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SPOTLIGHT

Great Lakes Pact Enters Into Force

The Pact on Security, Stability and Development in the Great Lakes Region, which was signed in December 2006 at the close of a two year long process conducted under the auspices of the International Conference on the Great Lakes Region (ICGLR), is now entering into force.

Under the terms of the Pact itself, it will enter into force 30 days after the ratification of the Pact by the eighth regional state. The International Conference on the Great Lakes Secretariat has informed IRRI that the necessary ratifications are now in place (of the 11 states in the ICGLR only Sudan and Angola have now not ratified) allowing the Pact to enter swiftly into force.

From the perspective of advocates for refugees and internally displaced persons (IDPs) around the region, this is welcome news, as the Pact contains some powerful new mechanisms for the protection of the displaced. The Pact brings together ten protocols laying out new legal standards on relevant issues, 33 priority projects, and a set of implement mechanisms and institutions. These institutions include a secretariat based in Bujumbura, a regional centre for democracy and good governance, and a Special Fund for Reconstruction and Development to be hosted by the African Development Bank.

Within this new framework, there are two new protocols which deal specifically with the experience of displacement in the region – the Protocol on the Protection and Assistance

of Internally Displaced Persons (IDP Protocol) and the Protocol on the Property Rights of Returning Populations (Property Protocol).

The Protocol on the Protection and Assistance of Internally Displaced Persons

The IDP Protocol will soon become the first legally binding international instrument providing protections specifically for the displaced. The IDP Protocol focuses primarily on ensuring that existing legal standards are adhered to—requiring states to respect the United Nations Guiding Principles on Internal Displacement as well as integrate them into national law.

In addition, the IDP Protocol is unique in that it recognizes explicitly those displaced by large scale development projects as IDPs in need of protection—and indeed it devotes an entire article to their situation. States are required to consult with the populations affected and explore alternatives to displacement as well as provide compensation in cases where displacement is justified.

The IDP Protocol also requires states to identify a framework of government response to situations of displacement—which often requires coordination by a range of government ministries and officials at the national, regional and local level. It is also interesting to note that the IDP Protocol uniquely reflects the experience of the region in defining policies on the internally displaced. This recognition has made clear the importance of—and made room for—wide consultation with civil society and the displaced themselves. The IDP Protocol also deals with a number of critical challenges for IDPs including security, issuance of documentation, and the provision of humanitarian assistance.

Protocol on the Property Rights of Returning Populations

The Property Protocol is focused on a particular aspect of the experience of displacement—the difficulty often experienced by the displaced in recovering or finding compensation for property lost when they fled. The Property Protocol was adopted in recognition of the fact that property—and particularly land—is often at the core of conflict and displacement in the region. Indeed, in some situations, such as the current war in Darfur, populations are purposely displaced so that their land can be acquired. In other situations, reacquisition of land is a major barrier to sustainable return, as it is in Burundi. Burundi is one of the most densely populated countries in the world and is primarily agricultural, meaning that there is intense pressure on land resources. For many refugees the ability to reclaim land abandoned during flight is a core concern in deciding to return as well as critical to their ability to reintegrate and support themselves at home. At the same time, efforts to return to their land often bring them into conflict with others who may have occupied it during their long exile.

The Property Protocol attempts to create a framework in which to address such concerns. The Property Protocol requires states to create procedures under which both local traditional authorities and judicial bodies can assist in the recovery of property and resolve disputes. The Protocol also calls on states to put in place systems of recognizing both customary and statutory tenure. The recognition of customary tenure is particularly important in the region because a large percentage of land is administered under customary tenure and is often managed by communities rather than through individual

ownership. The Protocol also provides a series of principles for addressing the property rights of particularly vulnerable groups such as women, children, and communities with special ties to the land.

Although the Property Protocol lays out a progressive legal framework, addressing complex property claims at the national and local level will require creation of more specific legal guidance on issues such as how to deal with "secondary occupants," those who might have lived on abandoned land for decades prior to the return of the displaced, and how the interaction between customary and statutory systems can be managed. It will also require mechanisms that are workable in practice—and creating those will require additional commentary and monitoring.

In addition, a number of other elements of the Pact are relevant more broadly to the situation of the displaced. These elements include those aimed at addressing the human rights violations which cause flight and to which the displaced may be at increased risk. One such example is the protocol devoted to combating sexual violence, which is a problem frequently faced by displaced persons.

IRRI and the Internal Displacement Monitoring Centre (IDMC) are currently working on a guide for NGOs in the region which more fully explains the potential of the Pact for advocates of refugees and internally displaced persons in the region. It is expected to be launched in July 2008.

For more information, please see:

- the website of the International Conference on the Great Lakes Region:
- the International Humanitarian Law Project, which has made all of the Pact's Protocols and Projects available in an easy to read format:
- and the website of "Enhancing Protection of Displaced Populations: Translating the Great Lakes Peace Pact into Action" a conference convened by IRRI and the IDMC to discuss NGO strategies for using the ICGLR in April 2007:

ACTION AND ADVOCACY

Kampala Conference on R2P in East and the Horn of Africa

The Responsibility to Protect (R2P) is an emerging norm of international law which provides that states have primary responsibility to protect their citizens from crimes against humanity, ethnic cleansing, genocide and war crimes; when a state fails to do so, however, the responsibility falls on the international community. R2P expresses a commitment to action along a continuum, from prevention to rebuilding, with a focus on prevention. The principle was first articulated in a 2001 report by the International Commission on Intervention and State Sovereignty entitled "The Responsibility to Protect." In September 2005, the international community endorsed central aspects of R2P in the United Nations' 2005 Summit Declaration.

On April 17 and 18, 2008, the International Refugee Rights Initiative (IRRI) together with the Responsibility to Protect—Engaging Civil Society (R2PCS), a project of the

World Federalist Movement–Institute for Global Policy (WFM), hosted a conference on R2P in East Africa and the Horn of Africa. The conference took place at the Metropole Hotel in Kampala and was well attended by academics and civil society representatives from around the region, including the AMANI Forum, the East Africa Law Society, the International Conference on the Great Lakes Region, the Kenya Human Rights Commission, Foundation for Human Rights Initiative, HURINET, HURIFO, and Oxfam. The conference was part of a global series of consultative roundtables organized by R2PCS with the objective of building a global civil society coalition for R2P. Other gatherings have occurred in Accra, Bangkok, Buenos Aires, Johannesburg, Ottawa, and one is planned for Paris.

The conference's three main objectives were to increase understanding of R2P and how it applies to conflicts in the region, explore how to strengthen regional and international mechanisms to support R2P, and forge partnerships among a core group of CSOs interested in building a regional coalition for R2P. Measured against those three main objectives, and indeed any objectives, the conference was a great success.

The first day of the conference focused on providing on overview of R2P and discussing how to increase understanding and use of the principle in the region. It included presentations by Bill Pace and Saapna Chatpar of WFM, Yitiha Simbeye of the University of Dar Es Salaam and Getechew Demeke of Africa Humanitarian Action in Ethiopia. Discussions highlighted regional institutions such as the African Union, the East African Community, the International Conference on the Great Lakes Region, and the Inter Governmental Authority on Development, which have existing mechanisms to bolster R2P (for a detailed account of those mechanisms, please see "Aspects of the Emerging Legal Framework Bolstering the Responsibility to Protect in East Africa and the Great Lakes Region" at www.refugee-rights.org).

The second day of the conference focused on strengthening civil society activity and collaboration for R2P in the region. It was decided that there should be parallel state-centric and civil society-centric strategies for bolstering R2P. The state-centric approach was further subdivided into national and regional strategies, and participants thought that the civil society-centric strategy should be multi-pronged to target academia, community leaders, faith groups, the general public, the media and NGOs. Central within both strategies will be education, as delegates believed that many leaders and policy makers do not know about or fully understand R2P.

At the end of the conference, an informal follow-up committee was appointed to work on building a regional coalition for R2P. We will keep readers abreast of future developments as we work to put momentum behind R2P.

For more information, please visit www.responsbilitytoprotect.org.

Children's Fate Focus of Fifth Global Day for Darfur

Five years into the war in Darfur, the world greeted another Global Day for Darfur. On Sunday, April 13, thousands of activists and concerned citizens came together in more than 30 countries worldwide to shed light on the dire situation in Darfur. The theme revolved around children, and the fact that children in Darfur under the age of five have yet to experience a peaceful environment. The Day's logo, a white child's handprint inside a red stop sign, clearly conveyed the message that a stop has to be put to Sudanese children being caught up in bloodshed and victimized by displacement and killings in Darfur.

A group of children's authors including J.K. Rowling and Judy Blume marked the day by releasing a letter demanding the world to bring childhood back to Darfur. Celebrities, including actor Matt Damon and Thandie Newton, were pictured destroying emblems of childhood to highlight that childhood is under attack.

"The people of Darfur are hungry for change," said Dismas Nkunda of the Darfur Consortium. "They have been the victims of a belligerent government and an inept international response. Above all it has been children who have suffered and it is they whom we must now rally to protect before we lose an entire generation to violence."

As previous Global Days for Darfur the event was organized by an international coalition of human rights groups including Amnesty International, Human Rights Watch, and the Save Darfur Coalition. Many Darfur Consortium member organizations organized events amongst which were the following:

Egypt

The Arab Program for Human Rights Activists, in collaboration with the preparatory committee of human rights organizations to save Darfur organized a solidarity event with the children of Darfur to stop or assuage their suffering.

The event took place at the Paramisa Hotel, Dokki, Egypt on Sunday, April 13. The activities were attended by journalists, writers, artists and civil society organizations, and included an art exhibition of Sudanese and Egyptian artists, children's drawings and pictures that reflected the extent of the human suffering of the children of Darfur. A documentary film about Darfur was also shown, followed by a round table discussion which was chaired by both Sudanese and Egyptian children. The children presented a letter of objection to the participating artists, acting as "ambassadors of goodwill."

Ghana

The **Media Foundation for West Africa (MFWA)** organized a seminar in collaboration with the Forum on African Affairs, a student group at the Political Science Department of the University of Ghana.

This program was well advertised on the university campus, and the event was attended by political science students, academics, lecturers and members of the university community in general. Members of the general public were also present.

The screening of a documentary on the situation in Darfur underscored the fact that women and children are the worst affected by the crisis. Professor Kwame Karkari, Executive Director of MFWA, presented a paper entitled "The Responsibility of Intellectuals in the Search for Peace in Darfur" and discussed the different dimensions of the crisis and the many reasons why humanitarian issues arising out of the conflict must be confronted by intellectuals.

The presentation provoked a lively discussion after which a joint statement by MFWA and the Forum on African Affairs was issued. The statement was widely distributed to local and regional media and was reported widely in the Ghanaian media, including newspapers and radio stations.

Senegal

Recontre Africaine pour la Defense des Droits de l'Homme **(RADDHO)** and **the West African Refugees and Internally Displaced Persons Network (WARIPNET)** organized a series of activities in Dakar. These activities focused on the promotion and protection of the rights of Darfurian children. A roundtable was organized that discussed the humanitarian and security situation of Darfurian children in general, as well as in the camps specifically. RADDHO and WARIPNET worked closely with inter-governmental organizations such as UNICEF, international organizations such as Save the Children, and African and Senegalese grassroots organizations in organizing the roundtable. The main objective was not only to draw public attention to the situation of the Darfurian child, but also to call upon Senegalese diplomacy to address the case of Darfur while promoting the rights of children and encouraging a continuation of their positive actions.

A video screening preceded the roundtable. The video screening focused on Darfurian refugees and the internally displaced. It was an opportunity for the audience to hear the testimony of Darfurian victims of forced migration and the different problems they are facing. A photo exhibition on Darfurian refugees and internally displaced persons was also part of the event. Various radio talk shows addressed the situation of the children in Darfur and the peace process in general.

South Africa

On April 12, the **Human Rights Institute of South Africa (HURISA),** in collaboration with the South African Human Rights Commission, the Darfur Consortium and the Save Darfur Coalition, hosted a gathering to commemorate the 5th anniversary of Global Day on Darfur in Newtown, South Africa.

This event focused on the children of Darfur who reached their 5^{th} birthdays without ever having known peace. Most of the participants were youth, who first heard a series of presentations educating them about the situation in Darfur. The children then broke into groups reflecting on how what they learned about Darfur affected them and how these

issues should be addressed. Many of the young people who attended the event reflected on their relative privilege as South Africans, and on their need to support those less fortunate. They reminded each other not to be wasteful, and of the importance of giving humanitarian aid. One young man suggested that South African President Thabo Mbeki should sit down with Sudanese President Omar El Bashir and speak sternly with him. Another young woman reflected that many of the problems in Darfur were linked to those in South Africa—for example rape, which she noted might be particularly widespread in Darfur, but was a serious problem in South Africa as well. Following these reflections the organizers reflected on the importance of understanding and connecting with other parts of Africa, an opportunity that many of them were denied growing up under the apartheid system, which tried to isolate South Africans from potential allies in independent Africa.

Following the speeches, the children participated in the creation of a banner, in which each person added their painted handprint and signature. Participating children also received reading materials and T-shirts. A live band provided cultural music at the event.

What's next?

With 1.8 million people under the age of 18 affected by the violence in Darfur an entire generation is at high risk for poor health, malnutrition and significant psychological and social problems. The effects of displacement, separation from family, violence, and continuous fear make the young of Darfur vulnerable to violence, sexual assault and recruitment by armed groups.

The Darfur Consortium and other concerned NGOs called on all parties to the conflict to stop attacks on civilians immediately in order to create an environment in which children can live without fear and achieve their dreams for the future.

FEATURES AND ANALYSIS:

Seeking Durable Solutions for Burundian Refugees in Tanzania

The Tanzanian government recently announced a major drive to address the situation of long-staying Burundian refugees in the country. This initiative aims to resolve the situation of Burundian refugees who have been in the country since fleeing widespread violence in Burundi in 1972. The government of Tanzania has offered citizenship to those who wish to remain and is working with UNHCR to organize repatriation for those who do not.

This initiative, therefore, presents a unique opportunity to explore the ways in which issues of identity impact the choices that refugees make. In an effort to understand these decision making processes, the International Refugee Rights Initiative (IRRI) is collaborating with the Social Science Research Council (SSRC) and the Centre for the Study of Forced Migration (CSFM) at the University of Dar es Salaam to conduct field based research amongst both camp-based and self-settled refugees in this group.

This research is to be conducted in the framework of a broader project undertaken by IRRI and the SSRC to explore the linkages between refugee situations and conflicts over identity. Disputes over group and national membership have been at the core of many of

the regions' conflicts. As a result, targeted populations have been forcibly displaced from their homes, social networks, and governmental protection, and have been forced to seek refuge within their own countries and across borders. Even in displacement, the ability of refugees and internally displaced persons to integrate is often determined by understandings of identity, which influence whether national and local government authorities and ordinary people are welcoming or hostile.

Burundian refugees in Tanzania

Burundian refugees who arrived in Tanzania in the early 1970s, as distinct from those who fled later (primarily in the 1990s), are typically referred to as the "1972 caseload." They have now been officially living in settlement villages for more than 30 years. The 1972 refugees are currently being considered as a distinct caseload by the Government of Tanzania and UNHCR. Their situation is different from that of other Burundian refugees because of the length of time spent outside Burundi (the majority were, in fact, born in Tanzania and have never been to Burundi), the fact that it may be more difficult for them to recover land and other property in Burundi given the length of their exile and due to their economic benefit to Tanzania.

As UNHCR representatives have pointed out, the current initiative to find durable solutions for this group of refugees is unique because it has combined all three durable solutions (local integration, repatriation and resettlement) operating simultaneously. Nevertheless, while a number of refugees from this group were approved for resettlement to third countries, this option will be open only to a small number of refugees (8,500 have been resettled to the US). In practice, therefore, refugees currently have a choice between repatriating back to Burundi, or remaining in Tanzania and accepting naturalization, with a proposed deadline of November 2008 for the closure of the settlements. The study will focus both on refugees living in settlements and on self-settled refugees, the latter of whom appear to be largely excluded from this current process.

The discussion surrounding durable solutions for this group of Burundian refugees who have remained in exile for over 30 years touches on questions of citizenship and belonging, both with regard to root causes of flight and in relation to their prospects of achieving integration into a stable national belonging and identity–whether back in Burundi or in Tanzania. Critical to this discussion is understanding the processes by which refugees define belonging and by which they are deciding whether to return or stay–and, indeed, the extent to which there is genuine choice involved. Specifically, within the paradigm of discussions on notions of belonging and the current and potential experience of citizenship, this pilot study asks about the specific dynamics of identity that are playing a key role in this decision-making process from the perspective of the refugees themselves. How does the refugees' sense of national belonging relate to the choices they are making? To what extent are decisions based purely on pragmatics? What factors might prevent them from not only receiving or reclaiming citizenship but realizing the rights that should accompany citizenship? In other words, how durable are these durable solutions, all of which involve (re)claiming citizenship at some level?

Set against a legal framework that determines the rights of national citizenship and social customs of membership the refugees would retain, gain, or lose as a result of their choice of durable solution, field-based social science research will examine the cultural

affiliations of the refugees and the role that these play in decision making. Most importantly, in a context in which refugees themselves are not being widely consulted regarding their future, field-based research will focus on the forced migrants themselves and will explore how they view their prospects for access to citizenship and membership regarding the different solutions.

Repatriation: a realistic option?

Among the 1972 group of refugees there is limited impetus to return: initial indications are that those who are opting for repatriation are mainly older refugees who were born in and have memory of Burundi. However, for those who do opt to return, a number of significant issues need to be considered regarding the durability of their repatriation and reintegration into Burundi. First, significant difficulties can be expected in relation to (re)accessing land: Burundi is the second most densely populated country in Africa and is overwhelmingly agricultural. Any return process will inevitably present considerable challenges for reclaiming land. Second, the political implications of Burundi's violent history may impose considerable barriers to return and reintegration. Indeed, a Tanzanian government official told our researchers that the political implications of large-scale return are highlighted by the fact that the Burundian government is concerned about the potential for renewed conflict if all refugees were to return home, potentially destabilizing the country. Set in the context of a country going through a highly vulnerable process of transition – not least given a history of impunity for past wrongs – the long-term stability of Burundi remains a serious concern regarding the durability of return.

Thus, while UNHCR has made repatriation a priority, particularly for the 1990s refugees, it acknowledges that it may not be possible to successfully repatriate and reintegrate all refugees. In particular those displaced by violence in 1972 are deemed less likely to have sufficient material and cultural ties with Burundi to successfully return. This raises a number of interesting questions regarding the nature of citizenship: it implies that the recognized grounds for citizenship are linked primarily to socio-economic rather than cultural, political or legal dynamics.

Naturalization: what are the implications?

Perhaps not surprisingly, the majority of refugees have opted for naturalization according to a survey carried out by UNHCR. But it is important to understand how the receiving of Tanzanian citizenship is viewed by this group of refugees, not least in a context in which they will have to renounce their Burundian citizenship (dual nationality is not permitted under Tanzanian law, but is permitted under Burundian law). What does the receiving of Tanzanian citizenship mean in social, political and cultural terms? For instance while much has been made of the fact that Burundian refugees currently opting for naturalization speak Swahili, have followed the Tanzanian curriculum in school, and that many have never been to Burundi, it remains critical to ascertain how this relates to notions of their sense of national and local identity – both as individuals and as a group. Indeed, despite the emphasis on these markers of assimilation, it is clear that the government is anxious about the organizing potential of group affiliation as Hutu and as (former) refugees – reflected in the fact that they are planning to formally close the

settlements. Refugees will be relocated elsewhere with the assumption that in the long term they will disperse.

In light of that, many questions remain regarding the way in which refugees will be received in areas of Tanzania where they move to settle. While local integration is expected to be easy within the Kigoma region (the main ethnic group in Kigoma, the Waha, have strong linguistic and cultural similarities with the Warundi people from Burundi), in other regions local integration is expected to pose a greater challenge. Furthermore, what, in reality, will by the dynamics in determining the ability of refugees to access land?

As we begin to explore some of these complex questions, the field-based research will be the first of a series of such studies which, in combination, will begin to generate new empirical understandings of specific cases of exclusion/inclusion, identify strategies and policies that will better protect the forcibly displaced in the region and begin to inform effective advocacy in the region, from the grassroots upwards.

LAW AND POLICY DEVELOPMENTS:

Juba Agreements on Accountability and Reconciliation Raise Questions

The question of justice and accountability has been a critical question in the ongoing peace talks between the Lord's Resistance Army (LRA) and the Government of Uganda (GoU). On February 19, 2008, the LRA and the GoU made an important step forward in negotiating these issues with the signing of the Annex (the Annex) to the June 29, 2007 Agreement on Accountability and Reconciliation (the Principal Agreement). The Annex elaborates how perpetrators should be held accountable for crimes committed during the conflict.

The Principal Agreement provides that the forum for a particular case – either a formal court or traditional justice – depends upon the severity of the crime. The Annex expands upon this, providing that a special division of the High Court of Uganda will try individuals, “alleged to have committed serious crimes during the conflict,” with prosecutions focusing on those “alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians, or who are alleged to have committed grave breaches of the Geneva Conventions,” while lesser crimes will be addressed using traditional justice mechanisms.

The Principal Agreement and the Annex pave the way for admissibility and other jurisdictional challenges in respect of the Uganda cases before the International Criminal Court (ICC), which cannot pursue cases prosecuted genuinely at the national level. In light of this, in early April the LRA refused to sign a final peace agreement until the ICC warrants were withdrawn. The GoU responded that it would not take any steps in that direction until a final peace agreement was signed. This impasse is a major factor in the current stall of the Juba process.

The discussion that follows considers the possible challenges to ICC jurisdiction flowing from the Juba framework for domestic prosecutions and highlights priority areas for civil society monitoring if that framework is implemented.

ICC jurisdiction

The ICC's Rome Statute allows states to investigate and prosecute persons for whom ICC warrants are outstanding. Indeed, the domestic prosecutions contemplated by the Principal Agreement and the Annex could curtail ICC jurisdiction in a number of ways. First, ICC judges could deem the Uganda cases inadmissible by operation of the principle of complementarity, which limits ICC jurisdiction to cases national courts are "unable or unwilling" to prosecute. An admissibility challenge could be mounted by the GoU, by any accused or by the ICC itself. Second, the UN Security Council could make a Chapter VII resolution requesting that the ICC defer investigations or prosecutions for an initial period of 12 months in order to allow domestic justice to move forward. Third, the principle of double jeopardy would place any individual prosecuted in a fair domestic trial outside of the ICC's reach. Finally, the ICC prosecutor could argue to its judges that prosecutions are no longer in the "interests of justice" if he deems that the Juba framework provides a more viable forum for pursuing justice.

Practically speaking, ICC jurisdiction could be hampered if the GoU refuses to cooperate with the ICC. Since the indictees are likely hiding out in the Central African Republic, the Democratic Republic of Congo or Southern Sudan, their cooperation may also be required and may be refused for a number of political reasons.

The Principal Agreement provides that the GoU will "address conscientiously the question of the ICC arrest warrants relating to the leaders of the LRA" and "undertake any necessary representations or legal proceedings nationally or internationally" to implement the Agreement's provisions. Although the Annex is silent regarding the ICC warrants, the Principal Agreement suggests that the GoU might mount an admissibility challenge in order to allow the domestic mechanisms provided for therein to move forward.

Whether or not the ICC trials go ahead, if the Juba process is concluded such that the Principal Agreement and the Annex are implemented, there will an ongoing need for civil society monitoring. Although the Annex does not lay out the substantive law and procedure for national trials, simply noting that it should be "expeditiously prepared" by the GoU, it is possible to highlight areas of particular concern for civil society. Because the Rome Statute represents an international consensus on various issues relating to war crimes and crimes against humanity, it, along with other international standards, could serve as useful benchmarks against which to assess domestic trials.

Fair trial standards

In assessing whether national trials conducted in accordance with the Juba agreements might render the Uganda cases inadmissible before the ICC, one element of considerable discussion has been the extent to which fair trial standards are respected. Research by Human Rights Watch has indicated that international fair trial standards and practice are adhered to inconsistently in Uganda. However, the "inability" prong of an admissibility

determination considers whether there is a total or substantial collapse or unavailability of the national judicial system, not the extent to which international fair trial standards are respected. Thus when using the Rome Statue as a bar, the Ugandan judicial system need not be in complete conformity with international judicial standards. Uganda is, however, obligated through other international commitments such as the International Covenant on Civil and Political Rights and by the Ugandan constitution to ensure that the trials contemplated by the Principal Agreement and the Annex meet basic standards of judicial independence and procedural fairness. Civil society may play an important role in ensuring that those commitments are respected.

Definition of crimes and punishment

Uganda has not domesticated the Rome Statute and therefore international crimes such as crimes against humanity and war crimes, two of the principle atrocities occurring in the north, do not exist in Ugandan criminal law. A particularly important issue is therefore how the law to be applied in the High Court—the law that the Annex states is being "expeditiously prepared"—will define such crimes and whether the available punishments will be proportional.

The language of the Principal Agreement and the Annex suggest that crimes will be defined and punished in accordance with international standards: i) a recital appearing in the Principal Agreement and the Annex "recalls" the parties' "commitment to preventing impunity and promoting redress in accordance with the Constitution and international obligations" and "recalls…the requirements of the Rome Statute," ii) the Annex references the fact that prosecutions in the High Court shall focus on individuals "alleged to have committed grave breaches of the Geneva Conventions" and iii) the Principal Agreement mentions the fact that individuals alleged to bear responsibility for "crimes amounting to international crimes" shall be tried in formal courts. It is worth noting, however, that in the context of "formal justice processes" Article 6.3 of the Principal Agreement provides, "legislation shall introduce a regime of alternative penalties and sanctions which shall apply, and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict." It will be important to scrutinize these alternative penalties in order to ensure that they are proportionate to the crimes committed.

Prosecutorial strategy

The Annex provides that those who "planned or carried out widespread, systematic or serious attacks directed against civilians or who are alleged to have committed grave breaches of the Geneva Conventions" will be investigated and prosecuted, while the ICC's mandate is to prosecute those "most responsible." The Annex certainly captures those "most responsible" so the High Court could prosecute those indicted by the ICC, and the Annex gives Uganda even wider jurisdiction to hold lesser criminals to account in both formal trials and through traditional justice. Nevertheless, it will be important to monitor who is prosecuted domestically as there is a danger that politics could interfere with bringing all of those "most responsible" to justice. This danger will be attenuated if ICC trials do not proceed.

Traditional justice

The role of traditional justice has been a controversial aspect of the struggle against impunity in northern Uganda. On the one hand, critics such as academic Tim Allen, highlight the ways in which traditional justice has been inconsistently applied and manipulated to serve certain stakeholders' interests. On the other hand, proponents such as the Refugee Law Project argue that forgiveness-based traditional justice such as that contemplated in the Annex is more meaningful to victims than retributive international justice. By trying serious criminals in the High Court while subjecting others to traditional justice, it seems that the Principal Agreement and its Annex seek to forge a balance. As the architecture of this balance is implemented, it will be important to monitor whether victims feel that the process is fair and holds perpetrators, both those tried in the High Court and those meted traditional justice, accountable in a meaningful way.

Conclusion

The Principal Agreement and its Annex raise important questions about the extent to which the elaboration of mechanisms for accountability at the national level may lead to jurisdictional challenges in respect of the Uganda cases before the ICC and the extent to which international standards may be met in national level prosecutions. Civil society can play an important role in the latter regard. In particular, civil society should pay attention to judicial independence and procedural fairness, the definition of crimes and the proportionality of punishment, who is prosecuted and the balance between formal proceedings and traditional justice.

For more information, please see:

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- For more information on this research and regarding the Principal Agreement generally, see Human Rights Watch's "Analysis of the Annex to the June 29 Agreement on Accountability and Reconciliation – Human Rights Watch's Fourth Memorandum on Justice Issues and the Juba Talks," February 2008.

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