

Press Release

1998 - 2007 : 9th anniversary of the International Criminal Court

ICC arrest warrants are not peace bargaining tools Crimes committed in Uganda must not go unpunished

Kampala, Paris, The Hague – 17 July 2007 - On the ninth anniversary of the adoption of the Rome Statute, which established the International Criminal Court (ICC), the International Federation for Human Rights (FIDH) and its member organisation in Uganda, the Foundation for Human Rights Initiative (FHRI), draw the attention of the international community to the “Agreement on Accountability and Reconciliation” (the Agreement), signed between the Ugandan government and the Lord's Resistance Army (LRA) on 29 June 2007. According to FIDH and FHRI, the implementation of this agreement could seriously undermine the work of the International Criminal Court and the fight against impunity for the most serious crimes committed in Uganda.

Uganda was the first State to refer a situation to the ICC. Following this referral, the ICC Prosecutor announced in 2004 the opening of an investigation into crimes under the jurisdiction of the Court, which had been committed in Northern Uganda since 1 July 2002. In 2005, the ICC Pre-Trial Chamber II issued five arrest warrants targeting LRA top commanders suspected of having committed war crimes and crimes against humanity. FIDH and FHRI recall that crimes committed by the Ugandan Army must also be prosecuted.

The arrest warrants have not been executed to date. In this context, negotiations between the parties to end a 20-year-conflict started in July 2006. FIDH welcomed the ceasefire agreement signed in August 2006 and has reminded on several occasions¹ that any agreement to be reached between the parties should be compatible with international law, including the Rome Statute, the prohibition of amnesties for international crimes and the right of victims to truth, justice and reparations.

The agreement recently signed by the parties sets a series of principles, whose implementation - unclear at this stage - raises a number of serious concerns.

- *Articulation between traditional, national and international justice*

The Agreement indicates that both traditional justice mechanisms and formal criminal and civil proceedings will apply. However, the articulation between those mechanisms is not clearly explained. FIDH and FHRI note that traditional justice mechanisms alone are fully inappropriate to deal with the responsibility of perpetrators of crimes against humanity and war crimes, in particular those who are sought by the ICC. With respect to formal national proceedings, FIDH and FHRI are concerned that Ugandan justice system does not have the capacity to investigate and prosecute the type of large-scale crimes which have been committed in Northern Uganda, as indicated by the Ugandan government itself when it referred the situation to the ICC Prosecutor in December

¹ FIDH, “No sustainable Peace without Justice – Open Letter to Mr. Yoweri Museveni, President of the Republic of Uganda”, 4 September 2006, http://www.fidh.org/article.php3?id_article=3597; FIDH, “Open Letter to Mr. Moreno Ocampo, Prosecutor of the International Criminal Court”, 4 December 2006, http://www.fidh.org/article.php3?id_article=3885

2003.

- *Alternative penalties*

The Agreement states that “[l]egislation shall introduce a regime of alternative penalties and sanctions which shall apply, and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict.” FIDH and FHRI strongly oppose any accord that will let the top commanders get away with their crimes through the application of “mock” penalties, thus violating the Rome Statute's principle of complementarity. FIDH and FHRI underline that penalties should in particular reflect the gravity of the crimes. The death penalty must not be allowed.

- *ICC arrest warrants in the bargain*

The Agreement states that Uganda shall “[a]ddress conscientiously the question of the ICC arrest warrants relating to the leaders of the [LRA]”. In this regard, FIDH and FHRI recall that the ICC judges have the last say and are the only ones who can decide whether national proceedings genuinely investigate and prosecute². Since the negotiations started, the LRA has requested that the ICC drop the charges brought against its top commanders as a condition for the conclusion of any peace agreement. FIDH and FHRI believe that such a request is unacceptable.

- *Victims' rights*

FIDH and FHRI note that a series of principles in the Agreement refer to victim participation and reparations and call for a gender-sensitive approach as well as particular attention to women and children. These principles are welcomed but FIDH and FHRI remind that implementation of these provisions must be meaningful and carried out with due regard to the safety and security of the persons concerned as well as in conformity with international law standards.

If the concerns outlined above are not adequately addressed, States' determination to fight impunity for serious crimes, which lead to the creation of the ICC nine years ago, will be mocked and the Rome Statute will be forever undermined. The Uganda government must honour its international obligations.

² Article 17