

**Imposed Justice and the need for Sustainable Peace in
Uganda**
*Presentation to the Beyond Juba Project/AMANI Forum training
in Transitional Justice for Parliamentarians*
Entebbe
18 Jul. 08
Dr Chris Dolan
Refugee Law Project

Thank you very much to our previous speaker for that wide-ranging and comprehensive exposition of what Transitional justice is and where it comes from historically. What I want to do is talk about what Transitional Justice is *not*. More specifically I want to make the point that, on its own, the ICC can never be regarded as bringing justice to war-affected countries, and that, if such justice is to be done and seen to be done, it requires a far broader effort. The conditions for sustainable do not just happen, they are created. I am making this point because the whole reason for this workshop is that we believe that you, as Members of Parliament, are absolutely central to that broader effort.

My starting point is a book written more than twenty years ago. This seminal work led to the development of a whole range of critiques of humanitarian assistance to refugees and the establishment of the whole field of Refugee Studies (which subsequently broadened to become known as Forced Migration Studies), and the beginnings of a capacity to hold one of the most important UN agencies, UNHCR, to account when it was failing to serve the needs and interests of those it is mandated to protect.

The argument at the heart of the book I am referring to was that the way in which international organisations delivered assistance to refugees in camps actually disempowered refugees and made it almost impossible for them to draw on the resources they still had and to create their own solutions to their problems. International assistance in the form of humanitarian aid was thus undermining the independence of the supposed beneficiaries.

That book was called 'Imposing Aid' and was authored by Dr Barbara Harrell-Bond. The disempowered refugees she wrote about were Ugandan refugees in southern Sudan.

The Refugee Law Project's experience of watching the relatively newly established International Criminal Court over the last few years suggest that in addition to imposed aid, what the 21st century is also bringing is imposed justice – and, once again, Ugandans have been at the receiving end.

When the ICC is looked at overall, a number of problems stand out; one is the way that by focusing all its attention on Uganda, DRC, Central African Republic and, since this

week, Sudan (and continuing to ignore the numerous other situations which are crying out for justice – Burma, Sri Lanka and Iraq spring to mind), it perpetuates the idea that the world can be divided into Africa and the rest. In short, the ICC polarises the world.

I find something deeply paradoxical about the way in which many proponents of the ICC seek to argue that the practice of international justice by the ICC is totally separate from the reality of international relations and global power inequalities. Only lawyers can really believe that law and politics are two discrete domains: the average person in the street is quick enough to make the connection between the two; during a talk show on KFM last Tuesday, which looked at whether the ICC was a stumbling block or an opportunity to end impunity, the very first caller asked the question; “if they want to end impunity, why aren’t they indicting George Bush instead of focusing only on Africans? Clearly for the ordinary citizen (who after all is more likely to be the victim of the kinds of violations international justice claims to address), the practice of international justice to date has already been tainted with the suspicion that there is something racist lurking within it.

Another major problem with the ICC in Uganda is that it has created a false polarisation between justice and peace. Those who had been ardently pursuing peace for years in northern Uganda, when they questioned the timing of the ICC intervention there from 2004 onwards, were accused of wanting peace at the expense of justice. Worse still, they were told that by questioning the ICC they were actually supporting impunity.

But such accusations rest on very shaky foundations. As students of conflict and peace know, a distinction is drawn between negative and positive peace. Negative peace is said to be where there is no direct physical violence, but where the structures in place continue to oppress and exploit people such that, even if they are not victims of physical violence, their lives are less than what they should be due to what is called structural violence.

Positive peace, on the other hand, is when, in addition to ensuring people’s physical security, structural issues, or the underlying causes of war, are also addressed. One of the key ways of ensuring positive peace is to ensure that all the elements of Transitional Justice Nahla talked about, that complex combination of prosecutions and accountability, reconciliation, truth telling, reparations and institutional reform, is put in place.

In other words, international justice with its narrow focus on prosecutions, is only one part of the bigger bundle of requirements for positive peace. There is no choice to be made between pursuing peace and pursuing justice, for if you are seeking positive peace then justice is not optional, it is an integral part of peace. Done wrongly (as we would argue has happened in northern Uganda), the pursuit of international justice can undermine the pursuit of peace, but done correctly, as we are seeking to do through the establishment of a whole array of transitional justice processes, the pursuit of peace and the pursuit of justice should and can go hand in hand.

The only question is when you should do it. As the RLP has repeatedly said, it is a matter of getting the sequencing right. For most people in northern Uganda, desperate to get a

clear and definitive signal that it is safe to return home, the ideal sequencing would involve ensuring that the guns are silent for good before pursuing the prosecution of criminals responsible for crimes against (their) humanity, war crimes and the like.

The failure to understand the intimate connection between the pursuit of positive peace and the pursuit of justice is part of the ICC's bigger failure to fully clarify its objectives. Is it seeking justice for victims? To date most of its attention has been on pursuing the perpetrators, with only some minor gestures towards addressing the concerns of victims.

Is it trying to reduce impunity by sending signals to other war criminals who are still out there doing what they do? And if so, is the primary focus on reducing impunity nationally or internationally? For many people in Uganda, the ICC's failure to investigate the UPDF is actually promoting a culture of impunity inside the country.

And what about bringing some peace – and again, if bringing peace is the objective, are we talking peace at national level or international level? Opinions are divided on whether or not the threat of arrest is what brought the LRA to the negotiating table. Personally I doubt it, just as I doubt whether the threat of arrest is the real reason for the LRA's withdrawal from the talks. And, looked at internationally, how can polarising the world into Africa vs. the rest be a contribution to world peace?

To be honest, after observing the ICC for four years, I still don't know which of the above objectives I have listed, if any, is at the heart of the ICC's intervention in Uganda. I would have thought that helping to strengthen domestic judicial capacity would be an important objective, but this seems not to be the case. Although the Rome Statute enshrines the principle of complementarity (i.e. the ICC is only supposed to intervene where states are unable or unwilling to pursue judicial remedies to acts carried out by their own citizens), the ICC to date doesn't seem to understand complementarity in this way: the establishment of the special division of the Ugandan High Court to deal with senior commanders of the LRA, which should have been taken as a signal of the Government's being *willing* to conduct its own trials, has not been welcomed by the ICC. They and their supporters have continued to cast doubt on Uganda's *ability* to conduct trials according to international standards of justice.

This brings me to my final issue: Whose Justice? We all know that the practice of justice is not God-given, nor is it something which emerged ready made out of nowhere. While many would argue that human beings are born with a natural sense of what is 'just', the practice of justice, through courts and other mechanisms, is constructed. Nowhere is this clearer than in common-law systems, where precedence is starting point for any judicial decision making.

For justice to be done in a way which supports victims, builds peace, and reduces impunity, the mechanisms have to be owned by the beneficiaries. Which brings me back to my starting point: Imposed justice, just like the imposed aid described by Barbara Harrell-Bond all those years ago, will certainly affect the lives of its targets, but not

necessarily in a beneficial way. The formal justice system in Uganda already suffers from having been imposed by the British, and the ICC is a further imposition.

We are not saying that the only justice which is worth pursuing is traditional justice. That would be another false polarisation. What we are saying is that justice mechanisms need to be negotiated. Any development practitioner knows that, if the development project is to be successful and sustainable, it must be 'owned' by the beneficiaries. That ownership is brought about by the beneficiaries being actively involved in the design and implementation of the project. Failure to do that and you end up with boreholes which are abandoned at the first mechanical failure. Justice mechanisms are no different to boreholes. If they are to be sustainable and to make a contribution to sustainable and positive peace, then they must involve local ownership. In a globalising world, there is no reason why all the decisions about what constitutes real justice have to be made in The Hague, and every reason for global citizens, including Ugandans, to be involved in deciding what shape justice processes should take. While the ICC has played an important role in stimulating a lot of debates around justice in Africa in general, and Uganda in particular, that does not give them the right to be the only ones to draw conclusions and make decisions. Truly international justice requires international participation in its elaboration, and to date this has generally not been the case. Where transitional justice has had a measure of success, as in the much acclaimed South African process, it has been the outcome of national debates and suggestions.

In this regard the very lively debate in Uganda about the role of traditional justice mechanisms is an extremely important one. Although as RLP we are not at all comfortable with the twin-track system established in the Juba protocols, whereby LRA soldiers are supposed to go through traditional justice while UPDF soldiers go to court martial, the fact that there is scope for traditional justice mechanisms within this agreement is an indicator of how alternative models do have resonance and should not be dismissed out of hand.

Turning now to what this all means for us in this workshop: Just as imposed aid does not in the long term help its beneficiaries, so imposed justice is not going to help bring about sustainable peace in Uganda. For that to happen requires the development of a far more comprehensive set of interventions, all of which can fall under the umbrella heading of transitional justice and the concept of national reconciliation. This is not something which can be left to the negotiating team in Juba (although I think they have actually done a commendable job as reflected in much of the Juba accords). Nor can it be left with any one ministry or with civil society organisations, or with academics alone. As Members of Parliament representing important constituencies throughout the country, you have a crucial role in developing transitional justice mechanisms which are contextualised and which will resonate with your constituents' sense of justice, for if they do not the justice achieved will be hollow justice. In this workshop, therefore, we want to work through the various components of transitional justice, so that everybody here is familiar with the key concepts, and also discuss how they could and should apply in the Ugandan context. As you will see from your programmes, we are planning to cover all the major elements over the next three days, starting with accountability today, moving

on to truth-telling, reparations and institutional reform tomorrow, and closing with an overview of the implications for national reconciliation in Uganda on Sunday morning.

This is, however, not just a talking shop. In each session we shall be taking one key element of Transitional Justice and seeing how it is dealt with in the Juba accords and/or existing national legislation. We shall also be working on drafting a National Reconciliation Bill for presentation to the Honorable Minister of State for Justice and Constitutional Affairs, Fred Ruhindi, on Sunday morning. We are not expecting you to do the drafting from scratch. As members of the Coalition On Reconciliation in Uganda, and in discussion with a number of individuals both in and outside Uganda, we have been working on putting together a first draft of such a bill, but we want to use this opportunity to thoroughly critique the first draft so that what is presented on Sunday is as much a product of your inputs as of our initial efforts.

I thank you and wish you fruitful deliberations.