

International Justice, Local Injustice

The International Criminal Court in Northern Uganda

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WHEN THE International Criminal Court announced in January 2004 that its landmark first investigation would be into the brutal war in Northern Uganda, the statement was met with widespread and passionate condemnation from within the East African country. For perhaps the first time in the history of international law, however, those opposing the enforcement of humanitarian and human rights law were not self-interested government officials or rebel leaders. Instead, the protests came from the Ugandan human rights community itself, from activists, lawyers, and civil-society organizations working for peace in the North. This apparent paradox is explicable only by situating it in the ICC's current predicament, in the history of the Ugandan war, and in the broader dilemma of merging international and local justice, or reconciling the demands of justice and the demands of peace.

Proposals for an international criminal court have circulated for more than half a century. In the wake of the Nuremberg Trials after the Second World War, jurists began working on plans for a permanent court that would prosecute individuals—as opposed to states, the traditional subjects of international law—for crimes against humanity, crimes against the peace, and genocide. But the cold war ushered in a long period of paralysis for the institutional development of international law, and it was not until the 1990s that the idea was again taken seriously. In response to a powerful international lobbying effort, the Rome Statute constituting the International Criminal Court was signed by 120 countries on July 17, 1998, with only seven votes in opposition, including

the United States and, reportedly, China, Iran, Iraq, Israel, Libya, and Sudan. The Statute received its sixtieth state ratification in April of 2002, and thereby entered into force.

However, the Court that has emerged today is far removed from the juristic dream of a court with universal jurisdiction and enforcement powers, the primary organ of a global rule of law. The United States delivered the first blow by asserting that its nationals would not be subject to prosecution by the Court. It subsequently pressed many allied and dependent states to sign bilateral immunity agreements, creating an expanding geography of legal impunity. The Court's legitimacy was further undermined when the United States rejected it as a venue for the trial of those accused of planning the terrorist attacks of September 11, 2001, and their aftermath, whether suspected terrorists or Afghani or Iraqi officials charged with war crimes.

The ICC thus began casting about for a case that could prove its relevance and utility. When Ugandan president Yoweri Museveni approached the special prosecutor, Luis Moreno-Ocampo, to ask him to investigate the Lord's Resistance Army (LRA), a rebel group that has terrorized Northern Uganda since the late 1980s, Moreno-Ocampo accepted. On January 29, the Office of the Prosecutor publicly announced that it had begun a probe into atrocities committed by the LRA.

At first glance, the LRA appears to be a perfect target for the ICC. Rebel movements have operated in Northern Uganda since Museveni took power. In the first few years these rebel groups enjoyed considerable popular support from the local Acholi population, but as fatigue and disillusionment with the war spread through the countryside, support dwindled. The rebels misinterpreted this declining support as sympathy for the government

and, faced with diminishing resources and recruits, they turned on the very population that had given birth to them. Since the early 1990s the LRA, under the messianic leadership of Joseph Kony, has carried out a series of massacres, lootings, mutilations, and abductions against the Acholi. What began in 1986 as a guerrilla struggle for political inclusion became over the years a predatory, terrorist subjugation of the people in whose name the struggle had begun. The war has led to thousands of civilian deaths, the economic devastation of the North, and the forced movement of more than a million people—the entire rural population—into displaced people's camps, which lack adequate food, water, and medicine. As this "temporary" measure persists year after year, an entire generation of malnourished children is being raised, knowing only the horrors of life in the camps.

WHAT HAS ATTRACTED the most international attention is the LRA policy of forced recruitment. When voluntary enlistment fell in the late 1980s, the LRA started abducting civilians in large numbers to replenish their ranks. This policy fed popular discontent, and soon the rebels' only mode of conscription was abduction. Within a couple of years, they realized that children were more easily molded than adults into obedient, effective killing machines. At present, over 90 percent of rebel ranks are abducted children, some as young as eight, forced to commit atrocities against each other or their families to bind them permanently to the LRA. From the early 1990s, the LRA has been synonymous with a reign of terror against children.

The unambiguously evil acts of Kony and his followers made the LRA high command seem an appropriate first target for the ICC. The LRA has no apologists and no spokespersons defending its atrocities; Kony himself is subject to universal moral condemnation. The maimings, massacres, and mass abductions carried out by the LRA fit neatly into the categories of "grave violations of human rights," "war crimes," and "crimes against humanity" that form the vocabulary of international legal condemnation. No one questions that Kony is responsible for these crimes—but many ques-

tion whether or not ICC prosecution is the appropriate response. Can it bring justice and, more important, peace to this troubled region?

The major players in the Western human rights community quickly responded, but called for the investigation to comprehend atrocities by the LRA *and* by the Ugandan government. Amnesty International and Human Rights Watch, both of whom have published reports compiling the atrocities committed in the course of the war in Uganda, issued almost identical statements soon after the ICC announcement. AI argued that "any court investigation of war crimes and crimes against humanity in Northern Uganda must be part of a comprehensive plan to end impunity for all such crimes, regardless of which side committed them and of the level of the perpetrator." Similarly, HRW called the "chance for [an] impartial ICC investigation into serious crimes a welcome step," asserting also that "the ICC prosecutor cannot ignore the crimes that Ugandan government troops allegedly have committed."

Although LRA abuses have received the most international attention, recently in response to calls from the courageous groups working on the ground in Northern Uganda, international human rights organizations have started to focus on war crimes perpetrated by the Ugandan army, the Uganda People's Defense Forces (UPDF). Indeed, the government-led counterinsurgency has been vicious: the displaced people's camps themselves were created through a government campaign of displacement, including bombing and burning down entire villages. Those in the camps cannot leave because the UPDF kills any civilian found outside them. The government does not protect the camps, so those in the camps are easy targets for the predation of the LRA—and often of underpaid, undisciplined UPDF soldiers. The failure to provide food, medicine, decent housing, and protection, in direct contravention of the Geneva Conventions, has led many Acholi to see the camps not as "protected villages" (the government's euphemism), but as a calculated effort to destroy the Acholi as an ethnic group—as genocide.

Amnesty and HRW represented the ICC prosecution as an opportunity to bring to light

and punish both the LRA and the UPDF for war crimes. But all the signs indicate that this will not happen. UPDF abuses in the North have been public knowledge for years, with no adverse effect for the Ugandan government. In fact, essential U.S. support for the Ugandan military has increased to include, since September 11, 2001, funds earmarked to eliminate LRA "terrorists." Moreover, Museveni would not have initiated a prosecution he did not think he could control; the government can cease cooperating with the ICC at any time if it appears that its own military may become a subject of the inquiry. The prosecutor has the discretion to decide to include crimes by the UPDF, but it does not appear that she will be pressured to do so by the international community—and certainly not by Museveni. The prosecutor may very well see the guarantee of impunity to the Ugandan government as the necessary price to pay for its cooperation and to ensure a successful first case for the ICC. Similarly, the institutional interest of organizations such as Amnesty and HRW in an ICC trial has led them to welcome what will inevitably be the prosecution of only one side in this war—the top LRA commanders.

Ugandan human rights and peace activists see such a one-sided judicial process as a catastrophe. The ICC statement of January 29 explains, "In a bid to encourage members of the LRA to return to normal life, the Ugandan authorities have enacted an amnesty law. President Museveni has indicated to the Prosecutor his intention to amend this amnesty so as to exclude the leadership of the LRA, ensuring that those bearing the greatest responsibility for the crimes against humanity committed in Northern Uganda are brought to justice." In this putative upholding of the ideals of justice, the ICC conveniently ignores the fact that the Amnesty Law of 2000 was the product of a dramatic effort by activists to salvage their last, best chance for peace. At the insistence of Northerners—that is, the victims of the LRA—the amnesty was extended to all levels of the rebel command, even Kony himself. It is generally believed that the conflict will continue as long as the rebel high command wishes it to continue. So Museveni's proposed amendment to the Amnesty Law will only lead to a

prolongation, and probable intensification, of the conflict as the LRA command concludes that its only nonviolent exit strategy has been closed off.

As Zachary Lomo, director of the Ugandan Refugee Law Project, explained, "The only way of stopping Kony is stopping violence against Kony, and giving total support to the Amnesty." Support for the blanket amnesty is overwhelming among the displaced people themselves, as I discovered while doing fieldwork in the war zone. For the people of the North, the guarantee of amnesty to Kony and other top leaders was an insignificant price to pay for getting their children back. The government's own Amnesty Commission spokesman, Moses Saku, put it bluntly: any amendment of the Amnesty Law "is going to make it very difficult for the LRA to stop doing what they are doing."

IN SPITE OF THIS reality, the ICC statement goes on to say that, once the Amnesty Law is amended, "A key issue will be locating and arresting the LRA leadership. This will require the active cooperation of states and international institutions in supporting the efforts of the Ugandan authorities." The issuance and execution of arrest warrants, when translated into the local political context, will be a disaster. The vice president of the Acholi Religious Leaders Peace Initiative (ARLPI), retired Bishop McLeod Ochola, told a UN reporter, "This kind of approach is going to destroy all efforts for peace. People want this war to stop. If we follow the ICC in branding the LRA criminals, it won't stop." Father Carlos Rodriguez, also of ARLPI, made his opposition to the ICC unambiguous in a public statement: "The issuing of . . . international arrest warrants would practically close once and for all the path to peaceful negotiation as a means to end this long war, crushing whatever little progress has been made during these years . . . Obviously, nobody can convince the leaders of a rebel movement to come to the negotiating table and at the same time tell them that they will appear in courts to be prosecuted."

The execution of arrest warrants would require a dramatic intensification of the government's counterinsurgency in order to capture the LRA leaders. The powerful minor-

ity within the government that opposes dialogue with the rebels would find their case for a "military solution" greatly strengthened by support from the "international community." Indeed, the rhetorical use of the ICC investigation to justify intensified military operations has already begun: simultaneous with the announcement of the appointment of American lawyer Christine Chung as the investigation's prosecutor, the Ugandan army announced that it would reenter Sudan to hunt down the LRA leadership, in a replay of its 2002 Operation Iron Fist. That time, in response to the UPDF incursion into Sudan, the LRA simply reentered Uganda and stepped up its anti-civilian violence after what had been a period of relative peace. It is feared that this new UPDF offensive will also lead to another pointless incursion into Sudan and, in response, a resurgence of atrocities against the civilian population of Acholi by the LRA.

International arrest warrants would be used as a *carte blanche* to impose the "military solution"—but the "military solution" is simply not a solution. For a number of reasons—lack of political will, corruption within the army, resilience and tenacity of the LRA child soldiers—the UPDF has not been able to defeat the LRA for eighteen years. Instead, violence by the UPDF is unfailingly answered with increased violence by the LRA against the unprotected civilian population. Most important, even if the "military solution" were "successful," its main effect would be the extermination of thousands of traumatized children abducted into the LRA, all in the name of capturing a few of their commanders in order to satisfy the demands of the International Criminal Court.

Why Museveni—himself a signatory to a bilateral immunity agreement with the United States and a consistent critic of human rights activists—is suddenly inviting international prosecution is obvious. Museveni's request is an attempt to claim international legitimacy for a military counterinsurgency that is strongly opposed by civilians and human rights activists living in the war-ravaged regions. The quest for international "justice" by well-intentioned outsiders—by a human rights community that is based in the distant metropolises of New

York, London, the Hague, and Geneva—will have only one effect in this case: the prolongation of suffering for more than a million people in Uganda.

THE BELIEF that the "justice" provided by international law is absolute, taking precedence over local resolutions to longstanding, complex political crises, is the quintessence of international law fundamentalism. International judicial processes are based on the idea that justice is best realized by punishing the guilty. This internationally supported punishment may, in some cases, be part of a locally based process; in these cases, international prosecution can work in solidarity with local democratic demands. The ongoing international effort to prosecute Hissene Habre, the ex-president of Chad, was initiated and is being driven forward by a broad coalition of Chadian human rights nongovernmental organizations and victims' groups; if this domestic coalition can continue to build broad popular support, the Habre case may provide a good example of international legal solidarity with the local pursuit of justice.

But when international prosecution is not in solidarity with local demands, then the idea that any part of humanity is entitled to punish those guilty of "crimes against humanity" necessarily entails a rejection of others' autonomy and self-determination. The decision, on the one hand, to seek justice through punishment or, on the other, to forgo punishment in favor of justice through reconciliation, is a decision that must be made by the concrete community that is the victim of the crimes and that will have to live with the consequences of the decision. "Humanity" is too thin a community upon which to base a universal right to punish. Even when one feels injured by horrible crimes committed far away, so long as one does not have to live with the consequences of punishment, one's intervention must be limited to solidarity. When legal prosecution in the name of humanity is in opposition to a community's demand for justice through peace and reconciliation, the prosecution takes on a peculiar and unattractive character: international actors come to the "rescue" of "helpless victims," often aligning themselves with undemocratic lo-

cal political forces that manipulate these foreign philanthropists for their own selfish purposes. When the enforcement of international law is opposed by the "helpless victims" because the proposed intervention only makes things worse for them, insistence upon prosecution amounts, at best, to paternalism and, at worst, to a new imperialism. The same sort of institutional arrogance underlies the idea that an American prosecutor can be the exclusive agent for bringing "justice" to people she has never met. International law must be guided by those it is claiming to serve, and by their vision of what is just or prudent. If it is

not, the ICC will find its already tenuous legitimacy eviscerated even further by its own misfeasance and ineptitude in carrying out its statutory responsibilities. If local injustice is the price to be paid for the kind of international justice that results from ICC prosecution, then we must abandon the Court and imagine new modes of building a truly global rule of law.

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Soviet Kitsch

Anson Rabinbach

V LADIMIR PUTIN'S Russia is awash in Soviet kitsch. In St. Petersburg's popular "Idiot" café a bust of Lenin sports a racy polka-dot tie. Trendy eateries with catchy names such as "Propaganda," "СССР," "Soviet Kitsch," and (no kidding) "Lenin's Mating Call" are doing a lively business. Flea market hawkers sell soviet military paraphernalia, watches, and caps adorned with Lenin pins; bookstores feature constructivist propaganda and Stalin-era slogans warning against excessive alcohol consumption; T-shirt vendors offer up Lenin in a field of marijuana, Stalin as the "great helmsman," and "McLenin" under golden arches. "Wartime" Soviet and Nazi Leicas do not mimic rare originals, but are entirely new creations, drawn from the fantasy of highly skilled Russian instrument makers. These wares should not be misread as evidence of nostalgia for the bad old days.

Mass produced for foreign visitors, today's designer dictatorship is just for fun. But it is also a cultural compromise between the lack of any serious effort to confront the dear de-

parted Soviet regime and the current glorification and idealization of the Soviet imperium that contrasts sharply with what Putin contemptuously called Russia's post-communist "backwater." As the proverbial "woman on the street" remarked, Lenin is still the grandfather of the country and Stalin the "father." Soviet kitsch is benign, but it is much more than just a tourist draw. It creates a symbolic bridge to the old regime without drawing unnecessary attention to more disturbing elements of continuity.

Stalinist culture was, of course, already kitsch, and the architecture and iconography of the 1950s is still very much in evidence in Moscow. Perhaps one reason that there appears to be somewhat less interest in the new consumer kitsch in the capital than in St. Petersburg is that in Moscow the real thing is much more visible, and St. Petersburg was always the center of the artistic underground. To be sure, in the city that once bore his name (it was renamed St. Petersburg in 1991), a larger-than-life Lenin still exhorts passersby in front of the Finland Station, and the monumental likeness stands before the former Party building on Moscow Avenue and points emphatically ("to the liquor store across the street," goes the lo-