



## **Questions and Answers on the LRA Commander Dominic Ongwen and the ICC January 2015**

On January 6, 2015, US military advisers supporting the African Union Regional Task Force in the Central African Republic received the Lord's Resistance Army (LRA) commander [Dominic Ongwen](#) into custody. The United States, Uganda – the primary contributor to the AU task force – and the Central African Republic should ensure the prompt transfer of Ongwen, believed to be about 34 years old, to the International Criminal Court (ICC). In 2005, the ICC issued an arrest warrant for Ongwen for crimes against humanity and war crimes.

### **1. What is the Lord's Resistance Army?**

The Lord's Resistance Army is an armed rebel group led by Joseph Kony. Organized in about 1987, it initially fought the Ugandan government in northern Uganda, with incursions into South Sudan.

Ugandan military operations forced the group out of Uganda in 2005 and 2006. After that, the LRA gradually became a regional threat, operating in the remote border areas between southern Sudan, the Democratic Republic of Congo, and the Central African Republic. Human Rights Watch documented the killings of more than 2,600 civilians and abductions of over 4,000 others by the LRA in northeastern Congo, Central African Republic, and South Sudan between 2008 and 2012. More than 400,000 people were displaced from their homes in this region because of LRA attacks.

Throughout its history, the LRA has been responsible for numerous atrocities, including massacres, summary executions, torture, rape, pillage, and forced labor. The LRA's brutality against children has been particularly horrific. It replenishes its ranks by abducting children, forcibly trains and uses children in combat operations, uses girls as sex slaves, and compels compliance through threats, violence, and mind control.

### **2. Who is Dominic Ongwen?**

Ongwen is from Gulu, northern Uganda. According to his family, he was born in 1980 and was abducted by the Lord's Resistance Army on his way to school in 1990 at age 10. Senior LRA leaders gave him military training and he eventually became known as one of the LRA's more ruthless commanders.

After LRA forces left northern Uganda in 2005 and 2006, troops under Ongwen's command

repeatedly terrorized communities in Congo's Haut Uele and Bas Uele districts. They were responsible for some of the LRA's most vicious attacks in the following years, including the Makombo massacre in 2009, when troops under Ongwen's command killed at least 345 civilians and abducted another 250, including at least 80 children, during a four-day rampage in the Makombo area of northeastern Congo. This was one of the worst massacres committed during the LRA's long, brutal history.

### **3. How did the ICC come to bring charges against Ongwen?**

In December 2003, Uganda referred the situation of the Lord's Resistance Army to the ICC. In July 2004, the ICC prosecutor announced that the ICC was opening an investigation into the situation in northern Uganda. In July 2005, the ICC issued sealed arrest warrants for war crimes and crimes against humanity for the LRA's top five leaders at that time: Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya, and Dominic Ongwen. The warrants were unsealed in October, 2005. Lukwiya was killed in 2006 and Otti in late 2007. Odhiambo may have been killed in recent fighting, Ugandan officials said.

### **4. What are the charges against Ongwen?**

The ICC has charged Ongwen with criminal responsibility for crimes committed in northern Uganda in 2004: three counts of crimes against humanity (murder, enslavement, and inhumane acts of inflicting serious bodily injury and suffering) and four counts of war crimes (murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, and pillaging).

### **5. What are Ongwen's rights as a suspect?**

Under the ICC's Rome Statute, an arrested person should be brought before the competent judicial authority of the custodial state, which should determine if Ongwen's rights have been respected according to the relevant domestic law. Notably, under the law of the Central African Republic, Ongwen should have immediate access to a lawyer and information about the charges against him in a language he understands by a local magistrate.

Under international fair trial standards such as found in the International Covenant on Civil and Political Rights and the ICC's Rome Statute, Ongwen is generally entitled to:

- have information about the charges against him in a language he understands;
- a presumption of innocence;
- adequate time and facilities to prepare a defense;
- not be compelled to testify against himself or to confess guilt;
- have a lawyer of his own choosing; and
- be protected from torture and cruel, inhuman, or degrading treatment or punishment.

## **6. How does Ongwen's experience as a child soldier affect judicial proceedings against him?**

Ongwen is believed to be the only former child abductee to face charges before the ICC. During its history, the LRA abducted at least 30,000 children into its ranks, in large part because they are easier to manipulate than adults. Through mind-control methods that instill fear, and sheer brutality, the LRA initiates children into the group and forces them to undergo what they call "military training." Children are often forced to kill adults or other children who fail to obey the LRA's strict rules or who try to escape.

The ICC's Rome Statute does not provide jurisdiction over crimes committed by someone under 18, but Ongwen can be tried for the crimes he committed as an adult. His status as a child abductee could be a mitigating factor during sentencing in the event of trial and conviction, and may also be relevant to his legal defense.

## **7. Could Ongwen be tried in Uganda?**

The ICC is a court of last resort. Under the Rome Statute, the ICC only prosecutes cases when national courts are unable or unwilling to prosecute. Once a case has been taken up by the court, as in the Ongwen case, it would only revert to national courts on the basis of what is known as an admissibility challenge, in which a state can show that it is investigating and prosecuting him for the same crimes.

In 2011 Uganda officially established an International Crimes Division to try war crimes, crimes against humanity, and other crimes. Although national trials could make an important contribution to securing justice for crimes committed during the conflict in northern Uganda, serious legal obstacles have emerged that call into question whether the division can fulfill its potential as a meaningful forum to [ensure accountability](#).

The only case related to the conflict in northern Uganda that has been brought before the International Crimes Division is against [Thomas Kwoyelo](#), a former LRA member captured in Congo in March 2009, who is charged with war crimes. Kwoyelo's trial was stopped after Uganda's Constitutional Court concluded that he had been treated unequally under the country's Amnesty Act (see below) and ordered his release. He remains in prison while an appeal of the Constitutional Court ruling is pending before Uganda's Supreme Court.

## **8. How has Uganda addressed serious abuses by the LRA and its own military?**

In 2000 the Ugandan government enacted an amnesty for Ugandan citizens, including LRA fighters, involved in an armed rebellion if they renounced their involvement. As of 2012, more than 12,906 people affiliated with the LRA had been granted amnesty, including a number of former high-ranking LRA commanders. Amnesty for war crimes and crimes against humanity violates

international law, which rejects immunity from prosecution for the gravest crimes.

Kwoyelo is the only former LRA fighter in prison in Uganda facing charges for LRA activity. A senior commander of the LRA, Ceasar Achellam, has been in Ugandan military custody since May 2012 and his status is not known. International law requires that a person held for a criminal offense be promptly charged or released. A domestic warrant for his arrest for war crimes has been pending in Uganda since November 2013, but has never been acted on.

The Ugandan army has said that Ugandan soldiers who committed abuses during the conflict have been prosecuted and convicted, though it has been unwilling to provide details of such cases.

Human Rights Watch has documented abuses by the Ugandan armed forces over the course of its 25-year armed conflict with the LRA, [including torture](#), rape, arbitrary detention, unlawful killings, and forced displacement of its citizens into camps with [no protection](#) and [minimal humanitarian assistance](#). These crimes have very rarely been prosecuted. Human Rights Watch is aware of some instances in which soldiers were executed after being found guilty of crimes against civilians during the LRA conflict, following a verdict in a summary court martial proceeding. Defendants had no right to appeal these verdicts, and Uganda's Constitutional Court has ruled such executions unconstitutional. Human Rights Watch opposes the death penalty in all circumstances because of its inherent cruelty.

At least some former LRA fighters, including some senior commanders, have been [integrated into the Ugandan military](#) and are actively deployed in the counter-LRA effort, without any investigation into crimes they may have committed during their time in the LRA.

#### **9. Could the ICC or other countries prosecute Ongwen for alleged crimes committed outside Uganda?**

There are no pending charges by the ICC or any domestic jurisdiction against Ongwen or other LRA leaders for alleged crimes outside of Uganda. The ICC prosecutor should consider adding charges related to serious crimes committed in those countries where the ICC has jurisdiction, such as the Democratic Republic of Congo. These cases could also be pursued by domestic authorities in the countries where the alleged crimes occurred. More discussion of these issues is available at: [http://www.hrw.org/sites/default/files/reports/drc0310webwcover\\_o.pdf](http://www.hrw.org/sites/default/files/reports/drc0310webwcover_o.pdf).

#### **10. What is Uganda's position on the ICC?**

Uganda is a state party to the ICC's Rome Statute and was the first country to request an ICC investigation. The ICC has worked in Uganda for many years, carrying out investigations and holding outreach meetings with victims' groups.

Since 2009, when the ICC issued an arrest warrant for President Omar al-Bashir of Sudan for crimes in Darfur, the court has faced hostility from some African leaders. This backlash increased in 2013 when Uhuru Kenyatta and William Ruto, both accused by the ICC of crimes committed during Kenya's 2007-2008 post-election violence, were elected president and deputy president of Kenya. The case against Kenyatta was [dropped in late 2014](#). President Yoweri Museveni of Uganda has supported criticism of the ICC and suggested pushing for withdrawal by African countries from the ICC at the next African Union summit.

Thirty-four African countries are members of the ICC, and the ICC continues to benefit from [support by many of those countries](#).