

ICC Judges to Review LRA Cases

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Rethink comes in light of deal between Kampala and rebels providing for domestic war crimes prosecutions.

Judges at the International Criminal Court, ICC, are re-evaluating cases against leading member of the rebel Lord's Resistance Army, LRA, to determine if they are still viable and whether Uganda's proposed special court could be used for some of the prosecutions.

Since the five top commanders of the LRA were indicted by the ICC in 2005, peace talks have been conducted between Uganda and the rebels in Juba, South Sudan. But an agreement reached earlier this year has not been signed.

A critical part of that deal provides for Uganda to set up a special court that would apparently conduct trials for some of the top LRA commanders – a role that had been reserved for the ICC ever since Uganda asked the court's prosecutors to investigate the rebels in 2004.

The special court was contained in an annex to the negotiated settlement, and was reportedly agreed to because one of the ICC indictees, the ICC's main indictee, LRA leader Joseph Kony, has refused to face justice at the Hague court. His advisers, meanwhile, have said that Kony would consider being tried in Uganda.

The special court has raised many questions about its relation to the ICC and the status of the ICC case against Kony and his commanders.

Under ICC agreements, it has been up to Uganda to capture and turn over Kony and the other indictees for trial in The Hague. But even before negotiations began, in mid-2006, Kony's army decamped to a remote corner of northern Democratic Republic of Congo, DRC, where he and two other indicted commanders remain. The two remaining ICC suspects are believed to have been killed, one apparently in fighting and the other allegedly executed by Kony.

The deadlocked situation has prompted ICC judges to review the LRA case in light of the agreement between Uganda and the rebels.

Uganda originally approached the ICC for help saying it was unable to conduct investigations and prosecutions nationally, but the establishment of a special court suggests this position has changed.

When judges asked Uganda directly how the special court influenced the ICC case, however, Solicitor-General Jane Kiggundu said Uganda's commitment to the ICC "was never vitiated by...the peace talks".

She stressed that "Uganda's position remains that there must not be impunity" and that the provision for a special court was made "without prejudice to Uganda's commitments to the ICC".

ICC judges have also asked the Uganda government and lawyers representing the defence, prosecution

and victims for fresh opinions on the case and about whether the country's efforts to pursue war crimes justice are genuine and should replace the ICC cases.

Victims groups in Uganda have warned, however, that Uganda may be capitulating to LRA demands, and is willing to compromise justice to achieve a permanent settlement of the conflict.

Moreover, there are serious problems with the special court, which will no doubt concern ICC judges.

Firstly, the country's constitution does not allow it to bring cases retrospectively. So it could not prosecute those accused of crimes during the twenty year insurgency. Although, there are suggestions that the constitution might be amended or new legislation brought into force permitting the court to try war-era suspects.

Secondly, as the court is currently conceived, it would only be able to put on trials "non-state actors" - that is the LRA. Members of the Uganda Peoples Defence Force, UPDF, implicated in crimes would have to face court martials in military tribunals.

Joseph Manoba from the Uganda Coalition for the ICC, a consortium of NGOs, said that if the special court is to proceed with such a limited mandate, it's unlikely to address many of the population's concerns.

"People think that if this court is to be useful, it has to investigate and prosecute crimes that were committed previously," said Manoba.

The LRA, meanwhile, continues to wage a war against the civilian population in and around the Garamba National Park. In September, they launched attacks in Orientale province in northern DRC, killing chiefs, looting villages, and abducting children. Tens of thousands of civilians have been forced from their homes.

Victims want an end to violence, but rights groups say it is difficult for people on the ground to have a view on which form of justice, the ICC or the special court, is most appropriate, as they have very little information on the latter.

"If the government had been communicating with victims, it would be easier to understand they are genuine about national prosecutions. At a practical level, victims are not seeing anything that suggests that the government is serious about this court, so how will it seem at the international level?" said a representative from the Uganda Victims Foundation, UVF.

Richard Dicker from Human Rights Watch said the ICC review of the case sends a message to the Ugandan government that progress in creating the special court needs to be made.

"It needs to have rules, laws, procedures and personnel to conduct complex legal proceedings, in which the accused get the full benefit of internationally recognised fair trial rights. If [the court] is simply an announcement and there is no content to it, this is a wasted effort," said Dicker.

Rights groups have expressed doubts about the legitimacy of the new court, saying that it is impossible to

obtain documents or details about its procedures.

“Even at parliament level, people are unable to understand a system [which integrates] international human rights laws [into domestic legislation]. Lawyers, advocates and judges admire the concept but are unprepared,” said the UVF representative.

Manoba says that when the Ugandan government realised that the ICC was going to investigate not only the LRA but also the part that the UPDF played in quelling violence, its position changed.

“The government is trying to play a game. The strategy changed because the prosecutor said he would look into the UPDF following the referral. This led to negotiations with the LRA and [calls for] the use of traditional justice mechanisms,” he said.

Kampala has been promoting tribal healing rituals as a means of encouraging reconciliation and forgiveness, but many analysts say these symbolic ceremonies are no substitute for proper trials.

Meanwhile, ordinary Ugandans appear to have mixed feelings about the proposed special court.

Michael Nyeko, a farmer from Ongako, welcomes the plans, since the ICC has been viewed as a stumbling block to the peace process. But he urged the government not to try to interfere in court proceedings, as has happened in the past.

Molly Odongo, a mother living in the Laminawino internal refugee camp, agreed that it is difficult to trust the government.

“I would not buy the idea of the special court,” said Odongo. “Many of us have reported cases of land wrangles with [the] government and even started court proceedings. But [the cases] are taking ages to be heard. How can we trust the case of the LRA commanders will not take the same route?”

Manoba suggests that the Ugandan justice system lacks the skill to investigate war crimes and crimes against humanity, “Lawyers and judges need to be trained, so that they can build capacity and experience.”

He said that ICC trials of top LRA commanders could have a positive influence on trials of the lower-level commanders in Uganda, “After lawyers and judges see how top level prosecutions are run, then they can deal with trials for lower level accused.”

Martin Ojara, a Gulu district official, said the ICC should give the Uganda government the opportunity to prove it can handle LRA cases, especially since there are concerns that Hague trials could prompt the LRA to return to war.

“[The] ICC should understand the feelings of Ugandans. Many people are asking if the ICC [trials] won’t spoil the relative peace ushered in,” said Ojara.

He agreed, however, that Uganda has to do more to convince the ICC of its judicial competence, “Parliament has virtually done nothing in regard to the legislation governing the operations of the special [court], or on alternative traditional justice mechanisms.”

Observations from lawyers, the Ugandan government and several human rights groups on the viability of the ICC cases and the capacity of the special court to conduct credible trials are due before judges this week.

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