

INTERNATIONAL JUSTICE SYSTEMS & THE INTERNATIONAL CRIMINAL COURT

Opportunities and Challenges for Uganda

SYNTHESIS REPORT

*“There can be no healing without peace, no peace without
Justice” – Kofi Annan, former UN Secretary General*

**Uganda Law Society &
Friedrich Ebert Stiftung**

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EXECUTIVE SUMMARY

The emergence of global value systems of democracy, good governance, and the rule of law have led to the growth of transnational institutions to offer realisation of, guidelines to, and the enforcement of those values.

These global institutions and values seek to build on local practices and institutions in order to generate domestic consensus, credibility and acceptability. These value systems and the need for their enforcement have led to the creation of an international justice system whose *raison d'ete* is to bring an end to the culture of impunity by both state and non-state actors who violate human rights.

Previous interventions were ad-hoc, such as the International Criminal Tribunal for Yugoslavia set up in 1993 to try war crimes in the Balkans, and the International Criminal Tribunal for Rwanda (ICTR) set up in 1994 to try perpetrators of the Genocide in the Central African country.

The International Criminal Court, which was created by the Rome Statute in 1998 and became operational on 1st July 2002, sought to give permanence to the international effort to wipe out impunity. It was created to deal with serious crimes of international concern, specifically crimes against humanity, war crimes, and Genocide. The ICC operates on the principle of complementarities along national jurisdictions.

In March 1999, the Government of the Republic of Uganda signed the Rome Statute and ratified it in June 2002. In the same year, the Government referred to the ICC, the human rights violations allegedly perpetrated by the Lord's Resistance Army, which has been fighting the government in northern Uganda since 1987.

After investigating the claims, the ICC indicted five senior LRA military officers, including rebel leader Joseph Kony, and issued its first-ever warrants of arrest. The indictments meant that the rebels could be arrested and handed over by any state that had ratified the Rome Statute.

The indirect effect of the indictments was to internationally isolate the LRA leadership and compel them to seek peace talks with the Government of Uganda to end the war. When the talks eventually started in July 2006 under the aegis of the Government of Southern Sudan, the rebels demanded for the lifting of the ICC warrants of arrest issued against them.

The ICC warrants went, in a relatively short time, from powerful instruments that had forced the rebels to the negotiating table, to stumbling blocks to the peace process in northern Uganda. Justice was offered as a sacrifice at the temple of peace and the words of former UN Secretary General Kofi Annan, that "there can be no healing without peace, no peace without justice," begun to sound hollow.

The two concepts – peace and justice—are certainly not mutually exclusive. The debate in Uganda had presented the two as mutually exclusive and it appeared the international justice system sought justice while the Traditional Justice system sought peace. But the application of the ICC warrants of arrest in Uganda show the friction that can arise when international

justice mechanisms are applied, and the need to harmonise the international justice system with local realities, and vice versa.

This is, in itself, a bit of a misnomer. Both the traditional and international justice systems seek to break the cycle of violence by delivering justice, in its various forms, to both parties, and thereby sowing the seeds for a sustainable peace.

The international justice system did not emerge out of a void. It was informed by domestic justice systems in various jurisdictions, and offers, as it *raison d'être*, a supranational justice system to stamp out impunity by those who have previously evaded domestic justice systems.

As this paper shows later, this supposed friction between the local and international justice systems is often one fuelled by lack of full understanding of one or the other, or both. By showing the common ground between the two justice systems, it is hoped that all stakeholders will understand – and appreciate – the commonality of purpose in the two systems, and try to manage whatever differences there might be, rather than try to make an exclusive choice of one over the other.

This paper is a synthesis report of a dialogue organised by the Uganda Law Society and Friedrich Ebert Stiftung on 8th February 2007 at Hotel Africana in Kampala under the theme: *“International Justice Systems & The International Criminal Court: Opportunities and Challenges for Uganda.”*

It seeks to identify the critical issues that emerged from the dialogue and offer insight on how they can be used to influence domestic law and policy, particularly the International Criminal Court Bill, currently before the Ugandan Parliament, which seeks to harmonise local laws and practice with those of the ICC.

INTRODUCTION

The Government of Uganda is currently considering a bill to harmonise its domestic justice systems with those in practice internationally, particularly those exercised through the International Criminal Court.

This Bill is the International Criminal court Bill, 2006

The Object of the Bill is-

- a) To give the force of law in Uganda, to the statute of the International Criminal Court (Rome Statute) adopted on 17th July, 1998 by the UN Diplomatic conference of plenipotentiaries and ratified by Uganda on 14th June 2002
- b) To implement the obligations assumed by Uganda under the Rome Statute
- c) To make further provision in Uganda's law for the punishment of international crimes of genocide, crimes against humanity and war crimes
- d) To enable Uganda cooperate with the international criminal court in the performance of its functions, including the investigation and prosecution of persons accused of having committed crimes referred to in the Rome Statute
- e) To provide for the arrest and surrender to the ICC of persons alleged to have committed crimes referred to in the Rome Statute
- f) To provide for the various forms of request for assistance to the ICC
- g) To enable Ugandan courts to try, convict and sentence persons who have committed crimes referred to in the Rome statute
- h) To enable the ICC conduct proceedings in Uganda
- i) To provide for the enforcement of penalties and other orders of the ICC in Uganda

Debate and discussion over this bill could not have come at a better time. The warrants of arrest issued by the ICC against rebel leaders of the Lord's Resistance Army have isolated the rebels and forced them to hold peace talks with the government. But the rebels' opposition to attending the ICC in The Hague, and their preference for traditional systems of conflict resolution and reconciliation have turned the ICC indictments into a double-edged sword.

It is unlikely that the rebels, who have been fighting the Government of Uganda for two decades, would have come to the negotiating table if the ICC indictments had not been issued against them. But it is also clear that unless some form of compromise is found – particularly one that whose pursuit of peace and justice does not sacrifice one for the other, the conflict might continue.

Thus the challenge is to bring peace to northern Uganda – and other parts of the country that have been affected by conflict – and also ensure that justice is delivered to the victims and that impunity does not thrive. Ostensibly, only then can the vicious cycle of violence be broken.

A dialogue organised by the Uganda Law Society and Friedrich Ebert Stiftung in Kampala in February 2007, highlighted the opportunities and challenges of harmonising the domestic and international justice systems.

The dialogue brought together a diverse group of stakeholders in the Justice, Law & Order Sector that included members of the Uganda Law Society, the Director of Public Prosecutions, officials from FES, the public, members of the Ugandan Parliament, as well as a Member of Parliament from the Federal Republic of Germany and former minister of Justice, Dr. Herta Daubler-Gmelin, who gave the keynote address. We also had a participant from UN International Criminal Tribunal for Rwanda

This paper offers a contextual analysis of the situation in northern Uganda, as well as traditional efforts of conflict resolution that have been implemented or considered for implementation. It identifies the areas of common ground between the traditional and international justice systems which should form the basis of the discussion over the bill when it is tabled before Parliament. It also outlines the challenges that were identified during the dialogue and ends by identifying possible ways in which those can be overcome.

CONTEXTUAL ANALYSIS

The current war in northern Uganda can be traced as far back as 1986 when soldiers from the Uganda National Liberation Army, which had been ousted by the National Resistance Army, tried to mobilise resistance against the new government. The current rebel group, Joseph Kony's Lord's Resistance Army, took centre-stage, in 1987.

Over the last 20 years, the war has claimed thousands of lives and displaced an estimated 1.6 million people out of their homes. Most of these internally displaced people now live in camps littered across the north and east of the country, in rather precarious humanitarian circumstances.

The LRA has carried out its rebellion with incredulous brutality and cruelty; the rebels are accused of murder, rape, abduction, destruction of property and the torture and mutilation of civilians in northern Uganda.

The Government of Uganda has, over the years, tried to end the war using both military and peaceful methods. None have been particularly successful. While the army has stopped the rebels from holding any territory, they have often failed to protect the civilian population from attacks, abductions, and have failed to eliminate the rebel's fighting force. The military campaigns against the rebels have also left many civilian casualties and created an environment in which human rights abuses were carried out.

Peaceful efforts to end the war – including a direct meeting between government officials and rebel leaders in 1993 – collapsed under the weight of suspicion and arm-twisting conditions laid on by both parties.

It is on the back of this failure of both military and peaceful efforts that the Ugandan government appealed to the ICC in 2002 for help in hunting down the rebel leaders and bringing them to justice. Subsequently, the ICC issued five warrants of arrest – its first – for Kony, his deputy Vincent Otti, and three other rebel leaders.

The warrants turned the rebel leaders into pariahs and isolated them from their backers, including some of Uganda's neighbouring countries. The 2003 peace deal between the Sudan People's Liberation Army and the government in Khartoum, which had previously supported the LRA in retaliation for Kampala's support for the SPLA, cut off crucial military and political support to the LRA rebels.

Since July 2006, the Government of Southern Sudan has been mediating in on-off peace talks between the LRA rebels and the Government of Uganda. The talks provided the first direct talks between government and the rebel leaders and a realistic chance to end the war.

During the peace talks, representatives of the rebels demanded that the ICC indictments be withdrawn as a condition for their participation in the talks, and ostensibly, their signing of a peace deal.

The Government of Uganda's response to this demand was ambivalent; some government officials suggested that the warrants would be ignored if the rebels signed a peace deal – but

no mention of this possibility was made when Uganda's security minister visited the ICC Chief Prosecutor, Ocampo Moreno, after the talks had started.

When the ICC indicated that it was unwilling to lift the indictments before the indicted rebel leaders had had their day in court, the warrants of arrest were transformed from a tool that had helped force the rebels to the negotiating table, to one that was hindering the peace process.

Writing in one of the local newspapers in Uganda, Norbert Mao, Chairman of Gulu district in northern Uganda said: "If Ocampo's mother was in one of the camps in northern Uganda, I do not know whether he would go ahead and insist on the indictment."

A 'third way' appeared to emerge around this time, of resorting to '*Mato put*', the traditional justice system practiced in parts of northern Uganda, and this seemed to enjoy the support of local leaders, the rebel leaders, and government officials. More significantly, '*Mato put*' was seen as an alternative to the ICC and its international justice system.

A review of the discourse shows that to many commentators and people involved in the negotiations, the ICC process represented a search for justice (or punishment for offenders) while '*Mato put*' was a search for peace and reconciliation. This is clear in the following extract from an interview that Mr Geresome Latim, a senior aide to the Paramount Chief of the Acholi gave *The EastAfrican* newspaper in August 2006:

"We are not questioning the ICC authority, but we stand for traditional justice. We don't want to coach the snake but kill the snake completely. Through the traditional justice, they will tell the world the secrecy behind their crimes, killings and why they did it. Rather than if you just lock him there, another Kony might come up. Kony must take responsibility for his act and participate in rebuilding of the community."

Such a perception ignores the ability of the ICC process to deliver peace and papers over the shortcomings and inadequacies of traditional justice systems in delivering justice. It is important that the common ground in both systems is identified and that discussions seek to identify ways of closing any gaps, rather than expanding them in order to justify exclusive choice-making.

Traditional justice systems have, over 20 years, failed to harness sufficient political and legal muscle to end the war; they have neither delivered peace nor justice. On the other hand, the ICC and the international justice system can only meaningfully be applied if its processes are well understood by domestic constituents, and if it is seen as a useful continuation for the search for peace *and* justice by eliminating impunity.

ISSUES ARISING

Common Ground

In comparing international justice systems to domestic systems and local realities, it is tempting to believe that the differences matter more than the similarities. The evidence suggests, however, that there is a lot of common ground between the two.

Both systems of justice seek to uphold universally-acclaimed human rights and dignity. The Laws of Uganda are based on the principle that all persons are equal before the law and that human rights are universal and inalienable.

Similarly, both systems seek to make reparations for wrongs committed and ensure some form of justice. This is either through the payment of compensation, or the admission of guilt and the seeking of forgiveness. The overall goal, in both systems of justice, is to uphold the peace by delivering justice.

It is also clear that both domestic and international justice systems do not allow impunity. Those who commit crimes have their guilt recognised, either by being found guilty, or by their own admission, and are either punished or forgiven.

In this regard, therefore, both justice systems seek to deliver justice and the ICC can therefore be seen as an instrument to bring justice to those who seek to exploit the geographical or technical limitations of national jurisdictions after committing serious crimes against humanity, genocide, and other war crimes.

Points of Contention

The dialogue, however, also highlighted some critical areas where there is a departure between the domestic and the international justice systems, with particular reference to Uganda. For instance, while the possible maximum penalty available for those found guilty by the ICC is life imprisonment, murder carries a maximum penalty of death in Uganda.

Similarly, the dialogue identified fundamental differences between the ICC's provisions and the traditional conflict resolution system (*Mato put*) practiced in northern Uganda, and which is favoured by local leaders in the area as well as the rebel leaders.

While the ICC's provisions are retributive and punitive in nature, the traditional forms of justice mentioned above are restorative and, by their very nature, appear to pay a higher premium to peace and social cohesion than to justice and punishment of offenders.

There is also little evidence to suggest that the traditional forms of justice pay any special consideration to the rights of minorities and vulnerable members of society, particularly women and children.

The Way Forward

In order to harmonise the domestic/traditional justice systems with international ones such as the ICC, the Government of Uganda has to consider implementing the following recommendations-

- Incorporate the traditional justice mechanisms into the Ugandan legal system as a way of ending impunity among perpetrators,
- Enact legislation to ensure uniformity and continuity between the traditional and international justice systems,
- Harmonise the national legal regime to align it with international standards, for instance in regards the provisions on capital punishment,
- Build the capacity of local leaders and elders who oversee traditional justice mechanisms through legal training and provision of other forms of facilitation,
- Make more Justice, Law & Order institutions available in northern Uganda, especially with the imminent end of the war, to break the over-reliance on traditional justice mechanisms,
- Carry out a nationwide sensitisation of the population about justice, law & order, as well as the need to harmonise domestic justice systems with international ones such as the ICC,
- In particular, sensitise the population in northern Uganda about the role of the ICC (and its warrants) in forcing the rebels to the negotiating table to minimise the ignorance and the hostility towards the ICC and international justice systems,
- Ensure that the local justice mechanisms conform to all the regional, continental and international human rights treaties ratified by the Government of Uganda and accordingly amend those that do not,
- Carry out political sensitisation about the need to cede some sovereignty to regional and international bodies such as the ICC, and the East African Community, in order to enhance global values and seek common solutions to common problems.