

Whatever happened to comprehensive justice?

When it comes to a peace accord between the LRA and the GOU, our hope is that it will be comprehensive with regard to all the agenda items, not least that which is currently under discussion, namely the vexed question of accountability and reconciliation.

In this regard I was astonished to read Human Rights Watch's most recent press statement (Uganda: Any Alternative to the ICC Should Meet Key Benchmarks: Fair, Credible Prosecutions Crucial to Justice and Peace, 30 May 2007) and the memorandum on benchmarks on which it draws. Insofar as they continue to present the ICC as the primary mechanism of justice they perpetuate a pattern of promoting a partial solution as *the* solution. This partial solution (the ICC) can never, on its own, really meet people's demand for justice in the true and *comprehensive* sense of the word, in short for justice which has both retributive and restorative elements, and which considers the various wrongs committed by *all* parties to the conflict.

Given that HRW states that '*On the part of the government, abuses have included extrajudicial executions, rape, torture and cruel, inhuman and degrading treatment, arbitrary detention and forced displacement*' it would surely be helpful if HRW began to say something about how it thinks these should be addressed? Although their memorandum on benchmarks states that '*Prosecutions of members of the Ugandan armed forces responsible for the most serious human rights violations must also take place*' there is no exploration of where and how these prosecutions should take place. Yet if they are not to be seen as victor's justice and create new grievances, then prosecutions must address all parties to a conflict.

In its one-sidedness the HRW statement is very reminiscent of the ICC's own behaviour, namely of making nods towards Government abuses at a rhetorical level while retaining a blinkered focus on LRA ones in terms of actual prosecutorial strategy. But merely acknowledging that Government abuses have taken place is not enough; at this point in the peace process people need to say what they think should be done about them.

In part, this one-sidedness reflects a lack of clarity on what the precise purpose of prosecutions is. One possible aim might be termed a 'real-politik' concern with ensuring peace by using prosecutions to remove certain actors from the scene (and HRW's memorandum's makes the point that when this was *not* done in Sierra Leone in 1998, a return to violence ensued).

Another aim could be prosecution as a form of deterrence, a way of making potential perpetrators think twice before they engage in violent conflict. However, it needs to go hand in hand with ensuring that *all* current victims' grievances are seen to be addressed, for if they are not, then the deterrent value of the threat of future imprisonment will be weak relative to the force of grievance caused by the failure to address existing violations.

Which brings me to a third possible aim, namely to use prosecutions to remove the justification for victims to engage in further violence, i.e. justice as the hand-maiden of sustainable peace. If justice is to play this role then it cannot be a matter of trying to assess who committed the bigger number of crimes. Rather it requires acknowledging and responding to the reality that terrible things have been done by both sides. Indeed, if the real concern is the question of sustainable peace, then nothing could be worse than the kind of partial justice which a narrow focus on the ICC promotes, for the victims of partial justice processes are quite likely to become the perpetrators of future violence in a delayed attempt to address the grievances which the partial justice process fails to address now.

And finally, a fourth possible aim of prosecution is the more principled and less pragmatic concern with addressing victim's sense of injustice and providing redress because it is simply the 'right thing to do' and because victims have a right to it – independently of whether it has beneficial consequences for medium term stability or not. From this kind of victim-centred human rights perspective (particularly where it is clear, as in the case of northern Uganda, that both sides share a degree of responsibility for violations), there should be no utilitarian calculus. The absolute magnitude of the wrong – or which side you consider to be the worst - is not the question; from this perspective the numbers raped/executed extra-judicially/tortured/forcibly displaced etc. by the UPDF are as important as the numbers who suffered grievous abuses at the hands of the LRA.

These various possible aims do not have to be at odds with one another, but as my observations make clear, the only prosecutorial strategy which does not need to be comprehensive is one which prioritises removing inconvenient actors from the stage but pays scant regard to the rights of victims (and in this regard it should be noted that the ICC's Victims' Trust Fund currently stands at a mere 2.37 million euros). All the other aims, to be fully achieved, require a truly comprehensive range of justice mechanisms and processes.

In conclusion, if the difficult discussions under Agenda item 3 of the Juba Peace talks are to be negotiated successfully and to produce a sustainable peace, and if the human rights of victims are to be fully promoted, this will therefore require a comprehensive perspective on perpetrators and ways of dealing with them. Those arguing that whatever processes are eventually adopted must meet '*international standards*' need to substantially develop their thinking about where the ICC should fit in these wider processes. Just for starters, this could include elaborating on some of the unresolved yet haunting justice issues facing a post-peace accord northern Uganda. What for example, does the Rome Statute have to say about punishments for those responsible for forcible displacement?

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