



Uganda/LRA

Expected Council Action

The Council is expected to be briefed in late April by the Secretary-General's Special Envoy for the LRA-affected areas, former President Joaquim Chissano of Mozambique, on the peace agreement between the government of Uganda and the Lord's Resistance Army (LRA), expected to be signed later this month. In the near future, the Council may also be confronted with a request by the Ugandan government for the Council to grant a year-long suspension of investigation and prosecution by the International Criminal Court (ICC) in northern Uganda. This would include ICC cases against Joseph Kony and other LRA leaders charged by the ICC for war crimes and crimes against humanity. (Article 16 of the Rome Statute establishing the ICC provides that the Council may grant such a deferral by passing a Chapter VII resolution for a renewable 12-month period.)

Recent Developments

In the period leading up to the signing of a final accord, the peace process witnessed hesitant progress and delays. The signing of a final peace agreement to end the 22-year old conflict had been scheduled for 3 April but was postponed when mediators announced on 31 March that the leader of the LRA, Joseph Kony, had been taken ill and could not attend. An earlier 29 February deadline for reaching a final agreement on the talks had also not been met. At the time of writing, the signing was postponed yet again, apparently due to Kony's request for further consultations regarding accountability issues.

On 26 March, the Department of Political Affairs briefed the Council in private consultations on the peace talks. There was no subsequent discussion of the issue among Council members and no statement. The silence of the Council seemed calculated to signal that progress towards signing a final peace deal should proceed without pressure on the process. (Chissano last briefed the Council on 13 November on the Juba peace process. In a press statement issued after that meeting, the Council said it was encouraged by progress so far and the resulting improvements in security and humanitarian situation in northern Uganda. It stressed its continued support for Chissano's facilitation role. At the same time, the Council urged the LRA

to release all women, children and non-combatants and reiterated the need to bring to justice those responsible for serious violations of human rights and international humanitarian law). Notably, no concrete progress seems to have been achieved on either of these demands to date.

The Ugandan government and the LRA signed a number of agreements in the lead-up to the envisaged final peace agreement. On 23 February, the Ugandan government and the LRA signed a ceasefire agreement (which is expected to come into effect 24 hours after the signing by both sides of a comprehensive peace deal and will replace the series of cessation of hostilities agreements that have been renewed between the two parties throughout the peace process). Recruitment, rearmament and movement by the LRA beyond a designated assembly area in southern Sudan are prohibited by the terms of the ceasefire.

On 19 February, the two sides signed a significant agreement on accountability and reconciliation, which is an annex to an earlier agreement, signed on 29 June 2007 that articulated principles on the same matters. The annex agreement envisions the setting up of a special division of the Uganda High Court to try those accused of planning or carrying out war crimes and other widespread attacks on civilians during the conflict. It also contemplates some use of reconciliation rituals known in Uganda as traditional justice. While the agreement does not specify exactly who would be subject only to traditional justice measures and not trials, those close to the talks have suggested that higher level persons bearing greater responsibility for serious crimes would be subject to trials before the Ugandan courts, while those implicated in more minor abuses, including child soldiers who had been abducted by the LRA, would be subject to traditional justice.

Reaching agreement in the final peace agreement on justice and accountability has been a major obstacle. LRA leaders had initially called for “dropping” the ICC’s cases against them. (The ICC has jurisdiction because of a formal request by Uganda in January 2004.) In October 2005, the ICC announced arrest warrants for five LRA commanders, including its leader Joseph Kony. (Two of the accused have since died; it is believed one died in battle and one was killed by Kony.) Given that no “dropping” or “withdrawal” of arrest warrants by the Ugandan government is possible under the Rome Statute, the parties turned to the possibility of national prosecutions in lieu of ICC prosecutions. Under the ICC Statute, this is a possible option under article 19. However, the ICC judges would have to determine the sufficiency of national trials as an alternative to ICC jurisdiction.

On 29 February, the parties concluded an additional agreement in which the Ugandan government agreed to make a request during a transitional period following the signing of a final peace agreement that the Security Council would decide to defer the ICC’s investigation and prosecution and that the request would be made after the Ugandan government had begun preparation for national trials. (It is unclear how the 12 March statement by President Yoweri Museveni during a visit to London that the prevailing view in his country was a preference for pursuing alternative traditional justice which was a “compensatory rather than a retributive system” rather than trials by the ICC in The Hague is to be reconciled with the 29 February agreement.)

During the week of 17 March, Kony was reported to have relocated from his base in the jungle in the Democratic Republic of the Congo (DRC) to the Central African Republic (CAR). This development has been perceived by some Council members as a negotiating maneuver perhaps to extract assurances regarding the somehow “dropping” or “lifting” of the ICC warrants before signing a final peace agreement. But it has also raised concern in the Council about the commitment of the rebels to ever fulfilling the terms of a final agreement or submitting persons accused of war crimes and crimes against humanity in their ranks to justice. The latter concern has been heightened by reports of a subsequent series of violent attacks in CAR and southern Sudan’s Central Equatoria state by unidentified groups which locals claim to have been perpetrated by LRA forces, especially since the attacks bore the operational trademarks of the LRA including violence, looting, abductions and rape.

On 10 March, a delegation from the LRA met with officials of the ICC Registry in The Hague to discuss legal procedural issues in regard to the LRA members facing the Court’s arrest warrants. The prosecutor had refused to meet the previous week with the same delegation which, reportedly, wanted then to press for getting the warrants somehow “lifted.”

In an exchange of letters (S/2007/720 and S/2000/719) between the Secretary-General and the Council President in late November and early December, the mandate of the temporary Liaison Office of the Special Envoy for the LRA-affected areas was extended and the office upgraded to a special political mission for a period of one year. The special political mission would conclude its operations when the peace process ends.

Key Issues

The key issue is whether justice and a sustainable peace consolidation process will follow the signing of any peace agreement between the Ugandan government and the LRA. There is concern that impunity for the most serious crimes committed during the conflict would never be the basis for sustainable peace.

Uganda seems likely to request the Council to defer the ICC investigation and prosecution pursuant to article 16 of the Rome Statute. Article 16 of the statute states that:

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Council members seem to be already weighing the related issues of justice for atrocities committed in Uganda, the prospects for sustainable peace, short term security requirements, and the immediate and long term impact of its decisions. An aspect of the problem is that this would be the first time that article 16 would be used by the Council in a particular ICC country situation. There are concerns about the precedent that invocation of article 16 in northern Uganda would set for the Court—including by legitimising political interference in its judicial activity—and its potential broader implications on the country situations the ICC investigates and prosecutes. (While a Security Council deferral is possible under the ICC Statute, inclusion of

this provision in the statute was very controversial precisely because of the threat it presents to judicial independence.)

A second aspect of the issue relates to concerns about granting a deferral while ICC suspects are at liberty, and could threaten to renew attacks on civilians unless deferral is renewed. Also, there are additional issues as to whether a deferral in the circumstances of Uganda, where a peace agreement that includes war crimes trials has already been concluded, would meet the requirements of a deferral resolution.

Another related issue is whether the provisions of the agreement will really be sufficient for tackling the post-accords human rights and humanitarian requirements of people from the conflict-affected areas, including resettlement of displaced people from the conflict affected areas and LRA camps, demobilisation and integration of LRA fighters, rehabilitation of child soldiers, recovery of property for returning internally displaced persons, as well as implementing a sustainable power-sharing agreement.

Options

Assuming the agreement is in fact signed, options for the Council include:

- limiting the immediate response to a statement welcoming the comprehensive peace agreement and the facilitation work done by Chissano;
- welcoming the agreement but also encouraging immediate implementation of the agreement's provisions, including on prosecuting serious crimes and releasing non-combatants held by the LRA;
- in view of the complex issues involved in the justice and accountability aspects of the peace agreement, delaying any consideration of the article 16 option and requesting the Secretary-General to prepare a report on this option as well as the article 19 option with reference to lessons learned in other contexts, clear analysis of the risks associated with the options and specific recommendations; and
- signaling a possible need for an ongoing future role for the Council on issues relating to the post-accords peace consolidation so as to prevent a return to conflict and give all parties a stake in the future, including integration of the peace process with recovery and development options.

Council Dynamics

The Council recently has been deliberately silent on the issue in order not to unintentionally disturb the tense closing stages of the peace talks and the work of Chissano. In this regard, a briefing to the Council by Chissano scheduled for late March was postponed to allow him more latitude to carry out his mediatory role.

Council members are awaiting the briefing by Chissano to inform their subsequent deliberations, especially on the issue of accountability for those allegedly responsible for the most significant rights violations and responding to a possible deferral request by the Ugandan government. Overall, because of the precedent setting nature of a first ever consideration of deferral of a country situation under article 16 of the ICC Statute, and perhaps also the nature of the crimes LRA members are charged with and the expectation of public and media revulsion at any hint of

possible impunity, many Council members are treading very cautiously. They want to effectively consolidate the peace but at the same time not undermine justice. (Council members seem conscious of their past general calls for accountability for serious violations of international humanitarian law in November 2006 (S/PRST/2006/45) and March 2007 (S/PRST/2007/6).)

Three sub-groups have so far emerged in the Council on the issue of possible resort to article 16 of the Rome Statute of the ICC as follows:

- i. Council members who may readily accede to a request from Uganda for a deferral of the matter by the Council;
- ii. Council members who prefer that in the first instance the Ugandan government make submissions to the ICC judges to have national prosecutions of war crimes and crimes against humanity replace ICC trials (i.e. this would be distinct from any Security Council action and occur on the basis of what is known as an “admissibility challenge” under article 19 of the statute). These Council members would rather avoid a more political Council decision to defer ICC investigation and prosecution; and
- iii. Council members who are yet to assume a position on the matter and/or still considering their options based on the merits of the issue as it evolves.

The UK is the lead country on this issue in the Council.

UN Documents

Selected Security Council Resolution
<ul style="list-style-type: none"> S/RES/1663 (24 March 2006) and S/RES/1653 (27 January 2006) requested a report on the LRA from the Secretariat.
Selected Security Council Presidential Statements
<ul style="list-style-type: none"> S/PRST/2007/6 (22 March 2007) welcomed the efforts of Special Envoy Joaquim Chissano and emphasised support for a negotiated settlement to the conflict. S/PRST/2006/45 (16 November 2006) welcomed the efforts to solve the conflict in northern Uganda and indicated the Council’s intention to monitor developments closely.
Selected Press Statement
<ul style="list-style-type: none"> SC/9167 (13 November 2007) conveyed the Council’s continued support for Special Envoy Joaquim Chissano’s facilitation role and its views on the security and humanitarian situation in northern Uganda.
Selected Meeting Record
<ul style="list-style-type: none"> S/PV.5415 (19 April 2006) was a briefing by the Ugandan government on the LRA.
Selected Secretary-General’s Report
<ul style="list-style-type: none"> S/2006/478 (29 June 2006) was the LRA report.
Other
<ul style="list-style-type: none"> S/2007/720 (6 December 2007) and S/2000/719 (21 November 2007) was the

exchange of letters between the Secretary-General and the President of the Security Council extending the mandate of Special Envoy for the LRA-affected areas and upgrading the Special Envoy's Liaison Office to a special political mission until 31 December 2008.

- SC/9167 (13 November 2007) was the Security Council's press statement on the security and humanitarian situation in northern Uganda.
- S/2006/930 (1 December 2006) was a Secretary-General's letter informing the Council of Chissano's appointment and mandate.
- SC/9167 (13 November 2007) supported the facilitation activities of Special Envoy Chissano and for a negotiated solution to the situation in northern Uganda.
- S/2006/861 (3 November 2006) and 944 (6 December 2006) contained the Cessation of Hostilities Agreement and its addendum.

Useful Additional Sources

Third Memorandum on Justice Issues and the Juba Talks: Particular Challenges for Uganda in conducting national trials for serious crimes, Human Rights Watch, September 2007, <http://hrw.org/eca/ugandamemo0907/>

Uganda: The June 29 Agreement on Accountability and Reconciliation and the Need for Adequate Penalties for the Most Serious Crimes, Human Rights Watch, 31 July 2007, <http://hrw.org/backgrounders/ij/uganda0707/>

Benchmarks for Assessing Possible National Alternatives to International Criminal Court Cases Against LRA, Human Rights Watch, May 2007, <http://hrw.org/backgrounders/ij/icc0507/>

Uganda: New Accord Provides for War Crimes Trials, Human Rights Watch, 19 February 2008, <http://hrw.org/english/docs/2008/02/19/uganda18094.htm>