

AMICC

Information Regarding the Referral of the Situation in Northern Uganda to the Prosecutor of the International Criminal Court

What is the situation in northern Uganda?

- Uganda's northern region has been engulfed in a violent conflict for 18 years. On one side is the Lord's Resistance Army (LRA) led by Joseph Kony. On the other side is the government of President Museveni and his army, the Ugandan People's Defense Forces (UPDF).
- According to human rights groups, the LRA rebels are responsible for murdering, raping, maiming, and torturing civilians. They are also accused of abducting, indoctrinating, and physically and sexually abusing young children. Children make up 85-90% of LRA fighters, most of whom were kidnapped between the ages of 11-15 and forced to join LRA forces.
- The primary targets of LRA attacks are members of the Acholi tribe, which occupies the northern districts of Gulu, Kitgum, and Pader in the region of Acholiland. Acholi tribal members also make up the majority of the LRA, including Kony himself. Tensions have existed between the Acholi and tribes from Uganda's southern region since the British established the protectorate of Uganda in 1894. President Museveni is a member of a southern tribal group. Kony says that he seeks to overthrow the government, give political power to the Acholi, and install a system based on the Biblical Ten Commandments.
- The UPDF and government security and law enforcement agencies fighting the LRA have also been also accused of committing atrocities against civilians. These include extrajudicial execution, torture, rape, sexual exploitation and assault, arbitrary detention, forcible relocation, and child military recruitment.
- Since 1999, the Ugandan government has sought to undermine the rebels by negotiating with Sudan, which has long provided the LRA with territory, training, and supplies. Uganda and Sudan have restored diplomatic relations and mutually promised to stop supporting rebel activity in each other's territory.
- In March 2002, the UPDF launched "Operation Iron Fist" in an attempt to defeat the LRA through military force. The UPDF was able to cut off much of the LRA's lifeline in Sudan and force the LRA leadership to release over 7,000 prisoners. However, the operation also led to a dramatic increase in kidnappings and attacks by the LRA with an estimated 10,000 children abducted since June 2002.
- Attempts by local and international civil society organizations to establish a peace process have repeatedly failed. In March 2003, the LRA unilaterally declared a cease-fire and agreed to meet with government representatives. However, neither party honored the cease-fire, which was never negotiated with the Museveni regime.
- In June 2003, the United States launched the Northern Ugandan Peace Initiative (NUPI). The plan seeks to establish small agreements between the government and the LRA in

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order to build trust and confidence in an effort to lay the foundation for a more permanent and comprehensive peace agreement later on. Due to continued violence on both sides, NUPI has, as of yet, made little progress.

Why is the ICC looking at the situation in Uganda?

Uganda signed the Rome Statute on March 17, 1999, and ratified it on June 14, 2002. Article 14(1) of the Statute authorizes States Parties to refer a situation to the ICC in which one or more of the crimes within the jurisdiction of the Court have been committed since July 2002. President Museveni referred the situation in northern Uganda to the ICC in January 2003. The Court's Prosecutor, Luis Moreno Ocampo, has determined that there is a sufficient basis for an examination into the situation in northern Uganda in order to determine if the Court should pursue an official investigation.

Why can't the LRA rebels be tried in Uganda's national courts?

As a court of last resort, the ICC can proceed with an investigation and prosecution when a state is unable or unwilling to do so. President Museveni's referral of the situation in northern Uganda to the ICC suggests that the Ugandan national judicial system is either unwilling or unable to pursue this case. Also, because Uganda's national criminal laws are not in accordance with the ICC Statute's definitions of international crimes, its courts might not be able to try individuals accused of international crimes. Furthermore, Uganda is deeply divided between its southern and northern regions and by the conflict itself. Thus, it is unlikely that any investigation and subsequent prosecution of the LRA leadership or of government or military personnel by the national judicial system would be viewed throughout the whole country as impartial.

Will the ICC investigation interfere with the amnesty process currently underway in Uganda?

The 1999 Amnesty Act, which grants amnesty and resettlement packages to rebels who disarm and denounce the rebellion, was set to expire on January 17, 2004, but was extended until April 2004. Museveni announced in January 2004 that he is planning on amending the law to exclude high-level LRA officers.

Would the ICC disrupt the peace process underway between the LRA and the government by taking up this situation?

Some observers and NGOs are concerned that excluding senior LRA leadership from the general amnesty and threatening them with ICC prosecution will make any peace process impossible. However, attempts to establish peace between the LRA and the government have repeatedly failed. Currently, the parties are not talking and civilians continue to be slaughtered. Moreover, since the ICC Prosecutor will only pursue the most senior of those responsible for these atrocities, regular combatants on both sides will have no disincentive to help the Court and to work for peace. The ICC was not designed to prosecute low-level offenders who may have been abducted and indoctrinated into the LRA or UPDF organizations. It also has no authority to prosecute offenders under the age of 18, who account for a large number of LRA rebels and some UPDF forces.

Won't arresting the LRA leaders mean more military action and the suffering it causes to civilians? If there are no arrests, what is the use of the ICC being involved in Uganda?

Military action is one way to arrest an accused, but many defendants in the Yugoslavia and Rwanda tribunals were apprehended through other means. Charges and indictments by an international tribunal turn a suspect into an international pariah or fugitive and induce other states to offer their assistance in capturing the suspect. It is likely that other countries, regardless of if they are States Parties to the Court, would be willing to help apprehend those indicted by the ICC. For example, due to Sudan's promise to cooperate in efforts to battle the LRA, Sudan may be willing to assist the Court in apprehending Kony and other LRA leaders.

If a suspect avoids arrest for an extended period of time, the Court still has the capacity to act vigorously on his/her case. The Court is designed and empowered to hold a complete and public indictment hearing to collect and assess evidence and testimony regarding the charges against the suspect. This creates an extensive, public judicial record preserving evidence of the suspect's actions and the circumstances in which they occurred. Such a record makes it easier and more compelling for countries to arrest the suspect. It also helps to meet the need for victims and survivors to hear their story told and to know the world is listening.

By investigating the situation in northern Uganda, is the ICC interfering in an internal conflict on behalf of one party to it?

The primary purpose of the ICC is not to resolve conflict, but to investigate, try, and punish the perpetrators of the most heinous crimes – crimes against humanity, war crimes, and acts of genocide. The Court is obligated to try those guilty of committing these crimes regardless of which side of a conflict they belong to. The referral of the situation in northern Uganda gives the Prosecutor an opportunity to investigate, try, and punish any perpetrators of crimes that fall within the Court's jurisdiction. The Prosecutor does have discretion, which includes the right to decide whether to begin or to continue with a case if he concludes that to do so would not be in the interests of justice.

The referral by a State Party to the ICC Prosecutor of the situation in northern Uganda shows the Court operating according to the intent of its framers. The Court's Prosecutor has carefully concluded that there is a sufficient basis for an initial examination into the crimes committed in northern Uganda in order to determine if an investigation should be conducted. He also expressed his commitment that his examination "will be carried out in an independent and impartial way, with paramount importance being given to the interests of victims." According to Article 54(1) of the Rome Statute, the Prosecutor is required "to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally." In addition, according to Article 42(1) of the Statute, "the Prosecutor shall act independently" and "A member of the Office shall not seek or act on instructions from any external source." These provisions within the Statute serve to prevent the Court from interfering in an internal conflict on behalf of one party to that conflict.

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