Peace Versus Justice in Uganda

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Can the International Criminal Court’s demand that Ugandan rebel leaders face trial coexist with the need to achieve a workable peace deal?
As peace talks between the Ugandan government and the rebel Lord’s Resistance Army continue across the border in southern Sudan, a debate is raging over whether those who have committed terrible war crimes should be allowed to escape international justice for the sake of peace.

The violence perpetrated by Joseph Kony’s LRA over 20 years on the Acholi people of northern Uganda has killed and displaced millions and left countless others mutilated, raped or enslaved as child soldiers.

More than 1,600 rebel fighters have so far arrived at assembly points in southern Sudan in the first phase of the Ugandan government-LRA deal - the Cessation of Hostilities Agreement - prior to full-scale peace negotiations.

The LRA is insisting as its condition for full peace talks that the International Criminal Court, ICC, in The Hague drop arrest warrants against its leaders on 33 charges of crimes against humanity and war crimes.

Uganda's president Yoweri Museveni referred the civil war in the north of his country to the ICC - the world's only permanent war crimes tribunal - in December 2003.

In July 2005, the ICC issued arrest warrants for LRA leader Joseph Kony and his main aides, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen. None has yet been arrested, but Lukwiya died in a recent gunbattle with the Ugandan army.

To the consternation of ICC prosecutors, Museveni has changed his mind.

A year after the arrest warrants were issued, following his own approach to the ICC, he unilaterally offered amnesty to the LRA in return for an initial ceasefire and an eventual comprehensive peace deal. He has promised that none of the rebel leaders will be sent to The Hague – raising problems for the ICC, which does not have its own police force and which was depending on the Ugandan army to find and arrest the rebels.

Some ICC officials and non-government organisations believe Museveni has toyed with the court, cynically undermining its credibility. The 102 countries, including Uganda, that have signed up to the ICC entered a solemn and binding agreement under international law and cannot, as a matter of convenience, simply opt out of holding to account individuals accused of terrible crimes.

"Museveni is acting in contravention of international law," Judge Richard Goldstone, former chief prosecutor of both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, told IWPR. "His government signed the [ICC's founding] 1998 Rome Statute, and offers of amnesty violate the letter of the law."
Goldstone added that the ICC cannot be used opportunistically, "like a convenient hot water tap that can be turned on or off".

However, Ugandans, particularly those in the north directly affected by the conflict, are frustrated by the amount of time the arrest warrants have been in the public arena without any arrest being made. ICC critics say that after two decades of war there is at last a real chance for peace across the three countries most affected by the conflict - Uganda itself and neighbouring Sudan and the Democratic Republic of the Congo, DRC. They feel that the international community should therefore not be doing anything that might stop the local peace initiative.

Ugandan human rights lawyer Barney Afako said the fundamental question to be answered is whether the intervention of international justice is prolonging the conflict or hastening its solution.

"Justice needs to be justified in terms of lives," Afako told IWPR. He asked how many more Acholi would need to be slaughtered before the ICC is in a position to try the LRA leaders, and went on, "The [international] criminal justice system is isolated from the moral consequences of its intervention."

Though it is still early days, the signs are that the ceasefire - under the Cessation of Hostilities Agreement, which came into effect in August - is holding.

Under the truce, all LRA fighters and leaders were supposed to have entered two assembly points near Sudan's border with the DRC by 19 September. At the latest count more than 1,600 rebel fighters had convened, but by the end of September Joseph Kony, his number two Vincent Otti and other top leaders had yet to emerge from the forests.

Regardless of the no-show of the LRA leadership, the mass exodus of fighters from their remote bases is a remarkable development in the context of the gross violence that has plagued Uganda, Sudan and Congo.

"Peace is gradually becoming a reality in this region," said Ugandan army commander General Aronda Nyakairima. "But if the talks fail, we will go for the LRA. It will be a free-for-all."

NO JUSTICE WITHOUT RECONCILIATION

If trials in a courtroom in The Hague in full view of the international community are not to take place, what instead is to happen with a rebel guerrilla force that has been at the centre of a web of mayhem and misery over two decades?

The countries that have ratified the Rome Statute governing the ICC no doubt believe it is the most robust form of justice available. But, ironically, many Ugandans say this "formal" mechanism is not sufficient to deal with the range of offences committed by the LRA.

The tradition of the Acholi - the Ugandans worst affected by the LRA terror - is to resolve disputes by talking around the fire and then performing an age-old purification and reconciliation ritual.
The elaborate ceremony called “mato oput” - which in Acholi means “to drink a bitter potion from the leaves of the oput tree” - involves a series of symbolic acts to restore unity between the injured and offending parties. Prodigal sons and daughters can receive forgiveness and be welcomed back into their communities.

"Mato oput involves the man or woman accepting responsibility for their actions and repenting for their crimes against their brothers and sisters," said the Anglican bishop of the northern town of Kitgum, the Right Reverend Baker Ochola, a passionate advocate of the local peace-making route. "They then ask for forgiveness of their community and pay reparations - sometimes in the form of a goat or a cow - to those they have wronged. Finally they rejoin their community without cruelty or victimisation."

The mato oput ceremony is conducted by a council of elders. The guilty party crushes a raw egg over his or her head to symbolise a new beginning and then steps over an "opobo", a bamboo stick, to represent a leap from the past to the present. At the climax of the rite, both the guilty and the wronged parties drink a pungent brew made from the leaves of the oput tree to show that they acknowledge the bitterness of the past and promise never to taste it again.

"The situation where the crimes are brought into the open is important, so that suffering is acknowledged and perpetrators sincerely apologise," said Simon Simonse, of the Brussels-based Catholic peace group Pax Christi International, an adviser at the negotiations between LRA and Ugandan government representatives in Juba, the southern Sudan regional capital.

"Perpetrators should not get away with their crimes, but prisons were never part of traditional justice."

The LRA's Vincent Otti, deputy to Joseph Kony, has told Uganda's Daily Monitor newspaper in a satellite phone interview that he is ready to ask forgiveness from his own Acholi people for wrongs he has committed against them, and that he is willing to submit to their justice system once a peace agreement is reached.

But Otti described the ICC as "just like a landmine or thorn ahead of me which I will not accept to step on. I will keep dodging it even if I am being pushed."

ROOTS OF VIOLENCE YET TO BE ADDRESSED

For many Ugandans, whether victims or accused, sending an individual to The Hague would mean denying communities the ability to take justice into their own hands - effectively leaving people disenfranchised. This perception centres on the belief that international prosecutions would not address the deep-seated causes of the violence.

Within the Acholi justice system, the question "why" is paramount: perpetrators are asked what motivated them to resort to violence.

Margot Stroeken, Uganda programme officer at the Centre of Justice and Reconciliation in The Hague, said that in Acholi culture, the guilty must admit they were wrong and ask forgiveness, whereas in the western legal system they can defend their behaviour and are not obliged to admit guilt.
At a meeting on the DRC-Sudan border on July 31, Kony offered apologies to village elders for atrocities committed by the LRA. The rebel leader, who claims to be guided by spirits and the Old Testament's ten commandments, launched his uprising in northern Uganda in 1986 and later set up bases in southern Sudan and, more recently, northeastern DRC.

Simonse, who was present when Kony offered his act of contrition, believes the ICC might be persuaded to withdraw its arrest warrants if the Ugandan government and Acholi leaders can prove that their own way of dealing publicly with war crimes will satisfy the international community.

However, Afako said that the government is "pulled in different directions," and has decided, on balance, to push traditional justice to the fore and deal with peace through dialogue rather than the ICC.

THE CASE AGAINST TRADITIONAL JUSTICE

Carla Ferstman, director of REDRESS, a London-based pressure group that seeks reparations for victims of torture, told IWPR that the ICC's founding statute suggests that the court can opt not to proceed with a prosecution if a strong local justice system is in place to deal with the matter effectively.

But should the ICC feel obliged to abandon the case against Joseph Kony and his aides? What kind of justice would that be for Acholis who have seen their sons and daughters kidnapped by the LRA to fight as rebels or be kept as sex slaves, whose neighbours' lips, ears and breasts have been cut off by the LRA?

Many argue that traditional justice mechanisms are inadequate to deal with crimes as grave and wide-scale as those carried out by the LRA.

Though a tentative peace has broken out, hundreds of thousands of people still live in internal refugee camps. Constant rebel attacks on the camps have destabilised Acholi culture and weakened traditional methods of problem solving, education and justice.

The camps are not a home and are not regarded by the Acholi as places of sacred value. They therefore feel that true purification and reconciliation will take place only when they can go back to their villages.

When that might happen is unclear. After a recent visit to northern Uganda, Jan Egeland, the United Nations Under-Secretary General for Humanitarian Affairs, told UN bosses that since the negotiations began in Juba "security has increased dramatically, allowing us to do much more on the humanitarian front". Egeland said that UN staff can now reach 54 of the 102 "internally displaced persons" camps without military escorts.

A weakness of traditional justice is that it differs from community to community. While most of the LRA's raiding has targeted Acholis, close neighbours such as the Lango, Teso and Madi were also badly affected. The justice systems of these tribes are completely different from those of the Acholi. Punishments include expulsion from the community, the withdrawal of all protection from the individual and even burial alive.

Stephen Arthur Lamony, coordinator of the Ugandan Coalition for the International Criminal Court, a local ICC support organisation, said that imposing the Acholi system on other tribes would "deny them access to justice". He said that representatives of other northern Ugandan peoples do want the LRA to be
prosecuted by the ICC. Their tribal leaders argue that the Acholis' mato oput has no jurisdiction over serious offences like rape and murder, he said.

All this is further complicated by the perception among some Ugandans that the Acholi are LRA supporters. This has had the sad consequence of fuelling hatred against the Acholi, despite polls showing that the LRA is extremely unpopular among them.

Ferstman said the wishes of all communities affected by the LRA's attacks must be taken into account. "Justice needs to be appropriate for each different group of victims, and the Acholi cleansing ceremonies may alienate other community groups," she said. "On their own, they [the Acholi ceremonies] would not necessarily be enough to satisfy international law, which does not allow impunity for the most serious crimes."

MUSEVENI FLOUTING INTERNATIONAL LAW?

It was President Museveni's government that invited the ICC into northern Uganda in the first place, and consequently that places certain responsibilities upon it under the Rome Statute which underpins the rules of the court in The Hague.

To honour its obligation to the ICC, the Uganda government is under an onus to make the local transitional justice system as acceptable as possible to standards the ICC may have in mind.

Judge Goldstone's objections to such a compromise are supported by Mark Ellis, executive director of the London-based International Bar Association, who urged the international community to take action against Museveni.

Ellis told IWPR that the ICC is obliged to adhere to its mandate to ensure that those accused of committing crimes against humanity are held accountable. He said that the international community must help ensure that nation states do not entrench the principle of impunity for such crimes. The ICC would be damaged if a groundswell of support emerges for the practice of ending violence by offering amnesty and freedom from punishment to the actors involved.

"If we undercut the role of the ICC it will be we, the international community, who will have weakened it," Ellis said.

AFRICAN PRECEDENTS

Illegal though the developing Uganda deal may be, there are precedents for such amnesties in other parts of Africa. The possibility of amnesty, in exchange for truth telling, lay at the heart of the philosophy of South Africa's well publicised 1996-2003 post-apartheid Truth and Reconciliation Commission.

Sierra Leone rebel leader Foday Sankoh was granted amnesty and even appointed the national Vice President. But his followers subsequently broke the peace agreement, and Sankoh was arrested and died in jail.
The UN-backed Special Court for Sierra Leone - an ad hoc international war crimes court - indicted former Liberian President Charles Taylor. He was given asylum in Nigeria as an African method of getting him away from Liberia and neighbouring Sierra Leone. However, international pressure forced Nigeria to extradite Taylor, who is now awaiting trial on charges of crimes against humanity.

In the case of Uganda, Pax Christi’s Simonse argued that offers of amnesty have been key to the progress of the local ceasefire talks. "For the cause of peace, it is a big step forward," he said. "We would otherwise never have come this far in negotiations since we are dealing with an extremely suspicious armed group."

The view is not shared by the UN's Egeland, who recently told northern Ugandan community groups that it was the ICC indictments, not the offers of amnesty, that had pushed the LRA into negotiations.

After spending a night in an internal refugee camp at Opit in the Gulu district, Egeland acknowledged the role that could be played by Acholi justice mechanisms. Bringing justice to northern Uganda should incorporate traditional methods, he said - but he insisted that it must go beyond them as well.

Reporting back to the UN, Egeland stressed that while the ICC indictments should not disrupt the local ceasefire and peace negotiations, those identified as responsible for mass murder and crimes against humanity could not be given amnesty.

ICC ALLEGED TO BE IGNORING ARMY ABUSES

Egeland told his bosses that the ICC’s chief prosecutor, Luis Moreno-Ocampo, had told him that the UN should support peace talks aimed at "the return of women and children, demobilisation of fighters and a solution that makes peace and justice work together".

But some Ugandans are saying this is precisely what the ICC is not doing.

Afako told IWPR that indicting only the “LRA Five” is not conducive to reconciliation since it appears to ignore allegations that the Ugandan Army has also committed human rights abuses in the north of the country.

Many Ugandans believe that both the army and the LRA should be held accountable and that singling out only the rebels for trial at The Hague demonstrates a lack of impartiality.

The Centre of Justice and Reconciliation's Stroeken said she believed the Ugandan government's amnesty offer could be a "trade-off to forget crimes Museveni's own troops have committed". Speaking to IWPR from Uganda, she questioned why ICC arrest warrants have been issued only against LRA combatants, who see themselves as freedom fighters against Museveni whose southern-based guerrillas took power by force in 1986.

Afako said that when people realised the ICC was relying on the Ugandan army to arrest Kony and his fellow leaders, their faces fell and they asked, “What is the point of all this posturing?”
Lamony, of the Ugandan Coalition for the ICC, pointed to a recent photograph showing Moreno-Ocampo with Museveni. He said this sent out a "clear indication" that the court was not going to investigate or try Ugandan military personnel because the ICC's chief prosecutor needs cooperation from the government and his investigators need protection by the army.

He warned that if the ICC does not change its approach it will continue to be resisted not only by the rebels, but "most importantly by the natives."

"People want to see the court issuing arrest warrants to both parties in the conflicts in Uganda, Darfur and the DRC, not only the rebels," said Lamony.

Meanwhile, the legal debate goes on.

Judge Goldstone is adamant that basing a peace agreement on an amnesty for those who have committed "the most terrible mutilations and rapes" amounts to cheating the victims and will not end in permanent peace.

However, he does also argue that if the Ugandan government truly believes an amnesty will facilitate peace, and that prosecution would prejudice it, its next step should be a submission to the UN Security Council, which has the power to order the ICC to suspend investigations for one year at a time.

"If Museveni could produce a strong case, they [the Security Council] would be sympathetic," said Goldstone.

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