



Letter to Members of the U.N. Security Council

Uganda and the International Criminal Court

Later this month the Security Council may consider the situation in northern Uganda. With others, we hope that an end to this horrific conflict, which has claimed countless victims, will soon be at hand. We write now to express our hope and belief that this can be achieved without sacrificing victims' hopes for justice and undermining the independence of the International Criminal Court (ICC). More particularly, we wish to express our concern about the possibility that the Security Council may act to suspend cases involving crimes committed in northern Uganda now pending before the ICC. For the reasons explained below, we believe that such an action is unwarranted and poses a risk to international justice more broadly.

The Rome Statute of the International Criminal Court (Rome Statute) establishes an elaborate structure for resolving potential conflicts between peace and justice. An underlying premise of the Rome Statute is that justice and peace reinforce each other. This premise builds upon the Security Council's now longstanding practice: The Council has repeatedly recognized since 1993 that war crimes, crimes against humanity, and genocide constitute a threat to international peace and security and that those most responsible for these crimes must be held accountable before fair, impartial, and competent courts.

The Rome Statute nonetheless recognizes that there may be moments when it would be appropriate to suspend an investigation or prosecution for a finite period in the interests of international peace. Article 16 allows the Security Council to adopt a resolution requesting the ICC to defer an investigation or prosecution for a period of 12 months. The resolution must be made under the Council's Chapter VII authority. But there should be a heavy presumption against deferral. To defer a situation such as Uganda would undermine both justice and peace processes. As a first deferral of an ICC investigation or prosecution, it could legitimize political interference in the work of this judicial institution. It could also set a troubling precedent that would undoubtedly generate interest by accused in other situations: that indicted warlords and dictators can dictate terms of their surrender or seek Security Council assistance in requesting the ICC to defer their investigations or prosecutions. It threatens to politicize the ICC while sending a terrible message to future genocidaires.

The Government of Uganda referred crimes committed by the Lord's Resistance Army (LRA) to the ICC in December 2003, and in mid-2004 the ICC opened an investigation into serious crimes committed by all sides in northern Uganda since July 2002. In July 2005, the ICC issued international arrest warrants against Joseph Kony, commander-in-chief of the LRA, and four other LRA leaders, charging them with a catalog of egregious war crimes and crimes against humanity. (Two have since reportedly died: Raska Lukwiya in August 2006 and Vincent Otti in November 2007. There is speculation that Okot Odhianbo may have also died very recently.)

Joseph Kony is the notorious leader of the LRA who over the past 20 years has caused untold suffering and death in central and eastern Africa, most particularly in northern Uganda. The LRA are reportedly

committing atrocities currently in the Central African Republic. The LRA has been accused by the ICC of directing attacks against civilian populations in Uganda through rape, murder, abduction, sexual enslavement, mutilation, and conscripting child soldiers. Kony had long remained unwilling to negotiate towards a peace agreement. The ICC warrants are credited by those close to the talks as helping prompt him to do so.

Kony has refused to sign the peace agreement negotiated with the Government of Uganda until the ICC removes the arrest warrants. The ICC Prosecutor has rightly refused to pursue withdrawing the charges. In this setting it may be tempting to grant Kony's demand for a suspension of ICC proceedings, but this is not necessary and the costs of doing so are high. There is another, more appropriate, mechanism for addressing Ugandans' urgent desire for peace without depriving them of justice. The Rome Statute provides for complementary justice proceedings to take place at the national level if domestic courts are proven willing and able to provide justice in accordance with international standards. This means that if the Ugandan courts are able to provide a fair justice process, another route – apart from deferral – opens for the ICC suspects to be prosecuted locally in an alternative justice forum.

The Government of Uganda and the LRA have concluded agreements as part of the Juba peace talks that provide that serious crimes will be prosecuted in Ugandan domestic courts, and it is up to the ICC judges to determine whether the rigorous complementarity provisions of the ICC Statute have been satisfied. The process for investigating and trying leaders for crimes against humanity is complex, expensive, resource intensive, and requires special expertise. Incorporating the principle of complementarity is a great achievement of the Rome Statute and the process should be allowed to run its course inside the Court. Whether Uganda is able and willing genuinely to conduct fair and impartial trials is an issue to be litigated before the ICC judges. It is Uganda's burden to demonstrate that it can and will hold fair trials of high-level persons accused of crimes against humanity, and it should be encouraged to extend all efforts to establish this now that it has decided it wants to hold such trials. If it cannot, international law precludes the ICC from sending the case back to Uganda and allowing impunity for these crimes.

We ask that the Security Council not defer the situation in Uganda. In addition to legal, moral and political issues such a deferral would entail, we are concerned about other issues as well, such as who will protect victims who have agreed to testify, who will fund the enormous costs associated with a delay, and how future complementarity challenges will be resolved. We are also concerned that other peace agreements entered into by warlords and dictators have been broken, and this one will be no exception if the ICC is taken off the table for even one year. We are similarly concerned that if deferral were granted, the LRA leadership could threaten to resume violence unless the deferral is continuously renewed.

We would be happy to meet with you or members of your staff to discuss these matters further.

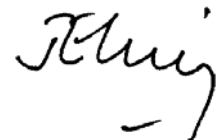
Respectfully submitted,



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