

For Justice Today

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Advocates for International Law Uganda (APILU) Newsletter

Bringing International Criminal Justice to Uganda



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How applicable is International Criminal Justice in Uganda?

Uganda ratified the Rome Statute of the International Criminal Court (ICC) in 2002. It took a step further by referring the northern Uganda situation to the ICC in December 2003. Referring the northern Uganda situation to the ICC was the first attempt by Uganda to make International Criminal Justice applicable to the conflict and hold perpetrators accountable for atrocities committed during the conflict. Subsequently five arrest warrants were issued for senior members of the Lord's Resistance Army (LRA). However, the application of International Criminal Justice in Uganda is not without challenges.

As part of its contribution to the Uganda Governance Monitoring Group (UGMP) annual report, APILU notes that the threat of ICC prosecutions contributed to pushing the LRA to the negotiating table; but some people blame the indictments for the LRA's failure to sign the final peace deal. The LRA demanded the withdrawal of the ICC indictments before signing the final peace deal. This demand puts the final peace deal in balance and could compromise efforts to hold LRA perpetrators accountable.

The LRA's refusal to sign the final peace deal has re-created tension in northern Uganda with fear of renewed attacks against the civilian population. Whereas it is important to ensure that perpetrators of atrocities do not go unpunished, victims may not comprehend why prosecuting a few people should take precedence over a peace deal that could end the appalling conditions they endure; and northern Ugandans feel that prosecutions may not bring the peace that they desperately want.

APILU also noted that applying international criminal justice in Uganda could be subjected to constitutional hurdles and conflicts between national law and the Rome Statute. The Uganda ICC Bill 2006 (which would domesticate the Rome statute) in its



Rebel leader Joseph Kony and members of his team during one of the LRA meeting

present form proposes that the Attorney General of Uganda must consent to all prosecutions under the Bill, which contradicts Constitutional provisions that vest these powers to the Director of Public Prosecutions.

Secondly, Uganda's Constitution provides that the President is immune from prosecution for offences committed while in office yet the Rome statute does not recognize Presidential immunity. If provisions of the Rome statute are to be applied in Uganda, a Constitutional amendment would be required.

More still, crimes under the Rome Statute can only be prosecuted if they took place after the coming into force of the

statute in 2002. To date Uganda does not have a law in place to enable the War Crimes Division of the High Court to try perpetrators of War Crimes or Crimes against Humanity.

Uganda's constitution provides that no one will be tried for an act that did not constitute an offence at the time it was committed. These issues have raised concerns that if either the Rome statute or the Constitution are to prevail; then some of the most heinous crimes committed by the LRA before 2002 will not be prosecuted; which will compromise accountability for the atrocities. The debate on prosecuting these acts as crimes under customary international law continues.

Sentencing of the suspects is also envis-



Rebel leader Joseph Kony chats with some northern Uganda politicians

aged as a challenge, APILU noted that the Rome Statute has no provisions for applying the death penalty whereas Uganda's ICC Bill proposes to apply the death penalty in cases of war crimes and crimes against humanity as long as the acts involve willful killing. This may create tension between international standards of justice and national laws. If the LRA are tried at the Hague, they could be given a life sentence (at most) yet lower level perpetrators who have not committed crimes of such magnitude would be tried in Uganda and sentenced to death. This would create disparity in the application of sentences considering the gravity of crimes. Questions arise as to the rationale behind sentencing a person who has committed massive atrocities to life, yet a one-time murderer is sentenced to death under Uganda's national laws.

More still, APILU notes that the ICC referral and subsequent indictments were not wholly welcomed in Uganda. Religious, tribal and political leaders in northern Uganda criticized the referral and the ICC's investigation

arguing that the ICC's intervention would prolong the conflict and keep the LRA away from the negotiating table. Other critics of the ICC's intervention argued that international criminal justice is an imposition on northern Ugandans because it is not locally grounded and socially acceptable. Local leaders in the north argued that that they have ways of dealing with, and integrating perpetrators of violent acts.

Through a traditional ritual called Mato Oput, they seek forgiveness, reconciliation, compensation and reintegration rather than punitive justice. However, there is doubt on the capacity of traditional justice to deal with impunity for crimes of international concern; and its universal application in a country which is ethnically diverse and lacks a strong historical precedent in terms of an integrated traditional justice system. Traditional justice critics argue that using traditional justice risks implying that northern Ugandans need their own special justice measures.

APILU attends JLOS workshop on ICC Bill

APILU participated in a four-day training workshop for members of the Justice, Law and Order Sector (JLOS) Transitional Justice Working group that was organized by Public International Law Pro Bono Group and the Refugee Law Project (RLP).

The workshop created a platform for JLOS members and civil society to give their input into the ICC Bill 2006 and its suitability for current circumstance.

Participants noted that there is need for the ICC Bill to reflect the outcome of the Juba Peace process, especially the agreement on accountability and reconciliation which led to creation of the War Crimes Division to try War Crimes.

The workshop further gave participants an opportunity to share experiences on how other jurisdictions had dealt with transitional justice issues, analyze Uganda's laws on Transitional Justice and engage in a discussion on how traditional justice mechanisms can be blended with the formal justice mechanisms to provide a holistic approach to dealing with the northern Uganda conflict.

APILU lectures students on criminal law

ICC offers new hope for Africa

The International Criminal Court (ICC) offers hope for African countries that have for years been ravaged by acts of crime against humanity since it has jurisdiction over individuals and nations accused of genocide, war crimes, and crimes against humanity. It is, therefore optimistic that heinous crimes, especially in Africa shall be minimized with the enforcement of the principles of the court.

In a paper, "Relevance of the ICC to the Uganda situation and practical aspects of enforcing International Criminal Law", presented at the Law Development Centre in February, the APILU board chairperson, Mr. Moses Adriko, emphasized the importance of the ICC in Africa, saying the court offers a threat to individuals or groups of individuals who might bear intentions of committing crimes against humanity.

APILU in collaboration with the ICC Outreach Unit of the Public Information and Document Section organized the presentation as one of its efforts to educate law students about Public International Law, International Criminal Law and Justice, International Humanitarian Law and the Rule of Law; the mandate of the International Criminal Court.

Quoting the South African Deputy Minister for Justice and Constitutional Development, Cheryl Gillwald, Adriko said, "For a country like ours whose history has for decades been ravaged by daily acts of crime against humanity, the ICC has a particular and poignant significance; it offers us the prospect that these heinous crimes will never again be tolerated or perpetrated with impunity. South Africans almost without exception, have the absolute conviction that the ICC is the most important human rights institution the world has seen in recent history. That the ICC has jurisdiction over individuals not just nations, accused of geno-



Law Development Centre students listen attentively to a presentation by APILU board chairperson Mr. Moses Adriko

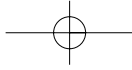
cide, war crimes, and crimes against humanity is a compelling reason for us to support its establishment.....".

Many African countries have subscribed to the ICC with the hope of bringing perpetrators and suspects of war crimes to justice.

During his presentation, Mr. Charles-Martin Jjuuko of the ICC Outreach Unit of the Public Information and Document Section said the ICC is completely independent although it has got a close relationship with the United Nations, following the signing of a memorandum of understanding between the two institutions. The ICC has an independent judicial

institution, charged with carrying out investigations and prosecution of persons accused of committing the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. He told the students that the ICC is completely independent although it has got a close relationship with the United Nations, following the signing of a memorandum of understanding between the two institutions.

APILU distributed a number of textbooks and other reading materials to the students in order to beef their knowledge on international law.



Pictorial: APILU in action at LDC lecture



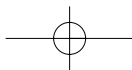
Law Development Centre students listen attentively to one of the presentation

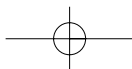


LDC officer Mr. Kaaya and APILU national Coordinator Ms. Martha Nanjobe listen to presentations



Mr. Jjuko gives his presentation





Advocates for International Law Uganda

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APILU participates in ISS/ICC monitoring workshop

APILU board member, Mr. Henry Kilama Komakech, participated in a workshop on International Criminal Justice in Pretoria.

Komakech was in South Africa on the invitation of the Institute for Security Studies, the SADC Lawyers Association and the ICC Monitoring and Outreach Program of the International Bar Association.

The workshop focused on building an understanding of International Criminal Justice and its role in promoting justice and peace in Africa and to provide SADC lawyers

with practical information about how they could become involved in International Criminal Justice efforts.

In his presentation, 'International justice in southern Africa: Relevance, lessons & prospects from Uganda', Mr. Komakech, said it was important to raise awareness about international criminal justice and its importance.

Komakech, also attended a Roundtable discussion on prospects for International Criminal Justice in Africa which focused on lessons from eastern and southern Africa and

Sudan.

The discussion considered and debated the role of international criminal justice in promoting durable peace, with reference to developments in Africa; and discussed practical ways in which lawyers and associated organizations could co-operate to promote an African-driven response to international crimes, including the establishment of an African action network.

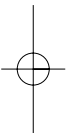
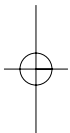
APILU starts internship programme for students

Advocates for International Law Uganda (APILU) has started an internship programme to enhance International Law students' knowledge and interest in International Law and its application in the Ugandan context. The programme is also expected to enhance law students' capacity to research, publish and articulate International Law issues with ease and confidence.

The program has gained popularity amongst university students, and APILU has received overwhelming requests for internship.

APILU member in USA for Transitional Justice meeting

Ms. Zedriga in January attended a colloquium in the USA where she represented Advcoates for International Law Uganda (APILU). The colloquium was organized by the Initiative for Inclusive Security. 19 women from 12 conflict countries participated in the colloquium. Participants were grouped in thematic areas; and Ms. Zedriga was in the Transitional Justice area in which she made representations about APILU's work in Transitional Justice and current developments in Transitional Justice in Uganda to date.



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