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Uganda: Government cannot prevent the International Criminal Court from investigating crimes

Amnesty International is concerned about reported statements by government officials suggesting that crimes against humanity and war crimes committed in Northern Uganda would be addressed in traditional reconciliation procedures, rather than in fair trials before independent and impartial courts in accordance with international law and standards.

"Uganda cannot 'withdraw' its referral, in January 2004, to the Prosecutor of the International Criminal Court (ICC) of the situation in the northern part of the country," the organization declared today.

Yesterday, 15 November 2004, the New Vision newspaper, which is believed to be close to the government, reported that President Museveni stated that leaders of the Lord's Resistance Army (LRA), which has been engaged in an internal armed conflict with the government for more than two decades, could cease fighting and "engage in internal reconciliation mechanisms put in place by the Acholi community such as *mataput* or blood settlement". He added that if this were to occur, "[t]he state could withdraw its case [in the ICC]". Similar statements have been made by Information Minister and government spokesperson, Nsaba Buturo, on the same day.

Uganda referred the situation in the northern part of the county to the ICC Prosecutor in December 2003. The referral was made public on 29 January 2004 pursuant to Article 14 of the Rome Statute of the International Criminal Court (Rome Statute), which permits state parties to that treaty to "refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed". On 29 July 2004, the ICC Prosecutor announced that he had opened an investigation into crimes against humanity and war crimes committed in that region since 1 July 2002.

The reported statement by President Museveni that he intended that members of the LRA, which include some of those most responsible for crimes against humanity and war crimes, participate in traditional reconciliation procedures instead of facing investigation and possible prosecution in Ugandan courts further confirms that Uganda is neither able nor willing genuinely to investigate and prosecute such crimes, whether committed by LRA members or by members of government forces.

"The ICC Prosecutor should today make clear publicly that he intends to continue to investigate vigorously the crimes against humanity and war crimes committed by all sides in northern Uganda.

Yielding to pressure from the state that referred the situation to stop the investigation would neither be in the interests of justice nor in the long-term interests of peace and reconciliation," urged Erwin Van Der Borgh, Deputy Director of the Africa Programme at Amnesty International.

Background

There is not a scrap of evidence in the drafting history or in commentaries by leading international law experts on the Rome Statute suggesting that once a state party has referred a situation that it can "withdraw" the referral. As soon as the situation has been referred, the ICC has jurisdiction and the state cannot "withdraw" its referral. Under Article 86 of the Rome Statute it then has the absolute duty to "cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court".

For nearly two decades, with complete impunity, members of the LRA have committed 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 that prevents prosecutions in Ugandan courts.

Traditional reconciliation measures do not involve judicial determinations of innocence or guilt, effectively ensure that the full truth about crimes will be known or provide victims or their families with full reparations. In the face of the continuing failure of Uganda to investigate and prosecute these crimes, the ICC may exercise its jurisdiction under Article 17 of the Rome Statute over all crimes against humanity and war crimes committed in the northern part of the country, regardless whether they were committed by members of the LRA or of government forces.

The reported statement of President Museveni recalls his previous effort in July 2004 to prevent any investigation by the ICC Prosecutor of crimes against humanity and war crimes reportedly being committed by members of Ugandan armed forces in the Ituri region of the Democratic Republic of the Congo (DRC). On that occasion, he wrote to the United Nations Secretary-General suggesting that the DRC should "suspend the activities of the international criminal court until the peace process in Ituri and DRC in general is irreversible."

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