

Participation of the Honorable Minister of State and Deputy Attorney General at the UNDP Policy Dialogue on ‘Complementarity’ and Transitional Justice: New York, October 12-13, 2011

“The Role of Specialised Courts in Prosecuting International Crimes and Transitional Justice in Uganda”

“Transitional justice strives not only to deliver justice to victims of mass atrocities, but also to assist societies devastated by conflict achieve sustainable peace and reconciliation. Peace and reconciliation demand comprehensive societal transformation that must embrace a broad notion of justice, addressing the root causes of conflict and the related violations of all rights. Transitional justice mechanisms offer the potential for incorporating economic, social and cultural rights.”¹

The Honorable Minister of State and Deputy Attorney General addressed the following topics:

- **Key developments in Uganda on ‘complementarity’**

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 and domestication of the Geneva Conventions in 1964 and the Rome Statute in 2002 (domesticated in 2010).

In 2009, the Justice Law and Order Sector undertook consultations on the use of formal criminal prosecutions in addressing impunity with specific regard to the then proposed International Criminal Court (ICC) Bill. The outcome of the study led to proposals for the amendment of the Bill which has now been enacted into law - the International Criminal Court Act, 2010² intended to address accountability for war atrocities that have been committed in different parts of the country.

Uganda has since taken additional steps to ensure effective implementation of the above mentioned treaties, with a particular view to enhancing national capacity to effectively prosecute international crimes. The creation of the International Crimes Division of the High Court of Uganda in 2008 marks a significant step towards this objective.

The ICD has jurisdiction to:

¹ http://www.unrol.org/files/96696_A-HRC-12-18_E.pdf

² The International Criminal Court Act was enacted on 25th June 2010.

*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.*³

Since the ICD’s establishment, Uganda has adopted additional measures to ensure that it is effectively ‘able’ to pursue prosecution of perpetrators of war crimes and other serious violations of international law. For example:

- Judges have been appointed and provided intensive training on the application of international criminal law and international humanitarian law.
- The justices of the court will further benefit from direct assistance of individualized legal assistants, technical assistance offered by an international criminal law expert attached to the ICD, 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 complete with a separate independent structure, housing the Court, the registry, and prosecution unit.
- Procedurally, the ICD will adopt rules of procedure and evidence applicable to criminal trials in Uganda as well as international practices and rules, including those applied by the ICC or other international criminal tribunals.⁴

Furthermore, Uganda is in the process of adopting legislative and policy measures directed towards the delivery of adequate protection for witnesses and necessary support to victims and witnesses expected to participate in criminal proceedings. Such measures, while critical for the trials to take place, will not be limited to application by the ICD, but will be national in scope.

In an effort to enhance the capacity of personnel in formal criminal prosecutions, the Judges of the ICD, the Registry, the DPP, Investigators, as well as members of the Ministry of Justice, the Uganda Law Reform Commission, defence counsel have had their capacity needs met through specialised training.

Uganda is now pursuing its first trial against an alleged perpetrator of war crimes, Mr. Thomas Kwoyelo, a mid-level commander of the LRA. The trial began, though faced with a constitutional challenge basing on objections raised by defence. At issue are: a question of equal protection under the law in the government’s failure to grant Kwoyelo

³ High Court (International Crimes Division) Order, 2011

⁴ High Court (International Crimes Division) Order, 2011

amnesty. This calls into question the constitutionally mandated powers of the DPP and the constitutionality of the Amnesty Act. All of these issues were heard by the Constitutional Court which delivered its ruling on September 22, 2011, finding a violation of the non-discrimination principle in the Constitution of Uganda and upholding the constitutionality of the Amnesty Act. The Court therefore ordered the trial against Kwoyelo to be ceased and the defendant to be released. The case is on appeal to the Supreme Court, which will make a final determination on these issues in the coming weeks.

- **Uganda's approach to *complementarity*—enhancing local capacity and sustainability**

Establishment of the ICD as a permanent yet specialised division of the High Court does not only contribute to meeting Uganda's obligations under the *complementarity* principle, but as an integrated mechanism within the national court structure, the ICD is an important measure that promises sustainability, enabling Uganda to fulfill its international obligations on the long-term.

Complementarity is therefore envisioned and 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, not solely limited to international crimes prosecutions.

Establishment of the ICD, building capacity of its staff and the adoption of relevant guidelines are therefore all long-term investments in enhancing domestic accountability mechanisms by the Government of Uganda.

- **Transitional Justice in Uganda**

The transition to peace implies more than just the end to hostilities and accountability for wrongdoers.

The Juba Agreement provides an overarching framework for Uganda's transitional justice process and reminds us to view transitional justice broadly and holistically. It emphasizes the importance of an integrated approach whereby complementary and coordinated mechanisms seek to achieve accountability through a variety of mechanisms, including truth-seeking, traditional justice and reparations for victims, with special emphasis on the rights of women and children.

Uganda is therefore embarking on a transitional justice process. It will seek to explore options for alternative justice mechanisms to complement the formal justice initiatives spearheaded by the Government. As with the establishment of the ICD, Uganda hopes

to develop transitional justice mechanisms that prove to have a long-lasting impact on improving the lives of those most affected by the conflict, but also for all Ugandans.

- **Transitional Justice and Development**

Adopting an integrated approach to transitional justice, one that also includes the aim to improve conditions of war affected communities will positively contribute to the full recovery of victims and war affected communities as well as enable them to develop their livelihoods and contribute meaningfully to the national economy. These are essential elements towards building lasting peace in the region. Empowerment of this group will transform their situation of dependency to a situation of independence. Our task is to facilitate this transition by developing the appropriate mechanisms and policies. In this regard, Uganda is faced with a new challenge and can stand to learn from other countries having faced and overcome similar situations so as to determine how best to move forward.

Finally, the progress achieved thus far is a combined effort, led by the Government of Uganda with the critical support of international stakeholders. Uganda's ability to establish a specialised mechanism to prosecute international crimes and to adopt relevant measures to ensure a fair trial that meets international standards, has been greatly enhanced with the financial support and technical assistance of international partners.

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, the setting up of the ICD, national consultations, fulfillment of international obligations through ratification, domestication and implementation.