

Question and Answers on the ICC Investigation in Northern Uganda

How did the situation in Northern Uganda come before the International Criminal Court?

Uganda signed the Rome Statute of the International Criminal Court (ICC) on March 17, 1999 and ratified the instrument on June 14, 2002. As a State Party to the ICC, Uganda has consented to the Court's jurisdiction for any crimes that occur after July 1, 2002. Although Prosecutor Luis Moreno Ocampo identified Uganda as an area of concern in July 2003, an investigation was not launched until after Uganda referred the situation to the Court in December 2003. On July 29, 2004, the Prosecutor determined that there was a reasonable basis to initiate an investigation.

Who are the principle actors in the conflict?

On one side is the Lord's Resistance Army (LRA), a rebel group led by self-proclaimed "prophet" Joseph Kony, who seeks to overthrow the government and install a system based on the Biblical Ten Commandments. On the other side is the government of President Yoweri Museveni and his army, the Ugandan People's Defense Forces (UPDF).

At what stage is the case?

After the Prosecutor identified the principle perpetrators, he went to the Pre-Trial Chamber of the Court to request issuance of arrest warrants. On July 8, 2005, sealed arrest warrants were issued for five senior members of the Lord's Resistance Army: Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen. They are accused of committing crimes against humanity and war crimes. The warrants were unsealed on October 13, 2005. As LRA crimes were found to be of the highest gravity, these were investigated first. If the LRA commits additional crimes in 2006, or if another group commits crimes of similar gravity, these will be investigated and prosecuted as well.

The warrants have been served on the governments of Uganda, the Democratic Republic of Congo and Sudan. When the persons surrender or are arrested and brought before the Court, the Pre-Trial Chamber will conduct a confirmation of charges hearing and then transfer the case to the Trial Division. If certain persons cannot be located and arrested, the Court may confirm their charges in absentia.

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

Although the ICC does not have its own police force, the States Parties to the Court agree to use their respective national authorities to apprehend suspected perpetrators and transfer them to the Court. In September 2004, the Prosecutor concluded cooperation agreements with Ugandan governmental bodies to facilitate investigations and execute arrest warrants. In addition, the fact that the UN Security Council referred the situation in Darfur, Sudan to the ICC may have a lasting positive effect in apprehending members of the LRA who have fled into Sudan. The LRA leaders are currently avoiding arrest by moving between Uganda, Sudan, and the DRC. The governments of Uganda and Sudan have openly discussed how they can aid one another in the capture of those committing atrocities in both of their countries.

Will the Amnesty Act inhibit or even prohibit the investigation?

In an effort to entice members of the LRA to end the fighting, the Ugandan Amnesty Act was passed in 2000. The Act offers blanket immunity to rebels who disarm and renounce the rebellion. There has been some contention as to whether the ICC can allow the Act to supercede the work and mandate of the Court. The Prosecutor has stated that he is mindful of efforts to promote dialogue between the different actors in the conflict in order to achieve peace and has acknowledged his willingness to consider the Act in his investigations and prosecutions.

What is the Court's position on the prosecution of child soldiers?

As provided for in the Rome Statute, the ICC cannot prosecute minors under the age of 18 at the time of the alleged commission of the crime. This is particularly important to the situation in Northern Uganda since the LRA has been accused of abducting, indoctrinating and physically and sexually abusing young children. Children make up 85 - 90% of LRA fighters, most of whom are kidnapped between the ages of 11-15 and forced to join the LRA.

Why can Uganda not prosecute the crimes alone?

While the country has a relatively well functioning criminal justice system, it could not operate at a level necessary to support the arrests of LRA leaders and the trials of their crimes. Uganda's criminal code is not wholly in accordance with the Rome Statute's requirements, and hence Ugandan courts may be unable to prosecute perpetrators of atrocities. Ugandan courts may also be incapable of appearing neutral to victims. Civilians may perceive any prosecutions as biased because President Museveni exercises considerable control over the judiciary. Finally, the Ugandan judicial system lacks security measures for victims that would encourage them to testify against the perpetrators or come forward with evidence. The ICC is in a unique position to provide both victim protection and neutrality to prosecutions.

How has the Court dealt with the issue of peace and justice?

Probably the most difficult issue in regard to the investigation is the delicate balance between rendering justice and promoting peace. Some NGOs and other observers are concerned that excluding senior LRA leadership from the general amnesty and threatening them with prosecution will hurt any peace process. Others are concerned that executing arrest warrants will create further violence. However, these concerns must be weighed against the failure of all previous attempts to establish peace between the LRA and the government. Although the parties are currently engaged in negotiations and some LRA fighters have surrendered, the violence is far from over and the perpetrators have not been held accountable. Moreover, the Prosecutor will only pursue those most responsible for the atrocities, and will not prosecute low-level offenders who may have been abducted and indoctrinated into the LRA or UPDF organizations.

Can the Prosecutor suspend an investigation?

The Prosecutor has the power to suspend investigations under Article 53 of the Rome Statute if he feels that it is interest of justice to do so. This decision can be reviewed by the Pre-Trial Chamber on its own motion, or at the behest of the Security Council. 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... 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." If investigations in Uganda would be detrimental to the peace process, the Prosecutor can halt investigations until a future date.

What forms of outreach has the Court undertaken?

The Court has taken proactive steps to reach out to and inform Ugandans about the mandate and reach of the Court. In March 2005, a delegation of Acholi leaders, the group most targeted by the LRA, visited the ICC at the invitation of the Prosecutor and met with various officials of the Court. The Registrar and the delegation discussed what possible actions should be taken in regard to supporting victims and rendering justice. Early in 2005, the ICC opened its first field office in Kampala, Uganda, which is responsible for coordinating with local authorities and providing logistical support and assistance to the Court's staff. The field office will increase the ICC's presence on the ground, as well as disseminate more information about the Court and the investigations to Ugandans. In August, the ICC also hosted a workshop with delegates from the local councils regarding the ICC and possible public outreach venues.