

Conference on Securing Accountability for Conflict-Related Sexual and Gender based Crimes in Uganda: Learning Lessons from International Experiences

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Lake Victoria Serena Resort, Entebbe, Uganda

Presentation by the Honorable Minister of State and Deputy Attorney General:

“Overview of International Criminal Court Act and efforts to implement complementarity”

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Your Lordships, Your Worships, Honorable Ministers, Members of the Justice Law and Order Sector, Members of the International Community, Ladies and Gentlemen. Thank you for inviting me to this important occasion to discuss the issue of accountability for sexual and gender-based crimes in Uganda. I have been asked to address you on Uganda’s efforts to implement complementarity in compliance with Uganda’s obligations under the Rome Statute.

Uganda has adopted numerous steps towards fulfilling its international commitment to protect human rights and to pursue of accountability for serious international crimes. The first of these steps include the ratification of several human rights treaties, and their adoption into national law for domestic application. Those of particular relevance to the subject of this discussion on *complementarity* include the ratification of the four Geneva Conventions in 1964 as well as Uganda’s ratification of the Rome Statute in 2002. Domestication of both treaties was marked by the adoption of the Geneva Conventions Act in 1964 and the International Criminal Court Act in 2010 into national law.

Adoption of the ICC Act was preceded by national consultations. It is modeled closely after the Rome Statute, and adopted in the run-up to the ICC Review Conference hosted by Uganda in June 2010 where the issue of *complementarity* was one of the issues on the agenda.

Article 17 of the Rome Statute on Issues of Admissibility provides the relevant legal provision on complementarity. It states that cases will be declared inadmissible if it is found that a State is pursuing an investigation or prosecution of the crimes in question. The exception to this rule is where a State is ‘unable’ or ‘unwilling’ to pursue an investigation or prosecution of the case, at which point the ICC has jurisdiction to seize the case. *Unwillingness* or *inability*, according to the Statute, may include undue delay in proceedings; the lack of independent and impartial proceedings; or the national decision or manner in which proceedings are pursued is to intended to shield the perpetrator from prosecution.

It is in this context that Uganda has taken additional steps to ensure effective implementation of Rome Statute and demonstrate that it is genuinely willing to prosecute international crimes. This intention is best demonstrated in Uganda's efforts to adopt relevant legislation and to enhance national capacity to effectively prosecute international crimes.

The ICC Act adopts provisions of the Rome Statute setting forth the crimes over which it has jurisdiction. This means the crime of genocide; crimes against humanity; and war crimes. Sexual and gender based crimes fall within each of these broad categories. Article 7 and 8 of the Rome Statute include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, as a form of crime against humanity and war crimes. Uganda will therefore be expected to hold criminal proceedings consistent with international criminal law principles and precedent. In this regard, the ICC Act cannot be seen to exclude gender based crimes that rise to the level of genocide, crimes against humanity or war crimes provided for in our domestic legislation.

International Crimes Division

The creation of the International Crimes Division of the High Court of Uganda in 2008 marks a significant step towards achieving complementarity. The ICD has the jurisdiction to "try any offence relating to genocide, crimes against humanity, war crimes and trans-boundary international terrorism, human trafficking, piracy and any other crimes under international law" as may be provided under the Penal Code Act of Uganda, the Geneva Conventions Act of 1964, and the International Criminal Court Act of 2010, as well as international customary law.¹

Since the ICD's establishment, Uganda has adopted several additional measures to ensure that it is effectively 'able' to pursue prosecution of perpetrators of war crimes and other serious violations of international law. Five judges have been appointed, some having previous experience working with international courts. The judges have been provided with intensive training on the application of international criminal law and international humanitarian law and will further benefit from direct assistance of individualized legal assistants, technical assistance and additional outside research support from expert bodies if necessary. Court staff, including the ICD registrar, clerks and interpreters have been put in place and provided specialized training. The ICD infrastructure is

¹ High Court (International Crimes Division) Notice, 2011

complete with a separate independent structure, housing the Court, the registry, and prosecution unit.

Alongside these measures, Uganda is in the process of adopting a legislative and policy framework directed towards guaranteeing the adequate protection for witnesses and necessary support to victims and witnesses expected to participate in criminal proceedings. Such measures will be national in scope so that the measures are applicable in all judicial processes.

All of these measures have been adopted towards achieving full compliance with Uganda's international obligations under the Rome Statute and international law in general. There are many reasons why pursuing criminal prosecutions through a specialized national mechanism is favorable and most suitable for the interests of justice of the victims. Proximity of the ICD serves many purposes, including the Court's familiarity with the national context and key events, access to evidence and key witnesses, and facilitating active and meaningful participation of victims, war affected communities and the Ugandan population more generally.

Alternative justice mechanisms

Alternative justice mechanisms can play a complementary role to formal justice processes in achieving justice and accountability for gender-based crimes. In line with the Juba Agreement, Uganda is embarking on the development of a national transitional justice policy that envisions a range of processes and mechanisms to achieve justice and accountability for conflict related crimes and their impact on society.

Uganda's approach to *complementarity*

Establishment of the ICD as a permanent and specialized division of the High Court does not only contribute to meeting Uganda's obligations under the *complementarity* principle, but the ICD promises sustainability of the division, enabling Uganda to fulfill its international obligations on the long-term. Unlike the ad-hoc criminal tribunals that have been adopted to date in other countries, the ICD will not be limited by a temporal mandate.

Complementarity is therefore approached more broadly in Uganda, encompassing the adoption of relevant institutional, legal and judicial measures to strengthen the rule of law institutions and the administration of justice more generally.

The principle of *complementarity* is presently being tested in Uganda, however with the necessary structures and personnel in place, Uganda is confident to fulfill this test. What is important in addressing issues of impunity is Government commitment, and this has been expressed in the Juba Agreement and through the Government's multiple efforts to implement the Agreement and pursue a transitional justice process to achieve justice and accountability in the aftermath of the conflict.

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