



**PARLIAMENTARY PEER REVIEW CONFERENCE  
GIVING FULL EFFECT TO THE PRINCIPLE OF COMPLEMENTARITY EFFORTS IN  
UGANDA AND THE DEMOCRATIC REPUBLIC OF CONGO**

Thursday 17 July 2014, 8:30am-4pm in commemoration of International Justice Day,  
Parliament Conference Hall, Parliament of Uganda

Background and Context:

**1. Introduction**

Putting an end to impunity for crimes against humanity, war crimes and genocide is a precondition for the stabilization and development of the African Great Lakes region. Impunity for these most serious violations of human rights and international humanitarian law leads to repeated cycles of violence and thus poses a continuing threat to the affirmation of the Rule of Law, which is the only framework able to protect human rights at both the national and international levels in a durable manner. The International Criminal Court (ICC) has been created as the centerpiece of a jurisdictional and law-enforcement system that fights impunity, hence contributing to the establishment of a sustainable *rules-based international order* (cf. vision of PGA). For the ICC to be effective, it relies on the universality of the Rome Statute; the existence and execution of legal mechanisms to ensure cooperation with the Court by States Parties, and the adequate operation of national judicial systems that are capable and willing to exercise their jurisdiction over ICC crimes (*complementarity*). Since 1999, PGA has been concerned directly with procuring the existence of these systemic factors, whose absence would threaten the effectiveness of the Rome Statute system.

Both Uganda and the DRC are States Parties to the Rome Statute bound to apply the principle of *complementarity* and are situation-countries before the ICC on cases of war crimes and crimes against humanity<sup>1</sup> allegedly committed in their territories.<sup>2</sup> In both situations, the Governments of the respective countries made referrals to the ICC. In Uganda, in 2005 the Prosecutor selected one case and five suspects belonging to the rebel group “Lord’s Resistance Army”, one of whom has been declared dead. Four indictees are still at-large, including their leader Joseph Kony. Conversely, with regard to the extremely complex situation of the DRC, the ICC Prosecutor selected five cases and brought publicly charges against 6 individuals, one of whom is currently under ICC custody (Bosco Ntaganda), one has been acquitted (Mathieu Ngudjolo Chui), another has been dismissed at Pre-Trial stage (Callixte Mbarushimana) and a last one still remains at-large (Sylvestre Mudacumura). The ICC concluded its first trials with convictions against Lubanga and Katanga.

An effective investigative and prosecutorial system for international crimes is paramount to put an end to impunity. Through a network of Members of Parliaments in Uganda, the DRC and worldwide, PGA designs strategic activities and actions to bring about political will for effective investigations and prosecutions of international crimes, while addressing the different obstacles and challenges that are connected to each country-situation. Indeed, empowering the domestic spine of the complementarity principle may also generate increased political support for effective cooperation with the International Criminal Court (ICC) by States, which are benefitting from the interventions

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<sup>1</sup> Genocide has been included so far in the charges of only one case by the ICC Prosecutor, the case against Sudan’s President Bashir.

<sup>2</sup> Other ICC situation-countries are, as of April 2012: Central African Rep., Cote d’Ivoire, Darfur/Sudan and Libya.

of the ICC on selected cases of mass-atrocities allegedly committed in their territories. Thus, the overall goal of PGA's project "*Promoting Effective Complementarity in Uganda and the DRC: Putting an End to Impunity and Preventing International Crimes within the Rome Statute of the ICC System*" (PGA-Complementarity Project) is to promote domestic justice for international crimes in Uganda and DR Congo and thus contribute to the effectiveness of the ICC jurisdictional system, in which States Parties have the duty to exercise their primary jurisdiction over genocide, crimes against humanity and war crimes while the ICC has complementary ("subsidiary") jurisdiction (*principle of complementarity*).

## 1.1 Background to the parliamentary peer review

On 27 September 2013, PGA and the Legal and Parliamentary Affairs Committee convened a meeting at the Parliament of Uganda to discuss required steps necessary to give full effect to the principle of *complementarity* in Uganda.<sup>3</sup> The MPs agreed on a number of action points including the following:

- 1) The urgent adoption of the Transitional Justice policy drafted by the Justice, Law and Order sector (JLOs) of the Government of Uganda and its transmission for necessary legislative and/or other parliamentary action. Priorities were given to the establishment of a national programme to protect witnesses and victims; establishment of a national reparations programme for victims and survivors of the most serious crimes; to undertake a reform to the amnesty commission procedures to make sure that amnesty *does not* apply to Rome Statute crimes (crimes against humanity, genocide and war crimes);<sup>4</sup> and undertake necessary steps to harmonise traditional justice processes with the overall need to ensure that the rights of victims and affected communities are respected.
- 2) The Members of the PGA Uganda National Group will analyze the draft budget for justice, specifically the fight against impunity for the year 2014, propose comments to increase and strengthen capacity of the State apparatus to counter impunity.
- 3) Civil Society organizations in Uganda and Members of PGA should also take measures to support a reform of the amnesty procedures to make sure that there are "conditioned amnesties" linked to the fulfillment of the rights of victims and protecting in all circumstances the rights of children (who must be recognized as victims of the crimes of enslavement and of recruitment, conscription and/or use of children into armed forces).

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<sup>3</sup> A total of 53 MPs and over 70 representatives from the judiciary, the legal professions, NGOs and Government participated in this National Seminar on domestic prosecutions of international crimes, remedies for victims and *complementarity* with the ICC. The seminar was officiated by The Right Honorable Rebecca Kadaga, Speaker of the Parliament of Uganda.

<sup>4</sup> Child soldiers and former child soldiers turned adults shall *not* be selected for prosecution as they are victims of war crimes and they require to be subjected to mandatory rehabilitation and re-education programmes in order to be re-introduced to non-violent and constructive psycho-social relationships. S. 2(2) of the Amnesty Act, provides that a person who qualifies for and is awarded amnesty "[...] shall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion" requires amendment to exclude amnesty for Rome Statute crimes, However, several PGA Members were of the view that the underlined provision does *not* cover Rome Statute crimes, which, by definition, cannot be subjected to an amnesty (the matter is before the Ugandan Supreme Court for determination in the context of the "Kwoyelo case").

- 4) The government of Uganda remains fully engaged within the Rome Statute system and recognizes the essential role that the ICC plays as ultimate, residual mechanism in the genuine fight against impunity in Uganda and African States. Any effort to “pull-off” or withdraw from the Rome Statute shall be rejected, and justice shall not be postponed or delayed or subordinated to political considerations.
- 5) Political reaffirmation of commitment, notwithstanding the long lasting tensions between the African Union and the ICC, PGA Uganda Group, consisting of MPs from all four Parties in Parliament reiterated their support for the ICC, the fight against impunity, domestic prosecutions and other mechanisms of justice, truth-telling and reparation to strengthen Uganda’s transition to durable, stable peace.

## **2. Implementation of the September, 2013 Action Points: *Progress and challenges***

There have been a number of engagements in implementing the *September 2013 Action Points* which re-echoes the fundamental goal of the PGA *complementarity project*. Albeit there have also been challenges towards the actual realization of the set goals in terms of priorities, PGA has remained in the struggle to redress serious human rights violations and put an end to impunity. The biggest challenge perhaps is the slow pace in the process towards adoption of the Transitional Justice Framework which to-date is still before cabinet.

### ***Progress***

PGA members were involved in a number of initiatives including the following:

- 2.1. On the April 3, 2014, PGA members actively participated in the adoption of the parliamentary resolution to award reparations to female victims and other categories of victims in urgent need. This followed a petition presented by Women’s Advocacy Network (WAN) to the speaker of Parliament. Accordingly, a motion was moved by Hon. Reagan Okumu supported by several MPs including Hon. Betty Amongi, the Chair of UWOPA, on the plight of formerly abducted children and persons affected by the Lord's Resistance Army. Specifically, the resolution called for the establishment of a “gender sensitive reparations fund” and the offering of reparations for war-affected women and men. The resolution also calls for the government to provide free and accessible health services for war-affected women and children as well as to ensure the integration and resettlement of children born in captivity and formerly-abducted women in their communities. The Deputy Speaker of Parliament, Rt. Hon. Jacob Oulanya (also a Member of PGA) appointed a three member committee consisting of Hon. Rosemary Nyakingogoro, Hon. Reagan Okumu and Hon. Godfrey Kiwanda to follow up on the government’s implementation of the resolution and to update Parliament accordingly.
- 2.2. There has been an active engagement and campaigns in support of cooperation for the arrest of ICC indictees such as the Lord’s Resistance Army (LRA) group. Media statements have been used periodically to draw the attention of governments to re-engage in the active search for the fugitives and also to applaud international military support to the regional forces pursuing the LRA. Indeed, arrest of accused persons is significant in ensuring accountability and justice for the crimes committed against victims and the international community as a whole. The group continues to monitor the engagements of regional troops in Central African Republic (CAR) and dialogue with the leadership of the government forces. It is important that, these forces

know that there is political support in their struggle to bring lasting peace and security to the Great-Lakes Region. A number of the LRA rebels have defected and others captured in these pursuits and some are in the custody of the government forces -Uganda People's Defence Forces (UPDF).

- 2.3. The PGA Uganda National Group has engaged actively in countering the back-clash on the ICC by the African Union. In 2013, the ICC countered the apex of negatives political resistance from the African continent following the trials of William Ruto and Uhuru Kenyatta by the Court. Under the active lead role of the Vice Chair, Uganda National Group, Hon. Abdu Katuntu, a group of MPs mobilized themselves to counter the efforts of some African leaders calling for the withdrawal of African States from the Rome Statute.<sup>5</sup> The cooperation of the states is a pre-requisite for ensuring that the ICC fulfils its mandate in according justice to victims of heinous crimes. It is, therefore, critical agenda for the Uganda group fighting to bring an end to impunity to counter attacks against the Court and support its growth towards effectiveness.
- 2.4. PGA membership under the Ugandan Chapter has continued to grow signifying growing interest for the fight against to impunity in Uganda. At the PGA Conference in September, 2013, 29 MPs from Uganda joined PGA as new members.
- 2.5. PGA members have been interested and have followed the processes of the TJ Policy framework. There has been concern on the delay expressed PGA Members, who are asking the Minister of Justice for explanation on the delays.

#### **Other related initiatives implementing the action points: CSOs**

- 2.6. The September action points acknowledge the robust support of Civil Society in pursuing domestic prosecutions, specifically measures to reform amnesty from *blanket amnesty* to *conditional amnesty*. Avocats Sans Frontieres (ASF) and Advocates for Public International Law (APILU) are working on a petition to the Constitutional Court to challenge the reinstatement of Part II of the Amnesty Act and the whole question of amnesty denying victims access to justice and reparations under the Amnesty Act, 2000 (as amended). The petition, if successful, will fast track the process of reform of the amnesty law to exclude grant of amnesty to Rome Statute crimes.
- 2.7. Uganda Law Society is also implementing an Amnesty Law Project to come up with a model law on amnesty.

#### ***Challenges***

- 2.8. The greatest hurdles to realizing accountability for most serious crimes of concern to the international community in Uganda are founded in the legislative framework.
  - a) The International Criminal Court Act, which domesticated Rome Statute crimes in Ugandan law, is prospective from June 25, 2010, and thus cannot be applied to the period of conflict in Greater Northern Uganda. The case against Kwoyelo is based on the Geneva Conventions Act (1964) and the Penal Code Act cap 120 (as amended). However, there is also possibility of using

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<sup>5</sup> See link: <http://www.monitor.co.ug/News/National/Museveni-has-no-mandate-to-mobilise-against-ICC---MPs/-/688334/2032176/-/xyga41z/-/index.html>.

customary international law since these crimes were already crimes under international law, as clearly stipulated by the International Covenant on Civil and Political Rights (ICCPR) of 1966 at its Article 15, para. 2, to which both Uganda and Congo are Parties.

- b) The Amnesty Act (2000) allows any former combatant to be eligible for amnesty unless expressly exempted by the line government Minister. To-date no exemptions have been made. This so far has been the practical legal challenge to the prosecution of Thomas Kwoyelo. In 2011, the defence team successfully challenged the prosecution of Kwoyelo in the Constitutional Court on the basis that his denial for grant of amnesty was discriminatory since other combatants were granted amnesty. The Constitutional Court ordered for his immediate release. There was an appeal against the decision to the Supreme Court and a hearing was conducted in March 2014, and awaits a ruling. Kwoyelo remains in detention in Luzira Prison to-date.

In a related development, Kwoyelo's lawyers submitted a communication to the African Commission on Human and People's Right (the Commission) on the basis of illegal detention. A recent decision by the Commission has found the case admissible.<sup>6</sup> The Commission agreed with the complainants that lack of quorum at the Supreme Court could not allow exhaustion of local remedies.<sup>7</sup> This was the position at the time the communication to the Commission was made, but, interestingly, the Supreme Court heard the petition on 19 March, 2014 before the Commission hearing between, 28 April, to 12 May, 2014<sup>8</sup> and the decision on admissibility.

- c) The delay in the adoption of the National Transitional Justice Policy (TJ Policy) is a huge challenge towards addressing many hurdles in pursuing domestic prosecutions in Uganda. Since 2011, the government commenced the development of the Policy which to-date has not been adopted. PGA Uganda Chapter provided a comprehensive commentary of the draft policy and submitted to JLOs for consideration. The Policy framework presents a multitude of opportunities, which, if implemented, would address a number of current challenges, close the legal gaps and define a clear path towards attaining meaningful justice to provide redress to victims who have suffered harm during past conflicts and periods of repression. The Policy framework proposals include the following: harmonising the legal framework - conditional grant of amnesty; Establishing a Truth and Reconciliation Commission; Developing a legislation for witness protection (already a bill exist); Establishment of reparations programme; Establishment of a Transitional Justice Commission and Transitional Justice Fund.
- d) The Directorate for Public Prosecutions (DPP) and the Police have also been engaged in investigating the case of Acellam Caesar, another senior level commander of the LRA (at the rank of Major General) following his capture by the government forces in CAR in May 2012. Since then, Acellam has been in the custody of the UPDF in Gulu barracks with very restricted movements and access. The investigation team completed their work late 2013 and his file for prosecution was sanctioned and a criminal summon issued. The status of his release for prosecution is unclear as unconfirmed reports indicate that the UPDF granted him immunity

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<sup>6</sup> In October of 2013, Kwoyelo's lawyers petitioned the ACHPR to rule on his detention. For some time the African Commission on Human and People's Rights was not sure as to whether the issue would be included on their agenda.

<sup>7</sup> This was during the 55<sup>th</sup> Ordinary of the African Commission held in Luanda, Angola, 28 April to 12 May, 2014.

<sup>8</sup> The Communication was submitted in October, 2013 and the hearing was held during the Commission 55<sup>th</sup> Ordinary Session between 28 April to 12 May, 2014 when the appeal was already heard by the Supreme Court in Uganda.

and integrated him into the national army, barring him from prosecution. Such a practice fundamentally ravages accountability efforts and poses a big question to Uganda's commitment to the Agreement on Accountability and Reconciliation and complementarity as a whole. Indeed, grant of immunities by the government army to former combatants considered for formal justice puts to waste prosecutions' efforts.

## ABOUT PGA

The Parliamentarians for Global Action (PGA) is an international network of individual, non-partisan legislators from 139 elected parliaments in all regions of the world. PGA is in general consultative status with the UN, which supports the new system of international and national justice created by the Rome Statute of the ICC as a tool “*to put an end to impunity for the most serious crimes of international concern*” (cf. Rome Statute Preamble). PGA has a track-record in generating consensus among lawmakers on international treaties and standards and their domestic implementation on issues relating to human rights, international justice, the Rule of Law, reproductive health, women's empowerment, the fight against HIV/AIDS, disarmament and the environment. PGA promoted the negotiation, adoption and ratification of the Comprehensive Test Ban Treaty, the Chemical Weapons Convention, the ICC Statute and, prospectively, an Arms Trade Treaty (ATT). Over the past three decades, PGA has achieved notable success as a catalyst for action by parliamentarians on issues ranging from local conflicts to global development. PGA's three programs are: International Law and Human Rights; Sustainable Development, Health and Population; and Peace and Democracy.

**PGA's Vision:** To contribute to the creation of a Rules-Based International Order for a more equitable, safe and democratic world.

**PGA's Mission:** PGA, a non-profit, non-partisan international network of over 1100 legislators in 139 elected parliaments worldwide, aims to promote peace, democracy, the rule of law, human rights, sustainable development and population issues by informing, convening, and mobilizing parliamentarians to realize these goals.

*THE COMPLEMENTARITY PROJECT FOR DRC, UGANDA AND KENYA RECEIVES THE SUPPORT OF*

*THE JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION*

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*THE PGA ICC CAMPAIGN (2013-15) RECEIVES SUPPORT FROM:*

***THE EUROPEAN UNION***

*EUROPEAN INSTRUMENT FOR DEMOCRACY AND HUMAN RIGHTS*



*THE GOVERNMENTS OF*

***THE NETHERLANDS***

***SWITZERLAND***

***ESTONIA***

***LIECHTENSTEIN***



*PGA RECEIVES CORE SUPPORT FROM THE GOVERNMENTS OF*

***SWEDEN***

***DENMARK***

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*For more information regarding the programme, format and goals of the meetings and PGA's work in the region in general, please contact*  
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