



## **The False Polarisation of Peace and Justice in Uganda**

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**Thank you very much Madam Fernandez and all other protocol represented here.**

**Ladies and gentlemen, I was asked by the conveners of this gathering to speak about the dilemmas of peace and justice in Uganda. I choose to speak about the false polarisation of justice and peace.**

In the course of an on-going conflict, it is always tempting to look at peace and justice as mutually exclusive imperatives and to pursue either one or the other.

Nowhere has this paradigm been embraced more clearly than in northern Uganda, which in the last two or three years of its twenty year conflict has become something of a battleground between those who have been promoting the immediate application of mechanisms of retributive justice, and those who feel that this particular way of pursuing justice substantially jeopardises the prospects of peace.

Over the last twenty years a deadly trail of heinous human rights violations has been committed by both the Government of Uganda and the rebels of the Lords Resistance Army. Uncountable numbers of people have lost their lives or been maimed, and almost the entire population has been uprooted and displaced at one point or another.

At times it seems as though no amount of stocktaking could ever come to terms with the magnitude of what has happened – but should that stop us from trying?

We at the Refugee Law Project think not. Yet, ever since the International Criminal Court seized itself of the situation in northern Uganda, many within the international and local communities have been complicit in shifting attention away from the true scale of what has been done to people and the range of actors involved, focusing instead on the infinitely more manageable task of prosecuting a handful of individuals from only one of the many parties to the conflict – and in the process ensuring the institutional interests of a fledgling global governance mechanism, the ICC.



Sadly, the proponents of the ICC have made their case in a way which has resulted in the creation of a false opposition between peace and justice.

They have pitted those of us who, on the basis of many years of on-going interaction with the many stakeholders in the conflict, argue that peace should always come first, and justice later, against a largely external set of actors who claim in a somewhat self-righteous manner that peace will be the eventual outcome of justice.

We in the former category have been accused of condoning impunity - yet we could equally argue that justice along the lines pursued by the ICC also condones impunity, not least that of the government actors.

In ordinary circumstances, it would appear quite natural that peace and justice go hand-in-hand, following the argument that peace and justice are inseparable and one is a sub-component of the other.

But this argument does not hold in a situation such as northern Uganda, where conflict is on-going and where the simultaneous pursuit of peace and justice only delays a peaceful resolution of the conflict (as we see in the current Juba peace talks) and contributes, in a very real and visible sense, to the continued internment of people in squalid camps for the internally displaced.

In the case of Uganda, the ICC indictments issued against the five top commanders of the Lords Resistance Army are always cited as evidence that the "peace with justice" position is tenable, based upon the claim that the threat of these indictments brought the LRA to the negotiating table.

While it *may* be the case that the carrot-and-stick threat of the indictments led the LRA to the negotiating table, this is merely speculation informed by opportunism. This is, after all, not the first time in the history of the conflict that the LRA and the government have attempted to talk peace. There were peace talks in 1994 and again in 2004. These talks were frustrated by the same government which referred the situation in northern Uganda to the ICC.

On the other hand, the rationale for a "peace first, justice later" position is quite simple: It is a matter of sequencing. *And, sequencing should be distinguished from prioritization.* If the preferred sequencing is peace followed by justice, this in no way signals that justice is a lower priority than peace – quite the opposite, in fact.

Whichever way you look at it, trying to ensure that the environment is conducive for a comprehensive pursuit of justice (**i.e., that a peace deal has been struck, civilian authorities are back in place, clan structures responsible for traditional justice have**



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**re-grouped after decades of forcible dispersal, people are no longer living hand to mouth and are therefore better able to pursue justice for themselves)** is definitive proof that you want real justice to be done.

Rushing in a fashion which jeopardises the whole enterprise, on the other hand, must raise serious questions about the underlying objectives of those who claim to be pursuing justice and peace simultaneously.

The violations committed in northern Uganda are quite clearly attributable to the government of Uganda for failing in its **obligation to protect its citizens** by commission and omission of acts of a serious human rights nature. Secondly, the violations are also the mechanism of the rebels of the Lords Resistance Army, who, for the latter phase of the conflict, have deliberately targeted civilians.

These are the most easily identifiable perpetrators and the ones for whom the peace with justice approach *may be appropriate*. However, if both perpetrators were to be pursued simultaneously prior to a peace agreement this might very well derail the peace efforts, and the current approach – whereby only one of the perpetrators is being stalked while the conflict is still on-going - is wholly unsatisfactory and an unforgivable injustice.

Furthermore, what does the current approach have to offer when it comes to dealing with the bystanders and active beneficiaries? (And I refrain from mentioning victims for now.) How can a comprehensive justice mechanism deal with such categories of potential spoilers to the peace?

While this is the meta dilemma confronting those searching for an end to the conflict in northern Uganda, the complexity of the problem lies also in the understanding of both justice and peace.

Many human rights activists seem unable to approach grave human rights violations without yielding to a retributive impulse; what else would justify developing sophisticated international tribunals, with their sometimes perplexing rules for the administration of justice, and attempting to apply these rules to all situations regardless of contextual specificities?

Rarely – if ever – have we invested in developing restorative mechanisms for addressing grave human rights violations, ostensibly because they are "incapable" of meeting the due process standards retributivists have invested so much in entrenching.

But what does this bode for the meaning of justice, which is central to the dilemma confronting Ugandans today?



In a 2004 report on "**The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies**," the Secretary General of the United Nations referred to justice as *"an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs."*

*Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant [emphasis added]."*

This definition is instructive insofar as it presupposes a range of justice mechanisms for conflict and post-conflict societies, an idea that the same document espouses in its understanding of accountability in times of transition.

The idea that traditional dispute resolution mechanisms have a role to play which the UN definition supports, resonates with many of the suggestions Ugandans have advanced for dealing with the conflict in the north. Traditional mechanisms for ending violence are more peaceful, less costly, and, above all, fairly fast and straightforward.

It is therefore intriguing that in the pursuit of both peace and justice, we consciously adopt retributivists' conceptions of justice, as embodied in the mandate of institutions such as the ICC.

Not that the latter is *per se* problematic. What is discouraging, however, is the failure to think outside such institutional frameworks. I wonder whether you have ever considered the injustice created by institutions such as the ICTY, the ICTR, and now the ICC?

Have we ever considered the impunity created by such actors and the role of others (such as donors) in supporting impunity?

Have we considered that retributivist conceptualisations of justice, with their focus on the visible leaders who ordered gross abuses to be committed, in fact enable international actors to conceal their role in fuelling conflict? What impunity!

Could it be the case that George Bush and Tony Blair - who both supported the Ugandan military while the latter decimated people - are as culpable for crimes committed in northern Uganda as Joseph Kony?

Lastly, while we could debate this forever (and, in particular, the irony that some of the most ardent supporters of retributive justice and the ICC preach their secular gospel from a country which sees itself as somehow exempted from international justice mechanisms), I think the greatest justice one can deliver to a people living in conflict is to

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enable them to enjoy some sort of peace, and then to enable them to have a say in how *they* think justice should be done – AND TO WHOM!

Thank you very much.