

## 'A Dangerous Luxury'

# The International Criminal Court's Dream of Global Justice

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**The International Criminal Court in The Hague is supposed to bring war criminals to justice, but it has yet to deliver a single verdict. Can international law bring peace to war-torn regions -- or does it actually hinder the peace process?**

Calvin Ocora is afraid whenever he hears a rustling sound in the jungle. At any time or place, it could happen again, just like on that day in May that he barely survived.

Ocora had fallen asleep under the mango tree -- and that nap probably saved his life. If it had not been so hot, and the shade of the tree had not been so cool, Ocora and his eight goats probably would have been back in the village of Lukodi in northern Uganda when it was transformed into a killing field.

But as it happened, Ocora was startled out of his slumber when he heard a rustling. Instantly alert, he rolled into a ditch for cover, and then started running away from the rebels who were coming out of the jungle, boys in camouflage uniforms who -- on a signal from their leader -- started indiscriminately firing their Kalashnikovs.

Ocora's family, including his mother, sister, brothers and daughter, were killed. After the massacre, the killers piled up all 56 bodies and burned them. That is the modus operandi of the Lord's Resistance Army (LRA) under the command of Joseph Kony. The murderous sect leader is responsible for the deaths of more than 100,000 people over the past two decades. The dead -- so he claims -- have been redeemed, and should he one day be in power in the Ugandan capital Kampala, he intends to establish a theocratic state based on the Ten Commandments.

Kony is an indicted war criminal who many call a "devil," although he proclaims to be the "spokesperson" of God. He has retreated into the jungle and is gathering new child soldiers. They could burst from the dense foliage at any time, shooting their Kalashnikovs, heaping up mounds of corpses, mutilating those who try to flee, hacking off arms and legs, cutting off lips and ears.

Ocora has built a new round hut with a palm-frond roof. Every night, the man who lost his family is plagued by nightmares -- and every day he rails against Luis Moreno-Ocampo.

Moreno-Ocampo knows nothing of this. The chief prosecutor of the International Criminal Court (ICC) in The Hague is sprawled in a chair of his office on the 11th floor, gazing out at the dreary rainy sky that hangs over the Dutch headquarters of global justice. Sporting a three-day beard, the Argentine props his feet up on the huge desk made of light walnut burl. He appears to be permanently in a good mood. He has been charged with the mission of bringing justice to the world.

Things are moving on the African front. A total of 12 arrest warrants have been issued against key perpetrators of violence on the continent -- four politicians and a militia leader from the Democratic Republic of Congo are already awaiting trial at the ICC detention center in Scheveningen. Now they are also taking action against the alleged mass murderer Joseph Kony. Moreno-Ocampo, humanity's avenger, talks softly and quickly. "We help in Africa, we protect Africa's victims, Africa has called on us for aid," he says.

But Calvin Ocora, for one, never asked them for help. "Western criminal justice doesn't bring us any closer to peace," he says. "We could have had peace a long time ago without The Hague."

Moreno-Ocampo's warrant came precisely at the point when Kony's emissaries were sitting with the government at the negotiating table, just when some observers thought that a peace agreement might be within reach. Kony refuses to sign an accord while the ICC arrest warrant remains in effect. He has gone into hiding in the Democratic Republic of Congo, just across the border, where he rules as a jungle prince with up to 60 wives and an estimated 1,200 loyal fighters.

Over the past few weeks, the army has recommenced shelling, but that hasn't stopped the atrocities. Recently, over 400 people were reportedly murdered by the rebels during massacres around Christmas. The week before last, the LRA cautiously enquired in Kampala if it might be possible to resume negotiations.

Is that what this Moreno-Ocampo calls peace through justice?

This question is being asked by an increasing number of people -- and not only in Uganda. When the man in The Hague comes crashing down with his sword of accusations, he often reaps a storm of protests instead of the gratitude and fulfillment that he feels he deserves.

Exasperatingly, the International Criminal Court -- an ambitious enterprise supported by 108 member states -- could fail on its first and greatest project: bringing peace to violence-torn Africa.

Large parts of the world recently rose in opposition to the court once again when it announced last summer that it is seeking a warrant against Sudanese President Omar al-Bashir for alleged genocide, crimes against humanity and war crimes.

This prompted an angry response from the African Union, which asked the United Nations Security Council to make clear to the chief prosecutor where his competencies end. The Arab League was outraged that The Hague wanted to arrest a head of state. Sudan's ally China expressed "grave concern," and Libya and South Africa tried to block the indictment against Bashir in the Security Council.

UN Secretary-General Ban Ki-moon had earlier expressed his opinion that a too-open search for justice merely compromises efforts to achieve peace. He warned the prosecutor that a warrant against Bashir would have "a very serious negative impact on efforts to achieve peace" in Sudan. However supporters of the ICC's position point out that Bashir has repeatedly announced negotiations on Darfur while his troops continued to -- as Moreno-Ocampo put it -- "murder, destroy villages and rape women."

Peace or justice? In faraway Germany even the respected daily *Frankfurter Allgemeine Zeitung* felt that it had the right recipe for combating violence in Africa. In a lead article about the struggles of politicians to broker a peace, it wrote that criminal indictments against African leaders are "a dangerous luxury."

That's also roughly how the people from Lukodi would put it. After the massacre, they couldn't bring themselves to build their round mud huts with their palm-leaf roofs on the exact same location where they had stood earlier. New Lukodi now lies 100 meters to the west of the ruins of the old village, which have long since been swallowed up by the jungle.

Edise Adong was seriously wounded in the attack. At the age of 40 she looks as if she were 70. She is too weak to remain on her feet for long periods. She cannot imagine why anyone would want to put that devil of a man Kony in a cell in The Hague that is more luxuriously furnished than the best hotel room in the nearby city of Gulu.

Nevertheless, justice must prevail, says Ocora. However, in Uganda they have their own methods: "We have to forgive -- even the perpetrators deserve a chance." Sometimes Ocora runs into his family's murderers in the neighborhood. "We even chat sometimes. Now they find their actions infinitely shameful. God will pass judgment on them one day."

### 'A World Without Justice'

Former members of the Lord's Resistance Army are not put behind bars. Many of them have returned to the villages where Kony once abducted them. The government under Ugandan President Yoweri Museveni has come up with a unique approach for dealing with them. Since 2000 it has granted everyone who puts down his weapons unconditional immunity from criminal prosecution.

The Uganda Amnesty Commission is located in a Victorian villa in the center of Kampala. The walls of the building could use a coat of paint. Tucked in blue file folders are the stories of thousands of rebels, the majority of which are from the Lord's Resistance Army. Their names, ages and combat units have been noted here. Most of them are child soldiers who were abducted, tortured and forced to fight.

The state grants each of them a pardon, no matter what they have done. "It's the only way to draw them out of the jungle," says Bruhan Ganyana Miir, the commissioner for the West Nile region. He is proud of the results of the amnesty commission. "We have pardoned 12,000 fighters from the LRA alone and

brought them back into civilian life." That must have severely weakened Kony who, during his best years, had no more than a few thousand soldiers under arms.

The concept of forgiveness undermines the objective of the ICC to establish law and justice as something inevitable, especially in developing countries that are wracked by violence. The signal sent from The Hague, says German ICC judge Hans-Peter Kaul, must be a "worldwide continuously visible beacon" against lawlessness. It cannot "simply be turned off like a lamp that you don't want to see anymore."

Specialists in international law are taking a critical look at the African approach to reconciliation. Cologne-based law professor Claus Kress, who works as an adviser to the ICC, conducted a study on whether the widespread tendency of politicians to link peace talks with amnesty pledges has created a new "lex pacificatoria" ("law of the peacemakers") in international law -- a new let-by-gones-be-by-gones principle that puts reconciliation before justice. "Political decision-makers must work according to the assumption that international criminal law takes priority," says Kress. "This rules out automatic amnesties, at least for those who are chiefly responsible."

In other words, Ocora's model of forgiveness contravenes international law, at least according to the standards of The Hague. But what good is international law in the territory under the control of rebel leader Kony?

Far to the north, in the cooler climate of the Netherlands, Moreno-Ocampo has a clear answer: "Uganda's government has requested our aid." Moreno-Ocampo takes off his jacket and rolls up his shirt sleeves. "I apply the law and implement it in a world without justice."

The government used radio stations and flyers to publicize the amnesty offer. It took a while before the first combatants ventured out of the jungle. They have to flee for their lives from their units because Kony orders doubters in his ranks to be murdered.

Usually these traumatized individuals turn to the police or aid organizations, who refer them to the amnesty commission, which issues the applicant an amnesty certificate without any red tape. Even after years of atrocities, no one is forced to examine their conscience. They merely have to confess that they fought against the government.

Peace first -- that is the credo of the frightened and tormented victims of Kony's brutal campaign and the thousands of refugees wandering helplessly through the desert after being displaced by the alleged mass murderer Bashir. "But peace and justice," says Moreno-Ocampo, quoting the UN secretary-general, "go hand in hand."

That's all well and good -- but where does one begin? The UN Security Council has reportedly indicated to Kony -- yes, even to a man who has allegedly committed such heinous crimes against humanity -- that it would make use of its right to suspend the proceedings in The Hague if he signed a peace agreement.

Of course the most powerful organization of the most powerful countries in the world cannot afford to do something like that officially. And since Kony has never appeared at the many planned meetings to sign an agreement, the Security Council was easily able to extricate itself from its proposal. But the message from New York is clear, not only in the case in Uganda, but also with regard to Bashir: The Security Council is debating how it can restrain Moreno-Ocampo. Peace takes priority, justice comes later.

Peace or justice -- which comes first? Bolivian judge René Blattmann is the second vice-president of the ICC. He once served as the justice minister in his home country -- a nation plagued by a weak legal system and rampant violence. No doubt about it, he says, justice comes first. The reason: "In Greek mythology, Irene was the daughter of Themis, the goddess of justice." And the Greek name Irene means peace.

Peace is the daughter of justice, and war is the incarnation of injustice. German judge Hans-Peter Kaul asks how catastrophes like Hitler's genocide could ever take place in a country like Germany, with its respect for culture and its humanistic traditions. "Cynicism, apathy and indifference with respect to the law" -- this, concludes Kaul, is a large part of the explanation.

So justice takes precedence over peace after all? Kaul is seen as one of the founding fathers of the ICC, the man who handled the negotiations for Germany on the Rome Statute, the founding document of the "first court that is based on the free will of the international community." The "beauty of the court," says the former diplomat, is actually its independence from the UN and the resolutions of the Security Council,

an organization driven by the power plays of the countries that enjoy veto rights.

But do they also see things this way in Uganda? Moreno-Ocampo has no doubts about it: "Kony has attacked children, in the Democratic Republic of Congo, Uganda and in southern Sudan and in the Central African Republic. That is a violation of human rights. That is against the law both in Africa and in Germany."

The prosecutor pulls out "two scientific studies" that he says prove that they see things his way in Uganda: Only 1.8 percent of those surveyed in the north are familiar with the local rituals of conflict resolution, but 28 percent are familiar with the ICC. And 60 percent agree that Kony should stand trial. Moreno-Ocampo also says that it is a travesty to talk about peace taking precedence over justice here: "Kony has taken advantage of the peace mission to buy new weapons and abduct child soldiers." And the slaughter continues.

In order to pave the way for peace in Uganda, the Amnesty Commission gives each of its reconciliation recruits a foam mattress -- if possible, in the colors of the Ugandan flag, black-yellow-red -- a set of cooking pots, a hoe, a drinking water canister and 263,000 shillings, the equivalent of about €100 (\$135). The government helps people find work and pays for job creation schemes.

"It has to be more attractive to give up than to continue fighting," says Ganyana Miiro. "The carnage must stop. That is our main objective." According to this approach to achieving peace, even Kony could walk out of the forest and return to civilian life under the protection of the amnesty.

### **Admitting Guilt**

Years ago, there were many who called for a similar approach with former Serb leader Slobodan Milosevic and Liberian President Charles Taylor. In 1999, when Louise Arbour, chief prosecutor of the International Criminal Tribunal for the Former Yugoslavia, openly accused then-dictator Milosevic of crimes against humanity, the allies in NATO winced, even though they were bombing Belgrade in defense of human rights in Kosovo at the time.

"Fatal consequences for any compromise" in the Balkans, that was the outcome that many observers predicted, recalls Arbour. "The Russian delegate told me that I had revoked the basis for the negotiating process."

But history showed that the path of justice was not in vain. After his indictment, Milosevic was chased out of office and arrested. He died in 2006 during his trial.

It was a similar story with Charles Taylor. When the international Sierra Leone tribunal issued a warrant for the man whose militias had killed over 300,000 people in Liberia and Sierra Leone, then-UN Secretary-General Kofi Annan reportedly threw a fit. The UN was trying to convince Taylor to resign and accept asylum abroad in exchange for a pledge of immunity from prosecution.

Thanks to the warrant, and despite all promises made, Taylor was deported from his Nigerian asylum and arrested while his country continued down the road to peace. Today, the butcher of Monrovia is standing trial in The Hague.

And Moreno-Ocampo is sure that it will be a similar story with Sudanese President Bashir: "I can't make allowances for politics. I have to apply and implement the law." And a number of observers in the court share his optimism: "If the judges really confirm the warrant, it will be the end of Bashir." The indictment from The Hague would have such a destabilizing effect on domestic politics, they believe, that Bashir wouldn't be able to hold onto power. But he cannot flee, either. Every country that has signed the Rome Statute is obligated to arrest and extradite him. And many who work for the court have no doubt that this will happen.

Meanwhile, encouraging news has emerged from faraway Africa. Former UN Secretary-General Kofi Annan, who recently worked as a mediator in the Kenyan crisis, has a sealed envelope in his desk. The envelope comes from a Kenyan investigative commission that dealt with the bloody unrest that shook the country in early 2008. After the elections, supporters of the government and the opposition attacked each other. The clashes claimed over a thousand lives.

The names of six ministers and a number of members of parliament are written on a list inside the envelope. These men allegedly incited violence. If Kenya fails to come to terms with the tragedy on its

own, Annan has been instructed to give the envelope to Moreno-Ocampo. "Our politicians are trying to skirt the issue," says well-known Kenyan TV journalist Beatrice Marshall in response to a question about the back-up option in The Hague. "But we cannot have a climate of impunity."

Justice or peace? Kenya is divided. A recent survey showed that 55 percent of Kenyans favor putting those responsible on trial -- but 47 percent would prefer an amnesty arrangement.

And if Kony really comes? What happens if the Ugandan rebel leader who is wanted around the world steps out of the jungle and asks for amnesty?

In the little village of Pawel, 30 kilometers (18 miles) from New Lukodi, sits the wise man Jonas Kutiote, protected from the heavy tropical rain by a roof of palm fronds. He has years of experience with remorseful criminals. "First, Kony has to bring a goat with him." He says that is the equivalent of admitting his guilt.

Kony would slaughter the goat together with the victims -- for example, the village elder of one of the communities that he attacked. A bitter drink is brewed from the root of the oput tree and the animal's blood. "The perpetrator and the victim kneel down, fold their hands behind their backs, and drink together out of one bowl. Then the crimes are forgiven. Life can continue." In addition, some form of compensation, even of a purely symbolic nature, must be made.

"Mato oput" is the name of the ceremony, which is the main reconciliation ritual following an act of violence. The Acholi in northern Uganda have been resolving conflicts like this for centuries. "Our tradition is very strong. It can bring peace. Even Kony would be protected from acts of revenge afterwards," says Kutiote.

Revenge and punishment are not so important in traditional African culture. The idea is to symbolically restore the honor of the victims in an official ceremony. The perpetrator admits his guilt in front of everyone. A study conducted by the German aid organization Caritas claimed that mato oput is even capable of easing the severe psychological trauma that many victims, like the people from Lukodi, have suffered.

This explains why Calvin Ocora from Lukodi would rather rely on mato oput than on Luis Moreno-Ocampo. Ocora is still haunted by bad dreams at night. During the day, he sits under his mango tree and waits.

But there is no sign of the man with the goat.