

## **Bringing Justice to the North**

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The ICC can only probe a limited number of crimes – is the Ugandan judiciary up to tackling the rest? With the International Criminal Court only mandated to try crimes against humanity and war crimes committed from 2002 onwards, there's concern over whether Uganda's justice system is up to the task of tackling earlier cases and more recent ones that the ICC deems too low-level to take on.

The ICC is currently engaged in investigating crimes committed in northern Uganda, but the time limitation - set out in its founding statutes - means that it can only probe a relatively short period of the Lord's Resistance Army, LRA, insurgency, which broke out 21 years ago.

Crimes carried out before July 2002 - when the court was set up - will have to be investigated and tried by the Ugandan judiciary. So too will those that were allegedly committed by low-level suspects.

But human rights organisations are worried about the credibility and impartiality of Uganda's justice system and the government's tight grip on the judicial process.

This comes as on-off peace talks between the government and the LRA, currently ongoing in Juba and hosted by the government of south Sudan, consider issues of accountability and reconciliation.

Those involved with the peace talks are exploring national justice mechanisms to help facilitate a peace agreement, which, according to Human Rights Watch, HRW, include tribal systems, truth commissions and national trials. The LRA has threatened to return to war if the ICC doesn't drop indictments against its leaders.

For now, the prospect of national trials worries activists.

Back in March, HRW and other human rights movements called on the government of President Yoweri Museveni to stop intimidating civilian courts after armed soldiers stormed the High Court in Kampala, Uganda's capital, to re-arrest five men who had just been granted bail after fifteen months of detention.

The men are part of a group known as the "PRA suspects" who are charged with treason along with Dr Kizza Besigye, leader of the opposition Forum for Democratic Change, FDC, for their alleged membership of a shadowy rebel movement, the People's Redemption Army.

The Ugandan judiciary began a strike on March 5 in protest at the government's actions at the High Court, while demonstrators in Kampala were met by heavy police deployment and teargas. HRW said the events were a "grim reminder" of an earlier High Court siege, in November 2005, by the army's anti-terrorism unit that prevented the release on bail of the same men.

At that time, Besigye was the leading opposition candidate running against Museveni for the February 2006 presidential election.

"The security forces surrounded the High Court to intimidate the judges and thwart the decision to release these men on bail," said Georgette Gagnon, HRW's deputy Africa director.

"The Museveni government's attempt to intimidate the courts shows its profound lack of respect for the law."

If Uganda's courts are to try crimes related to the insurgency, HRW says there must be credible and independent investigations and prosecutions; an adherence to international fair trial standards; and appropriate penalties reflecting the gravity of the crimes.

And this can't come too soon, according to Ugandan human rights lawyer Barney Afako. He told IWPR that ever since the LRA began its insurgency in the north in 1986 there have been complaints that the government fails to investigate or prosecute crimes thoroughly.

Victims in the north say that soldiers of the Ugandan People's Defence Force, UPDF, have also committed atrocities, including murder and rape, against civilians in their bid to quash the LRA - but when arrests have been made of soldiers the charges made against them have simply petered out.

Elise Keppler, a lawyer with the International Justice Programme of HRW, told IWPR that human rights groups have been documenting serious human rights abuses, pre- and post-2002, by both the UPDF and LRA for many years.

"Due to the temporal limitations of the ICC, fair and credible prosecutions of crimes committed before 2002 will need to take place before other courts," said Keppler.

"There has been an accountability vacuum in the north, and there need to be investigations, prosecutions and appropriate punishment if members of the UPDF are implicated. If the military are failing to prosecute their own, they should be prosecuted in civil jurisdictions."

Because of the absence of police during the insurgency in the north, the UPDF made its own arrests and handed suspects to civilian courts. But some cases were retained in the military court system where the justice meted out was of questionable quality.

However, Afako argued that the perception of a lack of political will to prosecute crimes is exaggerated. The problem is that the Ugandan legal system is hampered by too few prosecutors and a general lack of sophistication to deal with complex operational demands, he said.

He said that there are examples of individual victims going through the civil law system to bring allegations of human rights abuses against members of the armed forces. In the main, these prosecutions have been initiated by non-government organisations and the parliament-appointed Uganda Human Rights Commission and have resulted in awards for damages. "The bill against the government is huge and the difficulty is how to enforce the payments," said Afako.

Afako believes that the period from the beginning of the LRA insurgency in 1986 up until 2002 be re-

examined to allow investigations into the conduct of military criminal justice in relation to atrocities against the civilian population, and that there should be a commission of inquiry to make a prosecutorial assessments of whether there is enough reliable evidence to get convictions.

Investigations could be conducted by the Uganda Human Rights Commission, which began work ten years ago, into alleged human rights abuses, said Afako.

Under the ICC's Principle of Complementarity, the court must respect national justice systems and, under its Outreach and Jurisdiction, Complementarity and Cooperation Divisions, support local lawyers and judges to prosecute "lesser" suspects whilst it deals with key perpetrators.

The ICC can play a real role in "spurring improvement in serious crimes prosecutions in national courts for crimes committed pre- and post- 2002," said HRW's Keppler.

She also flagged the importance of the international community getting involved in building up Uganda's justice system, stressing that "programmes funded by major donors can promote positive developments in the justice system".

Whichever systems of justice are employed, they have to satisfy those most affected by the conflict - the victims. Northerners interviewed by IWPR tend to call for a multi-faceted approach to justice for crimes committed both before and after 2002.

Those who fled the bloody LRA insurgency and who are crammed into camps for internally displaced people have told IWPR that conflict resolution will fail if only one system is relied upon. Uganda's constitution recognises traditional tribal justice, and there is a strong feeling in the north that clan elders can handle justice and reconciliation far better than international or national legal systems.

Apart from the pastoral Karamajong of Uganda's "wild northeast", whose traditional justice demands blood for blood, many of the Ugandan clan and southern kingdom justice systems are fairly similar - so these could be knitted together to play a part in the national judicial process. However, this could take a long time to sort out.

Meanwhile, time is running out to find a solution to Uganda's peace versus justice conundrum. The threat in late May by the LRA's deputy leader Vincent Otti that the movement will return to war, if ICC war crimes indictments are not dropped against the LRA's five top leaders, lends fresh urgency to finding a durable solution which is palatable locally and internationally.

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