

## **Uganda**

Submission to the Universal Periodic Review  
of the United Nations Human Rights Council  
12th Session: October 2011

International Center for Transitional Justice (ICTJ)  
March 14, 2011

### **Introduction**

1. This submission considers Uganda's progress in implementing transitional justice measures in response to the serious crimes and human rights violations committed during the recent conflict and makes recommendations for further measures.
2. Uganda has signed and/or ratified more than 10 human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), and the International Convention for the Protection of All Persons from Enforced Disappearance.
3. Chapter 4 of Uganda's Constitution (adopted in 1995) recognizes a range of civil, political, economic, social, and cultural rights as well as rights of the child, women and people with disabilities, and also prohibits torture. Notably, the Constitution provides that "any person who claims that a fundamental or other right or freedom guaranteed under this constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation." It further provides that "all persons placed in positions of leadership and responsibility shall, in their work be answerable to the people."<sup>1</sup> These Constitutional provisions are in line with fundamental principles of transitional justice.
4. Uganda has also incorporated the Geneva Conventions into domestic law and has granted Ugandan courts the jurisdiction to try crimes set out in the Rome Statute of the International Criminal Court (ICC), to which Uganda is a state party.<sup>2</sup>

---

<sup>1</sup> Constitution of the Republic of Uganda, 1995, National Objectives and Directive Principles of State Policy, art. 50(1) and Objective XXVI on Accountability.

<sup>2</sup> See The Geneva Conventions Act (Cap 363), 1964; Jurisdiction has been granted pursuant to the International Criminal Court Act 11 of 2010 (ICC Act).

## Historical Context

5. Uganda's most recent conflict began as a rebellion more than two decades ago after the Ugandan People's Democratic Army (UPDA), a group of army officers, fled from Kampala when President Yoweri Museveni, leader of the National Resistance Army/Movement (NRA/M), took power in 1986 after a five-year guerilla war. The rebels gradually transformed into a highly structured group that called itself the Lord's Resistance Army (LRA), headed by Joseph Kony.
6. LRA crimes have been widely documented; they range from murders, abductions, forced marriages, and horrific mutilations including amputating limbs or cutting off ears, noses, or lips. These atrocities were deliberate attempts to instill terror, violate local values and power structures, and to swell rebel ranks.<sup>3</sup>
7. In December 2003, the government of Uganda (GoU) referred the situation in northern Uganda to the ICC because it could not arrest the LRA, which was operating mostly from bases in southern Sudan.<sup>4</sup> In October 2005, the ICC issued arrest warrants for five LRA leaders. Three of the five leaders, including Kony, remain at large.
8. In July 2006, the GoU and the LRA entered into a series of peace talks held in Juba, South Sudan, which ended in 2008. A final peace agreement was drafted but never signed. The talks did, however, result in five signed protocols, including the June 2007 Agreement on Accountability and Reconciliation (AAR), under which the parties agreed to promote national legal arrangements consisting of formal and informal institutions (including traditional justice mechanisms) and measures to ensure justice and reconciliation in respect of the conflict. The AAR required that formal courts provided for under the Constitution should exercise jurisdiction over people alleged to bear particular responsibility for the most serious crimes (especially those amounting to international crimes) committed during the conflict. As a result, in 2008 the GoU established the War Crimes Division (WCD) of the High Court of Uganda. Under the AAR, the parties also agreed to promote appropriate reconciliation, truth-telling, and truth-seeking mechanisms, as well as the effective and meaningful participation of victims in accountability and reconciliation mechanisms. The parties also agreed that individual and collective reparations should be made to victims.

## Substantive Concerns

### *WCD of the High Court*

9. The creation of the WCD is a positive step in ensuring justice and accountability for serious crimes and human rights violations committed during the conflict. The proceedings mark the first time that international crimes have been tried in Ugandan courts, and will raise a number of complex issues of substantive law and procedure. The court must ensure that its proceedings are fair, including proper provision for

---

<sup>3</sup> Michael Otim and Marieke Wierda, *Uganda: Impact of the Rome Statute and the International Criminal Court*, ICTJ Briefing; the Rome Statute Review Conference, June 2010, 1-2.

<sup>4</sup> *Ibid.*, 2, para. 5.

defense counsel and rules of procedure that allow for expeditious proceedings. Insufficient funding for state-provided defense counsel has hampered effective representation of suspects, despite constitutional rights to an adequate defense.

10. Progress before the WCD has been limited. The first case is against Thomas Kwoyelo, a former LRA commander. Kwoyelo has been in custody since he was captured in the Democratic Republic of Congo (DRC) in March 2009, charged with 12 counts of kidnapping with intent to murder, willful killing, taking hostages, extensive destruction of property, and causing serious bodily harm. He allegedly committed the offenses between 1996 and 2009 with others who are still at large in GuluDRC, and South Sudan. He is the first suspect to be charged with offenses relating to war crimes. He was indicted in September 2010. His trial was expected to start at the end of January 2011 but is now due to begin in May 2011. Only a small number of additional cases are expected to result from the WCD's investigations.
11. Under the AAR, the Ugandan Parliament may also enact laws allowing the WCD to recognize and implement aspects of traditional justice in its proceedings. Given the differing methods and outcomes of traditional and formal justice mechanisms, this will require careful coordination to avoid public confusion, and to ensure respect for the rights of defendants and the interests of victims. Clear outreach is needed in this regard.
12. Other key challenges the WCD faces relate to the areas of witness protection and victim participation. Victim participation in the Ugandan criminal justice system is currently limited to court attendance and testifying, which significantly limits the meaningful participation of victims in accountability mechanisms (as provided for in the AAR). Further, Uganda does not have any witness protection legislation and lacks any clear procedures for witness protection.

#### *Amnesty*

13. In 2000 the GoU enacted the Amnesty Act, which provided a blanket amnesty for those who rose in arms against the country's political leadership. According to the act, a person is protected from domestic prosecution in relation to the crimes, but that does not apply to international criminal prosecutions (such as the ICC). Though motivated by the desire of religious and cultural leaders and communities to put an end to the conflict in specific parts of the country, the act is viewed by many as perpetuating impunity, which raises an obstacle to the administration of formal justice. To date, more than 30,000 people have received amnesty in Uganda.
14. Amnesty for returnees is a particular challenge, as it heightens the stigmatization of former combatants, and increases tensions arising from the coexistence of perpetrators and victims. In particular, many affected communities consider that certain individuals, viewed as most responsible for serious crimes and human rights violations, should not have been granted amnesty. Given such evolving concerns, it is questionable whether the amnesty law remains appropriate in the current Ugandan context. Notably, the AAR provided that the GoU should amend the Amnesty Act in order to bring it into conformity with the principles set out in the AAR. To date, no amendments have been enacted. In fact, Parliament rejected a proposal made in 2010 to create list of people who would be ineligible for amnesty.

### *Reparations*

15. Victims have a right to adequate, effective, and prompt reparation for harm suffered. Uganda's international obligations in this regard include article 8 of the Universal Declaration of Human Rights, article 2.3 of the ICCPR, and article 14 of the CAT. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005, set out similar obligations.
16. Uganda does not currently have a national policy on reparations. Increasingly however, victims are demanding compensation for harm suffered. There are some instances in which the GoU has paid compensation to victims for the loss of property or life in the course of the conflict. For example, in 2008 the GoU agreed to a settlement out of court in relation to a petition from victims in northern Uganda who lost their property as a result of the war in 1986, when President Museveni came to power. During his campaign before the 2011 elections, the president promised a cross-section of victims from the south, east, and north compensation for harm suffered. By the end of the campaign season, most of the president's pledges had been fulfilled. Questions, however, remain about whether victims meaningfully participated in the process and whether the compensation provided constituted adequate, effective reparations.

### *Truth-telling and truth-seeking*

17. Given Uganda's violent past, measures to seek and tell the truth in the country could be important means of promoting reconciliation, addressing the root causes of conflict and seeking ways to avoid future repetition of violations. As noted above, under the AAR, the GoU agreed to promote reconciliation, truth-telling, and truth-seeking mechanisms. The GoU has established a Justice Working Group within the Justice Law and Order Sector, which has been tasked with moving the transitional justice agenda forward; the sector is considering, among other things, the establishment of a truth commission. It is critical that civil society is consulted in relation to key matters such as the mandate, time period, and types of violations to be investigated by any such commission. In addition, it is important that any commission established is independent of the GoU and operates in a political environment where victims and witnesses are able to speak freely, regardless of the identity of perpetrators.

### **Achievements**

18. The following are some of Uganda's key achievements:
  - Uganda hosted the Rome Statute Review Conference in June 2011, the first review of the International Criminal Court Statute since its adoption in 1998. About 4,600 people attended from intergovernmental and nongovernmental organizations. The conference is widely regarded as a success in creating a forum to discuss progress and challenges of the ICC, as well the adoption of an amendment of the ICC Statute to add the crime of aggression.
  - Relative peace has returned to most of northern Uganda (except the Karamoja regions due to cattle rustling), and a disarmament program is continuing.
  - Internally displaced persons camps have been disbanded.

- The Peace Recovery and Development Plan (PRDP) began in 2007 to assist regions recovering from conflict. The PRDP is intended to strengthen coordination of recovery interventions in the region; enhance monitoring of nationally and internationally supported recovery programs and activities in the north; enhance resource mobilization for affirmative interventions in northern Uganda; improve social welfare gaps in the north; and enhance peace and reconciliation.
- The Rome Statute was incorporated into domestic law.
- The WCD of the High Court of Uganda was created in 2008.

## **Recommendations**

### 19. The GoU should:

- consult widely with communities and civil society on issues directly affecting them, especially in relation to amnesties, awarding reparations, and establishing a truth commission;
- enact legislation promoting the meaningful participation of victims in court proceedings and providing appropriate protections for witnesses;
- amend the Amnesty Act to bring it into conformity with the provisions of the AAR and community expectations;
- develop a policy on reparations, in consultation with victims groups and other members of civil society; and
- establish a truth commission in relation to the recent conflict, in consultation with civil society;

### 20. The WCD should:

- ensure proper coordination between the registry and prosecution on witness protection assessments and measures;
- engage in a community outreach campaign to explain its role and to determine the practicability of including traditional justice processes within its jurisdiction;
- conduct a review of its rules of procedure to ensure consistency with international best practice of fairness and efficiency in trials of international crimes; and
- ensure that defendants' rights to an adequate defense are realized through sufficient time to prepare and proper funding of state counsel.

### 21. The international community should:

- insist on accountability for serious violations of human rights in Uganda;
- provide technical assistance, expertise, and support to domestic justice institutions so they can meet international standards, achieve durable solutions, and address a culture of impunity;
- provide funding to institutions that have been tasked with the delivery of justice to victims of gross human rights violations; and
- support civil society coalitions and networks that advocate for justice.