

REFORM IN SOUTHERN AND EASTERN AFRICAN JUDICIARIES: THE CASE FOR SPECIALISED COURTS

**GAINS OF THE INTERNATIONAL CRIMES DIVISION
IN UGANDA**

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BACKGROUND

- The Lord's Resistance Army (LRA) conflict was a long and brutal one, spanning over 29 years and claiming over a million lives. The LRA, founded by Joseph Kony in 1987, initially sought to overthrow President Yoweri Museveni's government. The conflict began in northern Uganda, particularly in the Acholi and Lango sub-regions, before spreading to the Teso sub-region in 2003 and later to the Central African Republic, Democratic Republic of Congo, and South Sudan.

BACKGROUND

Key Events and Impacts:

- Widespread Abductions: The LRA has abducted between 30,000 to 66,000 people, with approximately half being children under 18
- Mass Killings and Displacement: Estimates suggest over a million deaths, with 1.7 million people displaced in northern Uganda alone.
- Human Rights Violations: Alleged LRA members have committed serious crimes, including forceful enslavement, mutilations, and arson.

Current Status:

- As of 2022, the LRA is reported to consist of splinter groups, with approximately 1,000 members, and is considered militarily weak. However, the group continues to commit atrocities, including child abductions and civilian displacement in the CAR.

BACKGROUND

The Juba peace process

- In 2006, the LRA and the government again entered peace negotiations in Juba, this time with much brighter prospects following the signing of the Comprehensive Peace Agreement in Sudan and the establishment of a semi-autonomous government in the south.
- The 2006 Peace Process aimed to end the conflict between Uganda's government and the Lord's Resistance Army (LRA). Despite ICC arrest warrants, parties negotiated accountability and reconciliation measures. The Agreement on Accountability and Reconciliation (AAR) was signed in 2007, providing for:

BACKGROUND

- Formal justice measures
 - Traditional justice principles
 - Truth-seeking and reconciliation mechanisms
 - Reparations for victims
- However, disagreements over UPDF accountability and ICC warrant withdrawal hindered progress. The LRA leaders refused to sign the Final Peace Agreement, and the government launched military strikes in 2008, ending the peace process.

BACKGROUND

- The Government of Uganda established the War Crimes/International Crimes Division of Uganda's High Court in July 2008 to try individuals who allegedly committed serious crimes during the conflict. This move aligned with the Final Peace Agreement's provision for a special division to handle such cases. Initially called the War Crimes Division, the division was later renamed the International Crimes Division (ICD), which was mandated to try the core international and transnational crimes. Four judges were appointed, and support staff received training on international criminal law best practices.
- The Ugandan Parliament passed the International Criminal Court Act (ICC Act) in 2010 to domesticate the Rome Statute and ensure full cooperation with the ICC. However, the ICC's Pre-Trial Chamber determined that the Juba framework didn't meet the Rome Statute's requirements, making the LRA cases admissible.

BACKGROUND

- Following the establishment of the ICD, the Office of the Director of Public Prosecutions (ODPP) established a specialised department to prosecute international and transnational crimes and built the capacity of its staff in that regard.
- The Uganda Police Force followed suit by establishing relevant specialised departments to investigate war crimes, terrorism, and human trafficking.

BACKGROUND

- In July 2011, Thomas Kwoyelo Latoni, a former Lord's Resistance Army (LRA) Colonel, faced trial in the ICD for war crimes and crimes against humanity.
- The trial was complex, with Kwoyelo's legal team raising questions about the armed conflict's classification under the Geneva Conventions and the constitutionality of the Amnesty Act.
- The Constitutional Court halted the trial in November 2011, ruling that Kwoyelo was entitled to amnesty under the law.
- The Supreme Court later overturned this decision in 2015.

BACKGROUND

- Uganda has a history of amnesty, with the Amnesty Act of 2000 providing conditional amnesty to those who renounced rebellion. This act benefited over 27,000 combatants from 28 armed groups, half of whom were from the LRA.
- Kwoyelo's case highlights the complexities of transitional justice in Uganda, balancing accountability with amnesty and reconciliation.

BACKGROUND

- The trial resumed in 2017 with pretrial proceedings following the amendment of the indictment to include over 80 charges. The primary trial commenced in 2020. Multiple witnesses testified, and the panel of 3 judges put Thomas Kwoyelo on his defence and subsequently convicted him on several counts.

BACKGROUND

- Apart from the Thomas Kwoyelo trial, because of the presence of terrorist groups such as the ADF – ISIS affiliate, Al- Shabaab and Islamic State Central Africa Province (ISCAP) in the neighbouring DRC, the ICD has conducted several trials of terrorist suspects, including the Kampala 2010 bombings, which was presided over by the Hon . Chief Justice in 2015-2016, when he was still sitting in the ICD. We have also conducted several human trafficking trials.

GAINS OF THE ICD

The Thomas Kwoyelo trial, Uganda's first international crimes case, has been a game-changer for Uganda's International Crimes Division (ICD). It offers valuable lessons shaping its approach to future international criminal cases. This is true about the prosecution of terrorism and human trafficking cases at the ICD

- **Development of Jurisprudence:**

- **Interpreting Amnesty and Justice:** The trial underscored the intricate balance between amnesty and justice, underscoring the pressing need for unambiguous directives on using amnesty in cases involving grave international crimes.
- Interpreting the principle of legality under our constitution and applying customary international law as a basis for preferring international crimes
- Interpreting the ICD Rules on Victim participation in ICD trials
- Interpreting terrorism and terrorist organisations
- Interpreting elements of Trafficking in Children.

GAINS OF THE ICD

- **Applying Victim-Centered Approach:** The ICD has reaffirmed its commitment to a victim-centred approach, ensuring victims' voices and needs were central throughout the trial. For the first time in our jurisdiction, victims were allowed to participate in their own right, not as parties but as participants, and to receive legal representation. Emphasis is laid on a victim-centred and trauma-informed approach, including providing in-house Psycho-Social Support to address the mental health needs of all parties and participants throughout the judicial process.

GAINS OF THE ICD

Justice and Accountability

- Domestic trials: The ICD, in trying Thomas Kwoyelo, has provided an opportunity for greater ownership of the justice process and closer proximity to the affected communities.
- Accountability: The ICD, through its relentless efforts, has ensured accountability for international crimes, combating impunity and promoting the rule of law.

GAINS OF THE ICD

Capacity Building

- Enhanced judicial capacity: The ICD facilitates training for judges, prosecutors, and lawyers, improving their capacity to handle complex international and transnational crime cases.
- Improved investigation skills: The ICD has developed investigators' skills in collecting and preserving evidence for international crime cases.
- Strengthened prosecution: The ICD has enhanced prosecution skills, ensuring the effective presentation of cases.

GAINS OF THE ICD

Deterrence and Prevention

- The ICD's work deters potential perpetrators, conveying that international and transnational crimes will not go unpunished.
- **Engagement with the Media:** Proactive and transparent media engagement ensures accurate reporting and countered misinformation.
- **Early Planning in Case Management:** The ICD has adopted structured case management protocols to enhance efficiency and effectiveness due to limited human resources.
- **Effective Use of Resources:** Resourcefulness in managing operations and leveraging international experts and technological tools were essential.

GAINS OF THE ICD

- **Gender Sensitivity and Reintegration:** The ICD recognises the need for a gender-sensitive approach, incorporating psycho-social support tailored to female victims and children.
- **Partnerships with NGOs:** The ICD's collaboration with NGOs has been instrumental in supporting victims, providing crucial legal aid, and advocating for justice. This partnership has proven a key element in the ICD's operations.
- **Regional Potential and Perceptions:** The ICD has shown that African jurisdictions can manage international crimes regionally.

GAINS OF THE ICD

International Cooperation

- The trials at the ICD underscore the critical importance of international cooperation. This cooperation is vital in meeting international standards and overcoming the complex challenges of trials. The success of the Thomas Kwoyelo, the 2010 bombings case, and several human trafficking and other terrorism cases is a testament to this.
- **ICC complementarity:** The ICD demonstrates Uganda's commitment to complementing the International Criminal Court (ICC) in prosecuting international crimes. Recently, the ICC prosecutor opined that Uganda can now try Joseph Kony.

Challenges and Recommendations

- ❖ Despite these gains, some challenges persist, including:
 - Funding and logistical constraints: Limited funding limits the ICD's effectiveness and capacity to conduct trials expeditiously
 - Need for dedicated judges: The ICD requires dedicated judges to focus solely on international and transnational crime cases, ensuring timely and effective justice.

Challenges and Recommendations

- ❖ To address these challenges, experts recommend:
 - Increased funding: Provide adequate funding to support the ICD's operations.
 - Dedicated judges: Assign and empower more dedicated judges to handle international and transnational crime cases exclusively.
 - Capacity building: Continue training and capacity-building initiatives for judges, prosecutors, defence lawyers and support staff.
- By addressing these challenges and building on its gains, the ICD has the potential to serve as a beacon of hope for specialised courts in Southern and Eastern Africa, enhancing justice and accountability for international crimes.

- THANK YOU FOR LISTENING