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Uganda: First steps to investigate crimes must be part of comprehensive plan to end impunity

Amnesty International welcomes the announcement last night by the Prosecutor of the International Criminal Court (Court) that he would take steps towards investigating and prosecuting war crimes and crimes against humanity committed in the context of the conflict in northern Uganda.

The conflict involves the Government of Uganda and the Lord's Resistance Army (LRA) armed group. Accompanied by Ugandan President Yoweri Museveni, the Prosecutor, Luis Moreno Ocampo disclosed that the Court had received a referral, made by the Government of Uganda, concerning the LRA.

"Any Court investigation of war crimes and crimes against humanity in northern Uganda must be part of a comprehensive plan to end impunity for all such crimes, regardless of which side committed them and of the level of the perpetrator", Amnesty International said.

The text of the referral is still not yet public, but it appears that Uganda sought to limit the referral to crimes committed by one party to the conflict. Once the Prosecutor receives a referral by a state party of a situation, the Prosecutor, after analyzing the information, can open a formal investigation without judicial approval and has the right to investigate all crimes committed in that situation, regardless who committed them.

"A referral by a party to the Rome Statute may not limit the scope of any investigation by the Prosecutor of a situation", Amnesty International said. "Moreover, the Prosecutor under Article 15 (1) and (3) of the Rome Statute can open an investigation on his own initiative (*proprio motu*) of crimes outside the scope of that situation, subject to approval by the Pre-Trial Chamber. The organization emphasized that Article 42 (1) of the Rome Statute requires that "the Prosecutor shall act independently" and that no member of his office shall "seek or act on instructions from any external source".

Amnesty International urges Uganda to cooperate fully with the Court in connection with any investigation or prosecution. This will require promptly enacting effective implementing legislation for the Rome Statute and ratifying the Agreement on Privileges and Immunities of the International Criminal Court and enacting effective implementation legislation. The organization also calls on Uganda not to ratify or implement the impunity agreement with the United States of America that it has signed.

Furthermore, Uganda should review of the Amnesty Act of 1999 which covers crimes committed in the course of the conflict. "Under no circumstances should amnesty laws include crimes under international law," the organization stressed.

The ICC Prosecutor has consistently stated that one of his major challenges will be to close the impunity gap between the crimes he will be able to investigate and prosecute and the hundreds of thousands of others that remain the primary responsibility of states. Therefore, Amnesty International urges the Prosecutor to follow the example of the United Nations Secretary-General, who has stated that "amnesty cannot be granted in respect of international crimes such as genocide, crimes against humanity or other serious violations of international humanitarian law".

Article 12 (2) (b) of the Rome Statute gives the Court jurisdiction over crimes committed by the nationals of states parties, such as Uganda, anywhere in the world, including the Democratic Republic of Congo (DRC), where Ugandans and nationals of other countries have been implicated in serious human rights abuses.

The Prosecutor is also currently undertaking a preliminary examination of crimes under the Court's jurisdiction committed in the Ituri district of the DRC. Since 1 July 2002, when the Court was established, thousands of civilians have been victims of crimes against humanity or war crimes in Ituri. "The need for investigation of those crimes and prosecution of the perpetrators remains as urgent as ever," Amnesty International said.

Last week, the Prosecutor received a letter DRC President Joseph Kabila, which expressed the DRC government's commitment to collaborate with the Court. "The DRC government should take this commitment further by enacting effective implementing legislation for the Rome Statute, by ratifying and implementing the Agreement on Privileges and Immunities of the Criminal Court or by making its own referral to the Court."

Background

For 18 years, the conflict in northern Uganda has claimed the lives of thousands of civilians and the situation reportedly deteriorated further during 2003. The conflict resulted in the massive displacement of the population, arbitrary killings, maimings, abductions and forced recruitment. In particular the LRA has been accused of abducting children, at times moving them across the border into Sudan and amongst them scores of girls, for use as sex slaves and combatants. The treatment of children returning, voluntarily or as a consequence of military action, from their abductors has also been the subject of much controversy with allegations having been levelled against the Ugandan security forces of retraining some of them for military purposes in the fight against the LRA.

Amnesties for crimes under international law, including genocide, crimes against humanity and war crimes, are prohibited under international law, as Amnesty International has documented in numerous studies, including most recently its paper, *Sierra Leone: Special Court for Sierra Leone: Denial of right to appeal and prohibition of amnesties for crimes under international law*, (AI Index: AFR 51/10/2003, September 2003). Amnesty International opposes amnesties, pardons and similar measures of impunity for crimes under international law in all circumstances where they would prevent a judicial determination of guilt or innocence, the discovery of the truth or full reparations.