

“GIVING FULL EFFECT TO THE PRINCIPLE OF
COMPLEMENTARITY IN UGANDA AND THE
DEMOCRATIC REPUBLIC OF CONGO”

PRESENTED BY

JUSTICE MIKE J. CHIBITA
DIRECTOR OF PUBLIC PROSECUTIONS

HELD ON

17TH JULY 2014

AT

PARLIAMENT CONFERENCE HALL,
PARLIAMENT OF UGANDA

INTRODUCTION

According to the complementarity principle, the International Criminal Court is a court of last resort and comes in to prosecute where a National state is unwilling or unable to prosecute.

The jurisdiction of the ICC is complimentary to the criminal jurisdiction of national courts whose first and foremost duty it is to investigate, prosecute and punish perpetrators of crime.

Only when the state fails to fulfil its obligation does the ICC step in.

LEGAL FRAMEWORK

The complementary principle of the Rome Statute which is derived from paragraph 10 of the statute preamble and Articles 17, 18, 19, 20 and 53, gives precedence to national justice systems to combat impunity and to assume responsibility for trying (or extraditing) those responsible for the crimes listed in the Rome State, i.e. war crimes, crimes against humanity and genocide.

Uganda as a country has exhibited its willingness and ability to deal with international crimes by domesticating the Rome Statute under the “ICCP Act 2010” and the Geneva Conventions of 1949 under “The Geneva Conventions Act 1964”.

Apart from the available legal frame work, in 2008, the High Court set up the now International Crimes Division (ICD) of the High Court of Uganda which is mandated to adjudicate international crimes, i.e. war crimes, crimes against humanity,

genocide and other crimes of international nature and or of transnational nature.

The Geneva Conventions Act 1964 confers extra-territorial jurisdiction on the ICD, i.e. all war crimes committed outside Uganda can be heard before the Ugandan courts of Judicature.

BACKGROUND

The Lord's Resistance Army (LRA) and the Allied Defence Forces (ADF) have committed heinous crimes in the Northern and Western Regions since the early 1990s. The two groups have now moved to Democratic Republic of Congo (DRC), South Sudan and Central African Republic (CAR) and continue causing havoc.

Given the fact that the ADF & LRA rebels are operating across borders and committing crimes it is pertinent that a framework is established to ensure that they are arrested, successfully prosecuted and that the victims receive justice as a catalyst to end impunity.

In the year 2013, over 200 victims (abductees) were repatriated to Uganda from the DRC and CAR. There are also victims who have been re-integrated with their families in the DRC. The Re-integration is not enough, those at whose hands they suffered have to be held accountable, and this calls for investigation of cases in the DRC as well as executing arrests and extraditions in the DRC.

VICTIMS MARGINALISED

The criminal justice system is by and large suspect-centred. The victims of crime, apart from being used as witnesses are completely left out of the criminal justice system.

This is more so in the arena of genocide, crimes against humanity and other offences covered under the Rome Statute. The LRA, for example, left thousands of victims in its wake. Abductees, bereaved families, maimed individuals and displaced communities.

Nothing worth of mention has been done to address their individual needs. Of course peace has returned and like everybody else in society they reap the peace dividend.

On the other hand, about five members of the top leadership have been indicted by the ICC and untold resources have been set aside, as they should to hunt them down. Some other fighters have been granted amnesty.

So we have thousands of victims and a handful of perpetrators. More attention needs to be given to the victims.

Thankfully under the Sentencing Guidelines recently launched by the Judiciary, victims have been given a right to be heard at the time of sentencing. A Victims Impact Statement is required before sentence is read out. This is a step in the right direction.

The media reported this week that Justice Simon Byabakama Mugenyi awarded over one trillion shillings to the Lango War Claimants Association as compensation for loss of property and livestock during the LRA insurgency.

This means that the only hope for victims does not yet lie in the criminal justice arena but in the arena of civil action.

CHALLENGES IN IMPLEMENTING THE ROME STATUTE

- The lack of a law on Mutual Legal assistance (Uganda has none).
- Uganda does not also have an Extradition Treaty with the DRC. This is quite surprising given the amount of cross border criminality. Understandably DRC not being a member of the Commonwealth additional steps have to be taken to sign such a treaty.
- Some of the witnesses in Uganda and the DRC need protection and it is high time their needs are addressed. These victims are mainly the abductees and those who suffered sexual violence. The victims of the Christmas massacres in the DRC, too, need redress. There is need to pass
- It is also important that Uganda addresses the issue of the children who were born by the abducted girls whether currently resident in Uganda or in the DRC.
- Ratification, domestication of the Geneva Conventions and the Rome Statute is not enough. We have to fully empower the ICD to carry out its mandate. Uganda can only be seen as a willing and able state when the structures put in place can operate without the setbacks in our laws.
- The Amnesty issue need to be reconsidered if we are talking about the complementary principle. The Amnesty law in its current form is an impediment to successful prosecution of those most responsible. Moreover, the DRC is not party to the Uganda Amnesty Law.

PROS AND CONS OF AMNESTY

- It has been some time since prosecution took place at the War Crimes Division of the High Court of Uganda. Non prosecution before WCD can be both good and bad. If the non prosecution is due to compliance with the law then that would be very good.
- We cannot prosecute all the crimes that are committed. We have no human or financial capacity to do so. Neither does the judiciary.
- A kind of plea bargain or surrender, where the accused person pleads guilty and gets amnesty is not a bad idea after all. The only condition we would attach to this kind of plea bargain under the Amnesty Act is that the accused person should take responsibility for his actions, pleads guilty and is convicted. Thereafter he can be granted amnesty if that is what the terms of the plea agreement provide.
- Whether the protagonist surrendered or was captured is a question of fact not answerable by prosecution. It is the army or whatever security organ at the frontline that arrested or received the accused person that can advise prosecution whether he surrendered or was arrested in the thick of action.
- This conference therefore should build a platform for all stake holders to see how co-operation structures can be established between Ugandan and the Democratic Republic of Congo to give full effect to the principle of complementarity.

THANK YOU FOR YOUR ATTENTION.