

AMNESTY INTERNATIONAL

LETTER TO SECURITY COUNCIL

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Your Excellency,

Amnesty International is deeply concerned about reports that some Security Council members are considering the possibility of requesting the International Criminal Court (ICC) to defer prosecutions and investigations of crimes against humanity and war crimes in northern Uganda.

Our organization has documented horrific crimes committed on a massive scale against children and other civilians by members of the Lord's Resistance Army (LRA) and by members of the Ugandan security forces. They amount to crimes under international law. However, impunity has been pervasive throughout the two-decade-long conflict. The national justice system has been unable to provide effective prosecutions and convictions in fair trials for these grave crimes, for reasons which Amnesty International described elsewhere. Our organization is, therefore, convinced that the ICC is best placed to ensure justice for the victims of the conflict. Indeed, the ICC arrest warrants have been a contributing factor to bringing the LRA to the negotiations. Amnesty International also shares the views expressed by the ICC Prosecutor that the best way to stop the conflict is to arrest top leaders: Joseph KONY, Okot ODHIAMBO and Dominic ONGWEN, who have been charged with committing crimes against humanity and war crimes in northern Uganda.

Amnesty International, like most states at the time the Rome Statute of the International Criminal Court (Rome Statute) was adopted, opposes requests for deferral of prosecutions and investigations, invoking Article 16 of the Rome Statute, as political interference with the independence of the ICC prosecutor.

Under Article 19 (2) of the Rome Statute, “[c]hallenges to the admissibility of a case on the grounds referred to in article 17 . . . may be made by: (a) . . . a person for whom a warrant of arrest . . . has been issued under article 58”. Article 19 (2) (b) authorizes such an admissibility challenge by “[a] State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted[.]” Article 17 (1) (a) provides that a case is inadmissible when it “is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution[.]” Article 19 (1) authorizes the ICC “on its own motion, [to] determine the admissibility of a case in accordance with article 17”.

On 29 February 2008, the Pre-Trial Chamber of the ICC used this power when it requested Uganda to provide detailed information on the steps it had taken to implement the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the LRA /Movement Juba, Sudan of 29 June and the Annexure to the Agreement, dated 19 February 2008. Amnesty International published an analysis of these two documents a week ago, *Uganda: Agreement and Annex on Accountability and Reconciliation falls short of a comprehensive plan to end impunity*, AI Index: AFR 59/001/2008, 21 March 2008. The Chamber also requested details about the impact of the establishment of the proposed special division of the High Court of

Uganda and recourse to traditional justice mechanisms or other alternative justice mechanisms on the execution of the arrest warrants. The government has responded saying that, once the peace agreement is signed, it “remained committed to executing them [the ICC arrest warrants] should the LRA leadership fail to subject themselves to the process of justice in Uganda.” However, the Rome Statute of the ICC requires, in Articles 59 and 86, that states parties receiving a request from the court for arrest shall immediately take steps to arrest the persons in question and shall fully cooperate with the court in the investigation and prosecution of crimes within its jurisdiction.

There is nothing to prevent the three LRA suspects and Uganda, if it wishes to do so, to file an admissibility challenge to the case. However, a deferral by the Security Council could seriously harm the prospect of ending impunity for crimes under international law. A deferral could also undermine the effectiveness of the ICC and any deterrent effect it has by allowing any leader of armed opposition groups or of national armed forces named in an ICC arrest warrant to blackmail the Security Council. These persons, groups or national forces could do so by simply threatening to continue or to resume armed conflict if suspects were to be prosecuted in the ICC or in a national criminal court which was able to impose appropriate criminal penalties which take into account the grave nature of the crimes. For example, the Sudan could argue that a deferral was appropriate with regard to any person being investigated or prosecuted in its recently established special courts.

Amnesty International, therefore, urges the Security Council:

- To refuse any request for a deferral of any investigation or prosecution by the ICC Prosecutor in northern Uganda.
- To call on all states, and in particular Uganda, the Central African Republic, the Democratic Republic of Congo and Sudan, to fulfill their obligations under international law by promptly arresting and surrendering indicted individuals to the ICC.
- To ensure that all relevant UN or UN-authorized peacekeeping missions operating in the relevant countries are given the mandate and effective resources to pursue the arrest of the three men and any others for whom the ICC issues arrest warrants.

Amnesty International will be glad to provide further information and would greatly appreciate your response to this letter.

Yours sincerely,

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