

AMICC

FIRST ARREST WARRANTS ISSUED FOR LORD'S RESISTANCE ARMY

SUMMARY

On July 8, 2005, the International Criminal Court (ICC) issued sealed arrest warrants for five senior members of the Lord's Resistance Army (LRA), a rebel group in northern Uganda. The arrest warrants, unsealed on October 13, 2005, are the first warrants ever issued by the ICC. The five individuals under arrest are all high-ranking LRA members: Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen. They are accused of committing crimes against humanity and war crimes. The alleged crimes 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.¹

The arrest warrant issued for LRA leader Joseph Kony lists 33 counts, including 12 counts of crimes against humanity and 21 counts of war crimes. Vincent Otti, LRA Deputy Commander in Chief, is accused of committing 11 counts of crimes against humanity and 21 counts of war crimes. Okot Odhiambo, Deputy Army Commander, is accused of committing two counts of crimes against humanity and eight counts of war crimes. Dominic Ongwen, a LRA Brigade Commander, who is believed to have been killed on September 30, 2005 during an LRA incursion into sub-region of Teso,² is accused of committing three counts of crimes against humanity and four counts of war crimes. The arrest warrant for Raska Lukwiya, LRA army commander, lists one count of crimes against humanity and three counts of war crimes.

The arrest warrants remained unsealed until this month 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 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.

BACKGROUND

For the last 19 years, the LRA forces led by a self-proclaimed prophet Joseph Kony, have been fighting to oust President Yoweri Museveni and his army, the Ugandan People's Defense Forces. They claim to be fighting to free the Acholi people of the north by overthrowing the government and installing a system based on the Biblical Ten Commandments.

¹ Rome Statute, Article 7 (crimes against humanity) and Article 8 (war crimes).

² OCHA, IRINnews, "Uganda: ICC Issues Arrest Warrants for LRA Members," October, 7, 2005, http://irinnews.org/report.asp?ReportID=49420&SelectRegion=East_Africa&SelectCountry=UGANDA.

According to human rights groups, the LRA rebels are responsible for murdering, raping, maiming, torturing and displacing 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 are kidnapped between the ages of 11-15 and forced to join the LRA. The UN Office for the Coordination of Humanitarian Affairs (OCHA) approximates that 20,000 children have been abducted by the LRA and forced to become combatants.³ The United Nations Children's Fund (UNICEF) also reports that approximately 40,000 children are "night commuters," children who leave their rural homes at night to sleep in more populated urban areas.⁴ The war has caused thousands of deaths and the displacement of over 1.4 million people in northern Uganda.⁵

The Ugandan government, a State Party to the Rome Statute, referred its case to the ICC prosecutor in December 2003. Prosecutor Luis Moreno Ocampo launched an investigation in July 2004. On May 6, 2005, the Prosecutor filed an application to the Pre-Trial Chamber to issue arrest warrants for key perpetrators of atrocities. The governments of Uganda, Democratic Republic of Congo and Sudan were all served with the warrants following their issuance.

REACTIONS TO WARRANTS

Effects on Peace Negotiations

The Ugandan government welcomed the arrest warrants while others expressed concern about their impact on peace negotiations and the security situation in Uganda. Betty Bigombe, former Minister of State for Pacification of the North and the leader of current peace efforts who has often been critical of the ICC, acknowledged that the arrest warrants changed the dynamics of the peace negotiations and will require her to change negotiation tactics. The government has been trying to end the conflict through negotiations with the LRA since 1994, but they have been largely unsuccessful. Bigombe came close to brokering a successful peace agreement earlier in 2005, but the LRA's lack of a political agenda and clear goals ended the talks.

ICC Prosecutor Luis Moreno Ocampo waited for several months to issue warrants, providing Bigombe additional time to engage in peace talks. Refusal of the LRA to surrender prompted the Prosecutor to seek arrest warrants. The Court remains sensitive to the interests of justice. If the ICC investigation is seen as a hindrance to the end of the violence, the Court can suspend the investigation under Article 53 of the Rome Statute. The Prosecutor needs to consider all circumstances, including the gravity of crimes and interests of victims if he decides to suspend the investigation. His decision is then reviewed by the Pre-Trial Chamber.

The fact that arrest warrants were issued does not mean that the Ugandan government is not committed to establishing peace in Northern Uganda. The government has expressed its

³ OCHA, IRINnews.org, "Uganda, Waiting for elusive peace in the war-ravaged north" June 9, 2005, available at www.irinnews.org/report.asp?ReportID=47568&SelectRegion=East_Africa.

⁴ Jihun Sohn, "UNICEF Executive Director, Ann M. Veneman, highlights the plight of children caught in Uganda's conflict," The United Nations Children's Fund, July 25, 2005, http://www.unicef.org/infobycountry/uganda_27744.html.

⁵ OCHA, IRINnews.org, "Uganda, Waiting for elusive peace in the war-ravaged north" June 9, 2005, available at www.irinnews.org/report.asp?ReportID=47568&SelectRegion=East_Africa.

commitment to peace and its full support for Bigombe. The government will continue talk with rebels who are willing to renounce rebellion, while the five named individuals must be treated differently due to the international arrest warrants levied against them.

Can the Court capture those under arrest?

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. The 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. 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. The Uganda People's Defense Force (UPDF), Sudanese forces and Sudan People's Liberation Army (SPLA) continue to aid Uganda in the pursuit. 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. While four of Kony's bodyguards were killed in the attack, Kony escaped. It is believed that he is now moving back to the DRC.

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). In response to the hearing, 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.⁶

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.⁷

Why only the LRA?

While the first five arrest warrants were only issued for LRA members, the Prosecutor has made clear that his investigation would be impartial and investigate all crimes committed under the

⁶ Rome Statute, Article 61(7) (a), (b) & (c).

⁷ Rome Statute, Article 61 (2) (b).

Statute in Northern Uganda. The Prosecutor's first criterion for the issuance of arrest warrants has been gravity. As the crimes committed by the LRA were more numerous and of higher severity than those committed by the Ugandan army (UPDF), the Prosecutor decided to begin with these warrants. The Prosecutor has not ruled out possible prosecution of other groups involved in the conflict. The Prosecutor will continue to collect information and evidence concerning allegations of violence by other groups and if they meet the criteria specified in the Rome Statute, he may take appropriate steps to arrest and prosecute other individuals.

A more evenhanded approach is important for the Court's legitimacy. Investigation and possible prosecution of government forces will strengthen the Court's commitment to end all impunity and prosecute perpetrators of the gravest international crimes without any distinction based on official capacity.

Relationship to Amnesties

President Museveni historically preferred a military approach to end the conflict in the North, but after a long war with no end in sight, the Ugandan government introduced a new approach. The government passed the Ugandan Amnesty Act in 2000, which provides immunity to any Ugandan who at any time since January 26, 1986 engaged in or is engaging in war or armed rebellion against the government by actual participation in combat, collaborating with the perpetrators of the war, committing any crime in the furtherance of the war or assisting or aiding the conduct or prosecution of the war or armed rebellion.⁸ Amnesty has been given to a few rebels but the Act has not achieved an end to the rebellion.

Prior to the issuance of the arrest warrants, President Museveni in a speech to Parliament on June 8, 2005, stated that he would forgive Joseph Kony if he gave up fighting.⁹ Kony and the other LRA leaders under arrest did not accept the offer. It is unclear whether they can still receive amnesty. While the head of the Uganda Amnesty Commission (UAC), Peter Onega, said if his commission were to follow Ugandan law, the five indicted individuals would still be eligible for the blanket amnesty, the Ugandan Defense Minister, Amama Mbabazi, stated that the government will continue to provide amnesty to rebels who renounce the rebellion, but that those under arrest by the ICC will not be treated the same as before the warrants.¹⁰

The Rome Statute does not explicitly address the issue of amnesty. As the Court is complementary to national criminal jurisdictions, if Uganda decides to give amnesty to the individuals under arrest, the Prosecutor will examine the issue and decide whether the actions taken by the Ugandan government satisfy the complementarity requirements under Article 17. If the Ugandan government disagrees with the Prosecutor and would like to uphold its amnesty

⁸ The Amnesty Act 2000, Part II: Article 3(1).

⁹ OCHA, IRINnews.org, "Uganda: Museveni extends olive branch to LRA leader," June 8, 2005, http://irinnews.org/report.asp?ReportID=47536&SelectRegion=East_Africa&SelectCountry=UGANDA.

¹⁰ OCHA, IRINnews.org, "Uganda: ICC Issues Arrest Warrants for LRA Members," October 7, 2005, http://irinnews.org/report.asp?ReportID=49420&SelectRegion=East_Africa&SelectCountry=UGANDA.

decisions, the government has recourse through the Pre-Trial Chamber as well. If the Prosecutor is content with the Ugandan approach, he may present the case to the Trial Chamber and seek to withdraw the charges.

Prosecutor's reaction

The documents made public regarding the arrest warrants were edited so as to not reveal the dates, locations, characteristics, and other information regarding the crimes. The Prosecutor asked that Pre-Trial Chamber II reconsider withholding information from the public on the grounds that it would impede his ability to gain international support. He argued that editing the warrants hindered the Court's ability to proceed with transparent and public hearings. The PTC II rejected to hold a hearing on this and refused to grant him leave to appeal the decision. The judges contended that the OTP had not submitted a reaction to the PTC's first decision within a five-day time period as Rule 155(1) of the Rules of Procedure and Evidence states the Prosecutor must do to ask for leave to appeal. The decision also stated that withholding the information was necessary to protect the victims from retaliation attacks at that point in time.

Increased violence?

After William Swing, a veteran US diplomat and head of the UN peacekeeping mission in the Democratic Republic of Congo, told the UN Security Council in a closed session about the issuance of arrest warrants, notes from this conference were leaked to the press before the ICC had wished to make the news public. The Prosecutor feared that the news of arrest warrants would be detrimental to the safety of victims and was also concerned that it would undermine future investigations. While some believed this would not be the case because the LRA leaders had dispersed, the Prosecutor's fears have seemed somewhat valid. However, while the number of LRA attacks on humanitarian workers has increased, this may not be a direct result of the issuance of warrants.

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