WHO AND WHERE TO PUNISH IN A CRIMINALLY LOADED CONFLICT OF NORTHERN UGANDA: A DILEMMATIC JUXTAPOSITION OF FORMS OF JUSTICE IN THE NORTHERN UGANDA CONFLICT

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Abstract

Much has been said about the conflict in northern Uganda, a civil conflict that has caused untold suffering in Uganda and the general Great Lakes region of Africa. However, little is made concrete and precisely analysed about how applicable or whether different forms of justice can be used to construct and reconstruct social order in the region. In this article, some of the varied literature is contextualized within victims’ perceptions in northern Uganda. It links such perceptions to the choice of forms and approaches to justice and the implications and/or potential for outbreak of latent conflicts. Using inferences from field notes in northern Uganda, the article brings to bear the dilemma faced by justice administrators caused by the complexities of the actors involved in the conflict. Restorative justice is thus suggested as a hybrid to use in the interplay of traditional forms and modern justice to forge a common front.

Introduction

The conflict in northern Uganda has been and continues to boggle minds of many a people. Surviving for over two decades and led by a person whom some have called a barbaric lunatic; the Lord’s Resistance Army (LRA) continues to elude strategies and techniques of combined armies. Coined by several interconnected factors, this conflict has been characterised by atrocious actions, most of which are principally attributed to the LRA. In 2003, the government of Uganda referred this case to the International Criminal Court (ICC). In response, the chief prosecutor began investigations and issued arrest warrants. Following the referral and arrest warrants, several peace makers and activists voiced concerns over peace prospects. By referring the case to the ICC, the government of Uganda washed its hands and portrayed itself as innocent. This is contrary to various allegations and/or reports that the Uganda People’s Defence Forces (UPDF) committed atrocities as well. The ICC pledged impartiality in making its investigations. The investigations exonerated government soldiers by the fact that there was no sufficient evidence to incriminate them. Legally, they are exonerated, but does this make sense to a victim who went through the atrocity and survived? Is it true that justice prevails for victims who (after being brutalized by perpetrators), continue to see such perpetrators proudly enjoying innocence? Will they ever understand this innocence and this thing called “justice”? Well, look at the atrocities before delving into the question of justice in its entirety.
The atrocities
It is widely known that atrocities and gross violations of human have been committed (Allen, 1991, 2005; Dolan, 2002, 2004). Some comprehensive and categorical compilations of these crimes either as seen on spot or reported verbatim by surviving victims have been reported (Human Rights Watch, 2002, 2000). In the words of a surviving victim, “the people of northern Uganda were caught between two fires, the LRA and the Uganda government forces” (Field note: from Pabo, west of Gulu town in Uganda).

Indeed many reports have alluded to the fact that crimes against humanity and war crimes have occurred in northern Uganda. While this is true, an understanding of these crimes is important to help expose which crimes have indeed occurred and warrant any given form of justice. The Rome Statute Explanatory Memorandum defines crimes against humanity as odious offenses, constituting a serious attack on human dignity or grave humiliation or a degradation of human beings. They need not be few, but as long as they are a government policy or conspicuously supported by it or its arm, they are crimes against humanity. Horton, (2005:201) explains that “acts such murder, extermination, torture, rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice”. This would mean that some atrocities committed by governments in this conflict are not crimes against humanity if they are not proved to be a systematic practice. In the northern Uganda situation, proving of this said systematic practice is practically a hard task for justice administrators.

Crimes against humanity as outlined in article 5 of the draft statute include: murder; extermination; enslavement; deportation or forcible transfer of population; torture; rape or other sexual abuse of comparable gravity, or enforced prostitution; persecution against a group on political, racial, national, ethnic, cultural or religious reasons; enforced disappearance of persons; other inhumane acts causing serious injury to body or to mental or physical health; detention, imprisonment or deprivation of liberty in violation of international law. This explains why some critiques have complained that when the Uganda government confined people in camps purportedly to protect them but instead exposed them to killers, rapists and ill health, it actually committed crimes.

On war crimes, the draft statute of the ICC gives clear categories. The first category relates to breaches of the Geneva Conventions that give special protections to people such as the wounded; prisoners of war; and civilians during wartime. The draft statute considers the following acts as breaches of this convention: willful killing; torture or inhuman treatment, including biological experiments; willfully causing great suffering, or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement; and the taking of hostages.
The second category relates to serious violations of the laws and customs of international armed conflicts, especially as derived from the Hague law. The statute includes as crimes such acts as: targeting civilians; targeting buildings devoted to art or science; killing combatants who have laid down their arms and surrendered; declaring that no quarter will be given; pillaging; using a flag of truce or other flag or symbol falsely, resulting in death or serious injury; rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, and other forms of sexual violence; using civilians or other protected persons to protect specific locations from military attack; and starvation of civilians as a method of warfare.

The third category includes serious violations in armed conflicts not of an international character. They include: attacks directed against civilian populations, or non-combatants, or against buildings or other targets bearing the emblem of the Geneva Conventions; attacks directed against buildings dedicated to art or science, or monuments; pillaging a town or place, even when taken by assault; committing outrages upon personal dignity, in particular humiliating and degrading treatment; rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, and other forms of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; using children under the age of 15 in armed forces; displacing the civilian population for reasons related to the conflict; physical mutilation or medical or scientific experiments of persons in the power of another party to the conflict; killing or wounding treacherously an adversary; declaring that no quarter will be given; destroying or seizing property when not necessary; violence, murder, mutilation, cruel treatment and torture; outrages upon personal dignity, in particular humiliating and degrading treatment; the taking of hostages; and the passing of sentences and carrying out of executions without due process.

From the above expounded crimes, it can be seen that consequences of the war such as in (Liebling-Kalifani, et al, 2008; Nassanga, 2008 and AMMIC, 2006) all raise questions of who did what and caused what? Grass root investigations (such as by Wacha, 2007, JRP, 2010 and Pham et al, 2010) agree that that there are so many types of perpetrators of atrocities in this conflict. To punish some and leave others is not holistic justice as viewed by victims! Now, who is who among these perpetrators?

**Perpetration and perpetrators of crimes in northern Uganda**

It was revealed in a medical interventional study (by Isis-WICCE, 2006) that trauma perpetrators in northern Uganda actually included rebels, government soldiers, Police officers, prison officers and the Local Defence Forces. While no sympathy should be proferred to the Lord’s Resistance Army, especially its leadership, it is critically important to note that any objective analysis should agree that the criminal implications in this conflict are not and should not be one-sided. Some writers have tried to capture pockets of this assertion, but mostly seem to handle it at peripheral levels in their
analyses. The question of whether LRA leaders perpetrated alleged crimes or not is now less important because even the deaf and blind will agreeably nod heads. Rather, it is the question of whether it is only LRA leaders who perpetrated alleged crimes in Northern Uganda. The cold, one-sided and indirect style in which this case is approached is due to a fear of unveiling truths about sitting government officials, their filthy long arms and dirty politics notwithstanding. Therefore, much of the facts seem to be peripherally reported or in secondary forms. The ICC’s personnel are themselves not fear-free since they need support and security while in the field. The presence of an army officer who tortured a victim cannot allow the victim to reveal what he did to the ICC officials. One victim said, “I can’t say anything when you come with those killers to me… I just know you are already compromised and you won’t help anything... but one day, the truth will come out” (Field note: From Bobi, south of Gulu town).

Some bold revelations have been made though, especially through the Human Rights Watch (HRW). Revelations of serious human rights violations in Uganda that have taken place in the long northern war, during disarmament and harassment of political opponents have been made. “Even though most of the country currently enjoys relative stability, state-sanctioned abuses … and impunity for those responsible continues” (HRW, 2009:2). Although it concentrates on illegal detentions here, this report gives insights into the fact that government forces perpetrated atrocities in northern Uganda. This is however complicated by the so called “convincing evidence”, which has now made those who would be criminals get exonerated and seemingly enjoy impunity. A victim in one of the locations lamented that

“IT is very difficult to say that this group or that group are the ones who are guilty... all could come and beat or kill. When they ask whether you have seen their any...rebels or government soldiers, they beat you or kill you. But for my case, I think God I am still alive. That is all I can say”. (respondent in Koro, Gulu)

Beigbeder (2002), in his book on judging criminal leaders, the slow erosion of impunity rightly observes that internal armed conflicts are supported financially and by the supply of arms by external groups or governments. He gave a list of conflicts involving crimes which have not been acknowledged nor prosecuted and where impunity has prevailed. Unfortunately, he neither included the Ugandan case, nor mentioned countries and leaders involved in it and how they could be enjoying impunity. While this impunity is slowly being eroded like he pointed out, some sitting government leaders seem to be politically manipulating the international justice systems to cover up their contribution in the perpetration of crimes. In such conflicts, all involved parties need scrutiny than allowing preferential treatment as the case may be. Going by the analysis of actions that are considered as crimes against humanity, it is true that such actions should not be isolated or sporadic, but should be part either of a governmental policy, or a widespread or systematic practice of atrocities tolerated, condoned or acquiesced by a government or a de facto authority (Cassese, 2003). To this end, some of these actions may not necessarily be accepted by the perpetrators. Some policies are concealed and only known to perpetrators, who will always deny that they are involved. These don’t need to identify
themselves with such policies (Horton, 2005) and so may device ways of hiding their heinous activities by hurrying to refer the other parties to international bodies. As to whether this is not true of Uganda, remains unknown to many. A manager in one of the projects in northern Uganda said thus;

“When these people were in the bush, they had a plan of excluding northern Uganda from the rest of Uganda. However, when one of them was flying over the region, he saw how vast and fertile the land was, and then sought to change their original plan”

It is therefore believed that the current government intentionally wants to use their land and this is why it decided to prolong the war there. Some facts point to such allegations. In November 2006, Uganda’s President rejected a proposal by the Belgian government to arrest Joseph Kony and surrender him to the ICC and argued that Kony should be given an amnesty if he agreed to end the conflict through the then ongoing peace talks. Although sympathizers of such an argument can bring in the debate of peace versus justice, the arrest of Kony would bring better peace than it is now!! This rejection also raises suspicion on earlier reports that revealed that gross human rights abuses by the UPDF to the people of northern and eastern Uganda took place (Human Rights Watch 2005:27). Hints on the fact that the referral process by the government of Uganda to the ICC is not as virtuous have been made, given that it was designed to initiate proceedings against a rebel group while seeking to avoid investigation of any misdeeds by the UPDF. Indications that “…the government explicitly referred only the situation concerning the LRA, effectively shielding any Ugandan officials from prosecution” (Sriram, et al, 2010:226) are evident. When the prosecutor promised that the investigations would be impartial, but the results and arrest warrants exonerated government troops, some victims of the atrocities and critical analysts were disappointed. A resident in one of the former camps questioned that

“Killers were everywhere, but how do you investigate one side when both sides were killing? Though it is true that Kony’s people killed more, the UPDF also killed and raped people here... we saw and know it.” (Field note from Lira).

Another responded said that

“This conflict is very complicated and complex because many of the LRA killers were abducted, forced into the bush, indoctrinated and psychologically conditioned to kill. These are actually our children. Some of them now termed FAPs (formerly abducted persons) were victims of similar crimes.”

In this case, some victims became perpetrators and some perpetrators became victims. It would therefore be unfair to ignore their feelings in selecting which form of justice to be preferred to whom and where among all these. While the main leaders such as Kony and his top commanders may not be exonerated from retribution, the other killers were only
conditioned to commit the atrocities. Their treatment need not be equated to that of their captors, their heinous actions notwithstanding.

Victims’ perceptions and attitudes

Ssenyonjo, (2005:14) posit that the LRA failed to provide a coherent political platform and increasingly focused mainly on attacking civilians. The LRA claim and hold perceptions that government has intentionally under-developed and impoverished northern and eastern Uganda as a political tool of control and repression (ibid). This is a widely held perception by victims. Uganda’s ethnic diversity and regional social economic imbalances seemingly play a role in attitudinal dispositions of victims. More so, many Ugandans in regional and tribal groupings feel marginalized (Green, 2010). The Karamjongs for instance blame cattle raiding on the marginalization of their region. In the same way, the prolonged northern Uganda war is believed to be a ploy by a Banyankole led government to weaken northern tribes (CSOPNU, 2004:6). The former regimes were largely led by members of northern tribes. It may not only be tempting to conclude that the current government, led by a south western tribe is using its chance, but also justified by prolonging a conflict led by a barbaric personality with little support among his own tribe.

Worse still, the current leadership is said to be notorious at warmongering, and will want to continue doing so with impunity. While opening the ICC’s review conference in early 2010, Uganda’s president challenged the ICC to re-define the denotation of war crimes against humanity. He argued that atrocious acts during liberation movements across Africa in the pre- independence struggles needn’t be classified as war crimes or crimes against humanity. Nevertheless, brutalities of tribal regimes and massacres in Luwero and Teso regions still raise questions among many (Khisa and Nalugo, 2010). Support of rebels and arms exchange at borders; and the open official pledges for military support to rebels (International Crisis Group 2010) cannot be swept under the carpet as common people see and know. It may not be surprising that victims’ perceptions of UPDF soldiers in the conflict aren’t all positive.

In a survey by Pham et al (2007) regarding attitudes towards accountability without specifying the relationship to the peace process, half the respondents said the LRA leaders should be held accountable, but 40% said the government should also be held accountable. Earlier on, according to Otim and Wierda (2010), many believed that the ICC intervention was not impartial. The chief Prosecutor’s announcement of Uganda’s referral with Uganda’s President created a perception that the Court was siding with the government, a perception that has proved difficult to undo. Doubts about the Court’s impartiality pointed to the fact that the ICC had not opened an investigation of the UPDF, nor had it pursued the crime of forced displacement. Yet the conditions in camps were killing far more people than the LRA. In the same vein, since the Court did not have the ability to enforce its own arrest warrants, relying on the government’s cooperation meant that the ICC cannot be impartial. Agreeably, these authors point out that these views were held early in the process and may have changed over time.
Forms of Justice and choices

The best solution to a problem is one proposed by those directly facing it and which addresses its root causes. It is therefore pertinent to unveil inherent solutions from victims of the war in northern Uganda before suggesting anything external. The form of justice to be applied in northern Uganda is now a complicated matter. It is plausibly tempting to add that it has become almost another laboratory similar to that which was in Sierra Leone for experimenting hybrid forms of justice. The analyses of the debates of ‘peace versus justice’, ‘forgiveness versus fatalism’, as well as ‘local culture versus justice’ as analyzed by Shaw (2010), all point to the fact that there is no single form of justice that can provide a conclusive solution. It is in this same vein that it may not be easy to seek peace and justice simultaneously, especially when victims desperately require the former to the latter or at least before it (Suarez, 2006). Neither can it be easy to separate cultural traits from conventional and modern forms of justice. Local cultural justice forms, notably Mato Oput, were highly regarded by locals in the aftermath of the arrest warrants by the ICC (Ochola, 2006, Muto, 2006). Although Mato Oput lacks the ideals of modern justice in many respects, it installs some attitudinal level of confidence from the victims’ viewpoint. However, attitudes change when victims are exposed to different conditions such as prolonged presence of ICC, sensitization and relative peace.

Complicated by the fact that majority of the physical perpetrators are victims who were abducted and conditioned to commit atrocities (Pham, et al, 2007); and/or are sons and daughters of victims, restorative justice may become more appealing in this situation. Restorative justice is a process of bringing together the individuals who have been affected by an offense and having them agree on how to repair the harm caused by the crime. The purpose is to restore victims, offenders, as well as communities in a way that all stakeholders can agree is just. Restorative justice offers possibilities for solving dilemmas existing between peace and justice for post-conflict communities. By restoring relationships, it lays a foundation for peace and security while not breeding impunity. This can only be comprehensively achieved through a mix of justice forms. However, the use of local forms such as Mato Oput raises several questions relating to their success in ensuring justice and not breeding impunity. More so, when the crimes are of an international nature as is the case in northern Uganda. This renders this local form of justice inadequate.

It is seen then that “… Mato Oput is not part of a system aimed at bringing the persons concerned to justice…reflecting a traditional attempt to shield perpetrators from Justice.” (Senyonjo, 2007:375). But this is not the only form available when talking of a hybrid form of justice or restorative justice for that matter. Other forms need to be explored and integrated whenever necessary. The other tribes that have been affected may have their own traditional approaches and may view restoration in another way say by compensation or plea bargaining. Others may just want to forget the whole suffering by trying to put it behind them in the interest of peaceful existence. This study therefore
seeks to partly examine the interplay of these forms from the victims’ viewpoints and paying particular attention to retaliatory feelings among them.

**Implications for International Criminal court**

The influence of politics on the administration of international criminal justice cannot be underestimated. The interaction between the politics of the ICC and the political is of interest here. Rauch (2006:6) observed that “…to say that the court should never become politicized is to ignore its role in enforcing international peace and security.” This raises interesting questions regarding complexes brought by politics in impartially administering international criminal justice. Won’t perpetrators use politics to divert the court and/or enjoy impunity? In conflicts involving several parties such as sitting governments, won’t governments use their political connections to evade justice? Is it anymore a wonder that even when General Bashir of Sudan was indicted, governments in the African Union are not arresting him? Where is the strength of the ICC these cases? Isn’t the heavy Reliance on governments or the UN Security Council in terms of policing crimes turning it into a political institution (Peskin, 2009)? These all pertinently need answers as a matter of fact. The earlier negative responses of the victim communities in northern Uganda towards the ICC were partly due to this political vulnerability of the court. The referral process alone has been calculated into political formulae. Legally speaking and following the principle of complementarity, the Ugandan courts and judicial system could be capable of handling the LRA case at the time of self-referral. More questions have continued to flow …doesn’t this open a wide gate for using the ICC as a State’s political tool…” (Ssenyonjo, 2007:368). Was there “… need for the prosecutor to intervene … since the ICC would by no means be in a better position to arrest these leaders…?” (El Zeidy, 2008:216)? To make matters worse, after the referral, the Ugandan government continued nursing the idea of withdrawing the case, purportedly in the interest of peace. What then was the motive of the referral? Was it a ploy to distract a critical look at its own atrocities and politically confuse critiques? If it was in the interest of peace, then how is it now? Do victims still harbor negative attitudes towards the court? What would they rather wish to see happen? When these are all answered in some way, implications for the ICC in its approach to criminal justice in this region can be drawn thereof. It is in this same regard that the questions of who and where to punish can be answered.

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