

ICC Chief Prosecutor Talks Tough

Author: [Peter Eichstaedt](#)

Luis Moreno-Ocampo pushes for arrest of Ugandan rebel leader Joseph Kony as well as Sudanese suspects wanted by court.

The chief prosecutor for the International Criminal Court, ICC, has renewed his call for the arrest of fugitives from Uganda and Sudan wanted for war crimes and crimes against humanity.

“The responsibility for this is with the [member] states,” Prosecutor Luis Moreno-Ocampo said during a conference in Chicago at the weekend, held to mark the tenth anniversary of the ICC’s founding treaty, the Rome Statute.

Moreno-Ocampo lamented that Joseph Kony, the leader of the Lord’s Resistance Army, LRA, which has fought a 20-year war in northern Uganda, was still free.

“It is very bad [that] we are not doing enough to arrest Kony,” said Moreno-Ocampo, adding that if Kony is arrested, “we will have peace tomorrow”.

Kony and two others under his command are wanted by the ICC for crimes against humanity and war crimes committed during the insurgency.

Moreno-Ocampo described the LRA as “a small militia”, but one that had a big impact in central Africa.

“Massive crimes affect world security across borders and effect different regions of the world,” he said.

In a special report, IWPR confirmed last week that the LRA had resumed violence, looting and abducting civilians, and was operating in the Central African Republic, CAR, and Sudan as well as the Democratic Republic of Congo, where it has spent more than two years in the remote Garamba National Park. (See **LRA Prepares for War, not Peace**, AR No. 168, 24-Apr-08.)

Kony failed to make an appearance on April 10 to sign a peace agreement after nearly two years of talks. Subsequently, it transpired that the leader had not communicated with his peace negotiations team for months.

Moreno-Ocampo, meanwhile, suggested to IWPR that United Nations troops deployed in the eastern regions of DRC could “be provided with special forces” that could move against Kony and arrest him.

The chief prosecutor said efforts to capture Kony had been suspended as a result of the peace negotiations. One operation from two years ago ended in the death of eight Guatemalan soldiers serving

with the UN peacekeepers in DRC.

In retrospect, he said, it had been a mistake to halt operations to capture the LRA leader when peace talks began.

“[The] effort was stopped before, but all negotiations did was lead to impunity,” Moreno-Ocampo told IWPR. “It allowed Kony to rebuild.”

While the chief prosecutor acknowledged there was a need for negotiations, he said that “never again” would he acquiesce to suspending international efforts to capture individuals against whom there were pending arrest warrants issued by the court.

According to former Ugandan peace negotiator Betty Bigombe, the LRA may be defeated and in a weak state, but it continues to be a regional problem.

Kony may meet mediators on May 10, apparently to resume peace talks, she said. Yet she admitted she was frustrated that the LRA leader had failed to sign the peace deal earlier this month, and had apparently resumed abductions.

Many people are doubtful that further meetings with Kony will be useful, she said. The rebel leader clearly only acts at his own time and convenience, she added.

Bigombe, who was Uganda’s primary contact with Kony for the Ugandan government from 1994 to 2004, said she feared a military attempt to capture Kony would be bloody.

Such a move, she said, “will come at some cost of lives.”

Bigombe would like to see a special police force set up for the ICC to enable it to detain its own suspects.

“Why can’t the ICC have its own forces to effect an arrest?” she asked. Such a force would mean the court did not have to rely on the cooperation of member countries, because “governments do not have the capacity to do so”.

“Today, we are frustrated and humiliated,” she said. “At the moment, [Kony] is holding the whole world hostage. We are all waiting to see what happens.”

Moreno-Ocampo said the international community also had to get tougher with Sudan, and push for the arrest of two individuals wanted by the court for crimes in connection with the ongoing war in the western region of Darfur.

The ICC has released warrants for Ahmed Haroun, a former interior minister who is now in charge of humanitarian affairs, and “janjaweed” militia commander Ali Muhammad Ali Abd-al-Rahman, also known as Ali Kushayb.

The janjaweed are government-backed Arab militias which are implicated in widespread abuses in Darfur.

The two suspects are accused of inciting murder, rape, and torture, as well as the forced displacement of villagers in Darfur. Some two million people have been driven from the region and an estimated 200,000 have been killed or have died of war-related causes.

“Arresting Haroun today will break the criminal system in Darfur,” Moreno-Ocampo said.

However, he would not support military intervention to accomplish this. “Arresting a minister is not a military operation,” he said, “but a political one.”

Obtaining cooperation from the Sudanese government is unlikely to be successful since the country has refused to work with the ICC and does not recognise its legitimacy.

Moreno-Ocampo said he discussed the arrest warrants with Sudanese officials for two years before the documents were issued, and was told by Khartoum that “we cannot allow you to do a case in Darfur”.

The Argentine lawyer said he told Khartoum that he was going to act with or without their cooperation. The court, he said, has vast amounts of information against both Haroun and Kushayb, including eyewitnesses willing to testify against both men.

However, he has been frustrated by the lack of action to arrest either suspect.

“A soft approach is not working,” said Moreno-Ocampo. “We are not winning something by ignoring reality.”

At the Chicago conference, Moreno-Ocampo also discussed the third situation at the ICC, relating to DRC. He said the court’s recent decision not to hold portions of the upcoming trials of Congolese militia leaders in the DRC was due to security concerns.

In DRC, “protection of witnesses is the biggest problem today,” Moreno-Ocampo said, in reference to the upcoming trial of militia leader Thomas Lubanga Dyilo which is due to begin in The Hague on June 23.

Rebel leaders Germain Katanga and Mathieu Ngudjolo are also in detention in The Hague, after being transferred by the DRC authorities.

Although the militia leaders were in ICC custody, Moreno-Ocampo said, their armed forces still operate on the ground and witnesses are in danger.

“They know our witnesses and are looking for them,” he said.

Moreno-Ocampo said he was optimistic that the ICC has had an impact in DRC and will continue to do so.

“One ruling will have an impact in the world,” he said.

The prosecutor’s increasingly aggressive posture may have been spurred by comments from the United States that it is willing to help arrest the Sudanese fugitives.

Also speaking in Chicago, John Bellinger, the chief legal advisor to US Secretary of State Condoleezza Rice, said his government might be willing to do more than it has in the past to secure the Sudanese arrests.

“If there were something we were asked to do in addition to diplomatic activity,” Bellinger told IWPR, then the US would consider it.

When asked if that included military action, Bellinger told IWPR that he couldn’t say. However, he added that action “within the bounds of the law” was possible.

Bellinger said US involvement in Sudan was limited by laws that preclude American armed forces from being involved in situations that might result in them being prosecuted by international courts.

His comments signaled an apparent softening of US policy towards the ICC, which has been decidedly hostile in the past. Not only has Washington refused to sign the Rome Statute, it has secured approximately 70 agreements from ICC signatory countries that they will not hand over US citizens to the court.

Bellinger said the US wanted to help the ICC with Darfur because there was “no other way to achieve accountability” in Sudan for what Congress has called a genocide.

This stance was further endorsed by Richard Williamson, the US special envoy to Sudan.

“We have taken no robust action to stop a genocide in slow motion. We have failed our humanity in Darfur,” he said.

Williamson, who recently met Sudanese officials, said it was difficult to negotiate “with those who have blood on their hands”.

Peter Eichstaedt is the Africa Editor for IWPR.

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