



Justice Delayed
For Global Court,
Ugandan Rebels
Prove Tough Test
African Politics, Tactical Fights
Hamper Chief Prosecutor;
No Trial Date in Sight
Who Will Arrest Mr. Kony?

By JESS BRAVIN
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THE HAGUE -- In August 2004, the International Criminal Court sent investigators to Uganda to gather evidence against a shadowy insurgency known as the Lord's Resistance Army.

It was precisely the kind of desperate case the world's first permanent war-crimes tribunal was set up in 2002 to prosecute, and court officials hoped to showcase a new brand of international justice. The Lord's Resistance had terrorized Uganda's Acholiland region with murders, rapes and child abductions. Over two decades, the insurgents had kidnapped more than 20,000 children and driven nearly two million people from their homes, the United Nations estimates.

But the ICC quickly discovered how difficult it can be to dispense justice in corners of the world where political, military and diplomatic forces have long failed to produce stability. Seven months after ICC investigators arrived in Uganda, a delegation of Acholi tribal leaders came to the court's headquarters here with an unexpected plea: Drop the case.

Although the tribal leaders feared the Lord's Resistance and its messianic leader, Joseph Kony, they also were afraid that the ICC's vow to prosecute him left the rebel leadership little incentive to negotiate -- and every reason to fight on. Is the ICC "able to provide peace, or only justice?" asked David Onen Acana II, the paramount chief of the Acholi, during an interview last year at The Hague. "We want peace by any means."

The Uganda case, the ICC's first, has become a test of the fledging international court and its charismatic Argentine chief prosecutor, Luis Moreno-Ocampo. In January 2004, Mr. Moreno-Ocampo predicted arrests by year's end and a trial in 2005. But the ICC has no police force of its own, and its member states, including Britain, France and Germany, have shown no inclination to help Ugandan forces apprehend anyone. Today, not a single suspect is in custody and no trial date is in sight. To make matters worse, the unsealing of arrest warrants in October was followed by the killings of foreign aid workers in northern Uganda in apparent reprisal.

In recent weeks, Uganda's president, Yoweri Museveni, and Mr. Kony have engaged in an unprecedented public dialogue that threatens to cut the ICC out of the picture entirely. Mr. Museveni offered to shield Mr. Kony from prosecution should he surrender by July 31. And Mr. Kony, in a videotaped message, said he wanted peace.

SEE A PHOTO SLIDESHOW



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**Luis Moreno
Ocampo**

"In Uganda, they have not done well," says William R. Pace, head of the Coalition for the International Criminal Court, which promoted the creation of the tribunal and continues to serve as an independent adviser. "I think there's blame on all

Northern Ugandans displaced by the ongoing civil conflict have been resettled to government-controlled camps, sometimes forcibly.

airplane, recruiting the crew and taking off," he says.

The ICC was established as an independent international tribunal, a court of last resort for humanity's worst crimes. One hundred nations, including Uganda, are members, providing funding and electing the court's judges. The U.S. isn't among them. The Bush administration contends the court's charter lacks safeguards against prosecuting Americans for political reasons.

Rising Tensions

Thus far, the court has struggled to handle multiple investigations on a lean budget. As lawyers from different legal systems try to work together under an untested code of international criminal law, there have been disputes within the ICC over such basic questions as which incidents to review and whether prosecutors or judges are ultimately in charge of investigations. The court has squabbled with some member states over priorities and hiring decisions. And tensions have developed with some of the human-rights organizations that nursed the court into existence and now feel shut out.

The ICC traces its roots to the international tribunal at Nuremberg that tried Nazi war criminals after World War II. Nuremberg led to U.N. proposals for a permanent successor court, but the campaign stalled during the Cold War. In 1993, the U.N. Security Council established a tribunal for the former Yugoslavia, followed by additional ad hoc courts for Rwanda, East Timor, Sierra Leone and Cambodia. Human-rights groups argued that a single permanent court to handle future cases would be more effective and less expensive.

In 1998, a U.N. conference in Rome drafted a treaty for the ICC. Thanks to strong European support, the treaty garnered the required ratifications from at least 60 nations. The court's member countries quickly elected 18 judges. Settling on a chief prosecutor,

¹ sides."

Mr. Moreno-Ocampo says the court has suffered from growing pains, and that criticism and setbacks are inevitable, given its unprecedented mission. "It's like assembling the



who serves a single nine-year term, took longer. After several candidates dropped out for personal or political reasons, the post went to Mr. Moreno-Ocampo in 2003.

In Argentina, Mr. Moreno-Ocampo, 54 years old, is a legal celebrity. From a military family, he gained fame in the 1980s for prosecuting Argentina's deposed junta. "His family thought he was a traitor. They stopped talking to him," says Hector Timerman, a former dissident journalist and now the Argentine consul general in New York. Supporters of the junta threatened to kill Mr. Moreno-Ocampo and his children, Mr. Timerman says.

Mr. Moreno-Ocampo created an anticorruption advocacy group and hosted a television program on the law. He defended Mr. Timerman and his father, the late journalist Jacobo Timerman, from lawsuits filed by powerful figures, including former President Carlos Menem. Later, he represented wealthy clients in disputes over family assets, filed shareholder suits and consulted on corporate-accountability issues. He was a visiting professor at Harvard and Stanford. Today, "he's probably the best-known lawyer in Argentina," Mr. Timerman says. "Every young law student wants to be Moreno-Ocampo."

Mr. Moreno-Ocampo says he took office aware of the shortcomings of prior U.N. tribunals, which have been criticized for their slow pace and high cost. "This will be a sexy court," he said in an interview last year. The court aims to bring a different case each year, he said, and to televise them across the globe from the ICC's high-tech courtroom. The goal: swift justice that is comprehensible to often-uneducated victim populations.

The ICC treaty, known as the Rome Statute, gives the court jurisdiction only over "the most serious crimes of concern to the international community as a whole." The statute specified genocide, crimes against humanity, war crimes and "aggression" -- once a future diplomatic conference agreed upon a definition for that term. Anything that happened prior to July 1, 2002, was off limits. Unless the U.N. Security Council referred a case, the ICC could act only within its member nations, and only if one of them requested ICC action, or if the court determined that a member government was "unwilling or unable genuinely" to address a suspected crime. Even then, the Security Council could vote to block an ICC case for a renewable one-year period.

SONG AND DANCE

At a restaurant in The Hague, Cecilia Otim-Ogwal, a member of the Ugandan Parliament, leads a delegation of Ugandan tribal leaders and their host, ICC prosecutor Luis Moreno-Ocampo, in traditional song. See the video. *Credit: Jess Bravin*

Windows Media:

[HIGH²](#) | [LOW³](#) ([Player required⁴](#))

RealPlayer:

[HIGH⁵](#) | [LOW⁶](#) ([Player required⁷](#))

At a July 2003 news conference, Mr. Moreno-Ocampo announced out of the blue that he "believed" atrocities in Congo, a member state formerly known as Zaire, could qualify for an ICC investigation. He had provided no advance warning to Congo's government or to any other member countries. "Diplomats make a deal before they speak publicly," says Mr. Moreno-Ocampo. "But I am not a diplomat."

Mr. Moreno-Ocampo didn't follow up with an immediate investigation. But his remarks worried Congo's neighbor, Uganda, which Congo had accused of invading and destabilizing its eastern territory. An attorney for Uganda met with Mr. Moreno-Ocampo in 2003 to deny his government was involved in atrocities in Congo, according to someone familiar with the matter. Discussion turned to Uganda and the Lord's Resistance. Eventually, an agreement emerged for Uganda to refer that matter to the ICC. Uganda's government saw the deal as a way to gain an international ally in its campaign against the Lord's Resistance.

Mr. Moreno-Ocampo planned to announce the agreement in a joint news conference with Uganda's President Museveni. But several ICC staff members objected to Mr. Moreno-Ocampo appearing publicly with Mr. Museveni, citing the Ugandan government's reputed involvement in atrocities in eastern Congo, according to one court official. ICC investigations chief Serge Brammertz, a Belgian career prosecutor, "was going bananas telling Luis not to do this, and he did it anyway," according to the ICC official. Mr. Moreno-Ocampo appeared with Mr. Museveni at a news conference in London. Mr. Brammertz, who is on leave from the ICC to handle an unrelated case, couldn't be reached for comment. Mr. Moreno-Ocampo declines to discuss internal deliberations, but says it was vital to get the Ugandan president's cooperation.

The prosecutor says he had never heard of Mr. Kony before arriving at the ICC. To the extent Mr. Kony's opaque ideology can be discerned, the self-described prophet seeks to impose on Uganda his own interpretation of the Ten Commandments. Mr. Kony built his insurgency by raiding villages to kidnap children, then indoctrinating them into his rebel army, sometimes after forcing them to kill their own parents, according to the U.N., human-rights groups and ICC investigators.

Raised in the bush to become fighters, porters or concubines, Mr. Kony's captives then abducted more children to replenish the ranks. "The victims become perpetrators," says Christine Chung, a former assistant U.S. attorney from New York hired by Mr. Moreno-Ocampo to try the case.

A recent U.N. security assessment reviewed by The Wall Street Journal describes Mr. Kony as a "pathological liar" who "believes his own myth" and "shows traits of both a narcissistic personality disorder and antisocial personality disorder." Mr. Kony is "incredibly difficult to deal with," the report says, in part because "he has no conscience whatsoever."

'I Know My Fate'

Betty Bigombe, a former Ugandan cabinet minister who has held sporadic peace negotiations with the Lord's Resistance since the early 1990s, is among the few outsiders with whom Mr. Kony speaks. To his followers, he is a god, interpreting dreams, administering drugs, issuing commands on a whim, she says. But "sometimes he talks a lot of sense," she says. "One day I was talking to him, not too long ago, and he said, 'I know my fate. I have one of three options. One is death, one is prison, the other one is exile.' " Efforts to reach Mr. Kony through Ms. Bigombe were unsuccessful.

MORE ON THE ICC

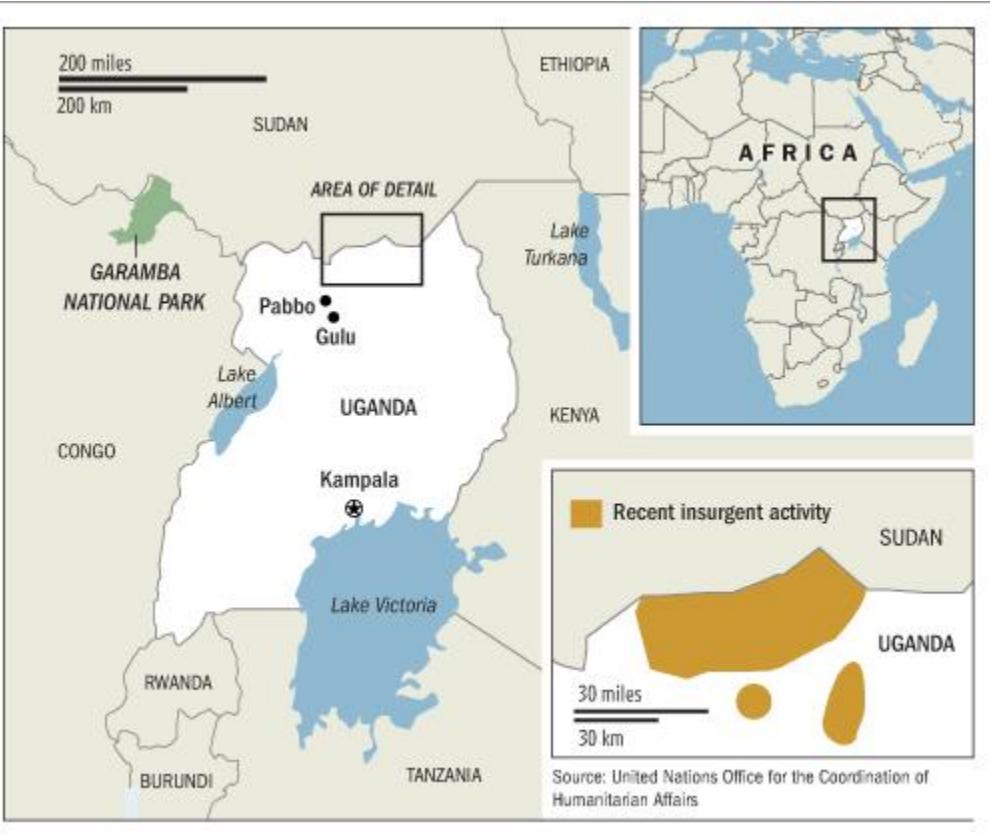
- [Read the full text of the Rome Statute](#)⁸, the ICC treaty that gives the court jurisdiction only over "the most serious crimes of concern to the international community as a whole."
- [See a video report](#)⁹ on the swearing-in ceremony for ICC Prosecutor Luis Moreno-Ocampo at the Peace Palace in The Hague.
- See Interpol's "Red Notices" or wanted bulletins for the top commanders of the Lord's Resistance Army: Ugandans [Joseph Kony](#)¹⁰, [Vincent Otti](#)¹¹, [Raska Lukwiya](#)¹², [Okot Odhiambo](#)¹³, [Dominic Ongwen](#)¹⁴. Plus, general information on [Interpol's bulletins](#)¹⁵.
- [Learn more](#)¹⁶ about how the ICC was established, and the office of Chief Prosecutor [Luis Moreno-Ocampo](#)¹⁷.

In many war-torn countries, regime change and peace historically come before justice can be delivered, says Mr. Moreno-Ocampo. In Uganda, he notes, the conflict is internal, and continuing, so the ICC must figure out a different approach. Unsure how their presence might affect the situation -- and fearful of attack by the Lord's Resistance -- prosecutors decided to keep a low profile inside the country. ICC "teams are very small," says Ms. Chung. "They go in there, they do their business quietly, and they leave."

With near silence from the ICC, rumors shot through Ugandan villages and refugee camps. Some expected the ICC to mount a military campaign with its own forces. Others worried that the court would take action against thousands of youths who had been forced to take part in atrocities, according to ICC investigators and Ugandan observers.

The court's secretive operations cost it support, says Claudia Perdomo, a Colombian who heads the ICC public-information office. "What we have heard from Ugandans is: 'We need you to explain what the court is about. You are behaving in a way as the guerrillas do, in a very clandestine way,' " she says. Ms. Perdomo says prosecutors rebuffed her suggestions for reaching out more aggressively to communicate with Ugandans. Prosecutors say they feared such a move could compromise their investigation.

In April 2004, nearly a year after Mr. Moreno-Ocampo floated the idea of a Congolese case, Congo President Joseph Kabila referred alleged war crimes within his nation to the ICC. Mr. Moreno-Ocampo set up a separate team to investigate atrocities there, which will likely involve reviewing Uganda's alleged support for Congolese militias. President Museveni of Uganda asked U.N. Secretary-General Kofi Annan to block the Congo investigation, according to one person familiar with the matter. Mr. Annan replied that he



had no power to interfere with the court, this person said. A Ugandan government spokesman, Robert Kabushenga, declines to comment on the matter.

Last year, after a Security Council referral, the ICC opened a third case, involving atrocities in Sudan's Darfur region. Sudan's government has long backed Mr. Kony. In recent months, hundreds of Lord's Resistance fighters have relocated from Sudan to the Garamba National Park in Congo, where in January they allegedly

killed eight U.N. peacekeepers, further destabilizing the situation.

'Proud to Be Economical'

The simultaneous investigations in three neighboring nations, and the movement of the Lord's Resistance across borders, complicates Mr. Moreno-Ocampo's task. "The way all of these situations are intertwined is enormously daunting," says Mr. Pace of the Coalition for the International Criminal Court, which is composed of advocacy groups such as Amnesty International and Human Rights Watch. He complains that the prosecutor is taking on new cases without seeking enough resources to run the cases simultaneously. "How can a six- or eight-member investigation team do all of northern Uganda, all of [Democratic Republic of Congo], all of Darfur?" he asks. "The court is unreasonably fearful of losing support of governments who they think want everything done on the cheap." Mr. Moreno-Ocampo says the court is "proud to be economical."

ICC investigators also sometimes find it difficult to corroborate information provided by human-rights groups, who are eager to call international attention to crises. "The gap between the assessment of the humanitarian groups and the evidence was sort of a surprise," says Bernard Lavigne, a French magistrate and former police detective who heads the Congo investigation team.

Mr. Pace concedes that "human-rights and humanitarian organizations are lousy criminal investigators. They are not producing forensic evidence that can be used by a prosecutor."

Although the ICC has issued arrest warrants for Mr. Kony and four of his lieutenants, it hasn't indicated how it intends to apprehend them. "Everybody thought that ICC would come with its own army or police to carry out the arrest," says Ms. Bigombe. "Now what difference does it make for ICC to give the Ugandan army just a piece of paper? The Ugandan army has tried for the last 19 years to kill or capture Kony." Mr. Moreno-Ocampo responds that it is the obligation of the international community, not the ICC, to arrest suspects.

At first, Ms. Bigombe says, Mr. Kony worried about the ICC and asked her if there was a chance to get the charges dropped. As the months dragged on, she says, the insurgents are "really beginning to scoff at them and say, 'OK, they said they were going to arrest us. Well, here we are!'"

President Museveni's recent offer of amnesty to Mr. Kony in exchange for his surrender could compound the ICC's problems. Mr. Kabushenga, the Ugandan government spokesman, says the president's aim was to demonstrate "good will" to the insurgents, and he doubts Mr. Kony will accept. If Mr. Kony does, it is unclear how Uganda's president will reconcile his amnesty offer with his country's obligations to the ICC. Mr. Moreno-Ocampo says Uganda is obligated to deliver Mr. Kony to the court if he surrenders.

Still, the prosecutor says he is trying to be responsive to the criticisms by Ugandans. Last year, one month after the Acholi chiefs asked him to drop the case, the ICC invited influential tribal leaders to a meeting at the court's headquarters.

"You take a traditional chief from northern Uganda, you put him in a fancy hotel in The Hague, drive him around in an air-conditioned car, provide him with good food, and pretty soon he understands what you are talking about," says Yves Sorokobi, an Ivorian former aide to Mr. Moreno-Ocampo. ICC officials also note that visits to the court itself and meetings with its staff gave tribal leaders a clearer grasp of the ICC and its mission.

Mr. Moreno-Ocampo prayed, sang and danced with the Ugandans. The Acholi chief, Mr. Acana, remained skeptical, but some other leaders were won over. "We are giving them our blessing," says Christopher Ojera, a leader from the Pabbo camp, where 64,000 displaced villagers live.

"They are people who have suffered a lot," says Mr. Moreno-Ocampo, "and they are not