

AMNESTY INTERNATIONAL

Media Briefing

AI Index: AFR 59/008/2005 (Public)

News Service No: 274

14 October 2005

Uganda: First ever arrest warrants by International Criminal Court - a first step towards addressing impunity

Arrest warrants issued by the International Criminal Court (ICC) for five senior leaders of the Lord's Republican Army charged with crimes against humanity and war crimes committed in Uganda since 1 July 2002, presents an important opportunity to address impunity for crimes that, over almost two decades, have caused the unimaginable suffering of thousands of people in northern Uganda.

The five arrest warrants were issued by Pre-Trial Chamber II of the ICC on 8 July 2005 under seal, a technique that has been effective for international courts to improve the chances that the accused persons can be arrested before they flee and which was used in this case to "ensure the safety or physical or psychological well-being of" and to "prevent the disclosure of the identity or whereabouts of any victims, potential witnesses and their families". Unfortunately, certain persons who were informed of the existence of the warrant disclosed this information to the general public, thus increasing the risk that the accused will flee and dangers to victims and witnesses. On the evening of 13 October 2005, Pre-Trial Chamber II decided to unseal the warrants after being assured by the Prosecutor and the Victims and Witnesses Unit that "necessary and adequate protective measures for all concerned at this stage" had been taken.

The accused are Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya. The charges of crimes against humanity and war crimes are annexed to this briefing.

All governments must ensure that those charged are arrested and surrendered to the ICC immediately.

The government of Uganda, as a state party to the Rome Statute, must take immediate steps to end the impunity it has imposed on the country by bringing to justice thousands of others accused of such crimes, including Ugandan government forces and their civilian superiors. The failure of the Prosecutor to seek arrest warrants against Ugandan government forces and their civilian superiors is a matter of deep concern because the Ugandan prosecutors have failed to investigate and prosecute such crimes during the 19-year conflict.

The importance of ICC arrest warrants

The killing, maiming, abduction, forced recruitment and sexual slavery of thousands of civilians, including, in many cases children, has had a devastating impact on the local population, who over 18 years after the conflict began, continue to live in daily fear.

Bringing to justice some of the leaders accused of orchestrating and conducting the crimes before the ICC is an important step that shows the international community will not tolerate such crimes.

The decision by the Prosecutor to proceed with issuing arrest warrants and, in doing so, resisting calls to suspend the investigation in favour of further political negotiations sends a clear message that without justice, there can be no prospect of a lasting peace for the region.

Trials of those accused will enable victims of the crimes prosecuted to obtain justice and apply for reparation in proceedings which observe the highest international standards of fair trial, which does not impose the death penalty.

Cooperation is essential to arrest and surrender the accused to the ICC

Amnesty International has called on all states to cooperate in arresting and surrendering all persons charged by the ICC.

Although the persons charged are believed to be in Sudan, Uganda or the Democratic Republic of the Congo (DRC), they could flee anywhere in Africa or elsewhere in the world. States where accused persons are found, or where their assets are located, or where important evidence of the crimes exist have a responsibility to cooperate with the ICC. In most cases, however, national law requires that states must enact new legislation expressly providing for such cooperation. Unfortunately, neither Sudan, Uganda nor the DRC has enacted the necessary legislation expressly authorizing arrest and surrender or defining crimes against humanity and war crimes as crimes under national law.

Amnesty International has made detailed recommendations to all states on how to enact effective legislation implementing the Rome Statute of the International Criminal Court in *The International Criminal Court: Checklist for Effective Implementing Legislation*, AI Index: IOR 40/011/2000, July 2000, and recommendations for improvements of draft implementing legislation in *Uganda: IJP commentary on Uganda's draft legislation implementing the Rome Statute of the ICC*, AI Index: IOR 59/005/2004, 27 July 2004, and in the *Democratic Republic of the Congo: Comments and recommendations on the July 2003 draft law implementing the Rome Statute of the International Criminal Court*, AI Index: AFR 62/008/2004, 28 May 2004.

Amnesty International today renewed its call to the governments and parliament of each state to implement the organization's recommendations immediately for effective legislation permitting cooperation with the ICC and trials of any other persons responsible for such crimes in their own national courts.

The full cooperation from the United Nations (UN), in particular, in countries where UN missions have been established, is also essential to work with the ICC and the states where they are located to arrest and surrender the charged persons.

Addressing broader impunity for the thousands of crimes committed in northern Uganda

Although the steps taken by the ICC are to be supported, it must be noted that ICC trials will only cover a handful of the thousands of persons responsible for crimes against humanity and war crimes in northern Uganda and only members of the LRA, but none of the members of the government armed forces or their civilian superiors.

The LRA have committed thousands of crimes including arbitrary killings, maimings, abductions, forced recruitment and use of children as soldiers and, in particular, using them as sex slaves.

Members of government forces have been responsible for forcing children returning from the LRA, voluntarily or as a consequence of military action, to join government armed forces to the fight against the LRA, as well as the massive forcible displacement of civilians and other crimes against humanity and war crimes.

Most of these crimes committed are covered by a national amnesty law adopted by the Ugandan government that prevents prosecutions in Ugandan courts, although amnesties for crimes against humanity and war crimes are prohibited under international law.

The ICC in addition to prosecuting the accused, has a major role to play in working together with the government of Uganda and other governments to ensure that national courts investigate and, where there is sufficient admissible evidence, prosecute all persons suspected of such crimes including members of Ugandan government forces and their civilian superiors. In particular, Uganda must revoke its unlawful national amnesty seeking to protect perpetrators of the worst possible crimes from justice and begin comprehensive national investigations and prosecutions as soon as possible.

Background

The new ICC established in The Hague has jurisdiction over crimes committed after its Statute entered into force on 1 July 2002. Since then, the ICC has commenced three investigations into crimes committed in northern Uganda, the DRC and Darfur, Sudan. Uganda referred the situation in northern Uganda to the ICC Prosecutor on 29 January 2004 and he announced on 29 July 2004 that he had opened an investigation.

ANNEX: LIST OF CHARGES OF CRIMES AGAINST HUMANITY AND WAR CRIMES AGAINST THE FIVE ACCUSED

The warrant of arrest for Joseph Kony lists thirty-three counts on the basis of his individual criminal responsibility (Articles 25(3)(a) and 25(3)(b) of the Statute) including:

- Twelve counts of crimes against humanity (murder - Article 7(1)(a); enslavement - Article 7(1)(c); sexual enslavement – Article 7(1)(g); rape - Article 7(1)(g); inhumane acts of inflicting serious bodily injury and suffering - Article 7(1)(k)), and;
- Twenty-one counts of war crimes (murder - Article 8(2)(c)(i); cruel treatment of civilians – Article 8(2)(c)(i); intentionally directing an attack against a civilian population – Article 8(2)(e)(i); pillaging - Article 8(2)(e)(v); inducing rape – Article 8(2)(e)(vi); forced enlisting of children - 8(2)(e)(vii)).

The warrant of arrest for Vincent Otti lists thirty-two counts on the basis of his individual criminal responsibility (Article 25(3)(b) of the Statute) including:

- Eleven counts of crimes against humanity (murder - Article 7(1)(a); sexual enslavement – Article 7(1)(g); inhumane acts of inflicting serious bodily injury and suffering - Article 7(1)(k)), and;
- Twenty-one counts of war crimes (inducing rape – Article 8(2)(e)(vi); intentionally directing an attack against a civilian population – Article 8(2)(e)(i); forced enlisting of children - 8(2)(e)(vii); cruel treatment of civilians – Article 8(2)(c)(i); pillaging - Article 8(2)(e)(v); murder - Article 8(2)(c)(i)).

The warrant of arrest for Okot Odhiambo lists ten counts on the basis of his individual criminal responsibility (Article 25(3)(b) of the Statute) including:

- Two counts of crimes against humanity (murder - Article 7(1)(a); enslavement - Article 7(1)(c)), and;
- Eight counts of war crimes (murder - Article 8(2)(c)(i) ; intentionally directing an attack against a civilian population – Article 8(2)(e)(i); pillaging - Article 8(2)(e)(v); forced enlisting of children - 8(2)(e)(vii)).

The warrant of arrest for Dominic Ongwen lists seven counts on the basis of his individual criminal responsibility (Article 25(3)(b) of the Statute) including:

- Three counts of crimes against humanity (murder - Article 7(1)(a); enslavement - Article 7(1)(c); inhumane acts of inflicting serious bodily injury and suffering - Article 7(1)(k)), and;
- Four counts of war crimes (murder - Article 8(2)(c)(i)); cruel treatment of civilians – Article 8(2)(c)(i); intentionally directing an attack against a civilian population – Article 8(2)(e)(i); pillaging - Article 8(2)(e)(v)).

The warrant of arrest for Raska Lukwiya lists four counts on the basis of his individual criminal responsibility (Article 25(3)(b) of the Statute) including:

- One count of crimes against humanity (enslavement - Article 7(1)(c)), and;
- Three counts of war crimes (cruel treatment of civilians – Article 8(2)(c)(i); intentionally directing an attack against a civilian population – Article 8(2)(e)(i); pillaging - Article 8(2)(e)(v)).

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For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566
Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

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