

Are Local Courts Up to Trying LRA?

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As calls for local trials of LRA commanders continue, some observers cast doubt over independence of national courts.

Steps have been taken to bring Lord's Resistance Army, LRA, commanders to trial in Uganda rather than at the International Criminal Court, ICC, in The Netherlands, said a senior source in the Ugandan judicial system.

"The plan is to ensure that these people are tried in Uganda, and not in The Hague-based war crimes tribunal," said a senior official at the Buganda Road Court in Kampala, who spoke to IWPR on the condition of anonymity.

The Buganda Road Court, he said, has issued warrants of arrest for the LRA's top leaders.

However, some legal experts say that the Ugandan judicial system is not capable of holding independent war crimes trials.

Nearly two million people have been forced into squalid refugee camps throughout northern Uganda as a result of the war, and some 100,000 people have died. As many as 38,000 children have been abducted and forced to join the insurgents.

LRA leaders are wanted by the ICC on charges of murder, abduction, sexual enslavement and mutilation, as well as mass burning of homes and looting of refugee camps. LRA leader Joseph Kony alone faces 33 different counts of crimes against humanity and war crimes.

Most believe that Kony killed his second-in-command Vincent Otti - another ICC indictee - in October 2007, after accusing him of betrayal. Otti was the LRA's most active advocate of the peace talks.

President Yoweri Museveni originally asked the ICC to help bring Kony and his commanders to justice in 2003 - after nearly 20 years of war with the rebel army - because the Ugandan army was unable to capture Kony.

LRA legal advisor and Kampala lawyer Crispus Ayena said he opposed international prosecution of Kony and the other LRA commanders.

"[The] Ugandan government is very unfair to refer the situation in northern Uganda to the ICC," said Ayena, recently.

"It could have only done that if national courts were not capable of having LRA suspects tried here in Uganda."

Ayena added that if the LRA was on trial, then some Ugandan military, UPDF, commanders should also be prosecuted for crimes against people in northern Uganda.

“The UPDF, on the other side, is torturing LRA combatants now under its control,” he claimed.

However, UPDF spokesman Major Felix Kulayige refuted this claim. “The UPDF cannot torture LRA combatants. The army is so disciplined,” he said.

Walter Okidi, a Gulu-based lawyer, also supports the idea of Kony and his commanders being tried in Uganda instead of The Hague.

“Peace negotiations cannot be conducted under the threat of arrest warrants. The LRA should not listen to ICC. They [had] better remain in the bush or else continue fighting,” he said.

The LRA and the Ugandan government are preparing for another round of peace talks in South Sudan, following a six-week tour of northern Uganda by a rebel delegation which consulted local people on accountability and reconciliation aspects of the proposed peace deal.

When asked if national courts were capable of prosecuting the alleged war crimes and crimes against humanity, Okidi said, “Uganda’s judicial system is strong enough to deal with [alleged] LRA war criminals.”

However, some in Uganda say they would prefer to see the LRA suspects prosecuted in The Hague rather than in Ugandan courts because local laws do not address the type of crimes alleged by the ICC.

“Local courts cannot handle high-profile criminal trials, such as war crimes, crimes against humanity and genocide,” said Justice Richard Oluge, who is based in Kaberamaido, a town in north-eastern Uganda.

“If Kony is to be arrested here [in Uganda], he would only be charged with murder and terrorism, which to me is very unfair.”

Moreover, he said, Ugandan courts are not free of political influences.

“I’d love to see these guys arrested and delivered to the ICC for trial. The ICC is independent,” he said.

Oluge said that the Ugandan courts’ lack of independence became apparent in 2006 when opposition leader and former presidential candidate Kizza Besigye was arrested and charged with terrorism.

After the Supreme Court granted Besigye bail because of flimsy evidence against him, he was arrested by a special police unit called the Black Mambas, who surrounded the court.

Oluge said he also feared for the safety of witnesses who might testify against the LRA commanders in local trials. Because Ugandan courts allow suspects to remain free pending trials, victims of LRA crimes could be at risk.

“In the process of the [prosecutions], the LRA suspects could still come back and kill civilians,” said Oluge.

Ruhakana Rugunda, Uganda’s interior minister and chief negotiator at the peace talks, said that a decision had not been made about whether to hold Ugandan trials for the LRA commanders.

“We have discussed this issue several times,” said Rugunda. “I trust very soon that the government will devise a legal system to achieve lasting peace in northern Uganda.”

Uganda is one of the 105 signatories of the treaty that created the ICC, and, as such, is required to detain and transport to The Hague alleged war criminals for whom arrest warrants have been issued.

Since 2002, only two alleged war criminals, Thomas Lubanga, and Germaine Katanga, both former militia leaders in the Congo, have been sent to The Hague for trial.

Many in northern Uganda say that peace is more important to them than the location of future war crimes trials.

“What we want is peace, not justice,” said Kumi district chairman Ismael Orot. “But if justice can also drive us nearer to peace, then to me the intervention [of the ICC] is pertinent.”

Bill Oketch in Kumi and Patrick Okino in Lira are IWPR journalists in Uganda.

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