

# For Justice Today

Vol. 1 Issue 2, August 2008

A monthly newsletter published by APILU - an organization formed by Ugandan lawyers

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## Peace delaying Juba peace process



**LRA government peace negotiator Ruhakana Rugunda shakes hands with LRA rebel leader Joseph Kony**

The current relative peace in the northern Uganda and justice later debate has to a large extent cast a shadow over the Juba peace process between the Lord's Resistance Army (LRA) and Government of Uganda which resulted in among others, the Agreement of Accountability and Reconciliation. The remark was made on August 29th by the APILU president, Mr. Moses Adriko, during a workshop organized by the ICJ-Kenya and the Institute for security to discuss the role of civil society in ensuring justice with reference to Uganda.

Adriko told participants at the workshop that up to now, the process is incomplete because the comprehensive Peace Agreement has not been signed.

The Accountability and Reconciliation Agreement principally provides for the creation of a War Crimes Court to dispense formal justice under the provisions of the Rome Statute and or other customary international law over individuals who bear particular responsibility for the most serious crimes, of

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**Mr. Ruhakana Rugunda and Southern Sudan Vice President Marchar chat during the peace process**



**Minister in-charge of northern Uganda Mr. Oyem Okum, Mr. Rugunda and another official attend a meeting to discuss the peace process**

International concern.

The Agreement also provides for introduction of a regime of alternative penalties and sanctions which would apply for war crimes and crimes against humanity. The Agreement provides for alternative penalties and sanctions to promote reconciliation between victims and the perpetrators of crime e.g Truth-telling processes and mechanisms and administration of traditional justice.

In his presentation, Adriko asked the civil society movement to act as the flag bearer of International Justice through Constant vigilance of all actions taken by the state. This engagement, he said, could be by way of constructive partnerships or media campaigns to empower the masses by teaching them their rights and the fate of International criminals in the new order established under the International Criminal Court.

Several organizations and a number of lawyers have been involved in various ICC-related activities since the intervention of

the ICC in Uganda. The Bar in Uganda formed a specialist group to internalize the Rome Statute, and the other procedures and Rules that form the Constellation of International Justice. Between 2005 and 2007, the International Bar Association/Uganda Law Society working group conducted seminars where they discussed various emerging issues resulting from the intervention of the ICC in Uganda.

Currently, Advocates for Public International Law Uganda (APILU) is sensitizing the public on matters concerning International justice. This is done through; translating the Rome Statute into local languages, forming and building partnerships with universities to extend knowledge of International Law by way of hosting annual days where important issues on International Law can be discussed, and promotion of moot courts in the universities to study the application of these principles, conducting advocacy campaigns to ensure that the rights of the vulnerable groups, women and chil-

dren remain at the centre in any transitional justice arrangements, underway in Uganda.

It should be remembered that in December 2003 Uganda, referred the situation in Northern Uganda to the ICC and a public announcement of the referral was made at a joint press conference between the prosecutor and President Museveni in London in January 2004. In July 2005, five (5) arrest warrants were issued under seal against five commanders of the LRA, three (3) of whom are now widely believed to be dead leaving Joseph Kony and Okot Odhiambo as the remaining indictees.

The ICC asserts in a summarized version of the warrants that they have reasonable grounds to believe that the senior commanders named in the warrants had ordered the commission of numerous crimes against humanity and war crimes in Uganda since July 2002.



## How applicable is the ICC Bill?

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Uganda should adopt the ICC Bill and include provisions for retroactive application for acts or omissions which constitute criminal offence under international, conventional or customary law. The temporal jurisdiction of the ICC Act should also include all criminal actions between 1989 and 1995 before the Uganda Human Rights Commission was established.

The remarks were by made by the APILU chairperson, Mr. Moses Adriko, during a workshop to discuss the applicability of the Geneva Convention and the ICC Bill in national trials of the principal commanders of the Lord's Resistance Army (LRA).

The Geneva Conventions Act criminalises war crimes as grave breaches of the Geneva Conventions. The criminalized acts include willful killing torture or inhuman treatment willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile power, taking of hostages and extensive destruction and appropriation of property not justified by military necessity and carried out wantonly and unlawfully.

Adriko said that for the convention to be invoked, the case being referred to should be of international character and that the act should have taken place between two or more states. He said that an internal armed conflict breaking out on state territory may become international (or depending upon the circumstances be international in character alongside an internal armed conflict) if another state intervenes in that conflict by use of its troops or alternatively or if some of the participants in the internal armed conflict act on behalf of that other state. If in an armed conflict paramilitary units "belong: to a state other than the one against which they are fighting, the conflict becomes international and therefore serious violations of the Geneva Convention may be classified as "grave breaches"

The test for determining state responsibility for the conduct of irregular forces is the degree or control that that must be wielded by a foreign state over armed forces fighting on its behalf in order to render "international" an armed conflict which is "prima facie internal"

It has been argued by the Government of Uganda that the Lord's Resistance Army (LRA) was merely proxies for the Government of Sudan and that the Government of Sudan was the arsenal and paymaster of the LRA.

It is, however, difficult for the Government of Uganda to prove that the conflict in Northern Uganda is an international conflict because it has to prove to that the court that the actions of the LRA were

specifically directed or enforced by the Sudan and or that the LRA was under the overall control of the Sudan Government. This indeed would be a difficult proposition to prove.

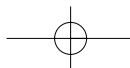
However, Article 2 subtitled Application of The Convention may offer a solution! It provides that, "in additional to the Provisions which shall be implemented in peacetime the present convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the high contracting parties, even if the state of war is not recognized by one of them ....."

It should, however be noted that the Geneva conventions do not cover crimes against humanity which are included in the indictments against the principal commanders of the LRA.

In December, 2003, the Government of Uganda referred the situation of Northern Uganda to the International Criminal Court and in July 2005 five arrest warrants were issued under seal against five LRA Commanders Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Domnic Ongwen. (Ongwen, Lukwiya and Otti have widely been reported as dead).

"It may prove difficult for the Government of Uganda to prove that the conflict in Northern Uganda was an international conflict because it would have to prove to that the court that the actions of the LRA had been specifically directed or enforced by the Sudan and or that the LRA was under the overall control of the Sudan Government. This indeed would be a difficult proposition to prove."

Moses Adriko - An advocate of  
the High Court



## APILU chairperson presents paper on domestication of Rome Statute

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**A**dvocates for Public International Law Uganda (APILU) president Moses Adriko on September 5th participated in a workshop organized by the Uganda Coalition of the International Criminal Court where he presented a paper on the domestication of the Rome Statute in Africa, its challenges and prospects.

He told the participants that the responsibility of the International Criminal Court (ICC) in Africa had generated much comment and mixed reactions among a broad spectrum of African Society especially in regard to the fact that all four situations which are the subject of the proceedings at the ICC are in Africa. The ICC is the most important human rights institution the world has seen in recent history because it has jurisdiction over individuals and not just nations, accused of genocide, war crimes, and crimes against humanity.

Adriko said Uganda first sought the assistance of the ICC in December 2003 Uganda when it referred there a situation concerning Northern Uganda. The referral was made public at a joint conference in London between Uganda and the ICC prosecutor on 29th January 2004 and on 27th February, the Government lodged a declaration of acceptance of the jurisdiction of the ICC dating back to 1st July 2002. Currently, the ICC has an ongoing investigation into the situation in Northern Uganda and has so far issued five arrest warrants for senior members of the Lord's Resistance Army (LRA). The court, however, is faced with some weakness it depends on the co-operation of states where the alleged atrocities occurred or in states that maybe harboring the fugitives.

He said Uganda through ratification of the Rome Statute and the execution of bilateral memorandum of understanding with ICC has co-operated with the organs of the ICC and enjoys diplomatic legal status.

The principal reason for enacting the ICC Bill to domesticate the Rome Statute is the constitutional imperative and principle contained under the chapter National Objectives and Directive Principles of State Policy which requires under objective 28 thereof respect for International Law and Treaty obligation. He said the most fundamental reason for domesticating the Rome State through passage of the ICC Bill 18/2006 would be to enable our national courts to prosecute international crimes. The whole premise underpinning international criminal justice or the golden thread running through the Rome Statute is the principle of Complimentary.

He said that in passing the bill, Uganda has to ensure that it has legislation to try international crimes and thus give reign to the newly formed War Crimes Chamber to have jurisdiction over international crimes. We would therefore be strengthening our national criminal justice system and the rule of law in Uganda in this regard.

It would also have the secondary effect of strengthening regional security because it will give our country the ability to surrender international criminals for trial at The Hague.

More importantly a national trial for perpetrators of international crimes brings "justice home to the victims of such acts through participation and presence at trials. It also ensures that there is national ownership of the process.

Finally we will strengthen our criminal justice system by introducing Gender Based Crimes and novel concepts such as allowing victims participation and generally strengthen our witness protection measures.

In his conclusion, Adriko said the enactment of the International Criminal Court Bill will be a solemn affirmation of our collective rejection of impurity, thus fostering peace and security in Uganda and across our region. We will strengthen the rule of law in Uganda by ensuring that our system is robust enough to try and prosecute individuals who commit crimes of international concern on Ugandan soil or any other country that has ratified the Rome Statute.

Find full presentation on <http://www.apilu.org/publications.htm>

## APILU briefs OSIEA meeting on ICC efforts

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**A**PILU attended the Open Society Initiative for East Africa (OSIEA) advisory committee meeting in which it reported on its efforts to enhance public participation and debates on International Criminal Justice in Uganda; efforts to address the existing gaps; and strategies to deepen the impact and relevance of International Criminal Justice in Uganda.

The Open Society Initiative for East Africa (OSIEA) supports and promotes public participation in democratic governance, the rule of law, and respect for human rights by awarding grants, developing programs, and bringing together diverse civil society leaders and groups. It seeks to promote open society and to consolidate democratic principles and practices through increased public participation and the creation of a strong institutionalized rights framework. OSIEA seeks to play an active role in encouraging open, informed dialogue about issues of national importance.

APILU chairperson informed the meeting about APILU's role in promoting

increased knowledge and discussion of International instruments and Conventions; the need to create a robust legal system that can influence change; and APILU's contribution to empowering civil society to ensure that International Criminal Justice issues are discussed in the whole of Uganda.

The potential for international justice has played a critical, but at times contradictory, role in the present Ugandan peace process. The threat of ICC prosecution has simultaneously shifted the interests of key actors, facilitating peace negotiations, and served as a foil for underlying political divides, potentially hampering ultimate settlement. More still, the terms "peace" and "justice" carry distinct meanings that differ from the ordinary uses of the terms in legal scholarship. Recognition these Ugandan understandings" may provide a means of reconciling the competing goals of peace and justice. APILU works closely to ensure that the local Ugandan people understand these concepts.

### Ongoing activities

**A**PILU is undertaking a study to simplify the Rome statute to produce a popular version of the Statute that incorporates all the 128 articles for the ordinary Ugandans.

The Rome Statute of the International Criminal Court (often referred to as the International Criminal Court Statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC).

It was adopted at a diplomatic conference in Rome, Italy, on 17th July 1998 and it entered into force on 1st July 2002. As of June 2008, 106 states are party to the statute. Among other things, the statute establishes the court's functions, jurisdiction and structure.

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