

AMICC

QUESTIONS AND ANSWERS ON THE UGANDAN ARREST WARRANTS

Who was named in the arrest warrants?

The Court issued arrest warrants for five leaders of the Lord's Resistance Army. The individuals include Joseph Kony, leader of the LRA; Vincent Otti, LRA Deputy Commander in Chief; Okot Odhiambo, LRA Deputy Army Commander; Dominic Ongwen, LRA Brigade Commander; and Raska Lukwiya, LRA Army Commander.

What crimes are the individuals accused of committing?

They are accused of committing crimes against humanity and war crimes, under articles 7 and 8 respectively. The investigation was confined to the six attacks that occurred on the territory of Uganda in a two-year period, from July 2002 until July 2004. The alleged crimes committed include murder, rape, enslavement, sexual enslavement, inhumane acts of inflicting serious bodily injury and suffering, cruel treatment of civilians, intentionally directing an attack against a civilian population, forced enlisting of children, and pillaging.

Why were the arrest warrants unsealed now and remain heavily redacted?

The arrest warrants were issued by the Pre-Trial Chamber II on July 8, 2005 but remained unsealed to ensure the safety and psychological or physical well being of victims, potential witnesses and their families, and to prevent the disclosure of their whereabouts and their identities. After the Court made arrangements to implement appropriate measures to protect the victims and potential witness, the Pre-Trial Chamber II decided to unseal the warrants. They remain in a heavily redacted form to ensure the protection of victims and witnesses from reprisal attacks.

The Prosecutor may also have held off requesting arrests warrants for a year to provide Betty Bigombe, former Minister of State for Pacification of the North and leader of the peace negotiations, enough time to negotiate peace settlement with Kony. These talks are said to have now failed and the LRA continues to fight and shows no interest in laying down their arms.

The Prosecutor may have also waited until an agreement was signed between the Ugandan and Sudanese governments to cooperate in capturing Kony. The agreement, valid for a month from October 7, 2005, allowed Ugandan forces to search for the LRA rebels in Sudan. Sudanese forces and Sudan People's Liberation Army (SPLA) continue aid Uganda in the pursuit, and the Uganda People's Defense Force (UPDF) is still present in Sudan in its search for Kony.

The Prosecutor has fought the PTC's redaction of the arrest warrants. He believes it hinders his ability to gain international support and is also destructive to transparency. However, the PTC decided on October 28, 2005 that the Prosecutor could not appeal this decision under the Rome Statute and left the document redacted to promote security for the victims.

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What actions will the Court take following the arrest warrants?

After the capture of an individual or the person's surrender, the Pre-Trial Chamber II will hold a hearing to confirm the charges (indictment proceedings). At this time, the Pre-Trial Chamber II can confirm the charges and commit the person to the trial; decline to confirm the charges; or adjourn the hearing and ask the Prosecutor to consider providing further evidence, conduct further investigation or amend the charges because the available evidence appears to show a different crime.¹

If the ICC is unable to capture the individual, the Pre-Trial Chamber can also hold a confirmation of charges meeting in absentia, to confirm the charges on which the Prosecutor is seeking to try the person. The Prosecutor must demonstrate that the person fled or cannot be found and all reasonable steps have been taken to secure his or her presence before the Court. Counsel shall represent the person in absentia.²

Will the ICC be able to arrest the leaders of the LRA?

Although the ICC does not have its own police force, State Parties to the Court under article 59 agree to use their respective national authorities to arrest suspected perpetrators and transfer them to the Court. In September 2004, the Prosecutor concluded a cooperation agreement with Ugandan governmental bodies to facilitate investigations and execute arrest warrants.

In addition, both Sudan and the Democratic Republic of Congo (DRC) were served with the arrest warrants. DRC is a party to the ICC and is required to cooperate to apprehend suspected individuals on its territory. Sudan, however, is not a party to the ICC and is not required to cooperate. However Sudanese First Vice President Salva Kiir Mayardit said Sudan would turn Kony over to the ICC if he were found in Sudan. Sudan further agreed to let the Ugandan army to search for the individuals in Sudan and would assist with the Sudan People's Liberation Army. A small number of LRA rebels led by Vincent Otti crossed over to the DRC, but after facing a mounting deployment of Congolese and MONUC forces (UN peacekeeping force), returned to Sudan. On February 14, 2006, the UPDF found Kony's camp southwest of Juba, Sudan. Four of Kony's bodyguards were killed in the UPDF attack, but he escaped. It is believed that he is now moving back to the DRC.

How will the arrests warrant impact the peace negotiations?

The impact of arrest warrants on the situation in Uganda is not clear. Betty Bigombe, the principle negotiator, came close to brokering a ceasefire agreement between the LRA and the government last year but has been unsuccessful in arranging further negotiations. She and Peter Onega, head of the Uganda Amnesty Commission, have been critical of the arrest warrants. They believe that the warrants will make it impossible to negotiate a peace agreement and may escalate the violence. The Ugandan government has expressed its commitment toward negotiations and support for Bigombe. And the Amnesty will continue be given to the rebels who

¹ Rome Statute, Article 61(7) (a), (b) & (c).

² Rome Statute, Article 61 (2) (b).

will disarm and renounce the rebellion. However, the five individuals under warrant of arrest will be treated differently and may not be eligible to receive amnesty as outlined in the Act.

Can the Prosecutor stop the investigation and prosecutions?

The Prosecutor can suspend his investigation under Article 53 of the Rome Statute if he feels that it is in interests of justice to do so. Article 53(2)(c) states that if “a prosecution is not in the interests 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; and his or her role in the alleged crime... the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral... or the Security Council... of his or her conclusion and the reasons for the conclusion.” This decision can be reviewed by the Pre-Trial Chamber on its own motion, or at the behest of the Security Council.

What happens if the ICC fails to arrest the individuals?

The ICC, unlike previous international courts, is a permanent institution and hence has no time restrictions in its investigations and prosecutions. The Court will pursue suspected individuals until they die, are tried either by the ICC or another country, or the Prosecutor decides to suspend prosecution if he feels that it is in the interest of justice to do so. Also, the Pre-Trial Chamber can hold a hearing, in absence of the person charged, to confirm the charges. During this hearing, the person in absentia will be represented by counsel.

Will the ICC investigate crimes allegedly committed by the Ugandan People’s Defense Forces (UPDF)?

The Court is required to assess a situation in a country as a whole and not restrict investigations to one side. As investigations are ongoing, the Court is looking into all crimes committed on Ugandan territory since July 1, 2002. If evidence of crimes committed by the Ugandan army rises to a level triggering the Court’s jurisdiction, the Prosecutor can request that the Pre-Trial Chamber issue arrest warrants for the suspected individuals.