administered condominium. The British adhering to their signature "divide and rule" policy, separated North and South Sudan until 1947 and gave political power to Northern elites. The political landscape did not change much after independence. People in Southern Sudan, including those in Darfur long resisted this Arab domination from Khartoum and felt socially, economically and politically marginalized. In 1955, Southern troops rebelled against the government over issues relating to creating a federal system of governance. Fighting dragged on until 1972, when a peace agreement granted Southern Sudan regional autonomy of internal matters.⁷¹ Several factors including systematic

⁷⁰ "Sudan at war with itself," Washington Post http://media.washingtonpost.com/wp-srv/world/pdf/darfur_040707.pdf

⁷¹ Conflict History; Sudan, International Crisis Group Report, last updated September 2008 http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=101

violation of the peace accord by the government, an announcement by then President Jaafar Nimeri that he would turn Sudan into a Muslim Arab state and the discovery of oil in South/Central Sudan led to the eventual collapse of the peace agreement and resumption of war in 1983. Nimeri officially aborted the peace agreement in June that year and dissolved the South's constitutional guarantees and declared Arabic as Sudan's official language and Islamic law, or Sharia, as law of the land. Southern grievances crystallized around Sudan People's Liberation Army (SPLA) led by John Garang. A popular uprising managed to overthrow Nimeri in 1985 but a bloodless coup led by now president Omar al-Bashir and his National Islamic Front (NIF) shattered moves towards a SPLA-government. Fighting between several rebel groups and the NIF government continued for two decades till a Comprehensive Peace Agreement was signed in 2005 granting the South six years of autonomy to be followed by a referendum on whether it should remain part of Sudan or secede.

Two year prior to signing the CPA, people of Darfur, especially those of African decent that have long been the subjects of economic, social and political marginalization by the Arab dominated central government in Khartoum took up arms against the government. In March 2003, fighters from two rebel groups- the Sudanese Liberation Army (SLA) and the Justice and Equality Movement (JEM) launched surprise attacks against government troops in Northern Darfur. The government responded by bombing villages whose residents they believed to have supported the rebels. Further the government allegedly recruited a militia, now known as the *Janjaweed*, from among Arab tribes in Darfur to fight the rebels. Most *Janjaweed* militia members came from the

herding and mostly landless Abala tribe. Abala livelihoods have been threatened and destabilized by years of drought and clashes with settled tribes of Darfur. In a campaign to push African tribes off the land, the *Janjaweed* started riding onto villages frequently, on horse or camel back and burning and looting villages and killing and raping hundreds and thousands of civilians. The Sudanese government has said that they have no control over the *Janjaweed*, but the international community believes otherwise.

4.3. NGO involvement in Darfur

The crisis in Darfur led to the largest humanitarian and human rights advocacy campaigns on a single issue/country by NGOs in recent history. Several NGOs such as ENOUGH, Not on our Watch, Darfur Wall, Darfur Scores, Divest Sudan, Sudan Divestment Task Force, Protect Darfur and NGO coalitions such as the Save Darfur Coalition⁷² came into being specifically to bring global attention to the crisis in Darfur. In early 2004, humanitarian organizations set up massive operations to deliver aid to the victims of violence, especially to refugees that fled to Chad and the Central African Republic and to internally displaced persons (IDPs). Today, nearly 13,000 humanitarian workers and one hundred relief agencies work in Darfur, making it the largest humanitarian operation in the world. As a result mortality rates have been reduced to pre-war levels and overall health, though fragile, has improved.⁷³

⁷² Save Darfur Coalition is a U.S based advocacy group calling for international intervention in the conflict in Darfur, Sudan. It is made up of 180+ religious, political and human rights organizations campaigning for an international response to atrocities in Darfur.

⁷³ Weissman, Fabrice., "Humanitarian Dilemmas of Darfur; June 2008 Available from <http://msf.fr/drive/214a9aa0483c6e560e05cdafb00beb11.pdf>

On the domestic (U.S) front NGOs and NGO coalitions launched numerous rallies, protests, letter writing campaigns and fund raising events. For instance on January 22nd, 2006 on the 55th anniversary of the ratification of the U.N.'s Convention on Genocide, Save Darfur Coalition launched the "Million Voices for Darfur" campaign, a national effort to deliver one million hand-written and electronic postcards from Americans to President Bush demanding that he support a stronger multinational force to protect the people of Darfur. On April 30th, 2006, the Coalition organized the "*Save Darfur: Rally to Stop Genocide*" on the National Mall in Washington DC and encouraged grassroots activists to hold rallies in communities around the country. Nearly 50,000 people gathered in Washington, D.C., to hear from leading voices in the effort to stop the genocide in Darfur, including a broad spectrum of prominent faith leaders, political figures, human rights activists, celebrities, and survivors of other genocides.⁷⁴ Many NGOs have produced documentaries (Darfur Diaries), books (The Devil came on Horse back, Not on Our Watch), and films (Darfur Now) music (Instant Karma) and paraphernalia to raise awareness and funds.

On the international front NGO coalitions, especially the Save Darfur Coalition formed partnerships with NGOs in Europe, Africa and the Middle East. Through encouragement and financial support from the Coalition, these partners have “hired full-time European Union lobbyists; developed a Globe for Darfur website; supported the attendance of Darfuri lawyers and human rights defenders at the U.N. Human Rights

⁷⁴ Save Darfur Coalition, Campaigns, Previous Initiatives
http://www.savedarfur.org/pages/previous_initiatives

Council Special Session on Darfur; organized effective lobbying efforts that have strengthened the final U.N. resolution to authorize the appointment of a special investigative mission to Darfur; conducted capacity-building training for Darfuri lawyers and human rights defenders; lobbied member states at the fortieth and forty-first sessions of the African Commission on Human and Peoples' Rights in Gambia and Ghana, respectively; coordinated two continent-wide strategy meetings for engaged NGOs in Kampala and Brussels; participated in a forum and led panel discussions with major broadcast outlets in the Arab world; hosted a conference for Arab journalists covering the conflict in Darfur; lobbied during the 8th and 9th African Union summits; coordinated a Solidarity Day for Darfur with the participation of renowned South African musician Hugh Masekela; and supported efforts by Darfuri Diaspora communities, specifically the Darfuri Leaders Network, to coordinate their efforts.”⁷⁵ Other NGOs that make-up the coalition have launched campaigns of their own in addition to supporting the efforts of the coalition. Both Amnesty International and Human Rights watch frequently lobby governments (mainly Western) and intergovernmental organizations (UN, EU, AU, and Arab League) to take action to save the people of Darfur.

The most significant accomplishment in terms of alleviating the suffering of the people of Darfur through the efforts by NGOs came on July 31, 2007 when the UN Security Council unanimously voted to send 26,000 peace keepers (20,000 troops and 6,000 additional police and civilian personnel) to protect the people of Darfur. However more than a year later only fewer than 11,000 peacekeepers have been sent to Darfur

⁷⁵ Save Darfur Coalition: Global Campaigns http://savedarfur.org/pages/global_campaigns/

under the United Nations African Union Mission in Darfur (UNAMID). Even the few peacekeepers on the ground are now lacking vital resources to carry the mission forward. Although the death rate has declined from the peaks of 2004, millions of Darfurians remain displaced and cut off from their traditional livelihoods. Without a comprehensive peace process, survival of the people of Darfur is dependent on continued international interest and involvement.

4.4. Human Rights NGO Involvement in Darfur

In addition to their advocacy efforts in collaboration with NGO coalitions such as the Save Darfur Coalition, human rights NGOs have launched specific campaigns to address justice issues in Darfur. Prominent human rights groups like Amnesty International and Human Rights Watch have been lobbying intergovernmental organizations and the International Criminal Court (ICC) for years to bring human rights violators in Sudan to justice. First many HR NGOs lobbied to get the situation in Darfur recognized as genocide. They succeeded when the U.S. Congress and then U.S. Secretary of State Colin Powell labeled the crisis in Darfur a genocide in mid 2004.⁷⁶ Their next victory came in March 2005 when the UN Security Council referred the case of Darfur to the ICC. Two years later on April 27, 2007 the ICC issued two arrest warrants against Sudan's former State Minister of the Interior Ahmad Harun and Janjaweed leader Ali Kushayb for 51 counts of war crimes and crimes against humanity. Sudanese government publicly and repeatedly refused to hand the men to the court. Instead Ahmad Harun was

⁷⁶ Lanz, David. "Conflict Management and Opportunity Cost: The International Response to the Darfur Crisis." Mediation Support project, Swisspeace, September 2008

promoted to State Minister for Humanitarian Affairs, making him responsible for the welfare of the very victims of his alleged crimes as well as having considerable power over humanitarian operations. He was also responsible for liaising with the international peacekeeping force (UNAMID) tasked with protecting civilians against such crimes.⁷⁷

On April 28, 2008, tired of the antics of the Sudanese government, human rights organizations around the world launched a “Justice for Darfur” campaign calling for the arrest of the two. The organizations behind the campaign, Amnesty International, Cairo Institute for Human Rights Studies, Coalition for the International Criminal Court, Human Rights First, Human Rights Watch and Sudan Organization Against Torture, joined forces through this campaign to call on the United Nations Security Council, regional organizations and individual governments to press Sudan to cooperate with the ICC.⁷⁸

Human Rights NGOs biggest victory to date however came on July 14, 2008 when ICC prosecutor Luis Moreno Ocampo applied for an arrest warrant for Sudan’s sitting head of State, President Omar Hassan al-Bashir. As a reaction to the announcement, Amnesty international issued a statement saying that it is an important step towards ensuring accountability for human rights violations and called on the Government of Sudan to ensure that the moves by the ICC do not have an adverse effect on the deployment of joint UN/African Union Mission in Darfur (UNAMID) troops or on access of humanitarian organizations. Human Rights Watch called the indictment “a

⁷⁷ “Justice for Darfur” Campaign launched, Amnesty International press release, 25 April 2008.

<http://www.amnesty.org/en/for-media/press-releases/quotjustice-darfurquot-campaign-launched-20080425>

⁷⁸ Ibid.,

significant step towards ending impunity for the horrific crimes in Darfur.” Richard Dicker, director of Human Rights Watch’s International Justice Program further said “Charging President al-Bashir for the hideous crimes in Darfur shows that no one is above the law.”⁷⁹ Overall, HR NGOs are considering the ICC prosecutor’s move to indict a sitting head of state as a bold and momentous step towards global human rights, but the reaction of those outside the HR NGO community to the indictment has been mixed for a variety of reasons.

4.5. The ICC indictment and the Darfur Peace Process

The reaction to the potential ICC indictment of president Bashir has been less celebratory among many Darfur scholars, diplomats, aid workers, Sudanese civil society and even members of the opposition. Writing into the Social Science Research Council Blog, *Making Sense of Darfur*, many of these individuals have expressed their fears that this indictment, at this fragile state of the Darfur peace process could be a clash between the international community’s demands for justice and the local needs for peace. Former U.S envoy to Sudan, Andrew Natsios writing into the SSRC Blog on July 12, 2008, two days prior to the official announcement of the indictment, said: “an indictment of Bashir will make it much more difficult for any country or international organization to help negotiate a political settlement with the Sudanese government. Some forms of pressure may force the Sudanese government to negotiate a political settlement; some will only make their leaders more intransigent: an indictment is clearly in the later category.”⁸⁰ In

⁷⁹ Darfur: ICC Moves Against Sudan’s Leader: Charges against al-Bashir a major step to ending impunity, HRW Press Release, July 14, 2008 <http://hrw.org/english/docs/2008/07/14/sudan19335.htm>

⁸⁰ A Disaster in the Making, SSRC Blog, posted by Andrew Natsios, July 12, 2008 <http://www.ssrc.org/blogs/darfur/2008/07/12/a-disaster-in-the-making/>

fact at the AU Peace and Security Council (AU PSC) meeting in New York on September 22, 2008 Sudanese Vice President Ali Osman Taha made it clear that an arrest warrant against Bashir would be a declaration of war against Sudan. Also not a single African state has spoken in favor of the ICC indictment of Sudan's president. During the meeting the AU PSC went as far as threatening to take rapid steps to become a zone free of universal jurisdiction.⁸¹

From the side of the Sudanese civil society one activist is quoted in the SSRC Blog as saying: "This government deserves everything that can be thrown at it. But it is the people of Sudan who will pay the price." Another is quoted saying "All of us want justice but justice cannot be achieved in a social vacuum. We should choose the time for justice. Today it is the lives of people that count."⁸² Two other Darfur scholars, Dr. Hassan Haj-Ali and Ibrahim Adam have said: "supporters of the [ICC] move, like Save Darfur Coalition, Amnesty International and other activist groups, argue charging President al-Bashir will not scuttle much in Darfur since, they say, there is no peace to keep there anyhow. Tossing oil on a fire is always feeble logic, and it will push even further away an end to the suffering in Darfur; the region's fractious, estimated twenty-five, warlords will have no incentive whatsoever to commit to peace talks unreservedly."⁸³ Dr.El Tahir Adam El Faki, Speaker for the Legislative Council of the JEM, also writing to the SSR Blog has said: "[We fail to explain how] when some people

⁸¹ Africa's position on the ICC, SSRC Blog, posted by Alex de Waal on September 23rd 2008, Available at <http://www.ssrc.org/blogs/darfur/2008/09/23/africas-position-on-the-icc/>

⁸² The Day of Justice, making Sense of Darfur, SSRC Blog, posted by Abdalbasit Saeed on September 11 2008 Available from <http://www.ssrc.org/blogs/darfur/2008/09/11/the-day-of-justice/>

⁸³ Illiquid, toxic, and not an Asset: End the ICC involvement if Darfur, posted by Dr. Hassan Haj-Ali and Ibrahim Adam on October 05 2008, Available from <http://www.ssrc.org/blogs/darfur/2008/10/05/illiquid-toxic-and-not-an-asset-end-the-icc%e2%80%99s-involvement-in-sudan/>

keep imploring us to believe that the arrest warrant on its own will bring peace and justice [to Darfur] when we know for a fact that it will not. If by asking for the arrest of Al-Bashir they are looking for revenge and not justice and that Al-Bashir should suffer the same pains by rotting in jail; neither justice nor peace will be achieved in Darfur or Sudan as a whole.”⁸⁴ Simply, something that HR NGOs consider a great victory and a bold step toward global justice seems to be threatening the peace process in Darfur in the eyes of some involved in the Darfur peace process.

4.6. Doing harm while doing good in Darfur

Over the past four years, the Conflict in Darfur has eclipsed all other conflicts in Africa, if not the world. Today, the world’s largest humanitarian operation takes place in Darfur; the largest most expensive peacekeeping mission is currently being deployed to Darfur; a plethora of envoys and mediators have been appointed to make peace there; as discussed earlier, the Darfur conflict has generated a highly influential advocacy movement by NGOs and human rights advocates; the U.S government has declared it genocide; the UN security council has referred it to the ICC and the ICC has either issued or seeking arrest warrants for three individuals, including the current president of Sudan for the alleged crimes they have committed there. But the crisis in Darfur remains far from being resolved. Creating considerable harm while doing good may be the reason for this far reaching, multi-faceted response by NGOs and human rights advocates to have not been effective in Darfur.

⁸⁴ Repercussions of Warrant Arrest Against President Al-Bashir, SSRC Blog, posted on September 11, 2008 by Dr. El Tahir Adam El Faki, Available from <http://www.ssrc.org/blogs/darfur/2008/09/11/repercussions-of-warrant-arrest-against-president-al-bashir/>

Evidence exists to support the claim that the inadvertent harm by NGOs and human rights advocacy groups started long before the current controversy over the ICC indictment of Sudan's president came into play. In fact it dates back to one of the initial campaigns by HR NGOs: the campaign to get Darfur recognized as genocide. From the beginning the crisis in Darfur has been equated to the 1994 genocide in Rwanda. The analogy between Rwanda and Darfur was very dominant from the outset, and many advocates saw Darfur as a test case of whether or not the international community had learned its lesson in terms of bearing silent witness to another ongoing genocide.⁸⁵ The ICC prosecutor Moreno Ocampo has gone as far as to compare the Darfur case with the Holocaust and the Nazi's.⁸⁶ Treating Darfur as a test case for the "responsibility to protect," a concept promoted by liberal internationalists which permits the use of force in situations when the humanitarian benefits of an intervention clearly outweigh its costs, has also created some harm by making the international community's response to the crisis in Darfur in many ways a knee-jerk reaction. Many NGOs and HR advocates reduced the extremely complex, multi layered conflict in Darfur to a fight between Arabs and Africans or Muslims and non-Muslims (or even Christians), when in reality most people in Darfur are African and Muslim. These equations of Darfur with Rwanda and the holocaust has made the common denominator of the strong NGO and HR NGO response to Darfur to be mostly inspired by humanistic ideals. More importantly, this

⁸⁵ Brunk, Darren. "Dissecting Darfur: Anatomy of a Genocide Debate." *International Relations*, Vol. 22, No.1, pp 25-44 (2008). Available from Sage Publications online <http://ire.sagepub.com/cgi/content/abstract/22/1/25>

⁸⁶ Tesch, Pieter. "Abusing "Genocide": Why comparisons with the Holocaust mislead" Available from <http://www.ssrc.org/blogs/darfur/2008/06/13/abusing-genocide-why-comparisons-with-the-holocaust-mislead/>

emotive rush to “do something” to prevent another genocide “on our watch” has prevented NGOs and HR advocates from setting priorities for their advocacy efforts. As a result some advocacy efforts have contradicted others, wasting valuable time and resources. It is not possible to simultaneously run a humanitarian operation, deploy peacekeepers, try the Sudanese President in an international court, negotiate a peace agreement, and foster the democratic transition of Sudan.⁸⁷ Effective conflict management requires setting priorities. It is important to “choose our battles” and strategically allocate our resources to achieving those objectives. Emotionally reacting to a situation in every which way not only makes advocacy efforts less effective but prolongs conflicts, inadvertently creating harm to those most affected by a conflict.

While due credit is given to relief agencies and NGOs for successfully stabilizing the humanitarian situation in Darfur (by taking mortality rates in some areas to pre war levels), them treating the symptoms of the conflict rather than the causes have also created some long term harm to the people on the ground. This claim is in line with the fundamental critique of the humanitarian enterprise. Namely, if armed conflict is a disease, then humanitarian aid alleviates its symptoms without tackling its causes.⁸⁸ In many cases, fighting symptoms mean the treatment of causes becomes more difficult and long-run. In fact there are concerns that humanitarian aid has entrenched the conflict in Darfur as well. According the Febrice Weissman of Doctors without Borders aid has had far-reaching consequences on Darfurian society and has contributed to its urbanization, with a third of the population of Darfur now living in IDP camps in close proximity to

⁸⁷ Lanz, D., P8

⁸⁸ Lanz, D., p7

towns and cities; land abandoned by IDPs have been taken over by other groups; displacement has fostered the emergence of a new leadership structure and marginalized many traditional leaders and camps have bred a new generation of Darfurians that grow up in a very poor and highly politicized environment.⁸⁹ All these factors have created dependencies and moved people away from their traditional livelihoods for too long and have added to the challenges of resolving the conflict in Darfur in the long run.

In addition to creating dependencies, aid agencies and human rights advocates have also done harm in Darfur by supporting fundamentally different approaches to conflict resolution. First there were tensions between humanitarian organizations and advocacy groups over a political vs. military solution in Darfur. During the early stages of the conflict HR advocates, especially those in the U.S called for a military intervention in Darfur under the responsibility to protect act. Humanitarian organizations feared that military intervention rhetoric of HR advocates would make the Sudanese government retaliate against aid workers and the people they are working to protect, advocacy groups on the other hand argued that humanitarian groups are prolonging the suffering of the people by putting a “band-aid on a cancer” and an intervention is required to tackle the root cause of the conflict, that is, the genocidal policy of the Sudanese government.⁹⁰ While HR advocates are right to say that Darfur needs a sustainable solution, their interpretation of the root cause is disturbingly narrow and shortsighted. And they continue to base their advocacy efforts on this narrow interpretation of the root cause of

⁸⁹ Weissman, F.,

⁹⁰ Lanz, D., p6

the Darfur conflict, all the way to the current ICC indictment [of Sudan's President] they are actively lobbying for at the moment.

HR advocates call for a military intervention in Darfur not only created tensions with aid agencies but also made peace negotiations more challenging than necessary. Alex de Waal, a long time Sudan expert that participated in the AU mediation team has pointed out the perverse effects of the responsibility to protect in Darfur. First, it has distorted the views of Darfur rebels and encouraged them to make unrealistic demands. For example one rebel leader referring to the NATO intervention in the Balkans has told mediators that he would not sign a peace agreement unless he got “a guarantee for implementation like in Bosnia.”⁹¹ Thus the responsibility to protect has fostered maximalist positions and allowed the rebels to hide behind the prospect of foreign military intervention, without seriously working on a political settlement. Second, the insistence of advocacy groups on peace enforcement made the deployment of a UN peacekeeping force the priority of the U.S and other states. De Waal says: “They wanted a peace agreement fast and used “deadline diplomacy” to bring the talks to a premature end – they consequently deprived the parties of their ownership of the process and produced a peace agreement, the Darfur Peace Agreement (DPA) that lacked popular support and was not signed by all rebel factions.”⁹² As a result DPA remains unimplemented.

⁹¹ De Waal, Alex. “I will not sign” London Review of Books, November 30 2006, Available from http://www.lrb.co.uk/v28/n23/waal01_.html

⁹² De Waal, Alex. “Dilemmas of Multiple Priorities and Multiple Instruments: the Darfur Crisis” March 20 2008 available at <http://alternatives-international.net/article1909.html>

4.7. The Darfur Peace Process

Soon after the world became aware of the crisis in Darfur in early 2003, attempts were made by the African Union to bring the Darfur rebels and the Sudanese government to the negotiating table. As a result, a faction of the largest rebel group, Sudan Liberation Movement (SLM), led by Mini Menawi and the Sudanese Government signed the Darfur Peace Agreement (DPA) on May 5, 2006. The agreement addressed issues of long-standing marginalization of Darfur and charted a path for lasting peace.⁹³ But as mentioned earlier, the DPA was never implemented. As the historic marginalization of Darfur is the real root cause of the current conflict, it is reasonable to argue that peace can be achieved by engaging the political and military elites of Darfur alongside the regime in Khartoum to find a compromise that both parties can live with. The January 2005, North-South Comprehensive Peace Agreement (CPA) supports this argument and can serve as a model for moving the DPA forward. However, in order for any peacemaker to help bring the DPA back to life, a reputation built on trust with all parties, especially those in the ruling government, is needed. Hence, many peacemakers have become skeptical of the accusatory approach of human rights advocates toward a Sudanese Government that needs to be apart of any comprehensive peace agreement. In their view, the demonization of the Sudanese Government by human rights activists and the ICC has become unhelpful⁹⁴ in finding a comprehensive solution to Darfur's dire conflict.

⁹³ United States Department of State, <http://www.state.gov/r/pa/prs/ps/2006/65972.htm>

⁹⁴ Lanz, David. "Conflict Management and Opportunity Cost: The International Response to the Darfur Crisis." Mediation Support project, Swisspeace, September 2008

There have been times human rights advocates supported peace negotiations between the Darfur rebels and the Government. But at the same time they have also sort an indictment on the head of that same Government, contradicting their first initiative. However, it is no secret that HR NGOs and advocates spent more time and resources on the ICC indictments than on the Darfur Peace Agreement (DPA)/process. As a result the DPA, which has the potential of addressing causes as oppose to symptoms of the conflict remains dead on the ground while three ICC arrest warrants/indictments that are narrowly focused on punishing three of the thousands of perpetrators and further complicate prospects of future peace in Darfur is moving forward with full support from the human rights groups.

4.8. A “Do no Harm” approach to Human Rights Advocacy in Darfur

First and foremost, it is important for Universal rights advocates to understand the limitations of their approach. Conflicts in Africa have multi-layered, extremely complex structural causes that are difficult to resolve through short-term external interventions that mainly focus on punishment. This is especially true for narrow and incomplete justice mechanisms like the ICC indictments. The three men HR NGOs are lobbying to have arrested and sent to The Hague did not cause the conflict in Darfur. They violently reacted to a new development in a very old conflict. Hence, bringing them to justice while important should not be the top priority of advocates who want to see and end to the larger conflict. The root cause of the conflict, as discussed earlier, is the long term economic, social and political marginalization of a group of people and of a region. Only

a carefully constructed comprehensive resolution that addresses those grievances that lie at the heart of the conflict will bring long term, sustained relief to the people of Darfur. HR NGOs fixation on punishing someone, anyone has not only derailed the peace process but has now (since the ICC indictment of Sudanese president) divided the international community, with African and Arab States largely opposing the ICC move and most Western States applauding it.⁹⁵

Looking at how little that has been achieved in Darfur for the amount of noise made and the resources spent, Western NGOs and rights groups need to take a step back and evaluate their work in Darfur and realize that their grand efforts to save Darfur has inadvertently done harm to the people on the ground. Western aid, UN forces and ICC indictments can do only so much for the people of Darfur in the long-run. It is crucial for HR NGOs that are so passionate about Darfur to realize that sometimes, even the best intended advocacy efforts do do harm to the very people they set out to serve. A human rights advocacy approach that is less focused on force, revenge and getting even with a handful of perpetrators can open doors to broader and more comprehensive means to finding peace and justice in Darfur. One important step in finding a comprehensive resolution to the crisis in Darfur includes getting the people of Darfur involved in the peace process. At the moment people of Darfur are passive beneficiaries of the many advocacy efforts by NGOs. Those most affected by the conflict know the most about what they need in terms of a resolution. It is crucial to explore and take into account the voices of victims of these major atrocities. It is highly unlikely that the victims will speak

⁹⁵ “Arab League slams unbalanced ICC prosecutor,” ABC News, 20 July 2008, Available from <http://www.abc.net.au/news/stories/2008/07/20/2308696.htm>

with one voice and advocate for one single solution. It will bring to light the issues they think are most important to be addressed first in finding a comprehensive resolution to the crisis in their country. HR NGOs and advocates who intend to “do no harm” should create a space for victim voices and support locally generated peace and justice initiatives whenever possible.

External actors taking full control of conflict situations, the way most HR NGOs and aid agencies have done with Darfur, only create dependencies that cannot be sustained. While the Sudanese President’s accusation of imperialism are an exaggeration of what HR NGOs have been doing in Darfur, the way NGOs and HR groups tried to manage the conflict in Darfur in many ways was a projection of Western morals and political agendas on a non-Western society. Moving from self-centered, self-righteous dogmatism to a pragmatic assessment of causes and consequences⁹⁶ with the help of international and local actors and victims, is ultimately the key to “doing no harm” in Darfur.

⁹⁶ Lanz, D., p8

CHAPTER V: CULTURE, IDENTITY AND SRI LANKA'S RELATIONSHIP WITH NON-GOVERNMENTAL ORGANIZATIONS

5.1. Introduction

Sri Lanka, a small island nation in the Indian Sub-continent has been plagued by a bitter civil war for the past quarter century. In 1983, a politico-militant group code named Liberation Tigers of Tamil Eelam (LTTE) that claims to represent Sri Lanka's largest ethnic minority – Tamils, took up arms against the state over issues ranging from language rights to territorial integrity. All internal and external efforts to find a lasting resolution to the conflict that has taken over 75,000 lives have so far been unsuccessful.

Like most developing countries with ongoing civil wars, Sri Lanka has attracted a large number of mostly Western Non-governmental organizations that address issues ranging from economic development to good governance to disaster relief. During the 80's and 90's Sri Lankans have been more open to external NGOs working in their country. But following an unimpressive disaster relief effort by NGOs after the December 2004 Indian ocean tsunami and a more recent Amnesty International campaign that many believe to have shamed the country on an international stage during the 2007 Cricket World Cup, Sri Lankans have become less enthusiastic about external NGO involvement in their country's affairs.

In early 2008, the government of Sri Lanka officially withdrew from the most recent [Norwegian brokered] peace agreement with the LTTE returning the country back to active conflict. At present, the country's humanitarian crisis is deepening, abuses of human rights by both sides (government of Sri Lanka and the LTTE) are increasing and those calling for peace are being silenced.⁹⁷ This chapter takes a closer look at Sri Lanka's relationship with external Non-governmental Organizations including human rights advocacy groups and the contributions they have made to Sri Lanka's two decade long search for peace.

5.2. Country Profile

Sri Lanka is a small (land mass: 66,000 Sq km, slightly larger than the U.S state West Virginia) island nation in the Indian Ocean. The ethnic makeup of the country's 20 million inhabitants is 73.8% Sinhalese, 7.2% Sri Lankan Moors, 4.6% Indian Tamil (historically settled in the North and East provinces), 3.9% Sri Lankan Tamil (decedents of plantation workers brought in by the British during the colonial era and settled outside the North and East provinces), 0.5% other, and 10% unspecified. The religious make up is 69.1% Buddhist (most Sinhalese), 7.6% Muslim, 7.1% Hindu (most Tamils), 6.2% Christian, and 10% unspecified. Sinhala is the official and national language of Sri Lanka and is spoken by 74% of the population. Tamil is a national language and is spoken by 18% of the population. English is spoken competently by 10% of the population.⁹⁸ The

⁹⁷ Sri Lanka's Return to War: Limiting the Damage, Asia Report No 146, 20 February 2008, P i

⁹⁸ CIA World Fact Book, Country profile – Sri Lanka

<https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html>

island was colonized by the Dutch in the 16th century, the Portuguese in the 17th century and the British from the 18th through the 20th century (from 1815-1948).

The war that broke-out in 1983 is between the Sri Lankan government that is mostly made-up of the majority ethnic group Sinhalese and a rebel group that claims to fight for 4.6% Indian Tamils living in the North and East provinces of the island.

5.3. Sinhalese and Tamils in Sri Lanka: A History of War and Peace

Contrary to the arguments by many Sri Lankan scholars that the island has been multi-ethnic and multi-cultural from pre-historic times, the majority Sinhalese believe that the country primarily belongs to them, simply because of historical narratives that suggest they arrived in the island first. The Sinhalese legend says that majority Sinhalese arrived in the island in the 6th century B.C from North India. The most ancient inhabitants of the island were the *Vedds*, an aboriginal people. A north Indian prince named Vijaya and his 700 men conquered the *Vedds* and Vijaya became the first Sinhalese king in 483 B.C. Buddhism was introduced to the island in third century B.C.

The close proximity of Sri Lanka to South India resulted in many Tamil invasions over the years. In the early 11th century a Tamil king from South India conquered the capital city of Sri Lanka. Sinhala king *Duttugemenu* managed to soon regain power killing the Tamil king *Elara* but Tamil kingdoms arose in the North from time to time due to continued invasions by South Indian Tamils. When Sri Lanka (then called Ceylon) became a colony under the British Empire in 1815 large numbers of Tamils were brought in from South India to work in the plantations. By the time full independence was granted

to the island by the British in 1948, Tamils have become a significant minority of the island. The Indian Tamils who became inhabitants as a result in South Indian invasions and migration settled in the North and Eastern provinces while the Sri Lankan Tamils, who were brought in by the British as plantation workers settled in the central and Southern provinces along side majority Sinhalese.

However, more recent scholarship rejects these theories of invasion and mass migration and suggests that demographic changes occurred gradually over long periods through trade, cultural, religious, political and military movements. Regardless of who arrived in the island first, by the 12th century, Sinhalese and Tamil identities have become distinct, with the Tamils identifying with the North and East provinces and the Sinhalese with the rest of the island.⁹⁹ Further when Buddhism disappeared from India in the 13th century, Sinhala Buddhism became a politico-religious category in Sri Lanka. The country's historic affiliation with *Theravada Buddhism* (the most ancient and supposedly the purest form of Buddhism) gave the island the name *Dhammadipaya* (a Buddhist land) during the pre-colonial and colonial era. This made Sinhalese-Buddhist and Tamil-Hindu identities in Sri Lanka even more distinct. Also the Sinhalese traditionally associated Tamils with the South Indian state of *Tamil Nadu* (land of the Tamils). To this day extremist Sinhala nationalists believe that Tamils belong in their homeland in *Tamil Nadu* and not in Sri Lanka. But open hostilities between the two groups didn't occur during the pre-colonial and colonial era. Instead there was a process of ethnic assimilation,

⁹⁹ Sri Lanka: Sinhala Nationalism and the elusive southern consensus, International Crisis Group Report, Asia No 141 – 7 November 2007, p 3 <http://www.crisisgroup.org/home/index.cfm?id=5144&l=1>

where communal identities were fostered and emphasized. But this process ceased under British colonial rule that began in 1815.¹⁰⁰

5.3.1. Formation of Sinhala Nationalism

Differentiation from outside is an initial step in national identity formation. When it comes to the formation of Sinhalese national identity, differentiation between the two main ethnic groups of Sri Lanka by the British colonizers during their 133 year rule is more significant and relevant than any other outside influence on the formation of Sinhala-Buddhist national identity. The British used their signature “divide and rule” policy in Sri Lanka during their entire rule to prevent a counter-colonial movement by unified Sri Lankans. They chose the minority Tamils living in the North and East and gave them access to better English language education in missionary schools and in turn a disproportionate share of government, university and professional jobs. Understandably, this preferential treatment of the Tamils by the colonial masters made the majority Sinhalese feel excluded from political and economic power. Faced with an acute case of relative deprivation, Sinhala nationalists used the group’s religious identity- Buddhism- to mobilize popular support. During these initial stages of national identity formation, Buddhism was portrayed as under threat, first from Christian missionaries and later from British capitalist interests, especially in the form of the plantation industry and its perceived deteriorating effects, including the rising use of alcohol.¹⁰¹

¹⁰⁰ Crisis Group Report No 141, P 3 <http://www.crisisgroup.org/home/index.cfm?id=5144&l=1>

¹⁰¹ *Supra* note 99, at p4.

The threat to the “Sinhala-Buddhist nation” was further exaggerated by Sinhala nationalists using the concept of the “majority-with-in-a- minority complex,” meaning that Sinhalese, through a majority (70% or 14 million) in Sri Lanka, are a very small minority in the region and the world, especially compared to the 70 million Tamils that live in very close proximity to Sri Lanka in the South Indian state of *Tamil Nadu*. Also the perception that Tamils are essentially tied to a homeland in *Tamil Nadu*, India, became prevalent in the Sinhalese nationalist ideology. The continued migration of Indian Tamils to the island, mainly as laborers and traders who came in the wake of the British colonization and the introduction of a globalized, capitalist economic system in which many Sinhalese felt outsiders had the upper hand, further expanded these growing Sinhala-Buddhist nationalist ideals and prejudice towards all out-groups, but especially towards “invading” Tamils.

By the time independence was granted to the island by the British in 1948, Sinhala nationalist sentiments nurtured by the relative deprivation of political and economic power for over a century and an actual (Indian immigrants) and perceived (regional and global minority complex) out-group threat (to the Sinhala-Buddhist nation) have reached to all time highs. The notion of the Sinhalese as “people of the land” and Tamils as “foreigners” and “strangers” had taken root in many aspects of post-colonial Sri Lankan society.

5.4. Majority Minority Relations in Independent Sri Lanka

Upon independence and with the granting of universal franchise, it was inevitable that the majority Sinhalese (70% of the country's population) would be able to redefine ethnic relations as they pleased. Sinhalese majority's in-group primacy or their belief in the supremacy of their groups' values over their personal goals and values was painfully evident in the leaders they chose for their newly independent country. In the immediate aftermath of independence, Sinhalese nationalists rallied their support behind Sinhalese Buddhist nationalist leaders like S.W.R.D. Bandaranaike and D.S. Senanayake of the Ceylon National Congress (CNC) who argued that Indian immigrants were pampered by the colonial rulers despite being only temporary residents with no commitment to Sri Lanka. They were also accused of taking away jobs from the Sinhalese. As a result one of the first major acts of government after independence was to deny citizenship and voting rights to 800,000 Indian Tamil workers¹⁰², sowing the first seeds of a brutal civil war to come.

Also at a high level among the Sinhalese majority in the immediate aftermath of independence was the majority ethnic group's readiness for conflict. Social identity theories say that: "the readiness for conflict with another group with the aim of in-group dominance over out-groups or at defending in-group status and goals is an extreme consequence of inter-group prejudice" (Korostelina 2007, 131). Due to a long and painful history of colonization and the humiliation suffered at the hands of the

¹⁰² *Supra* note 99, at p4.

British colonialists, the long deprived Sinhalese majority were more than ready to turn the tables and take their “revenge” upon independence.

As expected, it did not take long for Sinhalese Buddhist nationalism to emerge full force following independence. In 1956 S.W.R.D. Bandaranaike who ran on an uncompromising nationalist platform easily won the general election. His party’s central plank was the now infamous “Sinhala Only Act” that promised to establish Sinhala – the language of the majority, as the only language of government and business within 24-hours of election. The tables were indeed turned over night and now it was the Tamils who could not have access to government, university and professional jobs. All the traumas the Sinhalese suffered at the hands of the British colonialists were now projected towards the Tamils by the Sinhalese, giving Tamils a similar experience of relative deprivation. Inevitably, “Sinhala Only” provoked protests by the Tamils. Peaceful protests by S.J.V. Chevanayagam’s Federal Party (FP) in 1956 and 1958 were repressed violently and led to deadly anti-Tamil riots across the island.¹⁰³ These were first steps of a series of confrontations of the Sinhalese dominant state by a newly deprived and threatened Tamil minority/”nation.”

5.4.1. Formation of a Tamil National Identity

While Sinhala nationalism developed mainly as an anti-colonial movement tied to ethnic and religious identities of the Sinhalese, Tamil nationalism developed as a result of structural violence and tied to territory. Tamils, as discussed earlier,

¹⁰³ *Supra* note 100, at p5.

historically settled in the North and East provinces of Sri Lanka. Tamil nationalists often claim that because they have their own territory/homeland, they are a nation deserving autonomy from the racist and discriminatory Sinhalese state. When threatened, marginalized, and discriminated against by the majority Sinhalese in post-colonial Sri Lanka, Tamil nationalist used this concept of the “mythic or imagined nation-state” to mobilize support to fight for a separate homeland for the Tamil minority in the North and East provinces.

In September 1959 Prime Minister S.W.R.D Bandaranaike was assassinated and the weak governments that followed did not do much to alleviate the suffering of the Tamils. In the early 1970’s a militant student body called the “Tamil Students Movement” formed to protest the Government’s plans to limit access of Tamil students to universities. Soon this movement went underground and turned to overt terrorist activities. In 1972 the country changed its name from Ceylon to Sri Lanka and adopted a new constitution. This first constitution of the new “democracy” did not address many of the minority issues adequately and the Tamil United Liberation Front (TULF) called the Constitution anti-Tamil. With this came two more militant nationalist groups- the Tamil New Tigers (TNT) and Tamil Eelam Liberation Organization (TELO), a splinter group of the original Tamil Student Movement. On May 5th 1976 the biggest of these organizations, the Liberation Tigers of Tamil Eelam (LTTE) was born. On 23rd July 1983 they attacked Sri Lankan government forces in the Northern city of Jaffna killing 13 Sinhalese soldiers. On the 25th of July, the day the 13 soldiers were to be buried, group of Sinhala civilians who gathered at the cemetery formed mobs and started killing Tamils

and looting and burning their properties in retribution. These incidents, known to Sri Lankans as the “Black July” marks the official beginning of the now quarter century old civil war in Sri Lanka.

5.5. Many Failed Attempts at Peace

There have been many internal and external efforts over the years (including five major peace agreements) to arrive at a negotiated political settlement to Sri Lanka’s long drawn civil conflict, but they all failed leading to even more bloodshed and violence in the aftermath. The failures were due to a complex structure of inter-locking factors, the oversight mainly by international experts and peace negotiators of the salient ethnic and national identities of the two ethnic groups, particularly those of the majority ethnic group. This seems to be a recurring barrier to a lasting solution. A well received 2002 European Commission Conflict Prevention and Crisis Management Unit report says: “The conflict in Sri Lanka cannot simply be reduced to a question of the protection of minorities as against majority rule. Nor can it be reduced to a problem of how to disarm the LTTE and bring them to the mainstream democratic politics. Nor can it be reduced to cosmetic reforms that would provide formal devolution of powers to the regions” (Perera & MacSwiney 2002: 4).¹⁰⁴ It is unfortunate that all the five failed resolutions indeed reduced the conflict to a majority-minority power relation and to the issues of protecting the Tamil minority against the Sinhalese majority rule. But ignoring the historical traumas of the majority ethnic group, their inherent and persistent security dilemma of

¹⁰⁴ Perera, Rienzie and Morgon MacSwiney. *EC Conflict Assessment Mission in Sri Lanka*, European Commission, August 2002 http://www.dellka.ec.europa.eu/en/report/Report_final.pdf

being a “majority with in a minority complex,” and continued international emphasis on Tamil suffering (included in all of the five failed peace agreements), have all contributed to an even more salient Sinhalese nationalist identity. A more salient Sinhalese national identity has increased prejudice towards the Tamils by the Sinhalese majority and this, in turn, has increased the saliency of Tamil ethnic and national identity. In other words, in the conflict of Sri Lanka, ethnic and national identities of feuding groups have in a way reached a point of stalemate due to its never being acknowledged and addressed, particularly by external actors such as NGOs that have dominated the peace process in recent years. Both parties have legitimate historical traumas, deprivations and threats. Hence, it is vitally important for external actors directly or indirectly involved in the peace process to seek ways to transcend these salient national and ethnic identities by giving both groups opportunities to form alternative multiple identities. But most external NGOs, especially human rights NGOs working in Sri Lanka, have hardly taken these unique characteristics of the conflict into consideration when designing their advocacy campaigns. Below, I will discuss in detail one such case, the Amnesty International “play by the rules” campaign. Appreciation for this campaign begins with first understanding Sri Lanka’s relationship with NGOs and how it has evolved over the years.

5.6. Sri Lanka’s relationship with Non-governmental Organizations

Since the break out of war, Sri Lanka, like many developing countries with on going civil conflicts, has become a hotspot for Non-governmental Organizations and human rights advocacy groups. But Sri Lanka has always been somewhat hostile toward

external, especially Western NGO involvement in the country's political life. Since the breakout of war, the Sri Lankan state has viewed NGOs as a threat to national security and sovereignty. Following the failed December 2004 tsunami recovery effort and an Amnesty International campaign that shamed the country on an international stage during the 2007 Cricket World Cup, those initial hostilities have now grown into full blown resentment, especially by individuals belonging to Sri Lanka's majority ethnic group.

5.6.1. A Brief history of NGOs in Sri Lanka

Despite the recent fall out, Non-governmental Organizations¹⁰⁵ (NGOs) have a long history in Sri Lanka. In fact they have had a presence in the island from the beginning of the British rule in the form of local counterparts of organizations affiliated with Christian missionary efforts. The earliest, the Baptist Mission was established as far back as 1802. During the latter part of the nineteenth century, as local elites fostered a revival of their respective religions, Buddhist, Hindu and Muslim NGOs emerged modeled on their Christian counterparts (Wickramasinghe 2001, 76). Many of these organizations that introduce the NGO concept to Sri Lanka often engaged in social service activities and charity work. Many however had a religious orientation and strove to promote the interests of specific religious groups such as the All Ceylon Buddhist Congress (1919) and the Hindu Board of Education (1921) (Wickramasinghe 77). They were well received by the local populations and many have managed to survive until today. These initial NGOs were in principle closer to voluntary associations, from trade

¹⁰⁵ The term "Non-governmental organization" did not come to popular use till the establishment of the United Nations in 1945.

unions, to political parties, to Gandhian movements in India, than to the disputed NGOs of today. They had a strong commitment to democracy and a sense of national worth and the penetration by foreign funded NGOs of these locally initiated NGOs was limited (Goonatilake 2006, 10).

The new wave of NGOs that are the subject of this study started arriving in Sri Lanka following the fall of the Soviet Union in 1989. With the end of the Cold-War there was a conscious policy change in Western countries and through them in international agencies to sponsor NGOs in the developing world. The argument was that developing countries were not democratic, their leaders were prone to thievery, and they were not transparent and indulged in gross violations of human rights (Goonatilake 2006, 9). This perception of the developing world that the NGO concept was built on did not sit well with Sri Lanka which had had a long tradition of trade unions and political parties for at least a hundred years. Further, the country had also had a tradition of locally grown civic organizations that provided associational space outside rigid government structure for over 2,000 years. However, the new foreign and foreign-funded NGOs subsequently penetrated large areas of civic life through leverage brought by foreign funds and created a perceived and actual threat to national sovereignty. Today these NGOs are accused of restructuring the state, demobilizing the armed forces, privatizing foreign relations and controlling key segments of academia and media (Goonatilake 2006, 10).

The second significant wave of Northern NGOs came into the island in the 1990's due to the perceived need to address issues arising from the on-going armed conflict between the government and the LTTE (Liberation Tigers of Tamil Eelam). But many of

these NGOs were soon accused of siding with the underdog (the Tamil minority) ignoring the security and sovereignty concerns of the state. The Sri Lankan State and many members of Sri Lanka's majority ethnic group lump most human rights groups, including Amnesty International and Human Rights Watch, into this category.

The third wave of NGOs arrived in the island immediately following the December 2004 Indian Ocean tsunami that took over 40,000 Sri Lankan lives. These NGOs at first were credited with preventing the disaster from getting worse. Just eighteen months into the effort, recriminations were rife, with aid agencies accused of planning poorly, raising unrealistic expectations and plain incompetence. In a July 2006 report the Tsunami Evaluation Coalition (TEC) called the aid effort "a missed opportunity" (Casey 2006, 25). The general consensus in Sri Lanka today is that the international agencies that set up operations in the country after the tsunami had a negative impact on relief efforts and the local economy (Williamson 2005). To make matters worse, the (perceived) unequal distribution of tsunami aid led to the break down of the already weak Norwegian brokered peace agreement¹⁰⁶ that resulted in a cessation of hostilities between the Sri Lankan government and the LTTE for nearly three years.

5.7. NGOs "Doing harm" while doing good in Sri Lanka

The failed tsunami recovery effort is only the latest of a long list of critiques by the general populations in Sri Lanka of external NGOs doing more harm than good in the

¹⁰⁶ In December 2001, the Norwegian government brokered a peace agreement between the Sri Lankan government and the LTTE. A Ceasefire Agreement (CFA) was signed by the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) on February 22, 2002 as a means of reaching a negotiated resolution to the country's nearly three decade long ethnic conflict. It was officially intact till the aftermath of the December 2004 tsunami.

country. The emergence of external NGOs in Sri Lanka has also led to the division of civil society groups in the country into two categories, as local and foreign (or foreign funded). The foreign category includes external as well as local NGOs funded through external sources or non-Sri Lankan donors. Local civil society organization, an age old concept with a 2,000 year old history, is made up of monks, trade unions, and political parties. Many Sri Lankans credit these parties for helping the country obtain political freedom throughout history and spreading literacy (Sri Lanka, unlike most developing countries in the world has near universal literacy). They have and to this day remain a vital and welcome catalyst for change in Sri Lankan society. The newer and the more “foreign” concept of civil society appeared in Sri Lanka two decades ago when international donors began to distance themselves from the state institutions perceived as ineffectual and corrupt (Wickramasinghe 2001, 168). Today these civil society organizations that are generally equated with foreign funded non-governmental organizations are themselves seen as “all-powerful”, oppressive and corrupt. For example, Sri Lanka’s largest foreign funded NGO, *Sarvodaya* is said to have gone against all the possible norms foreign funded NGOs were expected to follow. It has not been transparent or democratic; it has disseminated misinformation and has proven to be corrupt from the top down, performing at times worse than the state (Goonathilake 2001, 250). The contrast between the foreign funded NGOs and organic civil society groups like the *Sangha* (Buddhist monks) were seen clearly during the December 2004 Indian Ocean tsunami. While *Sarvodaya* waited to mobilize funds from international sources, the *Sangha* responded quickly providing food and shelter to the victims (Goonathilake 270).

Sarvodaya, which claims to reach 8,000 of the 12,000 villages (67%) in the country, in a self conducted study has shown that 98% of its societies had collapsed soon after they had been established. Further the organization paid homage to Gandhi's ideas of self reliance but completely contradicted this core Gandhian belief by relying entirely on foreign donors for carrying out its activities. Instead of feeding the local market, as advocated by the Indian *Sarvodaya* theory of self-reliance, the products manufactured by the villages were exported to meet urban and foreign demands. Worse, the products being distributed in the villages were not those produced in the villages themselves, but imports from abroad. But *Sarvodaya* was so large in the imagination of the Western aid establishment its donors even formed themselves into an aid consortium similar to those giving aid to governments of developing countries (Goonatilake 248). In the end international aid given to foreign-funded local NGOs such as *Sarvodaya* has been largely mismanaged and has created more harm than good to the people that needed their services.

5.7.1. Security & Sovereignty

Since Sri Lanka's Tamil minority took up arms against the state in the late 70's, security issues have dominated the making of foreign and internal policy by the Sri Lankan government. The state rhetoric for decades has been about national security that is the protection of boundaries of the sovereign state of Sri Lanka from encroachments, first from its neighbor India, than from the citizens that took up arms against the state. The core values to be protected were territorial integrity and political independence. The wave of NGOs and human rights organizations that arrived in the island with the civil

war in recent years have formed a new circle of power that has begun to challenge and contest the state conception of security (Wickramasinghe 14). In other words foreign and foreign funded NGOs are simply saying the centuries-old doctrine of absolute and exclusive sovereignty no longer stands, and the state is to redefine its notions of sovereignty. Although local populations appreciate NGOs providing checks and balances to an oppressive or overdeveloped state, they are skeptical about NGOs trying to create prototypes of what seems ideal states to them.

5.7.2. Disaster relief and Development aid

The December 2004 Indian Ocean tsunami resulted in the biggest humanitarian response by NGOs in Sri Lanka. An estimated 300 foreign charities and other NGOs entered the country to help with relief work, according to reports they “overwhelmed” local administrations and civil society groups, despite being largely unaware of the social, economic, cultural and political relations in the country (Williamson 2005, 6). Spending decisions were often driven by politics and funds and not assessment and needs. These NGOs left many survivors ignorant about their plans and failed to deliver promised aid (Casey 2006, 25). Sri Lankan officials have complained that many NGOs refused to take part in meetings with local authorities to co-ordinate relief and reconstruction work leading to confusion and duplication in efforts to rebuild houses and replace fishing boats, causing a waste of resources. The NGOs that joined co-ordination meetings often insisted on speaking English without interpreters excluding many local officials and relief workers (Williamson 2005, 6). In the end these NGOs ended up doing more harm than

good in their grand relief effort, but hopefully became more aware of their impact on political and economic structures of Sri Lanka.

5.8. Playing by the rules: An Amnesty International Campaign in Sri Lanka

Despite Sri Lanka's strong anti-colonial sentiments (as a result of being colonized by the Dutch, the Portuguese and the British for over 400 years), one colonial inheritance, Cricket, has become a national obsession, pastime and an essential element of the country's post colonial culture. Cricket is played and enjoyed by people of all ethnic groups and social and economic classes of the country. It is fair to say that Sri Lankans love cricket just as much as Americans love baseball or football. The Cricket World Cup finals that takes place every four years in one of the Cricket playing nations of the world is Sri Lanka's Supper Bowl Sunday. One does not necessarily have to know much about Sri Lanka or its people to know that any "scandal" that comes in the heels of Cricket [World Cup] hurt twice as much.

Since the break down of the Norwegian brokered peace agreement in early 2005, international human rights groups have accused the Sri Lankan government (to a larger extent) and other parties to the conflict (to a lesser extent) of various human rights violations. Knowing the importance of the Cricket World Cup to many Sri Lankans, Amnesty International, the Nobel Prize winning human rights group, launched what they called a "play by the rules" campaign during the 2007 Cricket World in the West

Indies.¹⁰⁷ The multi-ethnic Sri Lankan cricket team had made it to the quarter finals at that point and was a favorite to win the World Cup. Amnesty International campaign's purpose was to make the Sri Lankan government grant unlimited access to human rights monitors inside the country, especially inside the conflict zone. Due to the obvious poor choice of venue the campaign back fired and made many Sri Lankans, especially those from the majority ethnic group, turn against most Western non-governmental organization operating in the country. In other words the Amnesty International campaign had the exact opposite effect of what was intended. Many Sri Lankans especially those of the majority ethnic group blamed the human rights group for their insensitivity and for shaming the country on an international stage at a rare moment of national pride and joy. Amnesty for its part issued statements saying: "Cricket is a great game and the Sri Lankan people are rightly proud of their ethnically diverse national Cricket team, which symbolizes the best of Sri Lanka, but hundreds of thousands of people have had to flee the fighting to live in temporary shelter -- and so are not able to live in safety let alone watch Cricket."¹⁰⁸ Many Sri Lankans did not buy this argument, they in turn asked: "Are we that undeserving as a nation and as a people of a rare moment of joy?" "when and how did international rights groups come to dictate even our pastime?" "why are national pastimes such as sporting events inherited from Western colonialists not considered part of a former colony's culture?" (Arguing that Amnesty International or any other NGO would dare to launch a human rights campaign during the 13-14 April new year

¹⁰⁷ Angry Sri Lanka blasts Amnesty International for human rights cricket campaign. Associated Press/International Herald Tribune - Asia Pacific, April 3, 2007
<http://www.iht.com/articles/ap/2007/04/03/asia/AS-GEN-Sri-Lanka-Not-Cricket.php>

¹⁰⁸ Sri Lanka: Human Rights is the issue, not Cricket, Amnesty International Press Release, April 12, 2007
<http://www.amnesty.org/en/library/asset/ASA37/010/2007/en/dom-ASA370102007en.html>

celebrations of Sri Lanka) and “why are developed Western nations and underdeveloped non-Western nations held to different standards when it comes to human rights issues?” For example the nationalist Sri Lankan media was sure that no human rights NGO would launch a human rights campaign during say the Super Bowl to get the U.S out of Iraq or to close down Guantanamo Bay.

The incident further limited Amnesty International’s access to the troubled regions of Sri Lanka and put people who may have been victims of state and rebel group abuse and needed AI’s help in jeopardy. There is no question that human rights groups like Amnesty International mean to do good. They have done a considerable amount of “life saving” work around the world. So it is important to explore how they could have avoided a pitfall like the one described to have the most impact through their campaigns. I am hypothesizing that a campaign designed with a better understanding of Sri Lanka’s ethnic and cultural identities would have made the AI campaign a success.

5.9. A “Do No Harm” Approach to Human Rights Advocacy in Sri Lanka

Western non-governmental organizations including human rights advocacy groups have done inadvertent harm in Sri Lanka in several different ways. First they have reduced the conflict into a majority minority issues and sided with the minority, prompting both parties to feel even more threatened and to have even stronger national and ethnic identities. This blunder by external actors/NGOs has prevented the creation of multiple alternative identities that is a crucial pre-requisite for a future resolution to the civil war. Even something as small as the multi-ethnic Sri Lankan Cricket team is a good

first step towards creating a Sri Lankan identity (as opposed to separate Tamil, Muslim or Sinhalese identities or worse majority, minority identities). But external NGOs using an occasion like the Cricket World Cup to highlight Sri Lanka's painful ethnic divisions at a time it is working to overcome those differences has indeed created harm. In order to reduce this harm, external actors/NGOs/rights groups have design their campaigns with a better understanding of Sri Lanka's ethnic identities and how they have contributed to the civil war that has been raging for over two decades.

Second, the Amnesty International "play by the rules" campaign is a classic example of inadvertently doing harm to the very people NGOs are working to protect due to lack of understanding of the cultures they work in. It is clear that AI thought about culture in its narrowest form because they did not launch the "play by the rules" campaign during the Sri Lankan New Year celebrations in April or the *Vesak* (Buddha day) celebrations in May. Instead they went for the safer Cricket World Cup option, maybe thinking that it will not stir-up any ethnic or religious tensions, as Cricket is an inheritance from the Colonial master most Sri Lankans are not that fond of. If AI made and attempt to understand culture in its broader sense, "as a shared common sense among Sri Lankans," it could have easily avoided this pitfall and continued their "live saving work" in the country.

Finally, not understanding or knowingly ignoring the ruling majority's fears and insecurities within a historic and cultural context have lead to more doors being closed to human rights advocacy work by external actors in Sri Lanka, doing more harm to those that need the help of HR NGOs the most. If human rights campaigns are designed in a

manner that does not vilify and exclude the ruling majorities/governments, there could be more opportunities for external HR advocates to reach victims of violence. In a best case scenario they could even contribute to ethnic assimilation through their campaigns as opposed to the current divisions their actions are creating. Instead what advocacy campaigns such as “play by the rules” have done is stir-up ethnic tensions and further limit the space for HR advocacy work by angering the people, in turn giving abusive ruling parties the support they need to limit or eliminate HR NGO access to victims.

In sum, HR advocacy campaigns should take into consideration Sri Lanka’s history, culture, ethnic/national identities of its people and its relationships with external [non-governmental] actors. Campaigns that do not take these important historical, cultural, political and social factors into consideration not only create inadvertent harm to victims but also limit the space for future advocacy work by NGOs in Sri Lanka and other similar active conflict situations.

CHAPTER VI: RESEARCH FINDINGS

6.1. Introduction

This research project sought to answer the following question:

“How can mainstream human rights NGOs promote international law and not do inadvertent harm to people in active conflict zones?”

Based on the findings, it also sought to propose a “Do No Harm” approach to HR advocacy by mainstream HR NGOs that has the potential to bridge the gaps of the current approach. Following are the findings from the cases studied.

6.2. Focused Case Comparison: Uganda, Sudan and Sri Lanka

6.2.1. Similarities

Despite being from two different continents, with Uganda and Sudan in Africa and Sri Lanka in South Asia, the similarities between the three conflicts were remarkable. All three countries have active conflicts that have lasted for twenty or more years. They all have ethnic elements to their conflicts. All three have also been former colonies of Britain. All three countries have internationally known rebel/insurgent/terrorist groups.

The root causes of the three conflicts are also remarkably similar. A North-South divide was created by the British, in all three cases, for ease of administration and to hinder the formation of anti-colonial movements during the colonial era. This divide and the subsequent unequal treatment of different ethnic groups by the colonial master have

lead to more salient ethnic identity formation in all three countries. Following independence, intense competition for political power and other resources among ethnic groups have resulted in intense violence and protracted civil conflict in the post-colonial era. Hence, all three cases share ethnic rivalries and political, social and economic marginalization of certain ethnic groups as a root cause of the civil conflicts. However, as discussed in chapters 3, 4 and 5 all three conflicts also have multi-layered, extremely complex structural causes that keeps them from being resolved through mere external interventions.

When it comes to similarities in NGO/HR NGO involvement, on the humanitarian front, all three countries have attracted large numbers of humanitarian NGOs to attend mostly to the IDPs. Many of these humanitarian NGOs have created dependencies. They have paid very little or no attention to local strengths or building local capacities for development. Hence, the future of those receiving humanitarian aid remains dependent on continued [mostly Western] donor interest and involvement. Therefore, the harm done by humanitarian NGOs is in many ways is limited to creating dependencies that cannot be sustained in the long run. With regards to the HR NGO involvement, especially in the peace processes of the three countries, there have been some differences. All though in their essence, the overall HR NGO approach has been confrontational (of ruling governments and rebel groups) and the resolutions advocated have almost always been confined to judiciary means.

6.2.2. Differences

HR NGOs have been involved in the peace processes of all three conflicts to varying degrees. Compared to Uganda and Sudan, HR NGOs have not been directly involved in Sri Lanka's peace process. Over the past twenty-five years that Sri Lanka has been at war, HR NGOs have kept a close eye on the situation and written many reports, often criticizing the ruling majority government but not going as far as lobbying the UN or the ICC to have anyone involved in the Sri Lankan conflict arrested and sent to The Hague. However, campaigns such as "play by the rules" have inadvertently created harm to the victims with whom they are working to rescue by giving the [Sri Lankan] government a reason to limit NGO access to the country, especially to the conflict zone where most victims live. This type of inadvertent harm is relevant to the Sudan case as well. When the ICC applied for an arrest warrant for Sudan's sitting president, many around the world, including the HR NGOs themselves, became concerned that it would lead to even more blood shed and retaliation against the Darfurians and to the expulsion of AU/UN peacekeepers and aid workers by the Sudanese Government. These concerns did not materialize because the Sudanese government (with full backing from the AU and the Arab League) chose to simply ignore the ICC.

HR NGO involvement in the peace processes of Uganda and Sudan has been more direct than it has been in Sri Lanka. Human rights groups have actively and openly lobbied the UN and the ICC to have rebel leaders in Uganda and government officials in Sudan prosecuted at The Hague. However they have been blind-sided by the perceived promise of their own creation, the ICC indictments, to bring peace and justice to the people of Sudan and Uganda. They have opposed to all other means of finding justice.

They adamantly have been opposed to any and all resolutions that do not involve the ICC and their *status quo* judiciary means to find justice in Uganda and Sudan, at times at the great expense of the victims they are working to protect. They have also undermined local values and strengths and have ignored population's views, concerns and priorities. They have also often reduced the conflict to either/or choices, taken over and man handled the peace and justice process and created dependencies by not giving local capacities for peace and justice a chance to lift its head let alone flourish.

6.2.3. Tones and Trends

The tone of the HR NGO approach to conflict resolution in Uganda, Sudan and Sri Lanka has not been that different from their usual operational procedures. The characteristics of this tone include the following: confrontation, humiliation, shame and punishment of those believed to be perpetrators of violence. In Sri Lanka and Sudan they have confronted the ruling governments; the former they have sought to shame and the latter they are seeking to punish. However, they have not confronted nor sought punishment for the human rights abuses by the Ugandan government. This could be due to the Ugandan government's shrewdly referring the LRA to the ICC pro-actively giving HR NGOs prized creation, the ICC, much needed visibility and relevance at its early stages. HRW, despite reporting on the abuses (killings, rapes and forced displacement) of IDPs by the government of Uganda, has never taken any actions to confront shame or punish them. These inconsistencies and double standards are further evidence to how HR NGOs have taken over these conflict situations and managed them in a way that is satisfactory to them.

HR NGOs have not made any attempts to evaluate the impact of their work on the people most affected by active conflict. For the most part, as we saw in the cases of Sudan and Uganda, punishing perpetrators at any cost have been the priority. However, this priority for justice by HR NGOs has not always been agreed with or shared by those most affected by conflict. While victims of these conflicts want to see their justice needs attended to, their top priority in many cases have been the end to the active conflict and say for IDP, the return home. HR NGOs, not understanding or not giving due attention these issues of timing, has resulted in unintended harm to the victims.

6.3. Lessons Learned

The findings of this research revealed several mistakes mainstream HR NGOs have made over the years while working in active conflict zones. These mistakes have done inadvertent harm to those closest to active conflicts, drawn criticism for certain groups and individuals advocating for comprehensive resolutions, stopped or prolonged peace negotiations, and limited the utility of HR advocacy work by NGOs. However, these mistakes highlight several key areas that a future “Do No Harm” approach to HR advocacy has to take into consideration. Following are the clusters of mistakes this study revealed.

6.3.1. Perpetrators as a root cause

In all the cases studied here, HR NGOs often reduced the root cause of the conflict to a group (e.g. LRA and Sri Lankan government, LTTE) or an individual (e.g. Sudanese President, Joseph Kony) when the actual causes of the conflicts were much

deeper and more complex. This reduction or simplification of root causes has minimized solutions to these complex conflicts to the mere punishment and/or removal of these individuals or groups from the conflict situation. As discussed earlier, all the conflicts studied have ethnic rivalries and centuries old social, economic and political marginalization of certain groups. These social issues cannot be addressed through the punishment of an individual or two. I am not advocating impunity for violators of human rights, but simply suggesting that HR NGOs holding up peace processes that addresses these broader issues for the sake of punishing few individual creates more harm than good. Bringing perpetrators to justice is important, but ending wars, returning IDPs home, ethnic and national reconciliation and addressing issues of marginalization are just as important. Spending all available resources on any one issue, the way HR NGOs have done with issues of justice, while holding down all other equally important issues (that must be addressed in order to find lasting peace) only creates further and longer term harm to victims.

6.3.2. Victims as Victims

To contemporary HR advocates, those most effected by conflict, such as IDPs, are helpless, voiceless masses, at the mercy of HR NGO protection. This attitude of HR NGOs has prevented them from taking seriously the wishes and priorities of victims. For the last ten years, people of Uganda have been expressing their wishes to leave the IDP camps and return home. However, universal rights advocates have not given due attention to Ugandans urgency for a resolution. For Ugandans, the priority seems to be the return home. This doesn't mean they wish to see Kony and other perpetrators of violence go

free. In terms of priority, ending the war and returning home seems to be on the top of the agenda for Ugandans who have lived in IDP camps for years. However, the priority for the HR NGOs has been the prosecution of perpetrators. They have failed to realize the importance of IDPs urgency to return home. Not realizing the urgency of the IDPs have prolonged their suffering and magnified the inadvertent harm done to them by external actors.

HR NGO perception of the victims as helpless masses has also kept them from giving due attention and credit to local capacities for peace. Every society has capacities for peace. Exploring and applying them accordingly, while making efforts to continue prosecution of perpetrators, can greatly enhance prospects for peace and justice. However, HR NGOs narrow mechanisms of finding justice through solely legal means/court proceedings have made involving those directly affected by conflicts in many non-Western societies a challenge. In essence, HR NGOs treating victims as victims and making them perpetual passive beneficiaries instead of active participants of advocacy efforts have prevented diverse mechanisms to finding peace and justice from being explored.

6.3.3. Dangerous dichotomies as popular perceptions

From the time of their founding, HR NGOs have also served as informants of human rights violations around the world to those interested and passionate about being involved and helping the oppressed in conflict situations. The financial and other support HR NGOs receive greatly depend on how moved the donors become regarding a given conflict situation. For ease of explanation, or out of pure ignorance, HR NGOs are known

to often reduce complex conflicts situations into simple minorities vs. majorities, governments vs. people, dichotomies. As discussed in the Darfur, Sudan chapter, the conflict there was reduced to Arabs killing Africans or Muslims killing Christians. Aid poured in from those around world that identified or sympathized with these simple dichotomies. In fact, the massive aid that poured in to save the people of Darfur from the Sudanese government's genocidal policies was enough to have the world's most expensive humanitarian and peacekeeping force deployed. Five years later, the conflict remains unresolved. All the now dwindling resources were spent on keeping the "Arabs from Killing Africans" or "Muslims from killing Christians" while the underlying causes of the conflict remain unaddressed.

Another dangerous dichotomy has been the idea of "Bad governments against helpless citizens." This was the justification behind the ICC indictment of the Sudanese President and "play by the rules" campaign in Sri Lanka. Most governments aren't inherently bad and as discussed victims aren't inherently helpless. Through ruling governments sometime become central players of conflict, comprehensive solutions to conflicts cannot be found without their support and cooperation. Vilifying and cornering ruling governments can as easily prevent their willingness to participate in peace processes, jeopardizing the prospects of comprehensive resolutions

6.3.4. Culture as a barrier to finding justice.

Contemporary human rights advocates always have been opposed to taking cultural aspects into consideration when seeking justice. They consider culture to be a

compromising factor, one that produces a less than perfect outcomes of judiciary proceedings. However, as discussed throughout this thesis, court proceedings by themselves are an inadequate means to finding justice. Outside the contemporary judiciary lie many cultural mechanisms that can contribute to finding justice. As demonstrated in the case of Uganda, traditional means of finding justice offer victims of violence faced with unique dilemmas, such as having to prosecute their own children, a choice. For the contemporary HR advocates, paying attention to culture as a common sense among groups of people, helps to expand the reach of their advocacy efforts. As discussed in the Sri Lanka chapter, if AI paid closer attention to how Sri Lankans live at present and understood their culture as a shared common sense among its people, they would have easily prevented the “play by the rules” mistake which caused many Sri Lankans to side with the government right or wrong.

In sum, contemporary HR NGOs status quo universalist approach to human rights advocacy has a lot of room for improvement. HR NGOs limited legalistic vision, hesitance to change status quo agendas, hostility towards culture, and most importantly undermining local strengths have all created inadvertent harm to populations they aim to protect, and minimized prospects for peace, justice and reconciliation.

CHAPTER VII: CONCLUDING REMARKS AND NEXT STEPS

On December 10, 2008 (Human Rights Day) United Nations, with a host of international HR NGOs, will celebrate the 60th anniversary of the UDHR. Hence there is no better time than now to look back at sixty years of human rights advocacy by NGOs and evaluate how they have done. There is no question that HR NGOs have greatly contributed to the advancement of freedoms of people around the world. However, there is always room for improvement. The world has changed in very significant ways since 1948. Some of the standards set back then needs to be evaluated and changed according to the needs of those lacking certain freedoms in our world today. That requires the identification of certain inadvertent harms done by contemporary HR advocates to date.

Over the past sixty years, universal human rights advocates have spent countless hours and billions of dollars “perfecting” [mostly non-Western] legal and state institutions that are incompatible with a narrow set of customary international laws outlined in the UDHR. However, as discussed through out this thesis, in most cases international law alone has not been able to bring lasting peace and justice to societies in active conflict. Worse, the narrow confines of international law has at times provoked criticism from groups and individuals for slowing down or stopping peace negotiations, creating more inadvertent harm to victims. A Do No Harm approach that brings together the strengths of both international and local peace and justice mechanisms has great

potential of addressing these shortcomings of the current contemporary approach to HR advocacy by NGOs.

Further, HR advocates have rarely made victims a part of solutions. Their priorities and potential insights to finding peace and justice have received very little attention and appreciation from universal rights advocates. However, if given the opportunity, victim perceptions have great potential of shaping comprehensive and appropriate resolutions to protracted social conflicts.

Like victims, governments also need to be a part of resolutions. Authoritatively demanding that governments (the way HR NGOs have often done in the past) accept the UDHR does not guarantee respect for human rights. After all it is the sovereign nation-states that sign on to or withdraw from all customary international laws HR NGOs work strictly within. As discussed in the Sudan and Sri Lanka chapters, taking the concerns and sometime insecurities of ruling governments can make a significant difference in the way HR NGOs interact with abusive governments. This doesn't mean that NGOs will be co-opted by governments, rather understanding where governments and ruling majorities come from increases the space for diplomacy.

Finally, to answer the primary question that guided this study: "*How can mainstream human rights NGOs promote international law and not do inadvertent harm to people in active conflict zones?*" the simple and straightforward answer is that most engagements by external actors will create some amount of controversy and harm. However, a pragmatic and flexible approach, such as Do No Harm, that brings together the strengths of international and local mechanisms and make victims a part of solutions

offer the best opportunities for doing less harm [to victims] while promoting international legal mechanisms to aid peace and justice initiatives in active conflict zones.

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