

Kasande Sarah Kihika and
Meritxell Regué
January 2015

Pursuing Accountability for Serious Crimes in Uganda’s Courts

Reflections on the Thomas Kwoyelo Case

Introduction

On March 18, 2014, the Supreme Court of Uganda heard the long-awaited appeal by the Attorney General against the decision of the Constitutional Court to suspend the prosecution of Thomas Kwoyelo, a former mid-level commander of the Lord’s Resistance Army (LRA) who was captured in the Democratic Republic of the Congo (DRC) in March 2009. The appeal was initially filed in April 2012, but the hearing was inordinately delayed due to the absence of a quorum at the Supreme Court.¹ This paper describes the domestic proceedings against Kwoyelo, analyzes the opportunities and challenges for the prosecution of serious crimes in Ugandan courts, and concludes with recommendations to enhance accountability for such crimes in Uganda.

International Crimes Division of the High Court of Uganda

The establishment of a special mechanism to try alleged perpetrators of serious crimes in Uganda originated in the Juba Peace Negotiations between the government of Uganda and the LRA. In the Preamble to the Agreement on Accountability and Reconciliation of 2007, signed between the LRA and Uganda as a result of these negotiations, the parties expressed their commitment to prevent impunity and promote redress in accordance with the Constitution of the Republic of Uganda and its international obligations.² Article 6 of the agreement stipulates that the ordinary courts of Uganda will have “jurisdiction over individuals who are alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict.” The Annex to the agreement provides for the establishment of a special division of the High Court “to try individuals who are alleged to have committed serious crimes during the conflict.”³

In July 2008, the Principal Judge of the High Court of Uganda exercised his powers under article 141 of the Constitution to establish the War Crimes Division. This special division of the High Court was created to conduct trials of “serious crimes,” including so-called international crimes.⁴ In May 2011, the Chief Justice of Uganda issued a Legal Notice formally establishing

TABLE OF CONTENTS

Introduction	1
International Crimes Division of the High Court of Uganda	1
Uganda v. Thomas Kwoyelo	4
Conclusions	7
Recommendations	8

¹ Uganda v. Kwoyelo, HCT-oo-ICD Case No. 02/2010 (Constitutional Court 2011) (Uganda), Memorandum of Appeal. The hearing of a Constitutional appeal needs to be presided over by seven judges; however, at the time of the appeal, the Supreme Court only had five judges. The court reached a quorum when new judges were appointed in June 2013.

² Agreement on Accountability and Reconciliation, Government of the Republic of Uganda-LRA, Preamble (2007), www.amicc.org/docs/Agreement_on_Accountability_and_Reconciliation.pdf

³ Annexure to the Agreement on Accountability and Reconciliation, Government of the Republic of Uganda-LRA (2008), para. 7, www.iccnw.org/documents/Annexure_to_agreement_on_Accountability_signed_today.pdf

⁴ See The Republic of Uganda, “International Crimes Division,” The Judiciary of the Republic of Uganda, www.judicature.go.ug/data/smenu/18/International_Crimes_Division.html

Pursuing Accountability for Serious Crimes in Uganda's Courts: Reflections on the Thomas Kwoyelo Case

About the Authors

Kasande Sarah Kihika is a program associate for ICTJ and an Advocate of the High court of Uganda. Before joining ICTJ, she was as a Senior Program Officer/Senior Legal Officer with the Association of Uganda Women Lawyers and a Fellow of the Open Society Justice Initiative at the Central European University.

Meritxell Regué is senior associate for ICTJ's Criminal Justice Program. Before joining ICTJ, she was Appeals Counsel at the Office of the Prosecutor of the International Criminal Court, Legal Officer at the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, and Project Officer at the OSCE High Commissioner on National Minorities. She also worked as Associate Lawyer at Uría & Menéndez.

the International Crimes Division (ICD)⁵ and expanded its jurisdiction to include transnational crimes, such as piracy, terrorism, and trafficking.⁶

The establishment of the ICD signified an opportunity for Uganda to put an end to impunity for the perpetrators of the most serious crimes and fulfill its obligation to exercise criminal jurisdiction over those responsible for such crimes. If the ICD satisfactorily carries out its mandate, not only will victims be afforded justice, but it could also build public confidence and trust in the justice system as a whole.

ICD Composition and Characteristics

The ICD is headquartered in Kampala and comprises five judges, a registrar, and a prosecutions and investigations unit. The ICD is a court of first instance, and its decisions can be appealed before the Court of Appeal and, subsequently, the Supreme Court of Uganda. The judges sit as a panel of three and are designated to the ICD by the Principal Judge in consultation with the Chief Justice.⁷ The ICD's prosecution function is entrusted to a unit of Uganda's Directorate of Public Prosecutions (DPP).⁸ The Criminal Investigations Department of the Ugandan Police Force is responsible for investigating crimes that may be tried before the ICD under the lead of the prosecutors, who guide investigations to ensure the effective collection of required evidence. Prosecutors and investigators assigned to the ICD are public officials appointed through the regular procedure set out in the Public Service Act and the Police Act⁹ and have undergone specialized training in the investigation and prosecution of serious crimes.

The ICD does not have witness protection mechanisms, like a witness protection unit with staff who have specialized training on how to handle and question vulnerable witnesses.¹⁰ The protection of vulnerable witnesses at the ICD is further hampered by the absence of an appropriate witness protection legislative framework. Parliament has not yet passed the draft Witness Protection Bill of 2012, which foresees the creation of an independent witness protection body. Further, the ICD draft Rules of Procedure and Evidence (ICD Rules)—also to be approved—provide for procedural protection measures, such as in camera proceedings, use of pseudonyms, and redaction of vulnerable witnesses' identities from court records during trial. While not technically witness protection, investigators and prosecutors have adopted measures to provide support to witnesses, such as the hiring of a psychologist who offers counseling to traumatized witnesses during investigations.

Relevant Legal Framework

The High Court ICD Practice Directions gives the ICD the jurisdiction to try the crimes of genocide, crimes against humanity, war crimes, terrorism, human trafficking, piracy, and any other international crime under existing criminal laws.¹¹ Such existing criminal laws include the Penal Code Act,¹² the Geneva Conventions Act (which implements the Geneva Conventions of 1949),¹³ and the International Criminal Court Act (which domesticates the Rome Statute).¹⁴

Uganda's Geneva Conventions Act adopts war crimes, as defined by the Geneva Conven-

5 A "Legal Notice" is a direction that the Chief Justice is authorized to issue under the Constitution of the Republic of Uganda, S.I. 354/1995 (1995), art. 133(1)(b), www.parliament.go.ug/new/images/stories/constitution/Constitution_of_Uganda_1995.pdf

6 High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 (2011), § 4, 5, and 6.

7 High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 (2011), § 4 and 5. ICD judges are appointed by the President on the recommendation of the Judicial Service Commission, with the approval of Parliament. They are selected from the pool of judges at the High Court.

8 High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 (2011), § 7.

9 The regular procedure is a competitive selection process by the Public Service Commission. See Public Service Act, Act No. 9/2008 (2008), www.ulii.org/files/ug/legislation/act/2008/2008/the_public_service_act_no_9_of_2008_pdf_11367.pdf; and the Police Act, Cap 303 (1994), www.ulii.org/ug/legislation/consolidated-act/303

10 See International Crimes Division, "International Crimes Division Annual Report" (2014), 7, www.judicature.go.ug/files/downloads/International%20Crimes%20Division%20Report%2020130001.pdf; Human Rights Watch, "Justice for Serious Crimes Before National Courts" (2012), 20121, www.hrw.org/sites/default/files/reports/uganda0112ForUpload_o.pdf

11 High Court Practice Directions, § 6.

12 Penal Code Act, Cap 120 (1950).

13 Geneva Conventions Act, Cap 363 (1964).

14 International Criminal Court Act, Act No. 11/2010 (2010).

tions, as part of Ugandan law; and the International Criminal Court Act adopts genocide, war crimes, and crimes against humanity, as defined by the Rome Statute of the International Criminal Court, as offenses under Ugandan law. While war crimes under the ICC Act apply to international and noninternational armed conflicts, war crimes under the Geneva Conventions Act apply only to international armed conflicts.¹⁵ The ICC Act also incorporates new modes of liability into Ugandan law, like command responsibility.¹⁶ Penalties for crimes under the ICD's jurisdiction range from a minimum of 14 years' imprisonment per offence to a maximum of life imprisonment.¹⁷

In 2013, the ICD began developing the ICD Rules to address the gaps in existing domestic criminal legislation in relation to the prosecution of serious crimes.¹⁸ Although the ICD Rules were expected to come into force by the end of 2014, once approved by the Rules Committee of the High Court,¹⁹ at the time of the publication of this document they had yet to be presented before the Rules Committee.

In addition, the 2000 Amnesty Act had a substantial impact on proceedings before the ICD and, in particular, on Kwoyelo's case.²⁰ In 2000, at the height of the conflict between the Uganda's People's Defence Force (UPDF) and the LRA in northern Uganda and other rebel groups in the West Nile region and western Uganda, the Ugandan Parliament enacted the Amnesty Act, which provided amnesty to all Ugandans who renounced the rebellion against the government of Uganda and met certain requirements.²¹ Individuals whose actions fall under the categories listed in section 2(1) of the Act would not be "prosecuted or subjected to any form of punishment for the participation in the war or rebellion or for any crime committed in the cause of the war or armed rebellion."²² To become eligible for an amnesty certificate, amnesty seekers merely have to inform the Amnesty Commission that they have renounced and abandoned involvement in the war or armed rebellion.²³ Notably, they are not compelled to divulge their role in any crime committed during the conflict.²⁴

Section 3 of the Act provides for the grant of amnesty to two categories of ex-combatants: section 3(1) applies to individuals who voluntarily abandoned rebellion and applied for amnesty, while section 3(2) applies to those who sought amnesty while in detention. In the latter case, a person would only be released after the DPP certifies that the crimes committed fall under those crimes that are eligible for amnesty and that the person was not charged with other offences that fall outside the amnesty provision.²⁵

ICD's Case Docket

With its expanded jurisdiction, the ICD now has nine cases, most of which involve human trafficking and terrorism.²⁶ Some of the cases have stalled, pending the determination of constitutional

15 Uganda has not domesticated the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (June 8, 1977).

16 There is internal debate on the applicability of the Rome Statute over crimes committed before the International Criminal Court Act (2010) was enacted, due to the principle of legality under art. 28 (7) of the Ugandan Constitution.

17 Geneva Conventions Act, Cap 363 (1964), § 2(1) and the International Criminal Court Act, Act No. 11/2010 (2010), § 7(3), 8(3) and 9(3).

18 The Draft Judicature (High Court) (International Crimes Court) Rules, 2014.

19 Interview with Jane Adong, leads drafts person of the ICD Rules of Procedure, November 10, 2014.

20 Amnesty Act, Cap 294 (2000).

21 Amnesty Act, Cap 294 (2000), § 2(1): "Amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986, engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by: (a) actual participation in combat; (b) collaborating with the perpetrators of the war or armed rebellion; (c) committing any other crime in the furtherance of the war or armed rebellion; or (d) assisting or aiding the conduct or prosecution of the war or armed rebellion," www.ulii.org/ug/legislation/consolidated-act/294

22 Amnesty Act, Cap 294 (2000), § 2(1)(d).

23 Amnesty Act, Cap 294 (2000), § 3(1)(b).

24 See Amnesty Act, Cap 294 (2000), § 2(1)(c).

25 Amnesty Act, Cap 294 (2000), § 3(3).

26 Figures obtained from the Registry of the International Crimes Division (Apr. 2014). See also International Crimes Division, "International Crimes Division Annual Report" (2014), 304, www.judicature.go.ug/files/downloads/International%20Crimes%20Division%20Report%2020130001.pdf

questions submitted to the Constitutional Court for interpretation.²⁷ Relevant to Thomas Kwoyelo's case, the DPP has filed charges against Caesar Achellam, a former field commander of the LRA who was apprehended by the UPDF in 2012 and continues to be detained to gain further insights into LRA operations.²⁸ The Buganda Road Magistrates Court issued an arrest warrant for Achellam in early 2014;²⁹ however, the DPP has failed to execute it due to a lack of cooperation from the UPDF. The DPP is also investigating two LRA commanders who were captured in the Central African Republic in 2013 as well as leaders of the rebel group the Allied Democratic Forces.³⁰

Uganda v. Thomas Kwoyelo

In July 2011 the ICD commenced proceedings against Kwoyelo, its first war crimes trial against an LRA rebel leader. On January 12, 2010, while in detention, Kwoyelo applied for amnesty under the Amnesty Act, which covers crimes committed in furtherance of war or armed rebellion. Under section 3(2), the DPP is required to certify that the individual seeking amnesty does not have other outstanding criminal charges that are unrelated to those covered by the Amnesty Act and the DPP must then notify the Amnesty Commission of whether the individual is eligible for amnesty. However, the DPP did not respond to Kwoyelo's application and instead initiated criminal proceedings against him. In August 2010, Kwoyelo was charged with 12 counts of violating Uganda's Geneva Conventions Act, including willful killing, taking hostages, and extensive destruction of property in the Amuru and Gulu districts of northern Uganda.³¹

The trial opened on July 11, 2011. The DPP submitted an amended indictment that included the entirety of the 2010 indictment and added 53 additional counts of crimes under Uganda's Penal Code Act, such as murder, kidnapping, and robbery "committed in the context of an international armed conflict that existed in Northern Uganda, Southern Sudan and North Eastern Democratic Republic of Congo between the [LRA], with the support of and under the control of the government of Sudan, fighting against the government of the Republic of Uganda."³²

Kwoyelo denied all of the charges, and his defense counsel indicated that they intended to raise several preliminary objections concerning the constitutionality of the case. As a result, pursuant to article 137 (5) of the Constitution, the ICD judges referred the constitutional issues to the Constitutional Court for interpretation.

In August 2011, the Constitutional Court considered the questions raised by the ICD. The court was confronted with three issues: first, whether the DPP and the Amnesty Commission had violated Kwoyelo's right to equal treatment and nondiscrimination guaranteed under articles 1, 2, 20 (2), 21 (1) and (3) of Uganda's Constitution when they failed to process and grant his application for amnesty; second, whether the charges for grave breaches brought against Kwoyelo under Uganda's Geneva Conventions Act were committed in the context of an international armed conflict; and third, whether sections 2, 3 and 4 of the Amnesty Act were consistent with articles 120(3)(b), (c) and (d), (5) and (6), 126(2)(a), 128(1) and 287 of the Constitution.³³

On the first issue, the defense named several senior LRA commanders, such as Kenneth Banya and Sam Kolo, who had been granted amnesty certificates even though, like Kwoyelo, they had held senior command positions in the LRA and had been captured during the armed conflict. According to Kwoyelo's defense, the failure by the DPP and the Amnesty Commission to respond to Kwoyelo's application for the grant of a certificate of amnesty was, by comparison, discriminatory and inconsistent with his constitutional right to equal treatment.

27 See also, for example, Uganda v. Agaba, Case No. 01/2010 (Constitutional Court 2010) (Uganda) (Case on Constitutional Petition).

28 Interview with State Attorney, ICD Prosecution Unit, Oct. 3, 2014 (Kampala, Uganda).

29 Ibid, Buganda road Court records

30 Presentation by Principal Prosecutor of the ICD at a roundtable meeting for the ICD and Civil Society (April 1, 2014).

31 Uganda v. Kwoyelo, HCD-00-ICC Case No. 02/2010 (2011) (Uganda), Amended Indictment, 2-25.

32 Uganda v. Kwoyelo, HCD-00-ICC Case No. 02/2010 (2011) (Uganda), Amended Indictment, 1.

33 See Thomas Kwoyelo Alias Latoni v Uganda, Case No. 36/2011 (Constitutional Court 2011) (Uganda), 1-3.

The second issue was withdrawn by Kwoyelo's defense counsel. On the third issue, the defense argued that the Amnesty Act was enacted in the public interest to address Uganda's turbulent history, as reflected in the Preamble to the Constitution as well as in the National Objectives and Directive Principles of State Policy, which provide guidance on the interpretation and application of the Constitution, laws, and policy decisions.³⁴ In reply, the Attorney General (representing the DPP) argued that sections 2 and 3 of the Amnesty Act are unconstitutional because they interfere with the DPP's independence to initiate prosecutions, as guaranteed under articles 120(3)(b), (c) and (d) and (6) of the Constitution. The Attorney General also argued that the Amnesty Act is inconsistent with Article 287 of the Constitution³⁵ and Uganda's international obligations under ratified treaties (including the Geneva Conventions) and the Rome Statute, which were both ratified and assimilated by national law to prosecute perpetrators of grave breaches.³⁶ The Attorney General submitted that Kwoyelo could not derive a right from unconstitutional legislation.

Constitutional Court Ruling

In their ruling of September 22, 2011, the judges of the Constitutional Court unanimously agreed with the submissions of Kwoyelo's defense. The court held that Kwoyelo had acquired the legal right to amnesty under section 3 of the Amnesty Act and that the DPP had failed to furnish a reasonable explanation for not enforcing the amnesty. The court further held that the Amnesty Commission and the DPP had violated Kwoyelo's constitutional right to equal treatment by failing to process his amnesty certificate when they had previously processed amnesty certificates for other senior ex-combatants. Consequently, the Constitutional Court directed the ICD to cease Kwoyelo's trial and directed the DPP and the Amnesty Commission to process his amnesty certificate.

Addressing the constitutionality of the Amnesty Act, the Constitutional Court observed that the Constitution allows for pardons, while barring criminal prosecutions for criminal offences regardless of their gravity. Notably, article 28(10) of the Constitution states, "No person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence." Further, the Court noted that parliament is empowered by article 79 of the Constitution to enact laws that promote "peace, order, development and good governance." The court held that:

At the time when the Act was enacted, this country was faced with a political rebellion in northern Uganda. The Act was meant to be used as one of the many possible ways of bringing the rebellion to an end by granting amnesty to those who renounced their activities. There is nothing unconstitutional, in our view in the purpose of the Act. The mischief which it was supposed to cure was within the framework of the Constitution.

The Act is also in line with national objectives and principles of State policy and our historical past which was characterized by political and constitutional instability.³⁷

However, the Constitutional Court did not address the internationally accepted distinction between amnesties and pardons.³⁸ It indicated that, contrary to the Attorney General's

34 As contained in the Constitution of the Republic of Uganda (1995). Directive III(i) states: "All organs of State and people of Uganda shall work towards the promotion of national unity, peace and stability." Directive III(v) further states: "The State shall provide a peaceful, secure and stable political environment which is necessary for economic development."

35 Constitution of the Republic of Uganda (1995), art. 287 governs international agreements, treaties, and conventions. It states: "Where—

(a) any treaty, agreement or convention with any country or international organisation was made or affirmed by Uganda or the Government on or after the ninth day of October, 1962, and was still in force immediately before the coming into force of this Constitution; or

(b) Uganda or the Government was otherwise a party immediately before the coming into force of this Constitution to any such treaty, agreement or convention, the treaty, agreement or convention shall not be affected by the coming into force of this Constitution; and Uganda or the Government, as the case may be, shall continue to be a party to it."

36 *Grave breaches* are war crimes that can be committed only in the context of international armed conflicts. They are separately defined for each of the Geneva Conventions and Protocol I, and include such acts as "wilful killing, torture or inhuman treatment" or "wilfully causing great suffering or serious injury to body or health" to persons protected by the relevant convention.

37 Thomas Kwoyelo Alias Latoni v. Uganda, Case No. 36/2011 (Constitutional Court 2011) (Uganda), 20.

38 Unlike amnesties, which immunize individuals from prosecution for offences they are alleged to have committed, pardons and the prerogative of mercy, as contemplated in articles 28(10) and 121 of the Constitution, are granted to individuals who have been prosecuted and convicted for committing criminal offences. See, generally, Office of the High Commissioner for Human Rights,

submission, Uganda's amnesty process did not constitute a "blanket" amnesty because the Minister of Internal Affairs, under a 2006 amendment of the Act, could declare certain rebel leaders ineligible for amnesty. Further, the court added:

We have not come across any uniform international standards or practices which prohibit states from granting amnesty. The learned State Attorney did not cite any either. We accept the submission . . . that insurgents are subject to international law and can be prosecuted for crimes against humanity or genocide.³⁹

The court reasoned that the referral to, and subsequent indictment by, the ICC of senior LRA leaders "clearly shows that Uganda is aware of its international obligations, while at the same time it can use the law of amnesty to solve a domestic problem." Hence, the court erroneously noted that Uganda's obligation to prosecute perpetrators of serious crimes under international law was fulfilled by the ICC's arrest warrants against the top LRA commanders.⁴⁰

The court did not address the Attorney General's argument that the amnesty act violates Uganda's international treaty obligations, such as those under Geneva Convention IV and the Rome Statute, in contravention of Article 287 of the Constitution, which requires adherence to treaty obligations under international treaties ratified before 1995, and Article 123, which governs the valid implementation of treaties ratified after 1995.

Appeal Before the Supreme Court

On April 11, 2012, the Attorney General filed an appeal before the Supreme Court of Uganda seeking to overturn the Constitutional Court decision and resume the trial of Kwoyelo. It was raised on 13 grounds of appeal alleging, among other points, that the Constitutional Court erred in law by finding that sections 2 and 3 of the Amnesty Act were not inconsistent with the Constitution and erred in interpreting article 28(10) of the Constitution to include an amnesty. The Attorney General also argued that the court erred in law and in fact by failing to consider that the Amnesty Act disregards Uganda's international obligations and by holding that Kwoyelo had acquired a legal right to amnesty.

At the appeals hearing before the Supreme Court, in March 2014, the Attorney General developed the above arguments and relied extensively on international legal instruments, United Nations principles, and the jurisprudence of the Inter-American Court of Human Rights to elaborate on the growing international consensus regarding the prohibition of amnesties for serious crimes under international law. The Attorney General argued that the Constitutional Court erred when it only analyzed the purpose of the Act, specifically, to restore peace and stability in conflict-affected regions, but failed to consider its unconstitutional effect, that is, preventing Uganda's compliance with its international obligations to investigate and prosecute international crimes.⁴¹ The Attorney General further argued that the Constitutional Court erred when it held that the Amnesty Act did not entail a blanket amnesty because the Minister of Internal Affairs could declare certain individuals ineligible. The Attorney General indicated that the minister's power was discretionary and that it is unconstitutional to subordinate Uganda's obligations under international law to the discretionary powers of a minister.

The Attorney General also objected to the Constitutional Court's interpretation of "amnesty" to include a "pardon" and argued that the pardon envisaged under articles 28(10) and 121(4) of the Constitution can only be granted by the President, on the recommendation of the Advisory Committee on the Prerogative of Mercy, to a person convicted of an offence.

³⁹ "Rule of Law Tools for Post Conflict States: Amnesties" (2009), www.ohchr.org/Documents/Publications/Amnesties_en.pdf

³⁹ Thomas Kwoyelo Alias Latoni v. Uganda, Case No. 36/2011 (Constitutional Court 2011) (Uganda), 24.

⁴⁰ In July 2005, the ICC issued arrest warrants for Joseph Kony and four other LRA rebel leaders The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya, ICC-02/04-01/05.

⁴¹ The Attorney General relied on the Preamble and art. 27 of the Rome Statute (1998) (on irrelevance of immunities for official capacity), and art. 146 and 147 of Geneva Convention IV (1949) to support these arguments.

The Supreme Court has not yet ruled on the appeal.

Ripple Effects of the Kwoyelo Case

The decision of the Constitutional Court in the Kwoyelo case highlights the conflicting approaches to transitional justice in Uganda and the dilemma of pursuing criminal accountability while a general amnesty remains in place. Following the Constitutional Court's decision, a process to repeal Part II (sections 2 to 5) of the Amnesty Act was initiated by the Justice Law and Order Sector (JLOS), a consortium of government ministries and institutions with closely linked mandates of administering justice, maintaining law and order, and promoting human rights. This process successfully culminated in the Minister of Internal Affairs declaring as "lapsed" Part II of the Amnesty Act in May 2012,⁴² pursuant to section 17 of that act.⁴³

Some civil society groups and religious and cultural leaders viewed the repeal of the amnesty provisions as a negative step that would undermine future peace efforts and discourage combatants from abandoning their arms.⁴⁴ After a successful petition by these groups to parliament, the Minister of Internal Affairs, in May 2013, backed by a parliamentary resolution, reinstated Part II⁴⁵ and extended the entire act for an additional two years.⁴⁶ This process has been described as irregular because the Minister of Internal Affairs is not entitled to reinstate legislation once it has expired or been repealed. In this respect, the Deputy Attorney General during the parliamentary debate noted:

Legally and logically, when you repeal provisions of the law, they cease to exist.

The Minister of Internal Affairs, under that statutory instrument being mentioned, repealed part II, which gave blanket amnesty. By doing that, it ceased to exist. Even if the minister revokes that statutory instrument, it will not revive that part. That part can only be revived through re-enactment by Parliament.⁴⁷

Following the reinstatement of Part II of the Amnesty Act, a civil society organization filed a petition in the Constitutional Court challenging the irregular reinstatement of Part II of the Amnesty Act, which they contend is in contravention of articles 91 and 94 of the Constitution of Uganda.⁴⁸ The Amnesty Act is due to expire in May 2015.

Conclusions

The ratification and domestication of the Geneva Conventions and the Rome Statute brought some hope with respect to Uganda's commitment to ending impunity for grave breaches and international crimes. However, the Amnesty Act and the inconsistent application of the Geneva Convention Act and ICC Act has put into question the existence of such a commitment. Further, Uganda's institutions need to embrace and implement the proposed transitional justice policy, which envisages implementing a comprehensive approach to pursuing justice for victims, including accountability for serious crimes.⁴⁹ The focus should shift from

42 Amnesty Act (Declaration of Lapse of the Operation of Part II) Instrument, S.I. No. 34/2012 (2012).

43 Amnesty Act, Cap 294 (2000), § 17: "The Minister may make regulations for the resettlement of persons under this Act and generally for better carrying out the provisions and principles of this Act." The Minister also issued Statutory Instrument No 35 (2012), which extended parts I, III, and IV of the Act for a period of 12 months to allow the Amnesty Commission to continue with the reintegration and resettlement of former combatants into communities.

44 See, for example, "Parliament Agrees to Extend Amnesty Act for Another Two Years," Acholi Times, May 27, 2013, <http://www.acholitimes.com/index.php/home/archives/8-acholi-news/1437-parliament-agrees-to-extend-amnesty-act-for-another-two-years>

45 Amnesty Act (Revocation of Statutory Instrument No.34 of 2012) Instrument, S.I. No. 17/2013 (2013).

46 Amnesty Act (Extension of Expiry Period) Instrument, S.I. No. 18/2013 (2013).

47 Statement by Mr. Frederic Ruhindi, Deputy Attorney General of Uganda. See Parliament of the Republic of Uganda, "Parliamentary Hansard" (May 15, 2013), 12, www.parliament.go.ug/new/index.php/documents-and-reports/daily-hansard

48 Advocates for Public International Law Vs Attorney General Constitutional Petition No—of 2014, www.apiluganda.org/constitutional-petition-challenging-the-reinstatement-of-part-ii-of-the-amnesty-act-2000-as-amended/

49 The Justice Law and Order Sector (JLOS) has formulated a national transitional justice policy that establishes a framework for implementing different transitional justice mechanisms. This includes truth telling, reparations, traditional justice, formal justice, and conditional amnesty. Under the policy, the transitional justice measures seek to address impunity for serious crimes, offer redress to victims, promote the rule of law and respect for human rights, and foster national reconciliation and sustainable peace. JLOS proposes conditional amnesties in certain cases, like after truth-telling processes. It also indicates that amnesties should not be granted for international crimes and that children should not be subjected to amnesty processes. See JLOS National Transitional Justice Working Group, "Fifth Draft of the National Transitional Justice Policy" (2013). The policy is still awaiting approval by the JLOS Executive.

Acknowledgements

ICTJ is grateful to the judges, prosecutors, and registrar of the International Crimes Division of the High Court for sharing their insights on the operation of the court. ICTJ also appreciates the input of civil society actors and representatives of victims' groups who graciously shared their insights and unique perspectives on the International Crimes Division.

granting amnesties to promoting accountability, truth seeking, and reparations for victims. The amnesty process does not enable the participation of victims, and it has done nothing to promote truth seeking or provide reparations for victims. Instead, it has shielded alleged perpetrators of serious crimes from accountability, thus perpetuating impunity.

Recommendations

Drawing on lessons from the Kwoyelo case, the following recommendations would help to ensure that criminal prosecutions conform to international standards and contribute to reconciliation, peace, and stability in Uganda.

1. **The Amnesty Act of 2000, which extends broad exemption from prosecution to perpetrators of serious crimes and gross human rights abuses, should be repealed or amended to exclude individuals who bear responsibility for the commission of international crimes, namely, genocide, war crimes, and crimes against humanity.**
2. **The DPP should publish a prosecutorial strategy that establishes criteria for the selection and prioritization of cases.** To inspire public confidence and promote the legitimacy of the International Crimes Division, the DPP should pursue crimes committed by both state and non-state actors. The selective investigation of crimes committed by members of the Lord's Resistance Army and Allied Democratic Forces has been a source of public criticism. Similarly, claims that allegations against government forces have been dealt with under prior disciplinary procedures do not meet Uganda's obligations under national or international law.
3. **The government should expedite the enactment of witness protection legislation.** This will extend protection to vulnerable witnesses and victims who face security, psychological, and physical risks for participating in criminal proceedings.
4. **The International Crimes Division of the High Court should establish a fully staffed and well-resourced witness and victims' support unit within its Registry.** This unit should provide appropriate support and protection to victims and witnesses who face security, psychological, and physical challenges due to their participation in criminal proceedings.
5. **The Rules Committee of the High Court should expedite the adoption of the ICD Rules for the International Crimes Division of the High Court.** This will enable the ICD to conduct trials of serious crimes in accordance with established international standards and best practices.
6. **The ICD should provide timely public information and outreach of the ICD's mandate and its proceedings to affected communities, in local languages.**
7. **The UPDF should fully cooperate with the International Crimes Division to ensure that suspects in their custody, like Caesar Achellam, appear in court to face trial for their alleged crimes.**
8. **The government of Uganda and the judiciary should provide the ICD with the necessary support and resources to enable it to execute its mandate, in accordance with established international standards and best practices.**
9. **Adequate resources should be afforded to lawyers for the accused, to protect the fundamental rights of the accused to a fair trial, as guaranteed under article 28 of Uganda's Constitution and under international law.**