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THE INTERNATIONAL CRIMINAL COURT IN UGANDA

A Detriment to the Peace Process

Jessica Sinclair

ABSTRACT

Conflict has raged in northern Uganda for decades. The Lord's Resistance Army has brought instability, poverty and bloodshed to the region since the late 1980s. In 2004 the Chief Prosecutor alongside the Ugandan President, Yoweri Museveni announced that the International Criminal Court (ICC) would begin investigate the conflict. The ICC intervention in Uganda however, has been a detriment to the peace process and has been executed poorly. This paper demonstrates that the ICC's involvement has led to the following concerns; it has been universally biased, has led to further violence, jeopardized the safety of already threatened groups, and devalued traditional judicial practices.

The conflict in Northern Uganda has been raging for over twenty years and has affected millions. The presence of Joseph Kony and the Lord's Resistance Army (LRA) has brought instability, poverty and bloodshed to the region since the late 1980s. The history of this conflict is both complex and long. In order to understanding the many dimensions of the conflict's origins it would take a journey back over half a century of history. For the purposes of this paper however, the primary focus will be on the LRA and the investigation into the conflict by the International Criminal Court (ICC). The ICC's investigation into Uganda and their subsequent acts, have halted the peace process and led to greater levels of instability in the region. The ICC in Uganda has sparked many concerns about the validity of universal involvement in individual sovereign conflicts. This paper will argue that the International Criminal Court's intervention in Uganda has been a detriment to the peace process and that this intervention was not properly executed. Essentially the main concerns are as follows: it was universally biased, it led to further violence, it jeopardized the safety of already deeply threatened groups, and it ignored and devalued the traditional justice procedures. However it is necessary to consider the combination of factors in this case.

The ICC is a relatively new international institution. It was ratified by means of the Rome Statue in 2002. The indictment of Uganda was the court's first universal judicial act. As such the court's presence in Uganda has been viewed under a microscope of scrutiny. Discourse surrounding the degree of effectiveness of the court is plentiful and will be further discussed in detail. In 2003 Ugandan President, Yoweri Museveni, asked the International Criminal Court to intervene. At this point the ICC had yet to establish a true international identity. Was this approach the best way to gain peace in the region and

in the best interests of the Ugandan people? Universal concepts of justice and law do not necessarily reflect the practices in African societies. Law is forever tied to politics, just as political environments shape legal systems. The debate between peace and justice has been very contentious in political science rhetoric. Regional discrepancies should be taken into account when transitional justice attempts are being implemented. This is not to say that the international legal system is without extreme validity. Universal concepts of human rights need to be enforced, and the foundation of this enforcement can be found through legality. However it is crucial that these universal concepts of justice are coupled with the individual identities and regional traditions. Every conflict requires a different approach, and it has become necessary to critically evaluate the importance of a balance between international and traditional judicial practices. This is evident in the case of Uganda.

HISTORICAL BACKGROUND

The Conflict in Northern Uganda

Conflicts in this region often do not stem from a singular event or reason, but rather are due to a variety of factors that have amalgamated over many years. Uganda's modern history has been filled with conflict and violence²¹⁸. An extremely short synopsis of the many regime changes and tyrannical leaders will suffice for the purposes of this paper. In 1971, Milton Obote, leader of Uganda at the time, was overthrown by his commander; General Idi Amin Dada. Amin, known even today as the "Butcher of Uganda," led a reign of complete terror, murdering all of those who stood in his way. Amin was defeated in 1979, and interim governments served until Obote returned to power in 1980. He

²¹⁸ Joanna Quinn, "Getting to Peace? Negotiating with the LRA in Northern Uganda," *Human Rights Review* 10 (2009): 55.

retaliated against those who supported Amin and was eventually overthrown again in 1985 by a military group. In 1986, Yoweri Museveni and the National Resistance Movement (NRA) came into power. Museveni and the NRA had been fighting all of the previous mentioned leaders since the early 1970s.

The conflict in the Acholi region of Northern Uganda began shortly after Museveni took power.²¹⁹ Joseph Kony considers himself an *ajwaka*, which means that he is controlled by a group of spirits²²⁰. He has proclaimed himself a “messianic prophet, declaring that he aims to overthrow the government according to the Ten Commandments”.²²¹ Since 1986 Kony has been leading the LRA to abduct children, capture sexual slaves, and execute the mass killings of uncountable numbers of people. This has predominately taken place in the Acholi region but is not limited to that area. For many years the response by the government of Uganda has been to simply ignore the situation in the north, which has allowed the conflict to continue for many years.²²²

The International Criminal Court

Limited background knowledge of the International Criminal Court is necessary to understand the many dimensions of attempted peace process in Uganda. The ICC is an independent international institution that is governed by the Rome Statute, which was signed in 2002 by 60 countries.²²³ The international human rights regime began post World War Two with the Nuremburg Tribunals. This combined with the tribunals in both Rwanda and Yugoslavia provided the foundation for the ICC. The court has jurisdiction

²¹⁹ Ibid., 56.

²²⁰ Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (South Africa: David Philip, 2006), 38.

²²¹ Issaka K, Souare, “The International Criminal Court and African Conflicts: The Case of Uganda,” *Review of African Politico Economy* 121 (2009): 373.

²²² Quinn, 58.

²²³ Souare, 125.

over individuals but it requires the state to ‘invite’ the court or accept the courts order to investigate²²⁴. It is the fact that the court requires state approval, which leads to suggestions that the court is toothless.

In the case of Uganda, President Museveni referred the conflict to the attention of the International Criminal Court in 2003. This was announced by a joint press conference between Museveni and the Chief Prosecutor; Moreno-Ocampo; illustrating that the investigation may be bias and not include actions of Museveni.²²⁵ On October 13th 2005 the ICC unsealed warrants for the arrest of five senior leaders of the LRA.²²⁶ Joseph Kony, the alleged commander-in-chief of the LRA was indicted with thirty-three accounts of war crimes, including sexual enslavement, enlisting of children and attack against the civilian population. The other four warrants were issued to the following: Vincent Otti, Second-in-command of the LRA, Okot Odhiambo, deputy army commander of the LRA, Dominic Ongwan, brigade-commander LRA, and Raska Lukwiya, deputy army-commander. All of these men are still at large, with the exception of Lukwiya who is deceased.²²⁷

The remainder of this essay will evaluate the presence of the ICC in Uganda. The ICC has become a very important part of the international human rights regime. However, it is crucial that the court critically consider the ramifications of their actions as well as the tactics they employ. If this is not done then the ICC can become a determinate

²²⁴ The International Criminal Court, “Situation and Cases: Uganda” <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0204/Uganda.htm>, (accessed March 29, 2010)

²²⁵ Allen, 82.

²²⁶ Phuong N. Pham, “The Lord’s Resistance Army and Forced Conscription in Northern Uganda,” *Human Rights Quarterly* 30 (2008): 404.

²²⁷ The International Criminal Court.

to the peace process, which goes against the mandate and purpose of the court but also can exasperate an already raging conflict.

EVIDENCE TO SUPPORT THE ICC'S FAILURE IN UGANDA

The Bias of the ICC

The ICC's investigation of the conflict in Uganda has been met with much criticism. The fact that Museveni referred the case to the ICC, and that governmental actions are not being investigated, has led to the suggestion that the ICC is biased towards Museveni's government. As previously mentioned the NRM, commanded by Museveni, has been a rebel group in Uganda since Obote's reign in 1971. Due to the complexities of the historical context, it seems that every group has committed gross human rights violations at one point or another. Tim Allen has written extensively on the LRA and the ICC investigation in Uganda. He writes, "The 2004 joint press conference with the Chief Prosecutor and Museveni portrays the impression that the court will not prosecute the government".²²⁸ After discussion arose criticising this move, Moreno-Ocampo attempted to take clarify that the government would not be void of accountability. He clarified that the Rome Statute empowered the court to look into government crimes as well as individual ones. This however, did very little to change the perception that the court was acting on behalf of the government and would not investigate the NRM.²²⁹ It is hard for the victims of conflict in Uganda to entrust the ICC when it is not considering the totality of the situation. Similarly the international community was already sceptical about the strength and purpose of the ICC, which is evident from the relatively small number of signatory countries, this fact did not aid the ICC in gaining international support. Angelo

²²⁸ Allen, 97.

²²⁹ Ibid.

Izama comments on this discrepancy: “When the ICC made a decision to indict the LRA in 2005 it did so without directly addressing [the] larger, more convoluted history of violence”²³⁰. In so doing, the ICC will not be able to bring peace to Uganda, it will only lead to more hatred and silenced victims.

Some opinions view the referral to the ICC by Museveni as a strategic political decision. Considering the tumultuous political structure and the historically short-lived reign of each governmental leader it is understandable that Museveni is concerned about maintaining his power. However, the way in which he is ensuring the consistency of this authority gives rise for concern. It has been said that the reason he has encouraged the ICC intervention in Uganda is to help distance himself from the conflict, thus protecting his international image and support. Issaka Souare is a well-known scholar on African conflicts and the presence of the ICC in the region. Souare comments on Museveni’s politicization of the court: “The whole story of referring the LRA to the ICC was a political strategy by the Ugandan government to achieve international criminalisation of the group, and to gain foreign support for its military operations against the rebels”.²³¹ This statement supports the claim that Museveni has used the court for his own self-interest. Furthermore, Museveni is aware that a lot of potential political opposition is located in the North By isolating it both politically and socially, he is more likely to maintain political and governmental control..²³² Victor Peskin, a fellow at the School for Global Studies at Arizona State University writes: “The LRA is blamed for the majority of atrocities, but the government is also implicated in killings and the brutal treatment of

²³⁰ Angel Izama, “Accomplice to Impunity? Rethinking the Political Strategy of the International Criminal Court in Central Africa,” *School of Advanced International Studies Review* 29 (2009): 54.

²³¹ Issaka K. Souare, 377.

²³² Quinn, 61.

the Acholi people”.²³³ All of these facts account for how the ICC has been biased in Uganda. The ICC’s dependency on Ugandan support has created serious doubts about the court’s independence. In so doing the court’s reputation has been tainted as one that maintains biases towards the state, and is fuelled by political agendas.

The ICCs involvement has led to further violence

In 2000 the Ugandan government passed an amnesty act in hopes of motivating the LRA to stop fighting. The amnesty would be applied to all of those who came forward and surrendered. They would be forgiving for the years of violence and allowed to return to society. The peace process, which included the Juba peace talks (a traditional justice mechanism conducted in Southern Sudan) were progressing, however not quickly enough rate, when the ICC issued their warrants in 2005. This move is regarded as inhibiting the achievement of peace in Uganda, as the rebels insist that the warrants be revoked before agreeing to sign a peace agreement.²³⁴ Moreover, not only has the ICC created a stalemate position to the peace process, but also it has resulted in purposeful violent acts executed by the LRA. “In response to the ICC’s action Kony often attacked villages such as Congolese in 2008”.²³⁵ The amnesty process is far from perfect and it was not necessarily leading to a peaceful conclusion, but the presence of the ICC and the controversial way in which their investigation has been conducted has most definitely resulted in further violence. Tim Allen, an anthropological expert on the region, has said that the “ICC investigation cannot exist with the Amnesty act still being offered”.²³⁶ The ICC intent is to halt crimes against humanity and to implement justice to those who have

²³³ Victor Peskin, “Caution and Confrontation in the International Criminal Court’s Pursuit of Accountability in Uganda and Sudan,” *Human Rights Quarterly* 31 (2009): 678.

²³⁴ Souare, 369.

²³⁵ Peskin, 689.

²³⁶ Allen, 117.

violated fundamental human rights. However perhaps it is necessary to first bring an end to conflict prior to obtaining justice.

The debate between amnesty and criminal justice has been very contentious and widely discussed. Path dependency is at play in this situation, meaning that the progression is limited based on previous decisions made by those involved. The LRA are of the mind that they must keep fighting, because if they stop, ICC prosecution awaits them. This does not foster a positive chance for peace. “Many LRA fighters are afraid to stop and come forward for fear of prosecution”.²³⁷ The pursuit of criminal justice is crucial to universal peace, however it should be limited where it will hamper an already established peace process.²³⁸ The presence of the ICC generally is very important, but in this case the ICC did not conduct itself with the appropriate level of care. Within the current approach the LRA and Kony have very little if not negative incentive to lay down arms.²³⁹ The court is addressing the “symptoms of criminality, but not the causes”, which will only deepen the conflict and put a limitation on the long-term impact of the court.²⁴⁰ The participation of the ICC seems to exclude a peacefully negotiated end to the conflict.

The involvement of the ICC has altered the safety of already vulnerable groups

One of the reasons the conflict in Northern Uganda is seen as one of the worst conflicts of our time, is the effect it has had on the children in the region. Joseph Kony has collected his army by forcibly abducting thousands of children mostly in the Acholi

²³⁷ Ibid., 119.

²³⁸ Izama, 58.

²³⁹ Peskin, 681.

²⁴⁰ Izama, 56.

region. Many of those who have been abducted have not returned.²⁴¹ This has resulted in what is known as “night commuting”, where thousands of children ranging in ages from 5 to 19, travel sometimes as much as twenty kilometres from displacement camps into the city to sleep at night. They do this in hopes of being able to sleep without fear of being abducted. The city offers a much safer and secure environment. The LRA has taken to retaliating against the presence of the ICC by furthering its attack on the youth population.²⁴² Further concerns for the safety of the children have occurred in the internally displaced persons (IDP) camps.. IDP camps in northern Uganda house up to 80% of the population. Hundreds of thousands of children are living in these camps and the mortality rate is alarmingly high.²⁴³ There is also a strong threat of LRA attack and violent abductions. The LRA seems to have focused their brutality on young children. Most people who are under the age of twenty-five have experienced only a life that is full of war and fear of being abducted. The ICC has not helped this situation.

Qualitative data assists in establishing the impact of the conflict on vulnerable groups. A study has been conducted by Phuong Pham, who is a fellow at the Human Rights Centre at the University of California, Berkeley. He studied the number of ‘returnees’ in a period of six months in 2006. Returnees refer to abducted children and adults who have returned from LRA captivity. He found of the returnees, 37% were under the age of 18, and 24% were between 19 and 30. Out of this group, 24% were female and 76% male. Among women, the average length of abduction was 4.5 years, while among men it was about 1 year.²⁴⁴ He concluded that between 1986 and 2006 there

²⁴¹ Pham, 5.

²⁴² Allen, 112.

²⁴³ Ibid., 114.

²⁴⁴ Pham, 402.

were approximately 76,000 abductions, children accounting for 38,000.²⁴⁵ These numbers are astounding. The reason for longer abductions for women is explained by the roles the women were forced to fill; the women are often used as sexual slaves and given to the commanders as ‘wives’, while the men are used as soldiers in combat situations, forced to kill. This survey occurred in 2006, so one year after the ICC warrants. Pham found that the numbers have increased in the past few years. This demonstrates that the presence of the ICC, and the manner in which they have conducted themselves, has only further harmed groups that already have been tormented time and time again.

The ICC has devalued traditional justice practices

Similar to cultural relativism in terms of human right concepts, judicial systems and procedures differ based upon culture. Conversely, universal concepts of human rights require the implementation of a universal standard. Thus it is important to consider cultural traditions and be aware of different national practices. The ICC in Uganda has not been sensitive to this notion. Justice cannot be reduced to only one form, namely criminal justice; there are other forms of justice to which one can resort. Transitional justice focuses on this dilemma, the combination between universal and traditional legal practices. Issaka Souare comments on this: “The term post-conflict justice or transitional justice is used to describe the interrelated process of prosecution and accountability, truth telling, reparation and institutional reform that contribute to the long-term restoration of social relations between the former belligerents and their victims”.²⁴⁶ Souare listed a variety of options that respect regional judicial practices. The ICC however has not shown this respect to Uganda, and as such is not as affective or respected in the country.

²⁴⁵ Pham, 404.

²⁴⁶ Souare, 371.

Combining universal and traditional components of justice is by no means an easy task. The universal legal framework will have to adjust with each conflict, while maintaining its authority and mandate. This is incredibly challenging and this paper does not attempt to offer a clear solution. It simply attempts to justify and demonstrate that changes need to be made. In Uganda, the Acholi view the ICC through a lens of betrayal. They believe that ICC has worsened the security situation.²⁴⁷ There are even those who have never heard of the ICC.²⁴⁸ With this reputation in the community, it is impossible for the ICC to be affective. Perhaps in truth, a commission should be set up that is independent from the court, one that excludes from impunity only those who are to be prosecuted.²⁴⁹

ANALYSIS

In this section, this paper will attempt to offer solutions to break the stalemated peace process, as well as move towards general tranquillity in Uganda. It is imperative that the ICC and the international community move forward with care, since, as previously mentioned this situation is incredibly complex. First of all the court should retool its political strategy, as “time again the court has chosen to target criminal activity while ignoring the larger criminal enterprise, seeking to eliminate the impunity of mid-level warlords, while allowing their patrons, who are often government officials, to go free”.²⁵⁰ That is to say that the court needs to ensure it avoids acquisitions of bias and investigates the totality of the situation. The ICC runs the risk of upsetting peace negotiations by over-criminalizing one side and in so doing they run the risk of potentially undermining both

²⁴⁷ Souare, 372.

²⁴⁸ Christian Noll, “The Betrayed: An Exploration of the Acholi Opinion of the International Criminal Court.” *Journal of Third World Studies* 26 (2009): 115.

²⁴⁹ Allen, 102.

²⁵⁰ Izama, 51.

peace and justice.²⁵¹ A possible solution can be found in the government being allowed to pass its amnesty laws for the LRA leaders, and the LRA revoking its indictments against the leaders.²⁵² This however does send an international message that justice is not absolute. Maybe this message is necessary in order to gain peace.

Deepening international support could strengthen the court itself. “To build an enduring foundation, the court must expand the number of state parties belonging to the Rome Statue.²⁵³ The success and the strength of the ICC are based upon the political will of the time. International leaders may decide it is not in their best interests to allow Kony to be captured. International technology is such that it is simply not true that the international community cannot locate Joseph Kony and the other LRA commanders. Perhaps it is inevitable that the court be tainted by political agendas. This is paradoxical because without peace, no progress toward development or political strategy will be possible.

CONCLUSION

African conflicts are not one-dimensional, they have many components. They are plagued by generations of identities that incorporate ideas of killings and human right violations. They also are not isolated to specific regions or geographical areas. Borders are not restrictive or respected, as they are in western society. In this case of the Lord’s Resistance Army, Joseph Kony has led the rebel group from Uganda to the Congo, to the Central African Republic and to Sudan. The International Criminal Court investigation began in 2005 and has received immense criticism for its strategy and investigation. Uganda has experienced violence for decades and any hopes for peace need to be

²⁵¹ Izama, 52.

²⁵² Souare, 383.

²⁵³ Peskin, 689.

discussed, even if they are not completely true to universal or traditional judicial practices. From Milton Obote, to Idi Amin and Museveni, Ugandans have not known leaders who uphold the sanctity of human rights. The international community has a responsibility to uphold these rights, however the judicial practices must allow for a successful peace process. This has not been the case in Uganda, as the ICC has been detrimental to the peace process and the investigation was not properly executed. The court was universally biased, it led to further violence, it jeopardized the safety of already deeply threatened groups, and it ignored and devalued the traditional justice procedures.

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