

The Investigations in Uganda and DRC:

Should the ICC also take care of the peace process?

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Outline

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The Interplay between Justice and Politics

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I. The Situations under Investigation

▪ Democratic Republic of the Congo (DRC)

- The conflict in eastern DRC is one of the most violent in modern Africa.
 - Since July 2002, civil society estimates 5000 civilian deaths in the Ituri province as a result of the war.
 - Women and children are direct targets.
 - Under investigation: since 23 June 2004
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- One suspect has been brought to the ICC on 20 Mar. 2006
 - The Pre-Trial Phase in this case is ongoing
 - The Trial is expected to start in 2007



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I. The Situations under Investigation

▪ Northern Uganda

- The conflict in northern Uganda
- has left thousands of deaths in 20 years.
- The allegations include multiple killings, children abductions, sexual slavery and looting.
- The situation is under investigation since 29 July 2004
- The Court has issued warrants of arrest against five top commanders of the LRA, including Joseph KONY.



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I. Is the ICC obstructing the Peace Process?

▪ Uganda Peace Talks

- Ugandan President Yoweri Museveni
 - has announced a total amnesty for Kony, on condition that the rebel leader renounced terrorism and accepted peace
- Luis Moreno-Ocampo (Chief Prosecutor ICC)
 - *"We believe that the best way to finally stop the conflict after 19 years is to arrest the top leaders."*
 - *"We do our judicial work; we cannot be involved in the rest."*
- Otti and some northern Uganda leaders
 - have said the ICC is a big stumbling block to attainment of peace in the region.



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II. The Peace and Justice Paradox

- What is the effect of International Criminal Justice on the Peace Process?
 - Security Council Res. 827 (1993)
 - *"...an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace..."*
 - Preamble of the 1998 Rome Statute
 - *"Recognizing that such grave crimes threaten the peace, security and well-being of the world"*

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II. The Peace and Justice Paradox

- Two extreme positions:
 - No Peace without Justice
 - On the long run, there can be no peace when justice has not been rendered
 - Consequence: there is no place for amnesties or peace deals which promise impunity
 - No Justice without Peace
 - It does not make sense to prosecute people if this prevents peace and creates even more violence and victims
 - Consequence: Charges should be withdrawn when this enables the establishment of peace in the region

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III. The ICC's Function as a Criminal Court

- What is the role of the Court?
 - Preamble
 - "...such grave crimes threaten the peace, security and well-being of the world..."
 - "...the most serious crimes of concern to the international community as a whole must not go unpunished..."
 - "...to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes"
 - "...to guarantee lasting respect for and the enforcement of international justice..."

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III. The ICC's Function as a Criminal Court



- When is a case inadmissible?
 - Art. 17 Rome Statute
 - “a case is inadmissible where
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the Person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- Does this leave room for amnesties or alternative methods of accountability?

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III. The ICC's Function as a Criminal Court



- Should Head of States or rebel leaders go unpunished?
 - Art. 27 [Irrelevance of official capacity]
 - “...official capacity ... shall in no case exempt a person from criminal responsibility under this Statute...”
- What is the Role of the Prosecutor
 - Art. 42. [The Office of the Prosecutor]
 - “The Office of the Prosecutor shall act independently as a separate organ of the Court.”
 - “It shall be responsible for receiving referrals and substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court.”

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III. The ICC's Function as a Criminal Court

- When should the Prosecutor stop his investigation?
 - Art. 53 (1)
 - “The Prosecutor shall ... initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute.”
 - Art. 53 (2) (c)
 - “there is not a sufficient basis for a prosecution because...”
 - “A Prosecution is not in the interest of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator”

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IV. The ICC and the Security Council

- Art. 13 (a) Rome Statute
 - Security Council Referral
 - “A Situation ... is referred to the Prosecutor by the Security Council acting under Chapter VII...”
- Art. 16 Rome Statute
 - Security Council Deferral
 - “No investigation may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII ... has requested the Court to that effect”



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IV. The ICC and the Security Council

- Art. 1 UN Charter
 - Purposes and Principles of the UN
 - "... to maintain international peace and security..."
- Art. 24 UN Charter
 - Functions and Powers of the Security Council
 - "...primary responsibility for the maintenance of international peace and security..."
- Art. 39 UN Charter
 - Actions with Respect to Threats to the Peace
 - "The Security Council shall ... make recommendations or decide what measures shall be taken ... to maintain or restore international peace and security."



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V. Conclusion

- The ICC is a Criminal Court!
- Its main purpose
 - is to prosecute individual perpetrators who have committed the most heinous crimes
- By fulfilling this mandate
 - it will contribute to peace and justice
- The ICC should be very careful
 - to become too much engaged in political issues
- This would endanger
 - the ICC's independent role as a judicial body
- Could have grave effects
 - on the deterrence which the ICC is supposed to stand for

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