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Uganda: Proposed national framework to address impunity does not remove government's obligation to arrest and surrender LRA leaders to the International Criminal Court

On 29 June 2007, the Ugandan government and the Lord's Resistance Army (LRA), which are both accused of crimes against humanity and war crimes against the people of Uganda during the conflict in northern Uganda, signed an agreement on accountability and reconciliation purporting to establish a framework to address impunity in Uganda.

Reports indicate that negotiations during the drafting of the agreement focused significantly on bringing about the withdrawal of the International Criminal Court's (ICC) arrest warrants for four senior LRA leaders - Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen -- by setting up alternative national processes. The ICC has charged the men with crimes against humanity and war crimes.

Although the agreement commits the parties to establishing "accountability proceedings" and providing for reparations, Amnesty International has a number of concerns about aspects of the agreement which are vaguely defined and could ultimately result in a denial of justice and full reparations for victims. For example, the agreement provides for establishing "alternative justice mechanisms" and "alternative penalties" for serious crimes, without defining them.

The agreement between the LRA and the government is not binding on the ICC, whose primary purpose is to ensure that such serious crimes are investigated and, where there is sufficient admissible evidence, those suspected of the crimes are prosecuted fairly and effectively. If the ICC convicts persons, it can order that they provide reparations to the victims and their families.

Although the Ugandan government may decide to challenge the admissibility of the cases before the ICC on the basis that it is able and willing to prosecute the crimes before national courts, the Rome Statute is clear that the ICC will not defer its cases to national authorities if it determines that the national proceedings:

- o would be undertaken for the purpose of shielding the person from criminal responsibility, or
- o would not be conducted independently or impartially and, they would be conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person to justice.

In the circumstances where there has been no clear commitment to prosecute genuinely the four men for the crimes for which they are charged by the ICC before Uganda's criminal courts, Amnesty International continues to call for the four men to be arrested and surrendered to the ICC without further delay.

In fact Uganda does not have the laws in place to prosecute the crimes at this time. Draft implementing legislation for the Rome Statute, which would define genocide, crimes against humanity and war crimes as crimes under Uganda law, has not yet been enacted. Recommendations made by Amnesty International three years ago to bring the draft into line with Uganda's obligations under international law have still not been implemented (see: Amnesty International's *Concerns about the International Criminal Court Bill 2004*, AI Index: AFR 59/005/2004, issued on 27 July 2004).

Arresting and surrendering the men to the ICC would be entirely consistent with the government's commitment to accountability contained in the agreement. Furthermore, enabling the ICC to prosecute the cases would allow the government to focus on developing an effective national system to address the thousands of other crimes committed during the conflict.

The development of effective national legislation, policies and procedures to further define the framework to address these other crimes, as provided for in the agreement, will be fundamental to ensuring the rights of victims to justice, truth and reconciliation are implemented. In particular, Amnesty International repeats its call for the government to ensure that the following essential elements are incorporated into a national strategy to end impunity, which could be effectively supplemented and complemented by proposed traditional justice mechanisms:

- o Ensure that all those responsible for crimes under international law committed in the conflict are brought to justice before national courts, thereby bringing justice to victims and establishing an effective deterrent to future crimes.
- o Establish effective mechanisms to provide full reparations to victims to address their suffering and help them rebuild their lives.
- o Ensure that courts deal with those recruited as children by the LRA and the Uganda People's Defence Forces (UPDF) who served as child soldiers are dealt with in a manner which fully respects international law and standards concerning juvenile justice, taking into account mitigating factors such as abduction and duress, and ensuring reparations, as part of a broader program of rehabilitation and reintegration of child soldiers.
- o Develop effective mechanisms to establish the truth about the crimes committed during the conflict by allowing those affected to tell their stories.