

## UPDATES ON THE TRIAL OF COL. THOMAS KWoyELO, EX-LRA COMMANDER

Gulu, 11<sup>th</sup> June 2011

Finally, after several months of delays and postponements, the long awaited trial of Col. Thomas Kwoyelo kicked off in the International Crimes Division (ICD), which held its first landmark session in the High Court of Gulu. The much anticipated trial attracted visitors from all over the globe, in addition to many of the local nationals who flocked the High Court and crammed it to capacity. In attendance were civil society organizations, members of the district local government, the media, victims and the public at large. The trial started with an inspection of the guard of honour by Hon. Justice Akiiki Kiiza, the head of the ICD. Other Judges in attendance were Hon. Justice Elizabeth Ibanda Nahamya, Hon. Justice Alphonse Owiny Dollo, in addition to the Principal Judge Hon. Justice Yorokamu Bamwine. The prosecution team was led by state attorney Joan Kagezi and backed by Mr. George William Byansi and Mr. Anguzu Lino. The defence was led by Mr. Alaka Caleb, and his colleague Mr. Onyango John Francis.



Justice Akiiki Kiiza inspects a Guard of Honour. Credit: JRP.

### Q&A Session

Thereafter, a question and answer (Q&A) session was convened by the judges. In this session, Justice Akiiki Kiiza noted that this trial was the first of its kind. But despite that, at the centre of it all there was a human being seeking justice. He promised that the accused would be accorded justice as a constitutional right, and the judges would ensure that the trial was fair. The audience was also given an opportunity to put forward questions to the Judges. The audience asked how the court intended to address gender based violence crimes, how the court intended to handle protection of victims and witnesses, whether reparations for victims would be effected by the court, whether Kwoyelo had applied for amnesty, whether *Mato Oput* was going to be part of the court's plans, and whether the court intend to try other parties other than the LRA.



The courtroom was packed to capacity. Credit: JRP.

In answering the above questions, Hon. Justice Kiiza noted that Uganda was applying common law principles, which among other provisions, limits judges from carrying out investigations. The cases to be handled by the ICD would depend on those brought before the judges by the prosecution. In a similar light, the court did not know whether Kwoyelo had applied for amnesty or not, but they would wait to hear from the prosecution. However, he asserted that the ICD intends to handle all parties who commit crimes in future. He also noted that the court was still in the course of establishing how traditional mechanisms such as *Mato Oput* could be used to complement the court's work. On witness protection, the ICD Registrar noted that in Uganda there is no provision for witness protection. In reference to reparations, he noted that Uganda lacks provisions for reparations to victims of conflict and called for the enactment of a reparations policy.

### The Hearing

Mr. Byansi then addressed the court on behalf of the prosecutorial team by applying to have the indictments against Thomas Kwoyelo amended in accordance with Section 50, Cap. 23 of the Constitution to enable the introduction of alternative counts under the Penal Code Act. With the defence counsel having no objections to this request, Hon. Justice Akiiki Kiiza read the charges to Col. Kwoyelo, a process which took a gruelling two and a half hours. Mr. Kwoyelo was charged with **12 substantive counts** and **53 alternative counts**, to all of which he pleaded not guilty. The substantive charges included wilful killing (5 counts), taking of hostages (2 counts), extensive destruction of property (2 counts), causing serious injury to the body (2 counts) and inhumane treatment (1 count). The alternative charges included murder (33 counts), kidnap with intent to murder (17 counts), robbery with aggravation (1 count), and attempted murder (2 counts). Seventy-one victims (27 females and 44 males) are set to

be used as witnesses to back-up the above charges and are listed as aggrieved parties. Most these crimes were alleged to have been committed between 1987 and 2005 in Kilak County, Amuru District and were either commanded by him or carried out with his full knowledge and authority. The specific dates on which he was alleged to have committed these crimes were listed as March 1993, 4th September 1994, February 1996, 4<sup>th</sup> March 1996, 14<sup>th</sup> May 2004 and 6<sup>th</sup> January 2005. The crimes were committed in Abera Village, Paibi Atiak Road, and Kulu Pu Oleal Village, all located in Parubanga Parish, Pabo Sub-County, Kilak County in Amuru District, and in Oboo Parish located in Lamogi Sub-County, Gulu District.

After reading the above charges, the defence counsel, Mr. Caleb Alaka, raised three preliminary objections to the charges levelled against the accused, which were later withdrawn. The first objection was in regard to an application for amnesty which had been made by the accused to the Amnesty Commission. Mr. Alaka noted that the accused had on 12<sup>th</sup> January 2010 renounced rebellion pursuant to Section 3 of the Amnesty Act,<sup>1</sup> Caption 295, by applying to the Amnesty Commission for amnesty. He argued that Kwoyelo's pending amnesty application thus raised complications with regard to whether the case should proceed or not since a response had not yet been received from the DPP. He further noted that other higher ranking officers such as Brigadiers Banya and Kolo Sam had been granted amnesty. According to Mr. Alaka, the failure to grant Kwoyelo amnesty contravened Article 21 of the Constitution of Uganda which provides for equality and freedom from discrimination. Eventually Mr. Alaka was advised to file formal objections regarding all the three preliminary objections he had filed, a matter to which he agreed.

The court concluded business for the day by selecting two assessors: Mrs. Ladu Sylvia, a retired police officer, and Mr. Lalobo Justus, a retired sub-county chief.

- **25<sup>th</sup> July** was set as the date on which the preliminary objections raised by the defence counsel would be heard.
- **15<sup>th</sup> August** was set as the date for hearings to commence.



Col. Kwoyelo in the dock. Credit: JRP.

### Future Challenges

After successfully holding its first session, the ICD must now work to find solutions to challenges that have already manifested. On amnesty, Col. Kwoyelo is said to have applied for amnesty on 12<sup>th</sup> January 2010, but has yet to receive a response from the Amnesty Commission, which is in turn waiting for a response from the Director of Public Prosecutions (DPP). Another challenge, and one that seems to be beyond the ICD's means to resolve, lies in the area of retrospectivity. It is common knowledge that many victims in northern Uganda were victimised prior to enactment of the ICC Act in 2010. As such, the ICD might perhaps refer to other alternative mechanisms such as truth-seeking and reparations. The ICD is also likely to face a challenge given that Uganda currently lacks a reparations policy. This means that in the event that Kwoyelo is convicted, the court may find itself at loss about what to do for hundreds of his victims. In addition, many people have called for the prosecution of other actors other than the LRA. This is an important matter that the DPP should look into if the ICD is not to appear selective or partial in its work.

*This update was compiled by Lino Owor Ogora and Evelyn Akullo. JRP will provide updates on the trial of Col. Thomas Kwoyelo and the ICD in the coming months. These updates can be accessed on our website at [www.justiceandreconciliation.com](http://www.justiceandreconciliation.com) or by contacting us at [info@justiceandreconciliation.com](mailto:info@justiceandreconciliation.com).*

<sup>1</sup> Under Uganda's Amnesty Act, amnesty is defined as 'a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the state.'