UPDATE ON THE ICC AND UGANDA: OUTSTANDING ARREST WARRANTS AND EFFORTS AT NATIONAL JUSTICE

ICC Case Summary

The ICC has been investigating the situation in Uganda since July 29, 2004. Uganda, which has been an ICC State Party since August 2002, referred the situation within its territory to the ICC for crimes committed since the entry into force of the Rome Statute on July 1, 2002. The Rome Statute requires referral by a country to be of an entire situation there, including crimes committed by any party or side in a conflict. Following a detailed preliminary examination, on July 29, 2004 the Prosecutor opened a formal investigation after determining that the conditions required for launching one were satisfied.

Arrest warrants for Lord Resistance Army (LRA) leaders Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Ruska Lukwiya were issued on July 8, 2005. The case is currently before Pre-Trial Chamber II. In 2005 the Chamber found that there are reasonable grounds to believe that between July 1, 2002 and 2004, the LRA leadership carried out an insurgency against the Government of Uganda and the Ugandan Army. The LRA forces, led by a self-proclaimed prophet Joseph Kony, have been fighting to oust President Museveni and the national 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. The suspects are alleged to have engaged in a cycle of violence and brutalization of civilians through acts of murder, abduction, sexual enslavement, mutilation, as well as mass burning of houses and looting of camp settlements. These qualify as war crimes and crimes against humanity at the ICC.

The case against Lukwiya ended when his death was confirmed on June 11, 2007. Kony announced Otti’s death on January 2008, but the ICC has yet to confirm it. Despite an ongoing search by the governments of Uganda, the Democratic Republic of Congo (DRC) and Sudan, the accused remain at large.

The United States and the Uganda Case

There has been an increased interest in the US in capturing Kony and achieving accountability of LRA leaders. President George W. Bush sent a team of 17 counterterrorism advisors to advise Ugandan troops and also provided millions of dollars’ worth of aid including fuel trucks, satellite phones and night vision goggles, to the Ugandan army. Although the LRA scattered and largely left Uganda, it regrouped in neighboring countries, such as the DRC, the CAR and southern Sudan.
On December 2008, Africa Command (AFRICOM) of the United States military helped plan an attack on Kony’s camp in DRC, but Kony escaped before the mission was initiated because he had been tipped off. In retaliation, Kony and LRA rebels reportedly killed hundreds of villagers in the DRC, known as the 2008 Christmas Massacre. Although Americans were not involved in the hostilities, advocates and villagers claim that the Ugandan and Congolese troops did very little to protect the villages.1

Since 2008, the US government has provided $33 million to support efforts to hunt down Kony and disperse the LRA. In 2011, the US provided over $600 million of aid to Uganda, and has supported programs that promote trade and investment, curb environmental degradation, encourage peaceful resolution of local and international conflicts, and promote honest and open government.2

On October 14, 2011 President Obama announced the US would send 100 military personnel to help in the effort to disperse the LRA and arrest Kony.3 Obama said that sending them was “in the national security and foreign policy interests of the United States,” authorized by a law passed by Congress in May 2010, “The Lord’s Resistance Army Disarmament and Northern Uganda Recovery Act.” This law had considerable conservative support in Congress. The military personnel sent by Obama to Uganda are operating in South Sudan, the CAR, and the DRC subject to the approval of each nation. They will not operate independently or carry out unilateral operations, and play a “strictly an advise and assist role.”4 On March 16, 2012 US Ambassador the African Union Michael Battle stated, “We need to capture [Kony] militarily. He needs to go before the International Criminal Court. He needs to be prosecuted.”

On March 23, 2012 the Africa Union announced that it would send 5,000 soldiers to join the hunt for Kony. However, in July 2012 Ugandan Col. Dick Olum, the head of a planned African Union force said that his force has not started its mission because it lacks money, troops, and equipment.5

In March 2012 Kony became a household name after Invisible Children, a US charity, released an online video that went viral, with tens of millions of hits in a matter of days.

The Search for Joseph Kony and the LRA

Currently, the estimated 200 to 300 remaining LRA fighters are scattered in South Sudan, the DRC and the CAR. Although the search for Kony continues in the dense jungles and difficult terrain, the LRA is reportedly weakening.6 The LRA is breaking into smaller groups, and for the first time the rebels are abandoning abducted women and children who cannot keep up.

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6 Id.
In the spring of 2010, Kony’s forces kidnapped hundreds of villagers in the jungles of DRC. Then, in May 2010, the Ugandan army successfully captured senior LRA commander Caeser Achellam in a clash in the Central African Republic. Achellam is not wanted by the ICC and has requested amnesty, which the Government of Uganda has not yet granted. Uganda may grant amnesty under its domestic law, but the ICC does not recognize amnesty for its proceedings.

Despite the dispatch of 100 troops and US-backed regional military efforts the LRA remains a serious threat to villagers in the DRC and CAR, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA). A total of approximately 128 LRA attacks have been reported in these regions between January and June 2012. The geographic span of these attacks, however, has reduced, as there were no reported attacks in South Sudan during this time. Since January, there were 24 reported deaths in CAR and DRC and the number of abductions in the second quarter of 2012 increased to 127 from 90 from the first quarter. As of June 30, 2012 the number of people currently displaced by the LRA is approximately 445,000.

The biggest challenge in the search for Kony and other rebels is the difficult terrain and jungle in the region. Kony has also stopped using electronic communication devices, making it even more difficult to track him.

The Other Side of the Conflict: Alleged Crimes of the Uganda People’s Defence Forces (UPDF)

There have been many atrocity crimes allegedly committed by Uganda People’s Defense Force (UPDF). The ICC is required to investigate these and determine whether they fall within the Court’s jurisdiction. Although the abuses allegedly committed by Ugandan forces have been on a lesser scale than those of the LRA, they include deliberate killings, beatings, rapes, and arbitrary detention of civilians. “Members of the Ugandan military and police commit serious crimes with impunity, particularly during politically charged demonstrations,” said Maria Burnett, a senior Africa researcher at Human Rights Watch.

Critics have raised concerns about the ICC’s fairness and have criticized the lack of action against atrocities committed by Ugandan forces. The ICC is an impartial and independent judicial system designed to try individuals for the most serious crimes. The Prosecutor is required to examine the situation objectively and thoroughly, including alleged crimes committed by individuals in the government. To date, the Prosecutor has determined that alleged crimes committed by the UPDF occurred before July 1, 2002, the date of the entry into force of the Rome Statute, and thus do not fall with the ICC’s jurisdiction.

One major purpose of the ICC is to encourage the investigation and prosecution at the national level of perpetrators of atrocity crimes. However, individuals in the UPDF and the Ugandan government have not been held publicly accountable for their abuses and violations in national courts. The Ugandan army claims individual soldiers have been prosecuted, but has not disclosed specific information about the cases.

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Instances of Violence
In September 2009, security forces killed at least 40 people during protests. Although the government and parliament promised investigations, no one has been held accountable and those responsible have not been brought to justice. The protests began when the police blocked a delegation representing the Buganda kingdom from visiting Kayunga district, as leaders of the rival Banyala ethnic group in Kanyunga opposed the visit. According to the minister of internal affairs, at least 846 people were arrested for alleged crimes and at least 24 of the rioters were charged with terrorism. The violence and alleged crimes, however, probably do not fall under the ICC’s jurisdiction because the ICC only tries the most serious crimes of genocide, war crimes and crimes against humanity.

In April 2011, Ugandan allegedly security forces suppressed with force protests over corruption and rising commodity prices, killing at least nine unarmed civilians. The protests began after Activists for Change (A4C), a non-partisan group, began “Walk to Work” protests against rising food and fuel costs and government financial mismanagement. However, none of those killed was involved in the rioting and some were not even part of the protests. Human Rights Watch found that the security forces fired randomly into the crowd and launched tear gas at people. Furthermore, the security forces beat or shot at more than 30 journalists and confiscated their recorders and cameras. Several opposition politicians were violently arrested and charged with inciting violence and unlawful assembly. No member of the security forces has been held accountable, and there is no indication that the government has fully investigate these deaths.

ICC and UPDF
In June 2010, UN Undersecretary for Children Olara Otunni accused the government of President Yoweri Museveni and the UPDF of crimes against humanity and war crimes and submitted information about these crimes to then-ICC Prosecutor Luis Moreno-Ocampo. Individuals, intergovernmental and non-governmental organizations, and any other sources can send information to the OTP. The Prosecutor is not required to act on the information that he receives, and in order for the Prosecutor to act the alleged crimes have to fall under the ICC jurisdiction and be of a certain high level of gravity. Moreno-Ocampo said that he received complaints from people in Uganda and human rights advocates about alleged atrocities committed by the UPDF, but most of the complaints were able alleged crimes that occurred before 2002, before the start of the ICC’s jurisdiction. “I follow crimes committed after July 2002, which include crimes against humanity, war crimes and genocide,” Moreno-Ocampo said.

Another issue with the ICC’s Uganda investigation is the decreasing resources allocated to the OTP. Although the investigation is ongoing, the drop in resources and lack of explanation on the progress and development of the situation are matters of concern to human rights organizations. At the end of 2009, ICC States Parties decided on a “zero-growth” budget policy for the court. According to Patrick Baudouin, president of the International Federation for Human Rights (FIDH), investigative teams are already working across more than one situation, which challenges the progress of investigations. The failure to increase resources at a time of increased activities means that there will be fewer resources for each investigation.

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11 Id.
Development of Uganda International Crimes Division (ICD)

Background
The International Crimes Division (ICD) is a division of Uganda’s High Court established in 2006 with the mandate to prosecute genocide, war crimes, crimes against humanity, and other crimes such as terrorism and human trafficking as defined in Uganda’s International Criminal Court Act (2010) and the Geneva Conventions Act (1964). After failed peace talks with the LRA in Juba in 2008, the Ugandan government nonetheless made a commitment to unilaterally carry out the terms of the peace talk as much as possible. The “Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda and the Lord’s Resistance Army” on February 19, 2008 provided for the establishment of a special division of the High Court of the Republic of Uganda.

The ICC recognizes the importance of domestic justice and that national court systems have the primary responsibility to prosecute alleged perpetrators of serious crimes. In fact, the ICC is designed as a court of last resort that is supposed to step in only when domestic courts are unable or unwilling to try perpetrators. The Prosecutor focuses investigations on those who bear the greatest responsibility for the most serious crimes of genocide, crimes against humanity and war crimes. Thus, the development and progress of the ICD is significant for the administration of justice in Uganda if the ICC and the ICD can complement each other effectively.

Uganda is party to the International Covenant on Civil and Political Rights (ICCPR), which guarantees that anyone facing a criminal charge has the right to assigned legal assistance if they cannot afford to pay. Sentences can range from a few years of imprisonment to the death penalty, and decisions made by the ICD can be appealed to Uganda’s Constitutional Court and Uganda’s Supreme Court.

In 2011, the ICD held its first trial involving serious crimes against Thomas Kwoyelo, a former member of the LRA. The ICD also has an ongoing trial of 14 people charged with terrorism for the Kampala bombings in July 2010.

The ICD’s jurisdiction is not restricted to the LRA; the ICD could try members of the UPDF and the National Resistance Army (NRA). According to the Human Rights Watch, efforts to investigate crimes committed by the Ugandan army have been inadequate, and if the ICD does investigate someone from the Ugandan army in the future, it needs to do so with impartiality. To date, no one from the Ugandan military has been tried before the ICD. In fact, Justice Akiiki-Kiiza of the ICD has said that the ICD will not try soldiers of the UPDF if they are accused of abuses because these soldiers will be tried in military courts.

First Trial: Thomas Kwoyelo
Former LRA combatant Kwoyelo was taken into custody in Garamba National Park in the DRC on March 2009, and was first held in custody of military intelligence for about three months in an undisclosed location. Although he applied for amnesty under Uganda’s Amnesty Act, he had never received a response from the Uganda Directorate of Public Prosecutions (DPP). According to the Uganda Amnesty

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Act, any rebel who “renounces and abandons involvement in the war or armed rebellion may receive amnesty.” This act effectively expired in 2012.

On July 11, 2011 the ICD opened the trial against Kwoyelo, during which the prosecution submitted 53 charges, including war crimes of willful killing, taking hostages, extensive destruction of property under the Geneva Conventions Act (1964) and murder, attempted murder, kidnapping, kidnapping with the intent to murder, robbery, and robbery using a deadly weapon under Uganda’s Penal Code. Charges against all LRA leaders wanted by the ICC also include war crimes of willful killing and pillaging under the Geneva Conventions.

These alleged crimes were committed during attacks he allegedly commanded in Pabbo and Lamogi sub-counties in Amuru District between 1993, and 2005. This includes the attack on the Pagak Internally Displaced Persons (IDP) camp on May 16, 2004 in which about 100 to 150 rebels attacked and killed 39 IDPs and five Ugandan soldiers, abducted an unconfirmed number of IDPS, and burned 544 huts.\(^\text{15}\)

Then, on September 22, 2011 the Uganda Constitutional Court ruled that the Amnesty Act was indeed constitutional and that the trial against Kwoyelo should be ceased on the grounds that he was treated unequally. The DPP subsequently appealed this decision to the Supreme Court, which has not ruled yet.

**ICC and the ICD**

The ICD and the ICC have no legal relationship, and the ICC has not sought to try people already wanted or tried by the ICC. Furthermore, the ICC’s Office of the Prosecutor has expressed its support of the ICD and met with ICD officials in late 2010 and 2011. The ICC Prosecutor noted that some incidents covered by indictments against Kwoyelo include incidents investigated by the ICC.\(^\text{16}\) If the ICD is successful, it can complement and co-exist with the ICC to effectively bring justice in Uganda.

**Conclusion**

The arrest of Joseph Kony and other LRA leaders is critical for the progress of the ICC’s case in Uganda since the Court cannot try the accused in absentia. With increased US support, and full collaboration and cooperation between Uganda and the neighboring countries of the DRC, the CAR, and South Sudan, there may be success in tracking down the accused and bringing them to the ICC.

The ICC has already made a difference in the Kony/Northern Uganda situation. According to a 2010 survey, 43% of 2,498 respondents from the Acholi sub-region believed that the ICC had helped the general situation in northern Uganda. Only 10% believed that the Court hindered in the peace and justice process. To complete its contribution, the ICC must try the LRA leaders to achieve justice and accountability.
