

**THE ICJ-KENYA AND THE INSTITUTE FOR SECURITY STUDIES
WORKSHOP ON INTERNATIONAL CRIMINAL JUSTICE IN AFRICA**

**THE ROLE OF CIVIL SOCIETY IN ENSURING JUSTICE WITH
REFERENCE TO UGANDA**

BY

MOSES J. ADRIKO

**MOMBASA CONTINENTAL RESORT
29TH – 30TH AUGUST 2008**

**MOSES J. ADRIKO IS AN ADVOCATE OF THE HIGH COURT OF
UGANDA, PAST PRESIDENT OF THE UGANDA LAW SOCIETY,
CHAIRMAN OF THE IBA WORKING GROUP IN UGANDA NOW
CHAIRMAN OF THE ADVOCATES FOR PUBLIC INTERNATIONAL
LAW UGANDA (APILU)**

PREAMBLE

There is an oft told anecdote of a conversation that took place before the end of the second world war, the victorious leaders of the allied powers Winston Churchill, Franklin D. Roosevelt and Joseph Stalin were discussing the fate of Nazi leaders after the war. Surprisingly both Winston Churchill and Franklin D. Roosevelt were of the view that the perpetrators of horrendous crimes should be lined against a wall and shot it was Joseph Stalin who insisted that there should be trials for the defeated Nazi criminals and thus the Nuremberg and Tokyo war trials came into being. This anecdote is a pointed reminder of the intrinsically political nature of international justice and what would otherwise be considered surprising views by people who would be expected to be the bastions and arch proponents for the rule of law and due process. I shall return to this anecdote.

The history of Uganda has been characterized by widespread disregard for human rights, mass and systemic killings of communities, abductions and disappearance of citizens in the immediate post colonial area. These crimes which were wholly extra judicial were resorted to by illegitimate usurpers of state power to perpetrate their dictatorships, and the reigns of Idi Amin and Milton Obote are well documented in this regard.

Indeed the pre-amble of the Constitution of Uganda states "We the people of Uganda Recalling our history which has been characterized by political and constitutional instability recognizing our struggles against the forces of tyranny, oppression and exploitation....."

It is important for all of you to understand that the use of force to date has been the only guaranteed method of obtaining control of state power in Uganda. We should bear these facts in mind as we consider the Northern conflict in Uganda and the timeliness of the Rome Statute to address any future acts of impurity.

THE INTERNATIONAL CRIMINAL COURT (ICC) INTERVENTION IN UGANDA

Uganda attended the Rome Conference that established the ICC and ratified the Rome Statute on 14th June 2002. Uganda has also ratified the Agreement on Privileges and Immunities, of the International Criminal Court (APIC).

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.

On 8th 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.

The principal controversy and challenge to the intervention of the ICC in Uganda is based on the allegation of bias arising out of the referral process and many subsequent statements of officials in the Government of Uganda, thereafter.

This perception is exacerbated by the fact that arrest warrants were only issued against LRA commanders, although the ICC has said on various occasions that its investigations in Uganda are ongoing. Indeed the prosecutor has said that although his investigation has been focused on the LRA because of priorities in relation to the gravity and extent of the crimes they have committed the Uganda Peoples Defence Forces (PDF) are not excluded from his investigations.

Other controversies relate to the peace now and justice later debate. The proponents of this view argue that the arrest warrants have been an impediment to the signing of a comprehensive Peace Agreement between the LRA and the Government of Uganda, the Government of Uganda has indicated that it would invoke procedures under **Article 16 of the Rome Statute** to move the security council to suspend the arrest warrants for one year after Joseph Kony has signed the comprehensive Peace Agreement.

The peace now and justice later debate has to a large extent cast a shadow over the JUBA peace process between the LRA and Government of Uganda which resulted in among others, the Agreement of Accountability and Reconciliation on 29th June 2007. 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 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.

There has been debate about whether the war crimes chamber which has been established as a division of the High Court can conduct trials for International Crimes, and whether there can be fair trials for the indictees in Uganda. There is no clear answer to this rhetorical question. What may be clear however is that steps have been taken to constitute the court with the limited resources available and the principal drawback for complete establishment of the Court has been the absence of legislative framework for the court to dispense justice, and the fact that the principal commanders against whom the warrants were issued are still outside the jurisdiction of the state of Uganda.

CIVIL SOCIETY ROLE

A number of lawyers have been involved in various ICC related activities from quite early on 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.

The group which I chair has now been constituted into a company limited by guarantee known as Advocates for Public International Law Uganda (APILU) the formation of this entity we think shall encourage particularity and specialization in matters concerning International justice.

Previously between 2005 and 2007 we had worked together as members of the International Bar Association/Uganda Law Society working group and had held several workshops and seminars discussing various emerging issues resulting from the intervention of the ICC in Uganda.

APILU's principal aims include:-

- (a) Translation of the Rome Statute into local languages.
- (b) 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 later promotion of moot courts in the universities to study the application of these principles.
- (c) Conducting advocacy campaigns to ensure that the rights of the vulnerable groups, women and children remain at the centre in any transitional justice arrangements, underway in Uganda.

CONCLUSION

Returning to the story about the antecedents of International Justice is important because it accentuates the role of the wider civil society to continue acting as the flag

bearer of International Justice through Constant vigilance of all actions taken by the state. This engagement 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.

REFERENCE

1. TRIAL JUSTICE TIM ALLEN (ZED BOOKS)
2. NO JUSTICE NO PEACE CASE STUDIES ON THE DOMESTIC IMPLEMENTATION OF THE ICC IN SELECTED AFRICAN COUNTRIES EDITED BY MAX DU PLEISIS AND JOLYON FORD.
3. THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1995
4. NUREMBURG EVIL ON TRIAL JAMES OWEN (C) 2006
5. ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT