
PRACTICE NOTE

Challenging International Justice: The Initial Years of the International Criminal Court's Intervention in Uganda

Lucy Hovil*

This practice note¹ describes and critiques the initial years of the International Criminal Court's (ICC) involvement in Uganda from the perspective of local civil society actors. It argues that the substance and process of the ICC's intervention fell chronically short of generating justice for those who had lived with the conflict for over two decades, and therefore created a disconnect between the priorities of those on the ground, and the priorities of the Court and its international minders. In order to unravel some of the dynamics that underpinned this disconnect, the paper asserts that the pivotal relationship between citizen and state provides a lens through which to assess any approach to generating justice in Uganda. It concludes that those promoting international justice need to be more cognisant of the fact that international justice mechanisms are obsolete unless they can move from theory to practice and make a genuine difference in people's lives. In this regard, a better understanding and awareness of the political and social context in which they are operating, as well as greater self-critique and honesty, is critical.

Introduction

Over the past decade, Africa has become the focus of numerous experiments in international justice (IRRI 2011). Given the nature and scale of conflict and crimes committed on the continent, this is not surprising. The compulsion to fix injustice is a good one, and the fast-growing international human rights industry that is trying to do just that is commendable and worthy. Yet the veracity of international justice activity on the continent has not been met by an adequate understanding of its impact and efficacy. Supported by the assumption that any intervention working to 'end impunity'

is somehow above reproach, there is an unwillingness to critically evaluate these well meaning, but sometimes unwanted and even harmful, interventions.

The involvement of the International Criminal Court (ICC) in Uganda provides a good example. In 2004, the ICC was a new institution with the somewhat daunting mandate of ending impunity for the worst crimes throughout the world. International human rights NGOs had spent years advocating for the Court and were desperate to see it succeed. The Lord's Resistance Army (LRA), a rebel group operating in northern Uganda, seemed a perfect first target. Its notorious leader, Joseph Kony, had a cultish aura that seemed to negate any rational political agenda, as he abducted and abused children and carried out atrocities of the most

* International Refugee Rights Initiative, Uganda
lucy@hovil.co.uk

appalling nature. As the investigation into the alleged war crimes of the LRA came at the request of the Ugandan government, the case presented an opportunity for the ICC to test out its mandate in the relatively uncontroversial context of state referral.

Unexpectedly, the announcement of the ICC's involvement in northern Uganda – which, significantly, was made jointly by the ICC Prosecutor, Luis Moreno-Ocampo, and President Museveni at a press conference – was met with widespread and immediate condemnation by members of Ugandan civil society. Unlike other situations in which local civil society groups had been calling upon international tribunals to intervene, civil society in Uganda had not requested ICC involvement. While this was due in part to the fact that the Court was new and relatively unknown, members of Ugandan civil society – who were themselves living and working in the midst of the conflict – did not understand or support the rationale for this form of international intervention.²

An increasingly heated debate between national and international NGOs developed over the course of the following months. Eight years later, many of the issues that lie at the heart of the dispute remain unresolved, highlighting the polarisation between international and local understandings of justice. The disagreement also served to significantly undermine areas of mutual understanding and common ground that could have otherwise led to a healthy discussion on ending the war, creating an environment of sustainable peace and pursuing accountability for international crimes. Instead, it set up a false distinction between the demands of justice and the demands of peace (Okello 2007). The debate also raised questions regarding the basis for the relationship between local and international organisations³ and led to concerns about who has the right to represent the views of victims, the intended beneficiaries of justice. The arrest warrants issued in 2005 only served to further entrench these already polarised positions of international and local actors.

Subsequent efforts have been made to bridge some of these divides. As the main focus of LRA activity has moved out of Uganda and the prospect of resumption of negotiations or prosecution has diminished, the intensity of the debate has waned. However, serious rifts remain, much damage has been done, and there continues to be inadequate space for debate. Even at the Rome Statute Review Conference in Kampala in June 2010, these issues remained largely implicit rather than explicit, suggesting the extent to which room for debate and discussion remains highly restricted.

The ICC engagement viewed within a transitional justice framework

This practice note explores why the ICC intervention became so divisive by examining local civil society's response to the ICC's involvement in Uganda. Based on the author's own experience of working with the Refugee Law Project (a project of the Faculty of Law at Makerere University) during the initial months and years of the ICC's intervention in Uganda, the note examines both the process and the substance of this intervention.

The discussion is situated in a broader discourse of transitional justice, which provides language that can help to untangle some of the complex issues and dynamics that were being discussed at the time. As an international criminal justice mechanism, the assumptions that underpinned the ICC intervention stemmed from a narrowly defined understanding of justice – which, in turn, led to a poor understanding of the context and way in which that justice might function. By contrast, transitional justice frameworks are increasingly recognising the need to widen the discussion beyond an emphasis on international criminal justice and to allow for far broader understandings and approaches to pursuing justice. In that respect, this paper uses the four goals of transitional justice recently outlined by De Greiff (2012) as a point of departure. He talks of 'two mediate goals' (providing recognition to victims and fostering civic trust) and two

final goals (contributing to reconciliation and to democratisation). By building on this approach – and, to a certain extent, simplifying it – this paper makes explicit the fact that, in essence, these goals emphasise the pivotal relationship between citizen and state, which provides a lens through which to assess any approach to generating justice in Uganda. The paper asserts that the full and equal realisation of citizenship (as both a legal construct ensuring the ‘right to have rights’ (Arendt 1986: 295–6) and as a form of empirical belonging) provides a framework for understanding both the consequences of injustice and the restoration of justice.

This approach is not intended to suggest that transitional justice discourse has the monopoly on understanding the means of recovery in the aftermath of conflict, nor that the ICC’s intervention was somehow intending to meet all (or any) of these goals. Instead, it is argued that these mediate and long-term goals provide a useful framework for measuring the impact of an intervention intended to bring about justice and sustainable peace in the aftermath of violence in a context in which much of the Ugandan population (particularly in the north, but not exclusively) felt excluded from broader political processes.

It is also important to recognise that, while the *goals* of transitional justice are important, they are often unrealistic and lead to disappointment. Therefore, the erosion or promotion of citizenship also provides a lens for assessing the *process* of any transitional justice mechanisms. As this piece demonstrates, the process revealed a major clash of priorities and understandings of justice (McAdams 2011). On the one hand, Ugandan civil society was trying to raise questions around whether or not the Court was playing a useful role in addressing *overall conflict dynamics* in Uganda and contributing to the wider demands of state-building. It dared to question the ICC’s role as a tool of international justice in the global ‘fight against impunity’ which was seen to be elevating itself above, or outside of, politics. On the

other hand, the ICC and its international justice minders seemed to be at ease with separating international legal justice from the pursuit of national political accountability. On the ground, this disconnect jeopardised the credibility of the Court.

The following overview of the immediate aftermath of the ICC’s intervention in Uganda focuses on two fields of concern: the *substance* of the ICC’s engagement and the *process* that took place. Set against a brief overview of events in the early stages of the ICC intervention, these two interrelated factors are discussed in turn.

An overview of events

The ICC’s involvement in Uganda began in July of 2003, when the Prosecutor identified Uganda as a situation of concern. In December 2003, President Museveni formally referred the situation concerning the LRA to the ICC. On 29 July 2004, the Office of the Prosecutor (OTP) decided that there was a ‘reasonable basis to open an investigation’ (ICC 2004).

Meanwhile, in November 2003, the former Minister of State for the Pacification of the North, Betty Bigombe, had begun to meet with top LRA members to try to reach a peaceful settlement to the conflict in northern Uganda. These talks led to a geographically bounded seven-day ceasefire between the LRA and the UPDF on 14 November 2004, which was then renewed continuously in anticipation of a general ceasefire agreement. However, no agreement was reached and 2005 began with renewed outbreaks of fighting. Bigombe continued to try to bring the warring parties to the table and her efforts bore some fruit, including the declaration by President Museveni of an 18-day ceasefire on 4 February 2005. However, LRA attacks continued. Weeks later, the defection to the Ugandan government of the LRA’s principal negotiator, Sam Kolo, dealt another serious setback to the peace process. The situation was further complicated in July when the ICC issued under seal warrants to arrest five senior members of the

LRA, including Kony, which were unsealed on 13 October 2005. It is this period of the conflict, from 2003 to 2005, that forms the focus of this piece.

The substance

A number of substantive issues relating to the context in which the investigation was announced and subsequently unfolded meant that the ICC's involvement at that point in the conflict was not viewed favourably by the majority of those who had been living and working in the midst of the conflict for decades. These issues coalesced around two main factors: (1) the one-sidedness of the ICC investigation, which was neither adequately cognisant of the views and desires of victims, nor allowed for an honest appraisal of the conflict that might lead eventually to reconciliation and stronger democratic realities; and (2) the way in which this particular approach to the pursuit of justice was seen to jeopardise rather than restore the bond between citizens and the state in the war-affected areas.

A one-sided process

As stated above, the ICC's involvement in Uganda came about as a result of a state referral by the government of Uganda. From the perspective of local actors, this fact alone was enough to discredit its involvement. By accepting an invitation from President Museveni to open the investigation, the ICC was seen as a tool of the government. This perception then appeared to be confirmed when arrest warrants were made against LRA rebels, with no further indication that the government was being investigated. The fact that the investigation unfolded with visible cooperation from state assets – including accompaniment of ICC officials by Ugandan security forces and the maintenance of considerable secrecy about the whereabouts of the ICC office in Uganda – added to the questions raised. Concerns about the close relationship between the ICC and the government of Uganda were more recently

reinforced when the government of Uganda hosted the first ICC Review Conference held in Kampala in June 2010.

Yet to those caught up in the midst of the war, the government was perceived to be as much a source of instability and human rights abuses as the LRA. It had not only failed to protect its citizens from the LRA, but had compounded their misery by forcing much of the rural population of the north into so-called 'protected villages' as part of its counter-insurgency campaign, preventing them from accessing their land. Those found outside of the allocated perimeters of the camps or towns were assumed to be rebel collaborators and were frequently executed (Human Rights Watch 2008).

The ICC, therefore, appeared to be set up to sidestep the one area of chronic injustice (the actions of the government and its armed forces) that was least likely to be reached by the domestic courts, which were subject to state control. When measured against the goal of building civic trust, therefore, this attempt at justice had failed before it started.

The official ICC position was that the UPDF's actions, where potentially criminal, did not reach the Statute's gravity threshold in the period of time over which the Court had jurisdiction (and, in assessing gravity, it should be acknowledged that the temporal restriction was an issue, particularly with regards to alleged crimes relating to forced displacement, most of which took place before 2002). However, the Court's criteria for defining gravity differed from that of the war-affected population: in asserting that actions associated with government forces did not reach the gravity threshold, the Court appeared to ignore the fact that the local population saw the government as a key perpetrator (Lomo and Hovil 2004). Consequently, the Court's neutrality was seen by local observers to be compromised from the start.

By not holding the government accountable, the ICC was also failing to address wider grievances that lay at the root of the conflict

and to acknowledge the massive break-down in trust as a result not only of the government's total inability to protect its civilians, but its complicity in their suffering. Although there was minimal support for Kony's actions in the north, the root causes of the war and its consequences reflected huge frustration with a government that had continually marginalised the north of the country and silenced opposition.

It was also symptomatic of wider discontent throughout a country that has seen the rise of 22 rebel groups since President Museveni came to power in 1986 (Lomo and Hovil 2004). The LRA insurgency was understood to reflect deep-rooted dissatisfaction with governmental abuses of power and the chronic marginalisation of large swathes of the country. Uganda had experienced more than enough victors' justice in its violent history, and the negative consequences of failing to confront root causes were predicted. Within this context, the Court, with support from a powerful and articulate international justice community, appeared to be pushing an agenda that seemed to ignore local understandings of the conflict and the seriousness of the different crimes committed – and, therefore, of the right response to that conflict. It was perceived to have become complicit in the political manoeuvring that has enabled President Museveni to maintain power for 25 years, and jeopardised the Court's own neutral stance as a result. The ICC's actions had effectively legitimised the government's military campaign in the north (and subsequent forays into eastern Democratic Republic of Congo (DRC), Sudan, and Central African Republic (CAR)) and reinforced its justification for continuing that campaign.

More Justice, Not Less

A second key concern was the chasm between justice in theory and the realisation of justice in practice that seemed to infuse the very process of discussing the referral and unfolding investigation. Specifically, the issue of

arrest warrants against five senior LRA commanders was seen not only as unrealistic in its ability to deliver justice, but dangerous in its potential fall-out. Issuing an arrest warrant with no ability to enforce it appeared irresponsible and only reinforced the status quo.

Of course, the Court was operating within constraints that are acknowledged, including the fact that it does not have its own forces to carry out arrests, and is dependent on governments to do so.⁴ Its actions certainly served to put attention on the devastating war in the north and, to an extent, put increased pressure on the government to protect its people. However, while no one questioned whether or not Kony had committed serious crimes and deserved to be brought to justice in some form, the questions were how it could and should take place, when it should happen, and who should lead the process.

In a context in which international human rights ideals had failed to protect civilians who had been pummelled for decades by an appalling and preventable conflict, people wanted mechanisms of justice that would genuinely deliver. By questioning the ICC's involvement at that point in the conflict, those who criticised the intervention were not turning their backs on the promotion of justice. Rather, they were demanding *more* justice: justice that was robust and that genuinely engaged with the context; justice that would contribute to, or at least complement, the promotion of fair and equal governance; and justice that would deliver. Arrest warrants that promised so much but were inevitably fated to deliver so little were seen as yet another unrealistic ideal, and a dangerous one at that, given the critical gap between the ICC's ability to talk about and realise justice.

Furthermore, the issue of the warrants implicitly legitimised and privileged a military resolution to the war. Not only have military engagements continued to fail up to today, but a military resolution to the war went against a long-standing campaign

– within northern Uganda specifically and amongst civil society in Uganda more generally – for a negotiated settlement to the conflict. The government's relentless pursuit of a military victory over Kony, or even, some would argue, the deliberate prolongation of the war, was not only seen as futile – and, in some respects, self serving – but had left the unprotected civilian population ruthlessly targeted in the fall-out. Previous peace talks had been attempted with minimal commitment from either the LRA or the government and had failed. Yet at the time of the ICC's initial intervention, there was increased optimism that both sides in the conflict might be willing to negotiate (Lomo and Hovil 2004). Most of all, there was a widely held belief that negotiations would allow for the most sustainable outcome for those living in the north, not least as it presented the opportunity to address root causes of the conflict.

The ICC's announcement in 2004 came at the height of the war, when the situation was particularly raw. The fall-out from Operation Iron Fist – the government's military drive against the LRA that began in 2002, and incorporated operations in south Sudan following the thawing of relations between the governments of Sudan and Uganda – had only served to exacerbate the conflict, which subsequently spread further east and led to an escalation in displacement, with numbers reaching approximately 1.8 million people. Most international NGOs remained in town centres, as it was considered unsafe to travel. They were therefore unable to reach those in the camps who were living in increasingly dire situations. This was also the period in which the Refugee Law Project conducted a major piece of research, documenting understandings of the conflict and ideas for its resolution. During the course of the research, over 600 people across northern Uganda were interviewed (both in the camps and towns), despite the context of chronic instability (Lomo and Hovil 2004).

With the stark realities of the failure of the military initiative, the momentum for peace talks had been growing. The interna-

tional community was finally listening to civil society and putting increased pressure on Museveni to act accordingly; the initiative by Betty Bigombe, outlined above, was also beginning to gain traction. However, this all took place alongside increasing speculation around the possible announcement of arrest warrants for Kony and four of his senior commanders, which were finally unsealed on 13 October 2005. In the thick of the conflict, with a mounting death toll, the lack of synergy between these two processes created considerable concern.

To a certain extent, these fears were allayed once the Juba peace process got off the ground in South Sudan in 2006. Many interpreted the peace process as the most promising development towards ending the war in 20 years. Indeed, the extent to which the ICC assisted in promoting negotiations is a subject of much debate. The ICC and its supporters argue that the pressure put on the LRA by the arrest warrants, as well as the international attention they attracted, were critical in getting the LRA to the negotiating table. Others would argue that the negotiations got off the ground *despite* the ICC's involvement. Whatever the impetus for the commencement of the negotiations process, it did not ultimately succeed in reaching its goal of ending the LRA insurgency. Instead, the LRA's operations have spread elsewhere and communities in South Sudan, CAR and DRC are feeling the full weight of its deprivations.

The process

Meanwhile, the process of ICC intervention itself underscored many of these substantive issues. When the Prosecutor announced that he would begin an investigation, Ugandan civil society was not only puzzled, but angered by this unsolicited international intervention. The ICC was seen to have played directly into the hands of President Museveni and to have further compounded the injustices at the root of the conflict. The process of engagement with civil society that unfolded reinforced these perceptions. It indicated that the ICC was either unaware

of these dynamics, or was not taking them into consideration. The ideas of local civil society actors, and their decades of involvement in a war that had affected many of them personally, seemed to be effectively ignored. There was minimal consultation about accountability and justice options before the ICC made its announcement, no prior warning about the announcement, and no mechanism provided for voicing dissent in the immediate aftermath. By the time the ICC did try to mount something of a public relations campaign, enormous damage had already been done.

The ICC, with support from its international justice constituency, seemed to be acting no differently than any external actor with money, power, and resources who forces its agenda onto local communities and organisations regardless of its efficacy. Instead, concerns voiced by civil society about the potential impact of the ICC's approach were condemned both by ICC staff members and officials of the Court and by a number of international human rights groups. Because the ICC's actions were being done in the name of promoting justice (the proverbial 'fight against impunity'), anyone who spoke out against the Court was by implication labelled anti-justice.

On the ground, this disagreement translated into heavy-handed pressure on local civil society organisations to stop speaking out against the ICC's actions. For instance, two of Uganda's leading human rights lawyers were invited to visit the Hague to meet with people from the Court along with members of high profile international human rights groups. Despite considerable pressure to change their stance, they refused to do so. Their position on the ICC's involvement was based on prior in-depth knowledge of the Rome Statute and a clear understanding of the implications of this particular approach to pursuing justice within the context of ongoing conflict in northern Uganda. Their problem was not a lack of understanding. Likewise, the author was asked to remove any negative references to the ICC from a

report for an international body, because it was 'against the interests of justice' (Personal e-mail). A number of field officers of international organisations based in Uganda initially voiced their concerns about the ICC's actions, but were soon silenced by head offices that took an official stance of support for the ICC, once again stifling debate (Personal communication). National voices that had previously been supported by international organisations were now being questioned by those same organisations because they were not showing unequivocal support for the Court's actions. Instead of healthy discussion, a major dispute developed which left everyone feeling bruised.

At the heart of this disagreement were two competing ideas of justice. To the people of northern Uganda, justice looked like the opportunity to go home in safety and to then pursue appropriate forms of justice. These forms of justice could promote political accountability and foster the growth of new forms of trust between citizen, community and state that would allow for sustainable peace. From the perspective of the ICC, however, the primary image of justice was of Kony standing in the dock. The former emphasised the need to address structural injustice, while the latter placed an emphasis on individualised criminal justice. People in the north were crying out for justice, but they desperately needed peace first as a component of the kind of just resolution to the conflict that was ultimately envisaged. There was a strong recognition of the huge deficit in justice which lay at the root of so many of Uganda's conflicts. While the prosecution of Kony might be a critical component of this process, it should not have come at the expense of the wider pursuit of justice, which inevitably incorporates peace.

Ultimately, therefore, people wanted a process and not a one-off event (symbolised by the dramatic issuing of an arrest warrant) that they feared would derail that process. These two pictures of justice are certainly not mutually exclusive. They do not deny that the ICC wanted to see people return to

their homes or that those in the north did not want to see Kony held accountable for his actions. They illustrate, however, the extent to which tackling the atrocious fallout from the war was driven by conflicting conceptions of priorities.

Furthermore, the absolutist nature of international law and the justice it purports to generate were seen as ignoring or even negating the value of local understandings of justice. Local mechanisms of justice were demoted and written off as not meeting the demands of justice (as defined in international law via the interpretation of concepts such as complementarity and admissibility). Those who were promoting these local understandings – including religious and cultural leaders in the north – suddenly had their integrity and motivations questioned. As these leaders spoke about alternative forums for pursuing accountability, controversy was created about the extent to which they could legitimately speak on behalf of the communities they purported to represent.⁵ Certainly, no leader – whether cultural, religious or political – will ever be fully representative. What was clear, however, was that such leaders were desperate for the war to end and for people to once again live in their homes in peace (Baines 2007). As Ugandan lawyer Barney Afako said, ‘when Ugandans referred approvingly to, for example, *mato oput*, this was often shorthand for saying, ‘Please leave us alone and let us address these problems ourselves’’ (Waddell and Clark 2007). Ultimately, Ugandan civil society actors recognised the need for any mechanisms of justice that would promote a proper, functioning democracy that would ensure that such a conflict could never be repeated.

Was the ICC needed?

There are also more fundamental questions that, although rarely posed directly, highlight the root of many of the concerns: Was the ICC really needed in Uganda? And, why was it there? It seemed clear to those on the ground that the issue was not whether Kony

and his senior commanders could be *tried*; it was whether they could be *caught*. Indeed, as the text of the referral from the government of Uganda to the ICC itself acknowledges, “[t]he Ugandan judicial system is widely recognised as one of the most independent, impartial and competent on the African continent...There is no doubt that Ugandan courts have the capacity to give captured LRA leaders a fair and impartial trial” (Republic of Uganda 2003: section 25).

In this context, surely the logical step for Museveni would have been to seek international cross border assistance under existing bi-lateral or multi-lateral accords to arrest Kony, rather than recruit an international court – with no powers of arrest or enforcement – to threaten him. Could it be that the decision to refer the case was taken in order to shift international attention onto a group of ‘lunatics’ committing heinous crimes across the north and away from growing criticism of the regime’s hold on power – and international armed forays – which were coming under increasing scrutiny? Despite the fact that Museveni had, arguably, had ample opportunity to end the war on several occasions⁶ – not least with increased surveillance and tracking of the LRA’s whereabouts – this poisoned chalice, handed to the ICC, was accepted at face value.

Conclusion

So what can be learnt? As stated above, the ICC cannot be expected to be anything more than a part of the solution, a mechanism that operates within the broader dynamics of international relations and *realpolitik*. No individual transitional justice measure on its own can achieve the kinds of outcomes that are only generated by a range of measures implemented in parallel and over a significant period of time. The goals of transitional justice outlined above, which reach to the heart of decades of abuse by those in power, can only be addressed by extraordinary amounts of hard work and diligence that are likely to take place long after the international human rights community has

lost interest. However, as this case so clearly demonstrates, in order for any mechanisms of justice to be effective, they must complement one another and be cognisant of the wider context in which they are operating.

This practice note argues that, when measured against the broader goals of transitional justice – in particular, the need to restore or create a sustainable and just bond between citizens and the state – the substance and process of the ICC's intervention in Uganda fell chronically short. While the scale of the war was unprecedented and surpassed levels of atrocity that traditional mechanisms of justice had previously dealt with, five arrest warrants not only failed to fill the deficit of justice in the north but were seen as negatively impacting both the chance for justice and for peace. By effectively ignoring state responsibility, the bond between citizen and state was only weakened further. In other words, what was presented as – and acknowledged to be – the partial realisation of justice, was interpreted as a travesty of justice. As Branch (2010) says, “some justice” may not be justice at all’.

Of course, eight years later, a considerable amount of water has flowed under the bridge and the jury is still out on the overall impact of the ICC's intervention. Hundreds of thousands of internally displaced persons (IDPs) have returned to their homes and there is no longer open conflict in northern Uganda. The Juba Peace Process, which began in July 2006, has taken enormous strides forward; and local initiatives have made some progress in filling the gaps in addressing the national dynamics of the conflict and promoting local voices. The signing of a Cessation of Hostilities, a Comprehensive Solutions to the Conflict, and an Agreement on Accountability and Reconciliation, all give cause for cautious optimism. In particular, the third agreement, Agenda Item No. 3 on Accountability and Reconciliation, shows a clear awareness of the need to address wider root causes of conflict in Uganda and to place the northern war within a national context.⁷ The creation of a division of the Ugandan High

Court to hear war crimes and related cases was an important aspect of building capacity to start this project, although its first steps have been tremulous. Meanwhile, the ICC has invested heavily in outreach activities in northern Uganda – and throughout Uganda – and in community support projects through the Victims Trust Fund, which has certainly had some impact on perceptions of the Court: some have been won over while others have not. The ICC has also recognised, at least in theory, the need to ensure greater understanding of the context in which it is operating (although, arguably, in practice little has changed).

However, the LRA remains at large, and the recovery process in the north is being hampered by the fact that there has been no final resolution or closure to the war. Kony and his supporters are still out there and the threat of renewed attacks remains. For many, therefore, the war is not over. Furthermore, the UPDF have yet to be held accountable for their actions in the north: the forced displacement of almost two million people in northern Uganda and the broader injustice it represents will likely haunt the country long after Kony has died, whether in the bush or in captivity. Civic trust remains appallingly low, victims have yet to see the delivery of justice from the government in terms of reparations or public acknowledgement of the role it played in the conflict, and the longer-term goals of reconciliation and democratisation are chronically lacking.

These deficiencies are neither the sole fault nor the responsibility of the ICC. Yet they show that it is critical that any mechanisms of justice implemented within a context of ongoing conflict or its aftermath are mindful of the wider impact and implications of their actions. Yet for as long as there is a reluctance to allow for criticism and honest debate, little will change.⁸ Ultimately, in a context in which local coping mechanisms are likely to be stretched to breaking point, external actors that come in to try to help can either reinforce them or undermine and even destroy them. In order for the former

to happen, those promoting international justice need to be far more cognisant of the fact that international justice mechanisms, however clever, however worthy, however *right*, are obsolete unless they can move from theory to practice and genuinely make a difference in people's lives. In order to do this, a fuller understanding and awareness of the political and social context in which international justice mechanisms are operating is critical. A little more self-critique and honesty would go a long way.

Notes

- ¹ This paper has evolved in stages. It was first presented by the author at the panel discussion, "NGOs and the International Criminal Court: the State of the Union?" held at the Review Conference of the International Criminal Court, Kampala, 4 June 2010, organised by the International Refugee Rights Initiative (IRRI) and the Open Society Justice Initiative. It then appeared in longer form as part of IRRI's "Just Justice" series (see below), before being re-worked for this journal. The author would like to thank Deirdre Clancy and Olivia Bueno and the editors of the journal for their comments on the paper.
- ² Not everyone had the same opinion and some did express their support for the ICC's intervention. However, many of those who expressed support initially believed that the Court had the authority and capacity to arrest members of the LRA. A report from the International Centre for Transitional Justice and Human Rights Center states that 83 percent believed that the Court had the authority and capacity to arrest members of the LRA (ICTJ and HRC 2005).
- ³ Of course, the concept of either local or international civil society is highly suspect, not least as neither is in any way homogenous. However, for the purpose of this paper a distinction is made between local and international organisations.
- ⁴ Indeed, in recognition of the limitations on the Court in executing arrest warrants

(only five out of 16 suspects against whom arrest warrants have been issued are currently in the custody of the Court), the ICC prosecutor called for the US military to help enforce ICC arrest warrants (Al-Bulushi and Branch 2010).

- ⁵ See, for example, Allen 2005.
- ⁶ See, for example, Hovil and Okello 2006.
- ⁷ The Agreement on Accountability and Reconciliation was signed on 29 June 2007, and an annex to that agreement was signed in February 2008 (IRRI 2008: 81).
- ⁸ Although the appointment of the new Chief Prosecutor is cause for optimism, the impact remains unclear.

References


- Al-Bulushi S** and **Branch A** 2010 AFRICOM and the ICC: Enforcing international justice in Africa? *Pambazuka News*, 27 May. Available at: <http://www.pambazuka.org/en/category/features/64752> [Last accessed 4 June 2011].
- Allen T** 2005 *War and justice in Northern Uganda: An assessment of the International Criminal Court's Intervention*. London: Crisis States Research Centre.
- Arendt H** 1986 *The origins of totalitarianism*. London: Andre Deutsch.
- Baines E** 2007 The haunting of Alice: Local approaches to justice and reconciliation in Northern Uganda. *International Journal of Transitional Justice*, 1 (1): 91–114.
- Branch A** 2010 What the ICC Review Conference can't fix. Oxford Transitional Justice Research Working Paper Series. Available at http://www.csls.ox.ac.uk/documents/AdamBranchICC_Final.pdf [Last accessed 22 November 2012].
- De Greiff P** 2012 Theorizing transitional justice. In: Williams M et al *Transitional Justice. Nomos vol. L*. New York: New York University Press.
- HRW** 2008 UN: Council should help end fresh abuses by Uganda's LRA. Letter to the Security Council. Available at: <http://www.hrw.org/en/news/2008/06/18/un-council-should-help-end-fresh-abuses-uganda-s-lra>

- Hovil L** and **Okello M C** 2006 'Only peace can restore the confidence of the displaced': Update on the implementation of the recommendations made by the UN Secretary General's Representative on Internally Displaced Persons following his visit to Uganda. Geneva: Internal Displacement Monitoring Centre/Norwegian Refugee Council.
- ICC** 2004 Prosecutor of the International Criminal Court opens an investigation into Northern Uganda. Press Release. 29 July. Available at: http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200204/press%20releases/Pages/prosecutor%20of%20the%20international%20criminal%20court%20opens%20an%20investigation%20into%20nothern%20uganda.aspx [Last accessed January 2012].
- ICTJ** and **HRC** 2005 *Forgotten voices: A population-based survey on attitudes about peace and justice in Northern Uganda*. Berkeley, CA: ICTJ and HCR.
- IRRI** 2011 Just justice? Civil society, international justice and the search for accountability in Africa. Series Background Paper. November 2011. New York: IRRI.
- IRRI** 2008 In the Interests of Justice? Prospects and Challenges for International Justice in Africa. November 2008. New York: IRRI.
- Lomo Z** and **Hovil L** 2004 Behind the violence: Causes, consequences and the search for solutions to the war in Northern Uganda. Refugee Law Project Working Paper 11.
- McAdams J** 2011 Transitional justice: The issue that won't go away. *International Journal of Transitional Justice*, 5 (2): 304–312.
- Okello M C** 2007 The false polarisation of peace and justice in Uganda. Presentation at Building a Future on Peace and Justice, Nuremberg, Germany.
- Republic of Uganda** 2003 Referral of the Situation Concerning the Lord's Resistance Army 16 December. Available at: <http://www-rohan.sdsu.edu/~abbranch/Current%20Projects/Uganda%20ICC%20Referral%202003.pdf> [Last accessed 23 March 2010].
- Waddell** and **Clark** 2007 Peace, Justice and the ICC in Africa. Report on a meeting of the Royal African Society, London School of Economics, London, UK in March 2007.

How to cite this article: Hovil, L 2013 Challenging International Justice: The Initial Years of the International Criminal Court's Intervention in Uganda. *Stability*, 2(1): 3, pp. 1-11, DOI: <http://dx.doi.org/10.5334/sta.ar>

Published: 1 March 2013

Copyright: © 2013 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 3.0 Unported License (CC-BY 3.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/3.0/>.

 *Stability* is a peer-reviewed open access journal published by Ubiqity Press

OPEN ACCESS 