



ISS Seminar Report

The Political-Legal Dilemma and the ICC in the Northern Uganda Conflict: What is the Way Out?

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Presenters: Ms Sandra Oder (Snr Researcher, Training for Peace Program)

Mr Godfrey Musila (Snr Researcher, International Crime and Terrorism Program)

Mr Issaka K. Souaré (Researcher, African Security Analysis Program)

Chair: Dr Wafula Okumu (Snr Research Fellow, African Security Analysis Program)

Introduction

As it can be easily surmised from its title, the seminar aimed to look at the complexities of the armed conflict in Northern Uganda and the involvement of the International Criminal Court (ICC) through its warrants of arrest for some leaders of the Lord Resistance Army (LRA) rebel movement. In so doing, it sought to put the conflict in its historical context, looking at the various causal arguments of the conflict, the peace process so far, and various legal and moral implications of the current state of affairs.

With their various backgrounds and experiences, the three presenters divided the topic among themselves, by each looking at a specific aspect of the subject matter. The expert knowledge of Dr Okumu of the subject matter added value to his brilliant chairing, by bringing out very salient issues to the attention of the presenters and the audience.

Presentations

Ms Oder began the seminar by providing a historical background of the conflict and first hands account of the peace process, for she is from the North of Uganda and has worked extensively on the issue. In her presentation, she noted that for over twenty years, the conflict in Northern Uganda has had severe impact on the communities in the region, systematically developing

into a complex cross border conflict in the last decade. While Uganda's post-independence history is coloured with bloody conflicts revolving around power struggles, the LRA has proved to be unique, gaining more international scrutiny after the September 11 attack when the Bush administration listed it as a terrorist organisation. But this and the indictments of the ICC notwithstanding, she noted that there is an increasing popular demand to settle for a peaceful negotiation with the government of Uganda.

She argued that the Juba Peace Process (started in 2005) has been the best chance ever for a negotiated settlement for the conflict. However, the indictments of the ICC are seen to be the main stumbling block. This is because the Court and its supporters insist on prosecutorial trials of the indicted leaders of the LRA while the latter demand that these leaders receive immunity from ICC prosecution before a final deal is signed. And given that the rebel movement still has the capacity to continue destabilising the region and killing more people, many civil society organisations and even a good number of victims advocate for a negotiated settlement, even if that means offering amnesty to the rebels.

How do we interpret the position of the ICC and those that support a prosecutorial process in Uganda in light of these realities? What are the legal and moral implications of this 'legalistic' position and that of those calling for amnesty? Are these two positions mutually exclusive? Can we think of other alternatives to these two options? What are those alternatives? These were the thorny issues that the other two speakers dealt with.

Issaka looked at the three main arguments for prosecutorial processes. With regard to the 'legal argument', he conceded that all international legal instruments condemn the crimes allegedly committed by the LRA and call for their prevention and punishment. He however called for a differentiation between the various ways in which wars end and the impact of this on policy options with regard to crimes committed during the war. He remarked that all wars that have ended through negotiations – in the absence of a clear winner – have involved some sort of amnesty, *de facto* or *de jure*, and that prosecutorial processes have only been used in the aftermath of armed conflicts that *had been decisively won by one party* (e.g. Nuremburg, Tokyo, ICTY, ICTR, etc.). Because of this, the tendency of such processes has been what some call "victors' justice", he argued.

Advocates of the prosecutorial processes also premise their position on a 'moral argument'; that is to argue that only criminal prosecution would do justice to the victims whose rights should be respected as international law calls for. But he countered this argument by calling for a consideration for the rights of 'future victims', *unless we are sure that we can truly do justice to past victims without creating future ones*, which is far from being certain in the case of Northern Uganda given the dynamics and realities noted above.

With regard to the 'deterrence argument' of prosecutorial processes, he contended that there is no empirical evidence to support this. In fact, the trial of alleged culprits of the genocide in Rwanda by an international court based in Tanzania did not deter warlords or government forces in neighbouring

DRC, the Central African Republic and Sudan to commit crimes that might be of interest to international justice. It is also hard to prove that the recurrence of armed conflicts that had been ended through negotiated settlement was due to lack of prosecutorial processes, simply because many others that did not have such processes have not recurred.

He therefore concluded that: a) the ICC should revoke its indictment and warrants of arrest for LRA leaders; b) the Ugandan government should pass an amnesty law for these leaders *if they make it a sine qua none and show a genuine willingness to sign a definitive peace agreement*; c) justice should be rendered to the victims, but this should not necessarily retributive justice (we must consider *economic justice* as even more important in this case, and consider *local justice mechanisms*); and that d) the direction that some campaigners want international law to take with regard to situations of armed conflicts where there is no clear victor should be thought through.

Godfrey Musila's presentation focussed on the role of traditional justice mechanisms in contributing to the search for justice in Northern Uganda.

It was noted that the indigenous/traditional justice mechanisms of conflict resolution in Uganda come by various names depending on the specific community: *Mat Oput* (Acholi); *Kayo Cuk* (Lango); and *Awadri/Atrita/Trima* (Lugbara, Madi). The main features of these mechanisms are: 1) the requirement that perpetrators acknowledge their crimes; 2) that they show remorse for these crimes; 3) they ask the community for forgiveness; 4) and that compensation be offered to the victims or their families.

The speaker made the following conclusions:

- Traditional Justice Mechanisms (TJMs) have their utility and value in transitional societies, but they have serious limitations – and will almost invariably not be compliant with international law where they are proposed to deal with serious violations
- Value of TJMs: can be used in respect of accountability for low level perpetrators and less serious crimes (Cf Rwanda's Organic Law and the 4 classifications). Even when used in this way, they need to be formalised and their compliance with human rights, fair trial guarantees – enhanced
- That formal criminal justice and TJMs do not, and should not be seen as operating in opposition to each other. *They are complementary*. The 'alternative' tag accorded to TJM is thus inappropriate. However, formal criminal justice is crucial for any sustainable TJ process or peace process.
- States have a range of obligations – some peremptory – which dictate that Traditional Justice Mechanisms (TJM) have to be part of a toolkit of options for addressing human rights abuses. The obligation to prosecute the most serious violations – which amount to international crimes such as genocide, war crimes and crimes against humanity – excludes the application of TJMs

- *Justice is a composite term and should not be equated to punishment of perpetrators.* The rights and concerns of victims as well as perpetrators must be factored into this view. Viability for criminal justice needs support mechanisms. In places like Northern Uganda, *'justice' will remain a mirage while pervasive economic depravation persists*
- Recourse to TJM should not be an excuse for states to find their way out of a tight corner. *States should not invoke these mechanisms when it suits them to opt out of international obligations* (Uganda's weakened support for the ICC linked to the possibility that the Prosecutor would open investigations into alleged Ugandan army crimes)
- Sometimes despite all, *TJM may be the only recourse in the search for justice.* Efforts in such cases should be directed towards enhancing compliance rather than to unqualified critique