

Army Seeks to Allay ICC Concerns Over Prosecutions

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Ugandan military attempts to prove it's capable of trying its own war crime suspects. The Ugandan army, UPDF, appears to be hoping that a series of upcoming trials of soldiers will demonstrate to prosecutors at the International Criminal Court, ICC, in The Hague that there's no need to indict its members.

The ICC has signaled its intention to investigate members of the UPDF for war crimes, but the military says the courts martial of 29 soldiers for the alleged murder of civilians in the north proves it takes seriously crimes committed by its soldiers during the war with the Lord's Resistance Army, LRA.

However, some rights activists have questioned the UPDF's commitment to bringing to justice those suspected of the worst abuses during the conflict, and have also expressed concern about the integrity of the military judicial system.

The ICC is a court of last resort, acting only when a country is unwilling or unable to prosecute under national law. It is only mandated to try high-ranking suspects. The UPDF has already put to death 124 soldiers for crimes committed against civilians over the course of the 20-year conflict with the LRA.

"We have brought back the rule of law in the army. The UPDF will continue to weed [out] errant soldiers and jealously guard its good image," said Lieutenant Chris Magezi, the northern regional army spokesman.

The 29 facing court martial will also be executed if found guilty.

Major Felix Kulayigye, the UPDF spokesman, said the 124 soldiers executed ranged from privates to lieutenants.

He said higher-ranking officers, including captains and majors, had been sentenced for up to ten years as a result of their soldiers committing crimes against civilians, but declined to provide exact numbers of such convictions.

"Our army abhors any violation of people's rights," said Kulayigye. "We hate anything that injures our relationship with civilians."

Uganda's state minister for defence, Ruth Nankabirwa, agreed.

"We don't condone impunity in the army. Those who murder and are found guilty, we execute them. We have done it and we shall continue to do it," said Nankabirwa. "In the UPDF we mind about our public image."

But Elise Kepler of Human Rights Watch's international justice programme told IWPR that her organisation

has documented numerous cases of the Ugandan government not investigating allegations of serious abuses by the UPDF.

“When complaints were raised there was no follow up. Or even when there was follow up, there was no serious investigation and prosecution,” she said.

But the army defends its courts and their decisions, saying they have helped to stop abuses by soldiers against civilians.

Kulayigye said suspects are given fair trials, “The courts are very good. They are like civilians courts. We have prosecutors, advocates and defence lawyers.”

Maddosman Kabega, a former deputy director of public prosecutions in Kampala who is now one of two Ugandans appointed to serve as defence counsel for the ICC, said that on the whole military justice in Uganda is at roughly the same level as civilian criminal justice.

For example, defendants in both civilian and military courts are provided with defence lawyers if they are too poor to hire their own, said Kabega, and military suspects can also hire private lawyers should they be concerned that a uniformed defence team is not up to the job - though in less serious cases they must pick up the cost of a private advocate.

Furthermore, Ugandan judges are afforded a high level of respect for their independence and impartiality by the international community.

However, HRW has raised several concerns about the Ugandan military and civilian justice system, including the risk of torture for suspects in custody, an under funded judiciary that already faces a backlog of cases as well as the concern that Ugandan criminal law may not include crimes that encompass the scope of the atrocities committed in the conflict between the LRA and UPDF.

In at least one area, the military justice system in Uganda falls short of the ICC, conceded Kabega. Even in the most serious capital cases, the prosecution isn't obligated to produce a list of witnesses and exhibits for the defence ahead of time, a concern also raised by HRW.

“The state which has all these resources and can marshal evidence of this and that ... should in all fairness let suspects know that this is the evidence we intend to show,” said Kabega. “But even in civilian trials here - that is the practice.”

And though he praised integrity of the current chairman of the UPDF military court that tries capital offences, Kabega said that much of the fairness of courts martial depends on the presiding officer.

Beatrice Le Fraper Du Hellen, the director of the Jurisdiction, Complementarity and Cooperation division for the office of the prosecutor at the ICC, told IWPR that her office is investigating allegations against members of the UPDF and the status of Ugandan government prosecutions of alleged offenders.

However, she stressed that the prosecutor is investigating allegations of crimes by individuals, not the UPDF as an institution.

“We’re after individuals. We’re after the worst perpetrators,” said Le Fraper. “When we started working in the Uganda situation, we quickly realised on the basis of our information and on the basis of evidence that the worst crimes and the worst perpetrators were the five that we indicted and who are allegedly responsible for mass abductions, massive sexual violence and massive killings.”

In July 2005, the ICC indicted LRA leader Joseph Kony, his deputy Vincent Otti, Dominic Ongwen, Okot Odiambo and Raska Lukwiya on 33 charges including rape, murder, sexual enslavement, and abduction and recruitment of child soldiers. Lukwiya has since been killed in northern Uganda.

Le Fraper added that the prosecutor’s investigations are by no means over.

“We are continuing to analyse alleged crimes conducted by other individuals from other groups,” she said. “Certainly we are assessing, in the same way that we did for others, the status of national proceedings. For that we need very, very specific information from the national judiciary. ... We haven’t finished at all this assessment of the national proceedings. We probably need more [information] and we are asking for such information.”

Before asking for further indictments, the prosecutor must determine whether there are national efforts to investigate alleged crimes and then assess whether these are fair and meet the standards of international justice, she said.

Le Fraper added that although the ICC has a mandate to investigate and prosecute the worst alleged offenders, it should not be seen as the only mechanism to bring justice to the victims of the conflict between the LRA and UPDF.

“We will only go after the worst perpetrators, and in most cases a few people,” she said. “So of course national authorities have to get involved and investigate, prosecute or find other solutions to deal with cases of the rank and file.”

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