

INTERNATIONAL CRIMINAL COURT

REFERRAL OF THE SITUATION CONCERNING
THE LORD'S RESISTANCE ARMY

SUBMITTED BY THE REPUBLIC OF UGANDA

16 DECEMBER 2003

I. INTRODUCTION AND SUMMARY

1. The Republic of Uganda respectfully submits this Referral of the Situation Concerning the Lord's Resistance Army (LRA) for consideration by the Prosecutor of the International Criminal Court (ICC), pursuant to Articles 13(a) and 14 of the Court's Statute.

2. Since the entry into force of the ICC Statute on 1 July 2002, the LRA has committed widespread and systematic attacks against Uganda's civilian population including, but not limited to, the abduction of an estimated 5,000 children; their murder, torture, mutilation, rape, and other inhumane treatment as a means of ensuring obedience; their use as forced labourers and sexual slaves, including forced pregnancy as the "wives" of LRA commanders; their forcible conscription and use in armed hostilities against the Uganda People's Defence Forces (UPDF); and their use in terrorising their own communities through murder, torture, mutilation, rape, abductions, and wanton destruction and pillage of civilian property.

3. The LRA's campaign of terror has claimed tens of thousands of innocent lives; scarred an entire generation of children; inflicted serious physical and mental harm on countless others; displaced an estimated 800,000 civilians

seeking protection in camps for internally displaced persons (IDPs); and plunged the once prosperous Acholi people of northern Uganda into abject poverty, hunger and disease, dependent on humanitarian aid for their survival.

4. These unspeakable acts clearly qualify as crimes against humanity within the meaning of Article 7 of the ICC Statute. Furthermore, they are undoubtedly of a sufficient scale and gravity to justify action by the ICC in their investigation and prosecution.
5. The atrocities of the LRA have plagued Uganda's people for more than seventeen years. Despite repeated Ugandan attempts at peaceful settlement and reconciliation, the LRA has refused to end its campaign of terror. The United Nations has repeatedly condemned the LRA, and the United States has declared it as a terrorist group. However, despite calls to isolate the LRA leadership and to hold it accountable for massive human rights violations, the international community has failed to arrest the perpetrators, and their heinous crimes continue unabated.
6. Having exhausted every other means of bringing an end to this terrible suffering, the Republic of Uganda now turns to the newly established ICC and its promise of

global justice. Uganda pledges its full cooperation to the Prosecutor in the investigation and prosecution of LRA crimes, achievement of which is vital not only for the future progress of the nation, but also for the suppression of the most serious crimes of concern to the international community as a whole.

II. STATEMENT OF FACTS

A. Origin, Evolution, and Characteristics of the LRA

7. In 1986, popular forces led by the National Resistance Movement (NRM) overthrew the dictatorship of General Tito Okello. Remnants of General Okello's armed forces responsible for mass atrocities against Ugandan civilians retreated north and found refuge in southern Sudan. There they re-organised themselves as anti-Government insurgents. Sudan had previously organised, trained, armed, and provided sanctuary to the remnants of former dictator Idi Amin's armed forces, reconstituted as the West Nile Bank Front (WNBF). The overthrow of the Okello dictatorship by the NRM, and the establishment of a broad-based, non-sectarian government that was tolerant and inclusive of all political, ethnic, and religious forces in Uganda, were considered by Sudan as threats to its radical Islamic ideology and the brutal subjugation of its African population in the south of the country.

8. Okello's forces were reconstituted as the Holy Spirit Movement (HSM) under the leadership of Alice Auma Lakwena, a self-styled prophetess who claimed to be a spiritual medium with the power to perform miracles. Her soldiers were exhorted to overthrow the newly established NRM Government and told that bathing in Holy Water would make bullets bounce off of them and that, with faith, stones they threw would turn into grenades. In November 1987, emboldened with these promises of invincibility, her forces suffered heavy casualties during a battle with Government forces, and Lakwena fled to Kenya.

9. Lakwena was succeeded in 1988 by Joseph Kony, an acolyte and young relative, who declared himself her "spiritual heir" with similar supernatural powers. He first became commander of the United Christian Democrat Army of Uganda, and then of the LRA composed of remnants of the Holy Spirit Movement. The declared mission of Kony's rebel movement was to overthrow the Government and to "install the Ten Commandments" in Uganda. It quickly became apparent, however, that the LRA was simply a force comprised of deranged warlords and slave masters for whom cruelty and terrorization of civilians was an end in itself.

10. The LRA's initial theatre of terror was northern Uganda. However, after the 1994 genocide in Rwanda, and in view of Uganda's alliance with the Rwandese Patriotic Front (RPF) against the *génocidaires*, President Mobutu Sese Seko of Zaïre (now Democratic Republic of Congo) and his former Rwandese Armed Forces (FAR) and Interahamwe allies decided to make use of anti-Uganda insurgents for their own purposes. With President Mobutu's support and approval, Sudan established new bases for the LRA inside Congo, across the border from north-western Uganda, opening yet another front in this campaign of terror.

11. From its inception until the present, the LRA has not had a coherent ideology, a rational political agenda, or any form of popular support. Its attempts to mobilise the Acholi people of northern Uganda against the Government have utterly failed, not least because the LRA derives most of its membership of forcibly conscripted children from the Acholi, and because the same population has been the primary victim of LRA atrocities. The fact that most members of the Uganda People's Defence Forces (UPDF) protecting the local population are also Acholi does not help the LRA's cause either. In order to justify its existence, the LRA is particularly eager to demonize as enemies and kill Acholi who are either members of local Government or Acholi

who are merely suspected of loyalty to the Government. By 1991, the LRA had fully established itself as a fanatical terrorist group whose primary objective was the extermination, brutalization, and enslavement of Uganda's civilian population. Despite Government offers of amnesty and peaceful settlement through negotiation, the LRA instead escalated its violence against innocent civilians during the 1990s, increasing the frequency and ferocity of its attacks.

B. Crimes Committed by the LRA

12. The LRA's lack of a popular base and its inherently criminal character were demonstrated most clearly by its almost exclusive reliance on the abduction and forcible conscription of village children for its membership. Without access to volunteers among the Acholi, this was the only way it could increase and maintain its forces. As the United Nations High Commissioner for Human Rights stated in a 9 November 2001 Report to the Human Rights Commission: "The LRA is devouring the lives of children in northern Uganda in order to sustain itself, given that it cannot attract young men to the rebel movement as volunteers." (E/CN.4/2002/86, para. 16)

13. The LRA normally abducts children between the ages of 11 and 15, although it has frequently taken children as

young as 6. Nongovernmental organizations report that the average age of abductees appears to be getting younger apparently because younger children are easier to control and younger girls are less likely to be infected with the HIV virus. According to the Abducted Children Registration and Information System, a database developed and maintained jointly by UNICEF and the Government of Uganda, there have been 26,615 cases of child abduction in northern Uganda and the West Nile region out of a total of approximately 38,000 abductions. Of these, approximately 5,000 took place after 1 July 2002, although in addition to these, many children abducted prior to this date also continue to be held captive.

14. Abductions occur mostly in the Apac, Gulu, Kitgum and Lira districts of northern Uganda, but children have also been abducted from communities and refugee camps in the west including Adjumani, Moyo, and Arua on Uganda's border with the Democratic Republic of Congo, where the LRA had also established bases. The abductees are usually taken to LRA bases in southern Sudan, around the town of Juba in the Bahr El Jebel region, although more recently, the majority of abducted children have been kept in remote regions of northern Uganda.

15. The LRA leadership deliberately preys on the innocence and vulnerability of children in order to transform them into a potent combination of docile subordinates and vicious killers. Typically, children are abducted from their homes, schools, communities, and even from IDP camps and refugee settlements. They are then forced into slave labour, or serve as “wives” for LRA commanders, or they are trained as fighters and forced to commit atrocities against their own communities in furtherance of the LRA’s policy of mass terror against civilians.

16. In 2001, there were signs of improvement as less than one hundred children were abducted. This glimmer of hope was quickly extinguished however, and in the latter part of 2002, an estimated 5,000 children were abducted, more than in any other year since the conflict began. These abductions have continued throughout 2003 and show no sign of abatement. Children are most vulnerable to abduction at night, when the LRA carries out raids on villages and camps, looting food and supplies, burning houses, and taking both children and adults captive. Each night, the fear of abduction drives thousands of children from villages into towns like Gulu and Lacor to sleep on verandas, in the bus park, on church grounds, and in local factories, before returning home the following morning. These children are known as “night commuters”. Hundreds of thousands of civilians have

simply abandoned their homes and sought shelter in “protected villages” where the UPDF provides security. The socio-economic impact of this massive dislocation and dependence on humanitarian aid has been catastrophic for northern Uganda.

17. Upon capture, children are subjected to severe mistreatment. Typically, they are initially used as slave labour to carry heavy loads looted by their LRA captors. They are then put through a well-designed process of torture and brutalization, forced under threat of death and torture to take part in beatings and killings of children who collapse under the burden of the workload, who disobey orders, or who attempt to escape. The killings are particularly brutal, involving severe beatings with clubs or mutilation and dismemberment with machetes, sometimes over a number of days. Other than instilling obedience through fear, the children who commit these acts are traumatised, and invariably consider themselves as outcasts, and thus become dependent on the sordid fraternity of the LRA. This trauma is exacerbated by forcing children to attack villages, often their own communities, to kill and torture civilians, burn homes and pillage property, and abduct other children. Upon release or escape, many children are so severely traumatized by their experiences that their full

rehabilitation and return to normal social life become unattainable.

18. The death rates for children in LRA camps are very high. Those who are not killed by other LRA members or deliberately put in harm's way in hostilities with the UPDF, face a high risk of death from starvation, dehydration, or disease. There is little effort to provide adequate food rations or hygiene for the children. Life within the camps is strictly hierarchical, involving a grotesque reordering of experiences familiar to children. "Family" units are headed by LRA commanders who effectively own the children as slaves. Even minor infractions of rules result in severe beatings by the "head of the family".

19. The plight of girls, comprising approximately 20% of abducted children, is particularly tragic. Although some are given military training and forced to attack villages and abduct other children, most girls are assigned to commanders as *ting ting* (servants), working long hours carrying heavy loads, walking long distances to fetch water and firewood, and performing other tasks such as cooking and field work. Most of the girls are raped and many are given to LRA commanders as "wives" or sexual slaves and subjected to serious abuse including

forced pregnancy. In addition to these horrors, many children have been infected with HIV/AIDS.

20. For some girls, becoming a “wife” and bearing the commander’s children brings some privileges like fewer working hours, fewer or less severe beatings, and better food rations. It is estimated that during the 1990s, over 800 children had been born to LRA “wives” concentrated at Jabelein camp in southern Sudan. In June 2000, the LRA released over 100 “child mothers” with their children, apparently because the children hindered the LRA’s movements as they retreated from the UPDF during a counterinsurgency operation. There are an estimated 200 girls still living in the LRA camps in southern Sudan together with the children of the LRA commanders that they were forced to carry and bear. The LRA leader Joseph Kony himself is said to have about 60 wives, including reportedly the 19 surviving “Aboke girls”, a group of 30 girls abducted in 1996 from St. Mary’s School in Aboke, Lira district.

21. Apart from the horrors faced by abducted children, the atrocities against communities in northern Uganda are also shocking in scale and gravity. In order to spread terror and instil obedience among the civilian population, the LRA takes pride in particularly gruesome massacres. To give but one example, on 25 July 2002, 48 people

were hacked to death near the town of Kitgum. It is reliably reported that elderly people were killed with machetes and spears, and that babies were flung against trees.

22. Despite their pretensions of Christianity, the LRA has not even spared priests from the grip of its terror. On 11 May 2003 for instance, 44 trainee priests aged 12 to 18 were abducted from their dormitories at St Mary's Seminary in Gulu. At least four were hacked to death with machetes when they were unable to walk because of enduring torture.
23. Beyond massacres and torture, the LRA has also engaged in wanton destruction and pillage of civilian property, including burning numerous homes. The LRA has even attacked humanitarian relief convoys belonging to the UN World Food Programme in order to deny civilian access to food and medicine. Not content with mere terrorization, the LRA also deprives people of their elementary means of survival, leaving not even a modicum of dignity and security for an already aggrieved and desperate population.

C. Reasons for Uganda's Referral of the LRA Situation

24. The Ugandan judicial system is widely recognized as one of the most independent, impartial and competent on the

African continent. Makerere University in Kampala has an illustrious reputation in legal education and counts among its alumni some of the most distinguished African jurists. Uganda's bar and legal culture are highly developed. Contentious political issues are regularly submitted to the Ugandan judiciary and vigorously litigated. Decisions adverse to the Government are implemented without exception. There is no doubt that Ugandan courts have the capacity to give captured LRA leaders a fair and impartial trial.

25.

Uganda has referred this situation to the ICC primarily because, without international cooperation and assistance, it cannot succeed in arresting those members of the LRA leadership and others most responsible for the above mentioned crimes. Furthermore, Uganda is of the view that the scale and gravity of LRA crimes are such that they are a matter of concern to the international community as a whole. It is thus befitting both from a practical and moral viewpoint to entrust the investigation and prosecution of these crimes to the Prosecutor of the ICC.

II.

EXERCISE OF JURISDICTION BY THE ICC

A. Jurisdictional Basis for a State Referral and the Initiation of Investigations by the Prosecutor

26. Uganda ratified the ICC Statute on 14 June 2002, prior to its entry into force on 1 July 2002. In terms of temporal jurisdiction, a substantial part of the above-mentioned LRA crimes were committed either on or after 1 July 2002, or committed prior to this date, but with continuing effect thereafter, such as the continued captivity of children previously abducted. As such, the crimes fall within the temporal jurisdiction of the ICC as defined by Article 11 of the Statute.
27. The LRA crimes were committed either on Ugandan territory, whether by Ugandan nationals or the nationals of other States, or committed by Ugandan nationals in the territory of other States, in particular the Sudan. Thus, the facts of the present situation satisfy both grounds for the exercise of ICC jurisdiction under Article 12(2) of the Statute.
28. Under Articles 13(a) and 14 of the ICC Statute, Uganda is entitled to refer to the Prosecutor a situation in which one or more crimes within the Court's jurisdiction appear

to have been committed, requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes. Under Article 53 of the Statute, in deciding whether to initiate an investigation, the Prosecutor shall consider whether: (a) the information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed; (b) The case is or would be admissible under article 17; and (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interest of justice.

29. With respect to Article 53, paragraph (a), there is considerable information that provides a reasonable basis to believe that LRA leaders have committed and are committing crimes against humanity within the definition of Article 7 of the ICC Statute.

30. With respect to Article 53, paragraph (b), any case arising from LRA crimes would be manifestly admissible under Article 17 of the ICC Statute because of the "inability" of the Ugandan judicial system to prosecute the crimes within the meaning of Article 17, paragraph 3. Inability in this instance does not in any way imply the

total or substantial collapse of the national judicial system within the purview of Article 17(3), but merely the “unavailability” of the system, because Uganda is “unable to obtain the accused” since those most responsible are either sheltered in the Sudan, or in remote regions of Uganda for limited time periods, making arrest and prosecution difficult without international assistance.

Furthermore, there can be no doubt that this case is “of sufficient gravity to justify further action by the Court” as required by Article 17(1)(d).

31. With respect to Article 53, paragraph (c), it is beyond question that, taking into account the gravity of LRA crimes and the interests of the thousands of victims (especially children), investigations by the Prosecutor would serve the interests of justice. In particular, beyond the need for retribution, deterrence and social rehabilitation, since most LRA subordinates are forcibly conscripted children, incapacitation of the LRA commanders and their benefactors through arrest and prosecution would most probably result in the organization’s collapse and dispersal and, consequently, the prevention of future crimes. Thus, in this instance, there is a particularly direct and immediate connection between the punishment of perpetrators and the interests of victims or potential victims.

B. Subject-Matter Jurisdiction

32. The conduct of the LRA manifestly qualifies as crimes against humanity under Article 7 of the ICC Statute as elaborated by the Elements of Crimes, and covers almost every enumerated act contained therein. As indicated by the Statement of Facts and accompanying documentation, since 1 July 2002, the LRA has been involved in the multiple commission of the following acts as part of widespread and systematic attacks directed against the civilian population of Uganda, including but not limited to the northern districts of Kitgum, Pader, and Gulu, pursuant to or in furtherance of an organizational policy to terrorize the civilian population:

- (a) Murder, whether by killing or otherwise causing the death of thousands of civilians, including killing of forcibly conscripted child soldiers as a form of intimidation, coercing child soldiers to kill each other under duress, using child soldiers as human shields and otherwise putting them in harm's way in hostilities with the UPDF, and by deliberate infection of girls with HIV/AIDS, and by denial of adequate food and medicine to captives;

- (b) Extermination, by mass killing of thousands of civilians in northern Uganda including abducted children, and by inflicting conditions of life such as denial of access to food and medicine to thousands of abducted children and destruction and pillage of the means of survival of village communities, calculated to bring about the destruction of part of the civilian population;
- (c) Enslavement, through the exercise of the powers attaching to the right of ownership over thousands of abducted children, namely exacting forced labour, trafficking in women and children, and otherwise reducing captives to a servile status;
- (d) Deportation and forced transfer of population, namely forcible displacement of hundreds of thousands of civilians caused by fear of violence, duress, detention, psychological oppression and abuse of power against such persons;
- (e) Imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law, including in particular the detention of abducted children;

- (f) Torture, namely the intentional infliction of severe pain and suffering, both physical and mental, through acts such as physical mutilation, rape, and severe beatings, and forcing children to kill and torture other children and to witness such acts;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, and other forms of sexual violence of comparable gravity, including but not limited to the use of girls as “wives” by LRA commanders and their subjection to rape, unwanted pregnancies, and the risk of sexually transmitted diseases such as HIV/AIDS;
- (h) Persecution against the civilian population, particularly in the districts of Kitgum, Pader, and Gulu, on political grounds, on account of their allegiance or suspected allegiance to the Government of Uganda, in connection with the acts enumerated under Article 7 of the ICC Statute as well as other crimes within the jurisdiction of the ICC, including but not limited to pillaging of towns and places under Article 8 (2)(e)(v) of the Statute;

- (i) Enforced disappearance of persons, through the arrest, detention or abduction of persons by and with the authorization, support and acquiescence of the LRA followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention to removing them from the protection of the law for a prolonged period of time; and
- (j) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, including but not limited to the policy of forcibly conscripting thousands of children under the age of fifteen years into the LRA and using them to participate actively in hostilities, comparable to Article 8(2)(e)(vii) of the ICC Statute.

C. Inapplicability of Immunities under the Laws of War

33. Uganda submits that in view of its policies and practices, the LRA is an inherently criminal organization without any legitimate political or military objectives, and thus, that it does not enjoy any immunity under the laws or customs of war for attacks or any other acts of violence against the UPDF, militia, police, or other Government officials. In particular, LRA leaders and other operatives

may not invoke the laws of war as justification for the killing of Government agents or destruction of Government property in order to escape accountability.

34. Under humanitarian law, the LRA does not qualify as a belligerent entitled to the lawful conduct of hostilities because:
- (a) Other than terrorization of the civilian population, the LRA does not exercise *de facto* control over any part of Ugandan territory;
 - (b) Other than terrorization of the civilian population, the limited and sporadic LRA military operations carried out by forcibly conscripted children against the UPDF do not amount to an armed conflict, understood as protracted armed violence between armed forces, as distinct from violence by insurgents against civilians;
 - (c) LRA operatives do not have a fixed distinctive sign recognizable at a distance;
 - (d) LRA operatives do not carry arms openly; and
 - (e) LRA operatives do not conduct their operations in accordance with the laws and customs of war.

IV. SUPPORTING DOCUMENTATION

35. Supporting documentation immediately available to Uganda accompanies this Referral in accordance with the requirements of Article 14(2) of ICC Statute. In the interests of expediting the Referral of this situation, this documentation is only preliminary and will be supplemented by other more detailed evidence in due course, in addition to any information gathered by the ICC Prosecutor in collaboration with Ugandan officials.

36. The accompanying sources are public reports on the human rights violations committed by the LRA. They include the "Report of the United Nations High Commissioner for Human Rights on the mission undertaken by her Office, pursuant to Commission resolution 2000/60, to assess the situation on the ground with regard to the abduction of children from northern Uganda", dated 9 November 2001 (E/CN.4/2002/86). Although this report pre-dates 1 July 2002, it provides a particularly valuable and authoritative account of the LRA's crimes and policies that remains equally valid at present. If anything, the report was prepared at a time when the LRA abductions had decreased, prior to their large-scale resumption after June 2002, and thus, the

account may not fully reflect the scale and gravity of LRA crimes.

37. The Human Rights Watch report "Stolen Children: Abduction and Recruitment in Northern Uganda" dated March 2003 also accompanies this Referral, and includes more current information concerning LRA crimes from 1 July 2002 onwards. Uganda's views differ from those of Human Rights Watch on certain aspects of this report, but it remains a valuable source of information for preliminary purposes.
38. Finally, this Referral is accompanied by a sampling of newspaper reports of LRA attacks on civilians in northern Uganda since January 2003, demonstrating the ongoing nature, severity and disastrous consequences of these brutal crimes.
39. Uganda recognizes that neither the Report of the United Nations High Commissioner for Human Rights, nor the report by Human Rights Watch, nor the accompanying newspaper articles would constitute evidence admissible in a court proceeding. Nor does Uganda vouch for each and every assertion or view expressed in these documents. Nevertheless, Uganda regards their contents as reasonably accurate portrayals of the general situation and, as such, suitable for use by the Prosecutor in

determining whether the investigations requested by Uganda are warranted. In any event, Uganda is presently gathering from its own official records reliable and contemporaneous documents and other materials to further establish the appropriateness of these investigations, and will provide them to the Prosecutor at the soonest possible time.

V. REQUEST TO THE ICC PROSECUTOR

- 40 Pursuant to Article 14(1) of ICC Statute, Uganda requests the Prosecutor to investigate the situation concerning the LRA for the purpose of determining whether one or more specific persons should be charged with the commission of crimes against humanity for acts committed on or after 1 July 2002.

41. Uganda offers full collaboration to the Prosecutor in such investigations including but not limited to the sharing of information currently in its possession, provision of security and other support for conducting on-site investigations in Uganda, and judicial cooperation in the execution of a warrant of arrest or summons to appear issued pursuant to Article 58 of the ICC Statute.

42. Uganda requests that investigations focus on the persons most responsible for such crimes, namely LRA members in positions of command and control, especially because a significant proportion of low-ranking perpetrators are forcibly conscripted children that have committed crimes under duress, and thus are themselves victims of the LRA leadership. Uganda further notes that under Article 26 of ICC Statute, there is no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.
43. Uganda further requests that any investigations or prosecutions resulting from this Referral take into consideration effective victim access to trial proceedings, public awareness and ownership of the process, and institutional capacity-building at the local and national level, so that involvement of the ICC in the LRA situation will have lasting benefits for social rehabilitation and national reconciliation, especially among grassroots communities directly affected by the crimes. In particular, Uganda requests the Prosecutor to consider a collaborative outreach program in Uganda, together with national and local participation as appropriate, during both the investigation and prosecution phases of proceedings, including holding a substantial part of these proceedings in Uganda where the public will be able to attend.

44. Finally, in accordance with Articles 17 to 19 of the ICC Statute, Uganda reserves the right to make relevant submissions and otherwise participate in proceedings as to the admissibility or jurisdiction of the ICC with respect to the situation concerning crimes committed by the LRA.

16 December 2003

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