

## *UPDATE ON THE CONFLICT IN UGANDA AND THE SITUATION BEFORE THE INTERNATIONAL CRIMINAL COURT*

### The Conflict in Uganda

Uganda's northern region has been engulfed in a violent conflict for 22 years. On one side is the Lord's Resistance Army (LRA), a rebel group led by self-proclaimed mystic "prophet" Joseph Kony, which seeks to overthrow the government. On the other side is the Ugandan government of President Yoweri Museveni and his army, the Ugandan People's Defense Forces (UPDF).

The conflict began in 1986 when President Museveni took power. Around that time, a number of groups formed in the Acholi region, one of them being the LRA. The LRA, which is supposedly dedicated to overthrowing the government of Uganda, instead has been brutalizing the Acholi population in northern Uganda as well as the Langi and Teso tribes. The rebel group is primarily composed of Acholi tribal members.

### The Situation Before the ICC

Uganda is a State Party to the Rome Statute of the International Criminal Court (ICC) which gives it the right to refer situations, including on its territory, to the Court. On December 16, 2003, Ugandan President Yoweri Museveni, with the encouragement of ICC Prosecutor Luis Moreno-Ocampo referred the situation concerning the Lord's Resistance Army (LRA) to the ICC. The ICC's Office of the Prosecutor (OTP), however, notified Uganda that the ICC could only accept referral of entire situations and would therefore impartially investigate all grave crimes committed throughout Uganda's territory since the entry into force of the Rome Statute on July 1, 2002. Uganda's referral was the first in the Court's history. Following the referral, the Prosecutor analyzed the situation in northern Uganda in accordance with the Statute and on July 28, 2004, took the decision to open a formal investigation.

On May 6, 2005 the Prosecutor filed an application before Pre-Trial Chamber II for sealed arrest warrants for five of the most senior commanders of the LRA in relation to crimes against humanity and war crimes. The Prosecutor requested sealed arrest warrants to ensure the safety or physical or psychological well-being of victims, potential witnesses and their families, and to prevent the disclosure of their whereabouts and their identities. The Court would have to establish for the first time the recurring programs for this protection. The Pre-Trial Chamber issued the five sealed arrest warrants on July 8, 2005. These were unsealed on October 14, 2005 once Pre-Trial Chamber II was satisfied that the Court had made the necessary arrangements to implement measures to protect the victims and potential witnesses.

Four of the LRA leaders are still at large, one of which is rumored to be dead, and a fifth leader named by the Court has been confirmed dead. If they surrender or are arrested and brought before the Court, the Pre-Trial Chamber will conduct a confirmation of charges hearing. The confirmation hearing is a process equivalent to indictment in the common law system. The judges decide whether or not there is enough evidence to support the charges against the suspects and justify a trial. They do not decide on the suspects' innocence or guilt. If the Pre-Trial Chamber confirms the charges, the defendants will be tried before a Trial Chamber.





## The ICC Arrest Warrants

**Joseph Kony**, Chairman and Commander of the LRA, is suspected of twelve counts of crimes against humanity, including murder, enslavement, sexual enslavement, rape and inhumane acts of inflicting serious bodily injury and suffering. In addition, he is named for twenty-one counts of war crimes, including murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape, and forced enlistment of children.

On August 28, 2008 the U.S. added Joseph Kony's name to its "specially designated global terrorists" list, which bans U.S. citizens from dealing with Kony and means that any assets Kony has in U.S. institutions will be frozen. The move aims to restrain support for the LRA by individuals, groups or countries, and increase the pressure on Kony to sign a peace deal.

**Vincent Otti**, Vice-Chairman and second in command of the LRA, is suspected of eleven counts of crimes against humanity, including murder, sexual enslavement and inhumane acts of inflicting serious bodily injury and suffering. He is also named for twenty-one counts of war crimes, including inducing rape, intentionally directing an attack against a civilian population, forced enlisting of children, cruel treatment of civilians, pillaging and murder.

In October 2007, sources in the Ugandan military reported that Otti was killed following a disagreement with Kony over the peace process. On January 23, 2008, Kony confirmed that Otti was dead but offered no details. In October 2008, the Prosecutor stated that the OTP had confirmed Otti's death, however the arrest warrant still stands since Otti's death has not been verified by the Pre-Trial Chamber.

**Raska Lukwiya**, Army Commander in the LRA, is suspected of one count of crimes against humanity, namely enslavement, as well as for three counts of war crimes, including cruel treatment of civilians, intentionally directing an attack against a civilian population and pillaging.

On August 12, 2006, Lukwiya was killed in fighting with UPDF. Charges against him were dropped by the ICC after the Court confirmed his death.

**Okot Odhiambo**, Deputy Army Commander in the LRA, is suspected of two counts of crimes against humanity, including murder and enslavement, as well as for eight counts of war crimes, including murder, intentionally directing an attack against a civilian population, pillaging and forced enlisting of children. In January 2009, Odhiambo announced that he planned to defect from the LRA and return to Uganda provided that the Government of Uganda agreed not to turn him over to the ICC. The International Organization for Migration indicated it had agreed to act as an observer if Odhiambo sought safe passage to Uganda. To date, Odhiambo has not defected.

**Dominic Ongwen**, Brigade Commander in the LRA, is suspected of three counts of crimes against humanity, including murder, enslavement and inhumane acts of inflicting serious bodily injury and suffering. In addition, he is named for four counts of war crimes, including murder, cruel treatment of civilians, intentionally directing an attack against a civilian population and pillaging. Ongwen was reported killed on September 30, 2005,





however, this information was dismissed by the ICC, following DNA tests on the corpse reported to be that of Ongwen. The OTP considers him to be at large.

## Alleged Abuses by the Lord's Resistance Army

The OTP alleges that the LRA leaders are responsible for war crimes and crimes, including; committing mass killing of civilians in northern Uganda; beating and mutilation of civilians; and cutting off of civilians' hands, feet, noses, ears, lips and breasts. According to the OTP, the LRA commits these brutal acts as a way to promote fear among the population and to deter any cooperation with the government.

Children have suffered significantly due to the LRA's alleged abuses. Children make up 85-90% of LRA fighters. According to UNICEF, some 20,000 children have been abducted by the LRA and forced to become combatants.

According to Human Rights Watch reports,<sup>1</sup> the LRA tends to pick children around the age of 14 to 16, yet, it is not unusual that children as young as eight or nine, boys and girls alike, are abducted.

They tie the children to one another, force them to carry heavy loads of looted goods and march into the bush across the Sudanese border to a LRA camp. The children who resist, cannot keep up, become tired, ill, or try to escape are killed. If a child attempts to escape for instance, the rebels force the other children to kill him/her with clubs or machetes. Any child who refuses to kill the would-be escapee may also be beaten or killed. On their way to the LRA camp in Sudan, a lot of children die as a result of dysentery, hunger and thirst.

The children who make it to the camp are trained as soldiers. Once trained, the children are forced to fight in Uganda against the Ugandan government army and in Sudan against the Sudan People's Liberation Army (SPLA). Those who refuse to fight are beaten or killed by the rebels. They are also forced to loot villages and abduct other children.

The girls are forced into sexual slavery as "wives" of LRA commanders. They are subjected to rape, unwanted pregnancies and the risk of sexually transmitted diseases.

The few children who manage to escape often have nowhere to go as their villages may have been destroyed and families may have been killed or fled. Those who do have a place to go home to are often hesitant to do so for fear of reprisals against them or their families and ostracism by community members who blame the children for the rebel atrocities.

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<sup>1</sup> Human Rights Watch / Africa, Human Rights Watch Children's Rights Project, *The Scars of Death, Children Abducted by the Lord's Resistance Army in Uganda*, September 1997; Human Rights Watch, *Stolen Children: Abduction and Recruitment in Northern Uganda*, Vol.15, No.7(A), March 2003.





## Alleged Abuses by the Ugandan People's Defense Forces

As a result of the conflict, more than 1.9 million people have been forced from their homes in northern Uganda. Many of those displaced live in internal persons camps and are susceptible to both LRA and UPDF abuses.

The UPDF has been accused of committing atrocities against civilians. According to Human Rights Watch reports<sup>2</sup>, soldiers have killed a large number of civilians. Civilians that happen to be outside the camps are often killed on the assumption that they are rebel collaborators. Some civilians are also deliberately killed or die as a result of intense beating inside the camps. Those alleged to be rebel collaborators are often detained and at times tortured as part of the interrogation process. In addition, women and girls are the frequent victims of rape and other sexual abuses inside and outside the camps.

Because civilians fear retaliation, they are reluctant to report abuses by the UPDF. Furthermore, it is argued that the government has failed to meaningfully prosecute its soldiers responsible for abuses against civilians.

The Prosecutor said that the OTP would impartially investigate all grave crimes committed in Uganda, including crimes committed by the UPDF. However, in August 2008, an official of the Court in Uganda said that the Prosecutor did not have sufficient evidence to charge UPDF commanders, although the Prosecutor has not since indicated whether the investigation has continued.

## Efforts Toward Ending the Conflict

### *The Amnesty Act*

In 2000, in order to encourage a peace agreement with the LRA, the Ugandan Parliament passed the Amnesty Act. This confers immunity from prosecution on all Ugandans engaged or engaging in war or armed rebellion against the Ugandan government since January 26, 1986. To benefit from amnesty, those engaged in acts of rebellion must report to a local authority, renounce and abandon the rebellion and surrender all weapons in their possession. The Act has encouraged many LRA combatants to escape and surrender. As of 2005, some 15,000 combatants, belonging to the LRA and other rebel groups, have been granted amnesties. Most of those granted amnesties, though not all, receive a resettlement package which includes a sum of \$150 dollars, a mattress, a blanket, a hoe and seeds.

### *Military action*

During much of the 1990s the LRA was mostly based in southern Sudan. The group enjoyed the Sudanese government's support, including training and supplies, due to Uganda's support of the Sudan People's Movement/Army (SPLM/A), a Sudanese rebel group. In 1999, Uganda and Sudan entered into an agreement to stop supporting rebel activity in each other's territory. In March 2002, the UPDF, with the assent of the Sudanese government, launched "Operation Iron Fist" inside southern Sudan in an attempt to defeat the LRA through military force. The UPDF was able to cut off some of the LRA's lifeline in Sudan but failed to destroy

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<sup>2</sup> Human Rights Watch, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, Vol.17, No.12(A), September 2005.





all of the LRA bases there.<sup>3</sup> Many LRA rebels retreated to Uganda. Attacks against civilians and abductions dramatically increased following the operation.

### *Failed peace negotiations*

There have been efforts to reach peace between the LRA and the Ugandan government, yet, none have been successful so far. In March 2003, the LRA unilaterally declared a ceasefire and sought to meet with government representatives. Neither party honored the ceasefire, thus negotiations never took place.

In November 2004, Betty Bigombe, former Ugandan Minister of State for Pacification of the North, began discussions with top LRA commanders and brokered a pledge by the UN to provide food for the LRA, a condition of their participation in peace talks. On November 15, 2004, President Museveni declared a seven-day ceasefire with the LRA, valid in government designated zones, which was subsequently extended several times until the end of December. Museveni instructed LRA soldiers to assemble in these areas to begin peace discussions with the government. Both parties agreed to sign a draft document of a general ceasefire by the end of December, but the LRA asked for more time to look over the document. On December 31, 2004, the extended 47-day ceasefire ended without an agreement.

On February 3, 2005, Museveni agreed to a limited 18-day ceasefire, but LRA attacks increased. Later in the month, LRA chief's negotiator Sam Kolo surrendered, renounced the LRA and defected to the Ugandan government. The ceasefire ended and LRA attacks increased. In spite of the enduring failure of peace negotiations, the government continued to maintain contact with the LRA.

### *The LRA in the Central African Republic (CAR)*

On February 18, 2008, an estimated 189 LRA rebels entered the CAR. It has been reported that the LRA is relocating to the southeastern region of the CAR, which is controlled by the rebel Popular Army for the Restoration of Democracy (APRD). The APRD is a group which is fighting the CAR President, General Francois Bozize. UN officials reported that in March 2008, LRA rebels attacked villages, raped women and took 150 hostages, including 55 children.

### *LRA in the Democratic Republic of Congo (DRC)*

The LRA was first been reported crossing into the DRC in September 2005. By May 2006, the UPDF reported that about 95% of the LRA rebels in Southern Sudan had relocated to the DRC. Since then, the rebels have been in hiding in the Garamba National Park in eastern DRC. According to the United Nations peacekeeping mission in the DRC (MONUC), the LRA has abducted some 200 civilians. Most recently, on September 19, 2008, it was reported that the LRA abducted another 40 school children. In August 2008, the DRC said it would participate in military actions with Uganda and Sudan against the LRA. On September 9, the DRC army, with the support of MONUC, announced that it was deploying its troops to contain the rebels in the Garamba National park. The LRA reacted quickly by saying that its forces would repel any attacks on its camps. The Ugandan Army carried out military operations in Garamba National Park beginning in December 2008 to

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<sup>3</sup> In its 2002-2003 report, the *International Institute of Strategic Studies* noted that the LRA has 1,500 fighters. Out of 1,500, only 200 are in Uganda, the rest are in Sudan.





attempt to rout out LRA leaders. The offensive allegedly destroyed LRA command operations but failed to capture Kony and caused significant casualties.<sup>4</sup> It is alleged that Kony is still in the DRC.

### *The Juba Talks*

On July 14, 2006, talks began in Juba, Sudan between delegations from the Ugandan government and the LRA. The Vice President of Southern Sudan, acted as the chief mediator. After a month and a half of negotiations, on August 26, the two parties signed a truce, whereby LRA rebels had to leave Uganda and their bases in Sudan and the DRC to gather in specified zones, Owiny Ki-Bul and Ri-Kwangba, where they would be protected by the Southern Sudanese government. The Ugandan government also promised not to attack the LRA. It was decided that talks on a comprehensive peace agreement would begin afterwards. Talks were delayed.

On September 23, 2006 the LRA claimed that the UPDF attacked their forces at one of protected zones and threatened to end the negotiations. The Ugandan government denied these accusations. They later proved unfounded and it was in fact established that the LRA had moved away from the protected zone, thus breaching the agreement. The talks between the parties became weaker. The LRA and the Ugandan government signed another truce on November 1, whereby the LRA had to regroup in the two protected zones. The truce was renewed on December 18 for another two months.

Before returning to Juba to continue the peace talks, the LRA demanded that South Africa, Kenya and Mozambique agree to join the talks. The three countries agreed and the next round of talks was held on April 13-14, 2007. It was agreed that the ceasefire would be extended until June 30.

Talks resumed in May 2007, and on June 29, the parties agreed to combine both the formal legal system and traditional mechanisms to achieve accountability and reconciliation for crimes committed by both the LRA and the Ugandan government. The government delegation stated that it would try to convince the ICC to drop the arrest warrants by showing that this agreement would ensure that those who committed the crimes would be held accountable and punished accordingly.

The United States and the European Union joined the negotiations as observers on January 29, 2008. The talks resumed the next day and the ceasefire was extended until February 29. The two parties signed a deal on accountability and reconciliation on February 19, whereby they agreed to set up a special war crimes court. It was agreed that the special court would deal with serious crimes, while traditional justice would deal with lesser offences.

On February 28, 2008 the LRA requested that the ICC arrest warrants be lifted before signing a final peace deal. Kony said he would never sign otherwise. The LRA requested the Ugandan government to ask the United Security Council and the ICC to have the warrants lifted. In response, the government said that this would not be possible until a full demobilization of the rebels had occurred.

On February 29, 2008 an accord on Disarmament, Demobilization and Reintegration was signed, thus leaving the signing of the peace deal as the missing part of the puzzle. The final peace deal was to be signed on March

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<sup>4</sup> Jeffrey Gettleman and Eric Schmitt, The New York Times, *U.S. Aided a Failed Plan to Rout Ugandan Rebels*, February 6, 2009.





28. The implicit agreement between the LRA and the government was that Kony would not be arrested and transferred to the ICC. The signing was delayed from March 28 to April 10. On April 10, Kony refused to sign and demanded clarification on the operation of the traditional justice and the special war crimes court. Kony later suspended the peace talks claiming that he had been misled about the terms of the solution to resolve the conflict.

Since April 2008, the LRA is accused of having resumed abductions of civilians and of having acquired new arms in Chad. Some 1,000 new recruits have been added to the LRA forces. Moreover, the Ugandan government has become impatient with LRA's actions and failure to sign the final peace deal. The spokesman of Uganda's peace team said that the Uganda authorities will not engage in negotiations, but rather, expect Kony to sign the agreement.

On May 26, the Ugandan government set up the special war crimes court with the mandate to try the LRA in an alleged attempt to convince the ICC to withdraw its indictments against the rebel leaders. Little action, including the naming of judges, has been taken regarding the special court because no agreement has been signed yet. On September 17, 2008 the head of the special war crimes court, Justice Dan Akiiki-Kiiza, clarified that the special court will not try soldiers from the UPDF accused of human rights abuses. He insisted that the mandate of the special court is restricted to the prosecution of LRA leaders.

On June 20, 2008 UN Security Council members indicated a willingness to consider any decision taken by the Ugandan government to suspend Kony's indictment by the ICC and put him in trial in Uganda.<sup>5</sup>

On July 3, Kony announced the reshuffling of his negotiating team. Among other changes, he reinstated David Matsanga, who was the former top negotiator who resigned when Kony failed to sign the peace deal. This new peace team caused an outcry and led to the resignation of half of the 13-member peace negotiation team.<sup>6</sup>

On July 5, Kony contacted via satellite telephone, UN Envoy for Uganda's conflict, Joachim Chissano, and told him he was committed to signing a final peace deal. On August 17, Kony phoned Chissano asking to meet with him before setting a date to sign the peace deal. The meeting was planned to take place in Ri-Kwangba in Sudan, near the DRC border, a week or two later, but was eventually cancelled due to a clash between the South Sudanese Liberation Army (SPLA) and the LRA.

On September 16, the chief negotiator for the LRA, David Nyekorach Matsanga, announced that Kony had decided to sign the final peace agreement between the LRA and the Ugandan government. Kony agreed to do so in spite of the fact that the ICC arrest warrants have not been dropped. However, Matsanga added that the LRA will not disarm until the government asks the Security Council to drop the arrest warrants.

On May 23, 2009 Secretary-General Ban Ki-Moon announced that the UN would suspend UN Special Envoy Chissano assignment on June 30, 2009, six months earlier than Security Council's mandate, and close his office in

<sup>5</sup> Matthew Russell Lee, Inner City Press, *At UN, Chissano Says Council Ready to Defer to Uganda on Kony, ICC as Well*, June 20, 2008, available at <http://www.innecitypress.com/un51ra062008.html>.

<sup>6</sup> Joe Wacha, Institute for War & Peace Reporting, *Kony Adds to Peace Process Turmoil*, July 3, 2008, available at <http://www.globalpolicy.org/component/content/article/207/39840.html>.





Kampala. The reason for the suspension is the failure of the LRA and the Ugandan government to sign a final peace deal.

Under the Rome Statute, the Security Council may ask the Court to defer an investigation or prosecution for a year at a time and the ICC must honor this request. The Security Council cannot require the ICC to drop the arrest warrants against the LRA leaders. In order to have the arrest warrants dropped, Uganda would need to make a formal request to the Chamber dealing with the case and demonstrate that the case is inadmissible. On March 10, 2009 Pre-Trial Chamber II of the ICC ruled that the case against Kony and the LRA leaders is admissible, though the Ugandan government and/or the defendants could challenge that decision at a later date.

### *A regional problem*

The LRA is reportedly continuing to abduct civilians, most of them children, from South Sudan, the DRC and the CAR. The abductees are forced to undergo military training in the Garamba National Park in the DRC. The LRA's recent abuses demonstrate a lack of commitment to the peace process. It appears that instead of preparing itself to disarm, the LRA is in fact building up military capacity. Because the ceasefire agreement has expired, some believe that the LRA is preparing itself for possible attacks by the UPDF.

The LRA has become a regional problem, affecting Uganda, South Sudan, the DRC and the CAR. Some human rights groups, such as Amnesty International, have called the governments of Sudan, the DRC and the CAR, with the assistance of the UN, to join forces to secure the release of those abducted and to cooperate to arrest and surrender the LRA leaders wanted by the ICC.

### The ICC: A Court of Last Resort

The ICC complements national courts. The Rome Statute provides that national courts preserve jurisdiction to try crimes of genocide, crimes against humanity and war crimes, unless ICC judges determine that the country is unwilling or unable genuinely to investigate or prosecute. This means that if Uganda has the willingness or ability genuinely to try the defendants at the domestic level, the ICC is required to defer to it. The establishment of the special war crimes court on May 26, 2008, indicates that Uganda may carry out investigations and prosecutions of the LRA leaders at home. However, it could be argued that the special court was set up for the purpose of shielding the LRA leaders from criminal responsibility for crimes within the jurisdiction of the ICC. In any case, for the Court to drop the arrest warrants, the Ugandan government would have to make a formal request to the Pre-Trial Chamber.

### Peace and Justice

At the heart of the issue of peace and justice is the fear that providing justice through the accountability and punishment of perpetrators of crimes will hinder any existing peace process. The question is whether those who committed mass atrocities should be allowed to escape justice, at least temporarily, for the sake of peace.

When the ICC issued the arrest warrants against the LRA leaders, many thought it would thwart the peace process and instead exacerbate the conflict. However, the arrest warrants are partly responsible for bringing the LRA leaders to the negotiating table, a first step toward peace.





Some Northern Ugandan leaders have argued that the ICC was not an adequate solution. Rather, they have been advocating Mato Oput, the Acholi traditional reconciliation mechanism, for the rebels. Under Mato Oput, the rebels are accepted back into the community after a number of rituals.

Mato Oput is a public ceremony where the victim and the perpetrator stand facing each other and hold a long stick between them. An elder instructs the two not to fight again. They crush two eggs on the ground at the same time, an act which is meant to purify them. The two drink gin from the same gourd at the same time. Then, two lambs are slaughtered and both parties exchange body parts of the animals. In a final act of reconciliation, the two parties eat from the same plate.

This type of justice, however, does not necessarily reflect the wishes of all northern Ugandans. In 2005, a population-based survey on attitudes about peace and justice in northern Uganda revealed that 66% of respondents were in favor of punishing the rebels. Only 25% suggested that forgiveness, confessions to the community, and compensation may be appropriate. Of those who had heard of the ICC, 91 % believed that the Court would contribute to peace and 89% believed it would contribute to justice.<sup>7</sup>

Also, the Acholi are not the sole victims of the LRA. The Langi and the Teso in Uganda, as well as Southern Sudanese, and most recently civilians from the DRC and the CAR have too been affected by the LRA. Therefore, the proposed Acholi rituals cannot satisfy all of the LRA's victims.

It was reported in September 2008 that Ugandan local courts, which normally deal with crimes such as theft, have adopted a new function, that is, to try former lower level rebels for war crimes. Some Ugandans are so discouraged by the regional, national and international processes for justice that they have decided to bring their case before local courts. The sentences issued by the courts include expulsion from the community and a requirement to pay for compensation. There is some backing for the local courts' new role, yet a number of victims and family members think that this form of justice is not credible.<sup>8</sup>

It should be noted that domestic courts and traditional reconciliation mechanisms can still play a major role in prosecuting human rights crimes in Uganda, along with the ICC. Because the ICC has jurisdiction only over crimes committed after July 1, 2002, Uganda will continue to be responsible for prosecution of crimes committed before that date. Furthermore, the ICC is limited in its resources and mandate such that it can only prosecute the most heinous crimes and highest level perpetrators. Ugandan courts and other traditional reconciliation mechanisms are therefore necessary and can complement and co-exist with the ICC.

*Researched and drafted by Aurélie Coppin  
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<sup>7</sup> International Center for Transitional Justice, *New Study Finds Ugandans Favor Peace with Justice*, July 25, 2005.

<sup>8</sup> Institute for War & Peace Reporting, *Villagers Confront War Crimes*, September 16, 2008.

