

MAKERERE UNIVERSITY

Faculty of Law



Refugee Law Project



Beyond Juba: Building Consensus on a Sustainable Peace Process for Uganda
A transitional justice project of the Faculty of Law, the Refugee Law Project and Human Rights and Peace Centre

In Pursuit of an End to Impunity

The Refugee Law Project (RLP), Human Rights and Peace Centre (HURIPEC) and Faculty of Law, Makerere University would like to extend sincere congratulations to the people of the Kingdom of Sweden and Norway on the occasion of their National Day. Both countries continue to be among Uganda's key development partners, particularly with regard to matters of peace, justice and national reconciliation. Their sustained support to *Beyond Juba*, a transitional justice project of the RLP, Human Rights and Peace Centre (HURIPEC) and Faculty of Law Makerere University, clearly demonstrates that they have our nation at heart. It is thanks to this support that the Beyond Juba partners have been able to actively engage with different branches of the Government of Uganda and to work with a range of civil society organizations in together advocating for and contributing towards the development of appropriate transitional justice mechanisms in Uganda, mechanisms which have as their ultimate objective sustainable peace and an end to impunity.

The ICC Review Process:

Last Friday saw the end of a two-week review conference (May 31 – June 11 2010) of the International Criminal Court (ICC) at the Commonwealth Resort, Munyonyo, Kampala. Uganda has itself experienced various civil wars since independence, and has recently not just domesticated the provisions of the Rome Statute in its own International Crimes Act (2010) but also established a War Crimes Division of the Ugandan High Court capable, for the first time in Ugandan legal history, of trying war crimes, crimes against humanity, genocide and now the crime of aggression. As

such Uganda was in many respects an appropriate host for the review conference.

However, given the disturbingly close relationship enjoyed by the ICC in its dealings with the Ugandan Government (not least the now notorious 2004 handshake between President Museveni and the ICC's principal prosecutor, Moreno Ocampo), the choice of venue also raises several uncomfortable questions: by hosting the review, was Uganda implicitly endorsing the behaviour of the ICC to date? And by bringing the review to Uganda was the ICC re-emphasising that the Ugandan Government has nothing to fear from the ICC? And given the diplomatic niceties incumbent upon both parties, was the floor really open for critical review? If not, can we truly be satisfied that this event really served to sharpen the pursuit of an end to impunity? Was the siting of the 'Peoples' Space' on the very outer margins of the conference venue merely a clumsy accident, or did it effectively symbolise the huge gulf between the Court and the people it is ultimately supposed to be helping protect?

The Substance of the Review:

The conference addressed itself to a number of weighty questions, not least the role of the ICC in on-going conflict situations, its involvement of victims in its processes, and its conceptualisation of the principle of complementarity. It also saw the Rome Statute extended to include the crime of aggression. The latter can truly be counted as a remarkable achievement, particularly given the determined lobbying against this measure both from some states that *are* signatories to the Rome Statute and from some states that are not.

If they were listening, Court officials will have heard Civil society actors take issue with the way in which the Court, rather than wondering whether it may in fact have proved an obstacle to peace in northern Uganda, appears to believe that the ICC arrest warrants pushed the LRA to the negotiation table, thereby "bringing peace to northern Uganda".

It is important to point out that, not only were many other factors and actors at play in bringing the Juba Peace talks of 2006-2008 to the point they reached, but the current absence of hostilities in northern Uganda is by no means guaranteed. When in the course of the talks the LRA took up residence in Garamba, eastern DRC, and when in late 2008 the Government of Uganda launched Operation Lightning Thunder, what we were witnessing was not the dawn of peace in northern Uganda, but rather the extension and enlargement of the theatre of war to DRC, Sudan and Central African Republic. It is still early to tell whether this displacement is permanent or not, nor is it yet possible to assess what the knock-on effects of this expanded area of operations will be, whether for northern Uganda or for the region as a whole. Either way, to claim this development as a success in the pursuit of international justice and an end to impunity seems foolhardy at best - and a gross disrespect to the latest victims of the violence at worst.

Victims were remarkably absent from the proceedings, with the exception of a football match. Had they been there for serious rather than recreational purposes, perhaps the conference would have paid greater heed to the question of how peace and justice relate to one another. From the discussions in Munyonyo, it seems that the ICC is still much bent on conflating the two, rather than properly addressing its intellectual resources to the question of how they relate to each other, and what kind of sequencing of activities this relationship demands. Our own research with urban IDPs living in Kampala, for example, suggests that any transitional justice process must be in harmony with the psycho-social needs of the victims. People cannot tell the

truth which is necessary for justice to be done if they themselves are not in a sufficiently safe place, both physically and psychologically. In the case of urban Acholi IDPs this means being able to return home or access another durable solution, which in turn hinges partly on being able to reconcile with former combatants, including those who committed atrocities against their neighbours and family members.

On the question of complementarity, namely the idea that the Court should only intervene where the relevant state is unable or unwilling to prosecute war crimes and so on, one wonders why the conference did not make more out of Uganda's establishment of a War Crimes Division. While this demonstration of willingness on the part of the Ugandan state should have enabled the ICC to withdraw from the prosecution of the LRA as Uganda's War Crimes Division can now do this instead, the Court continues to pursue the case itself. One wonders what is more important; the 'success' of the Court in pursuing a particular prosecution, or the dissemination and widespread adoption of a set of core judicial principles.

The relative silence on this is perhaps linked to the relative absence of critical consideration given to the most important question of all, the question around which ideally the whole review might have hinged, namely ***"Is the ICC the most effective instrument with which to address impunity?"***

Ask any Ugandan working on peace and justice, and they clearly appreciate the fundamental underpinnings of the Rome Statute, namely the desire to see an end to impunity. It goes without saying, however, that an end to impunity can only be delivered upon a foundation of impartiality. Eight years into the life of the Court, it is not yet clear that those foundations have been put in place.

One of the biggest structural obstacles to addressing impunity is the commencement date of 2002. Certainly in Uganda this puts many perpetrators out of the Court's reach. How does

this make the victims of those perpetrators feel? And if they are not satisfied, can we say that justice has been done? Unfortunately, instead of adequately responding to the critique that the Court's one-sided justice to date risks contributing to impunity in future, the Court continues to repeat its now somewhat tired accusation that those who prefer alternative or additional means of achieving justice are the ones condoning impunity. The Court appears not to hear or take seriously the grave reservations held by many civil society actors about the Court's ability to deliver the type of comprehensive justice they yearn for, justice which addresses both historical and contemporary matters in an impartial fashion.

Ways forward for Uganda:

Even if one limits one's gaze to Uganda, it is evident that the current absence of hostilities in the north does not in itself address the governance deficit that this country has experienced since independence. Equally it is evident that to plug this governance gap will require a far more complex set of responses than the very restricted prosecutorial strategies available to the Court or to Uganda's own War Crimes Division. Even if the ICC does eventually help to bring about accountability for some of the crimes of the LRA—and it seems clear, six years down the road, that it will address only the LRA—it is therefore incumbent upon Ugandans to continue to work towards a more comprehensive search for an end to impunity, in short for a process which is able to bring to book all sides to a conflict. Alongside any trials that take place, and alongside working through the numerous technical challenges these are likely to raise, the other aspects of Uganda's nascent transitional justice process must continue to

receive our full attention. These include the need to harmonise formal law and traditional law, and to respond to the longstanding desire to initiate and see through a comprehensive national reconciliation process.

In this regard, Hon. Minister Ruhindi, Minister of State for Justice and Constitutional Affairs, should be applauded for taking the bold step of stating in parliament that a reconciliation process is in the offing. Such a process will however, require considerable care and caution, for if it is not well timed, planned and executed, it runs the risk of imploding the nation. Not only must it ensure that it insulates itself from any trials (be they ICC or national trials), and that it maintains the independence and impartiality of its governing institutions, it must also show due regard for how the various steps along the way are sequenced.

In pursuit of an end to impunity the Beyond Juba Partners have not and shall not tire of emphasising the need to address simultaneously the root causes of conflicts in this country, as well as the legacies of those conflicts. Equally we shall continue to appeal to the ICC to constructively engage in equitable, impartial and non-discriminatory justice processes, and to situate itself as one - *rather than the one and only* - actor amongst many in the pursuit of an end to impunity both nationally and internationally. We believe that proposals to use truth and reconciliation processes, while fraught with their own complexities, afford Uganda the opportunity to reflect on its history and to avoid the selective amnesia which seems bound to emerge if we restrict ourselves to trials alone, and we thank, once again, the people of Norway and Sweden, who through their governments have enabled us to engage in these important deliberations.

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