



## Outreach Consultative Meeting with Civil Society for the First War Crimes Cases before the War Crimes Division

### MEETING SUMMARY

Organized by the International Center for Transitional Justice (ICTJ)  
& the Justice and Reconciliation Project (JRP)

**Dates:** Thursday, April 21, 2011  
**Venue:** Churchill Courts Hotel, Gulu  
**Participants:** 33 (See attached list)

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## 1. Objectives

The objectives of the meeting were to:

1. Assess civil society's expectations and realistic understanding for potential outcomes of the work of the WCD;
2. Increase civil society's engagement in all stages of legal proceedings before the WCD;
3. Provide input for the draft outreach strategy and briefing information on TJ by JLOS.

## 2. Opening and Purpose of the Workshop

*Michael Otim, ICTJ-Head of Office*

In this opening session, Michael Otim, Head of the ICTJ office in Uganda, explained the purpose and objectives of the workshop to participants. According to Otim, this meeting was a consultative one, designed to gather CSO and community representatives' views on the War Crimes Division (WCD) of the High Court of Uganda, specifically in regards to its first case of Thomas Kwoyelo, set to go to trial soon, and the pending outreach strategy being developed by the Justice, Law and Order Sector (JLOS) with input from stakeholders.

According to Otim, the purpose of the meeting was to provide CSO representatives upcountry with a realistic understanding of the potential outcomes of the work of the Court, and also to ensure that CSOs and victims are represented at the different stages of the legal proceedings being put in place. Moreover, feedback obtained in the meeting will be forwarded to JLOS to impact the abovementioned JLOS outreach strategy.

Since news of Thomas Kwoyelo's arrest and detention, there have been many questions asked about its implication on justice processes, amnesty, and the future of any peace talks or negotiation in Uganda. For example, people are asking, "Why Kwoyelo and not the others? Why this and not that?" Through this meeting, ICTJ and JRP aimed to collect those questions and follow them up with JLOS to ensure satisfactory answers are provided in any official communications from the Court or JLOS. This is important because these trials are for the benefit of victims, so victims should feel they understand and support such processes.

He went on to explain that the meeting would be structured to provide space for experts to kindle discussions on specific areas of interest, while providing ample time for feedback so that input could be recorded. There will be a follow-up meeting in Kampala which some participants may be invited to, in hope that the final outcome is one where victims feel justice is being done in a fair and transparent manner.

### Questions/Comment from Participants

After this introduction, the following questions, comments and concerns were raised by participants:

1. *What makes Kwoyelo unique from others who were arrested or captured on the front lines and given amnesty or punished?*
2. *Is the WCD going to be fair and independent?*
3. *Why is Kwoyelo not considered a war victim since he was originally abducted into the LRA?*

## 3. What is Outreach and How Different is it from Public Relations?

*Michael Otim, ICTJ-Head of Office*

After concluding the opening remarks and taking a few initial comments from participants, the meeting continued to provide a brief overview on the role of outreach in the WCD. According to Otim, outreach is a process of establishing two-way communications between the Court and the affected communities (This is based on the ICC definition). Outreach provides for clarification on any misperceptions or misunderstandings and allows for the communities to follow trials very closely. It also allows for communities to learn of ways to support the judicial process.

Outreach is different from public relations in that public relations are only about maintaining a public image. Outreach allows for two-way feedback and communication to explore different issues.

If outreach is not done and people in the communities do not have an understanding of the Court and what is being done, the public is unable to make informed decisions on how to participate, whether to testify as a witness, whether to provide evidence, etc. Outreach is an empowering process because it allows people to know what their contribution can be to the Court, which can benefit trials.

Outreach is also about answering difficult questions communities have about the Court regarding rules, procedures, indictments, etc. While outreach is very important, it is unfortunately not given enough attention in terms of manpower or money. As civil society, we have a role to play to ensure that outreach is supported so it can be done effectively and extensively.

### Questions/Comments from Participants

After this introduction to outreach, the following questions, comments and concerns were raised by participants:

1. *Which types of crimes and which period of war crimes will be tried? Will crimes committed before 2002 be considered?*
2. *Is the timing right to decide who is to blame for these crimes? What precedence is this trial going to set for those still in captivity? What will be their fate?*
3. *Can the WCD try torture when it is not recognized in the Penal Code?*
4. *Will the WCD try UPDF soldiers and not just LRA?*
5. *How can the WCD be put in place when the Final Peace Agreement in Juba was not signed?*
6. *What role can civil society play in ensuring transparency and comprehensiveness of the WCD in regards to state actors?*

## **4. Insights on the Work of the WCD**

### *Joyce Freda Apio UCICC*

Joyce Freda Apio, coordinator of the UCICC in Kampala, proceeded to share basic facts about the Court. According to Apio, the WCD was created following the signing of Agenda Item 3 on Accountability and Reconciliation from the Juba negotiations. It has been established to try international crimes including war crimes, crimes against humanity and genocide. It also fulfills the complementarity principle in the Rome Statute of the International Criminal Court (ICC), where national criminal prosecutions are encouraged to complement the work of the ICC and close impunity gaps created when it goes for only those considered most responsible. The state in question should however demonstrate its ability and willingness to prosecute such crimes. The WCD will therefore prosecute mid-level commanders of the LRA and other leaders who mastermind other rebellions in the other regions of the Country, even though the brochure of the WCD states explicitly that the WCD will try LRA commanders.

The Court has five judges; however, a panel of three Judges constitutes a quorum for a hearing. The current Head is Justice Akiiki Kiiza. The number of judges is not fixed and can be expanded depending on the workload of the Court. The WCD is a division of the High Court of Uganda.

A number of individual may face trials before this Court. Last year the Director of Public Prosecutions (DPP) admitted to working on about 41 files, including the case of Kwoyelo. The lists of the other persons will be made available once investigations are complete.

Kwoyelo has been charged with 12 counts of war crimes and crimes against humanity under the Geneva Conventions Act of 1964. Last year Parliament passed the ICC Act, but Kwoyelo cannot be tried under that act because of the retroactivity (One cannot be tried for a crime committed before a law against that crime was in place). The Geneva Conventions Act comes with the condition that the armed conflict must be of an international character. The conflict in greater Northern Uganda under the leadership of the LRA has been classified to be a conflict of international character because of the alleged involvement of the Sudanese government.

Decisions of the WCD can be appealed to the Court of Appeal and finally the Supreme Court, where they receives final judgment.

### Questions from Participants

After this introduction to the work of the WCD, the following questions, comments and concerns were raised by participants:

1. *How will evidence be collected to be used in the court?*
2. *Can an individual sue the Government for alleged cases of torture or for failure to protect civilians?*
3. *How can we ensure protection of witnesses, especially in cases implicating state actors?*
4. *Did Kwoyelo deny amnesty or was he denied amnesty?*
5. *Is the timing for this court right? Can we not start with other forms of justice like compensation?*
6. *Does Kwoyelo have an advocate? Who is s/he?*

## **5. Participants Feedback on Victims' Participation, Protection, Assistance & Reparations / Defense Issues**

*Sarah Kihika, FIDA Uganda*

During this session, Sarah Kihika, an advocate working with FIDA Uganda, explored the current issues surrounding victim and witness participation, protection, assistance and reparations in regards to court proceedings, as well as special issues surrounding the defense of Kwoyelo and others to come after him. According to Kahika, oftentimes when we look at transitional justice (TJ), victims fall outside of the process, or become an afterthought. Instead, they should be drivers of such processes and actively involved in all steps. She traced this lack of involvement to the structure of Ugandan common law and its lack of space for involvement from witnesses and victims. They may testify, but they have little say in how a prosecutor handles a case or the judgment is passed, instead they sit and wait for a verdict to decide their fate. In light of these limitations of retributive justice around the world, the drafters of the Rome Statute included special provisions for the involvement of victims and witnesses in cases of the ICC. This is something we must seek to be included in the rules and procedures of the WCD.

Currently, under national laws and the WCD, there is no provision for victim participation in judicial processes. Moreover, the law does not specifically call for victim protection. This has traditionally been handled by the police, without funding or a comprehensive policy. One of the key challenges of the WCD is that there is going to be a large number of victims and witnesses who will have interest in the case and will need to be offered protection. That is why it is important to have a witness protection process for both the prosecution and defense, which could include maintaining confidentiality of witnesses, not having them appear before the public, recording their testimony on camera or in closed door proceedings, etc. If safety and security is not guaranteed, witnesses are not likely to participate. The Registry must develop guidelines to coordinate and govern these procedures.

Moreover, on the issue of assistance, Kahika recommended that there be guidelines on the kinds of questions that can and cannot be asked of the witnesses, with special consideration to not re-traumatize them. For example, the ICC has ruled that an advocate cannot ask questions about a woman's sexual history, but can only discuss the evidence. In Uganda, courts are beginning to develop jurisprudence to do the same. To minimize the risk of re-traumatizing victims and witnesses, a psychosocial support unit could be there for those who appear before the court to prepare them for the experience and to provide assistance after. Lastly, the Court should consider providing support to allow victims to access the Court and to provide space for victims and witnesses to give input on what should be included in any participation/protection programme.

### Questions from Participants

After this discussion on current trends for victim and witness protection/promotion, the following questions, comments and concerns were raised by participants:

1. *Unless the Government sees all Ugandans as Ugandans, there cannot be justice. Unless there is recognition that when one falls, we all fall, there cannot be justice. When will we receive justice from our own Government?*
2. *Are the victims supposed to be the ones who direct the Court? Are the victims supposed to be the ones who decide how much compensation they should receive?*
3. *What mechanisms are there to allow victims to participate and provide evidence?*
4. *What do victims want? Are we asking them enough if they agree with this justice and if it's what they really want?*
5. *How can the WCD contribute to easing economical challenges facing victims?*
6. *Kony is not yet finished and the current political atmosphere in Uganda is not very safe. How can we ask victims to testify in Court without granting them proper security?*
7. *Do you think that if the LRA hears that Kwoyelo has been tried that our children still in captivity will have any interest in coming back?*
8. *How will we decide which situation should be handled using which justice mechanism (ICC, WCD, local courts, forgiveness, etc.)?*

9. *How will the WCD contribute to breaking cycles of violence?*
10. *For how long will the Court be in Gulu?*
11. *Will there be reparations or compensation after the trial?*
12. *Will there be a liaison office or Assistant registrar in Gulu to give information to the affected communities?*
13. *Since victims and witnesses are not aware of their rights for protection and participation, can we stop the first trial of Court until after outreach has been done?*
14. *What is being done to ensure that the WCD complements other transitional justice mechanisms in Uganda?*
15. *Does Uganda have a jury system that could allow for public participation in the trials?*
16. *How can civil society monitor the work of the DPP in regard to these trials? How can we ensure cases are not thrown out because of political considerations?*
17. *How can we be sure a lawyer is not biased against the state?*
18. *By law, when do you know that the war is over?*
19. *Who is going to define who gets to participate in the process? Will it be that cases on Kwoyelo's charge sheet will be the ones represented? Who decides who the witness is and who only comes to watch (i.e. the different levels of participation)?*
20. *Where do CSOs fit within the WCD? Whom do they cooperate with? With the defense, registrar, prosecution, etc.?*
21. *Can CSOs raise issues and evidence to the prosecution or defense?*

## **6. Participants Feedback on Current Amnesty Law versus WCD**

*Boniface Ojok, JRP*

In this session, Boniface Ojok, programme coordinator for the Justice and Reconciliation Project, provided updates on the current amnesty law in Uganda. Ojok began his presentation by stating that numerous international studies have found that amnesty should be conditional, oftentimes where a perpetrator agrees to tell the truth in exchange for forgiveness (and amnesty), or by telling the truth and then receiving a lighter sentence if retributive justice is sought. That is the current state of amnesty.

For the Kwoyelo case, he was born in Amuru and abducted around 1987 when he was just 15 years old. He spent over half of his life in captivity. He is claimed to have been commander of the Sinia brigade of the LRA and was captured in February 2009 by joint forces in the eastern DRC before being remanded to Gulu prison. There were other commanders who came before Kwoyelo who were not denied amnesty. Kwoyelo came in the midst of an existing amnesty act and the circumstances to deny him amnesty are unclear. He applied for amnesty and was never granted it.

The case of Kwoyelo raises complex questions regarding the victim-perpetrator dilemma. He is the second person from the LRA to be charged with the same crimes he was a victim of (the first was Dominic Ongwen, indicted by the ICC). He was a victim, yes, but he also picked up a panga, gun, etc. and carried out crimes. Ojok was not absolving Kwoyelo of justice, but rather was warning that until the Court recognizes his complex status as both a victim and a perpetrator, there will be few incentives for others in similar situations to lay down arms.

Moreover, he made the suggestion that the Government needs to clarify its intention to prosecute mid-level commanders because it is causing unrest and fear among those still in captivity and those already back (both with and without amnesty). However, he said that while some may receive amnesty, this is not condoning their crimes, nor should they be omitted from participating in other TJ mechanisms that hold them to account and stamp out impunity in Uganda.

### Questions/Comments from Participants

After this discussion on the current state of amnesty, the following questions, comments and concerns were raised by participants:

1. *We cannot treat people differently. It is not that we are siding with Kwoyelo, but we cannot treat him differently from Kenneth Banya and others because they were all captured by Government during the same rebellion. We have to show the world we are not taking sides with anyone.*
2. *Kwoyelo was part of the team that respected the cessation of hostilities, so this [trial] even puts the Juba talks into question. So now I see Kony's point of not trusting the amnesty. This will really shut the door for the continuity of peace talks or peaceful dialogue.*
3. *We need to decide on a definitive definition of whom victims are and whom perpetrators are and zero down on true perpetrators, and then we don't need amnesty.*

4. *What is the situation of amnesty in Uganda? Why should this amnesty at this time be influenced by the President and the Minister he appointed?*
5. *When do we say that this war is over? Do we have justice in Uganda? Who is going to testify to that?*
6. *When talking about amnesty and concerning Kwoyelo and his trial, what is the community thinking about him and his trial?*
7. *What is the future of the Amnesty Act?*
8. *Looking at this case study, Kwoyelo is not different from those pardoned, so why are others pardoned at same time Kwoyelo is not?*
9. *Are people coming home now also being denied amnesty so the Court can get access to them?*
10. *If the minister decides to give Kwoyelo amnesty once the trial has started, how will that affect proceedings?*
11. *When amnesty is conditional, what categories of people are given what kind of treatment?*
12. *Why doesn't government want to give reparations?*
13. *These people were abducted, forced. What is best would be the traditional justice mechanisms where you come to people, apologize, confess, and then people forgive you. Whose justice is being done in this Court? Because people are here bitter on how Kwoyelo was abducted and yet he is being tried.*
14. *Is it possible to know the next two trials of the Court? Did they also refuse amnesty or were they denied amnesty? What ranks were they? Were they colonels or above or below?*
15. *How did Kwoyelo come out of the bush without an amnesty card?*
16. *Did Kwoyelo pass through a rehabilitation center?*

## **7. Participants Feedback on Opportunity and Challenges for Outreach / Next Steps and Closure of the Meeting**

*Joyce Freda Apio, UCICC; Michael Otim, ICTJ; Sarah Kahika, FIDA*

In this final session of the meeting, Apio, Otim and Kahika provided final clarification, allowed for last words from participants and gave closing remarks. According to Otim, there has been a culture of impunity in Uganda and the WCD should set the precedence for dealing with it. As a young institution, it has many challenges, but that doesn't mean we should throw it away. It is important that we work to make the institution work for us despite certain weaknesses. He implored participants to nurture the WCD into something beneficial to Uganda. He shared that he has heard of possible cases against the ADF also coming to the Court, making it more of a national institution for national crimes, not just LRA. He also said that there is no single mechanism for justice that can solve everything, and that Uganda should have both restorative and retributive justice. Lastly, liaison in the field is critical to the success of the WCD.

Otim thanked everyone for attending this consultative workshop, saying their commitment to be here was a testament to their willingness to testify on behalf of their people. He reminded participants that outreach is a two-way consultation and that it has to be sustained.

A participant closed the meeting by encouraging participants to continue telling people what is on their minds, stating, "How will they do it if they don't know what is on our minds?" He reiterated that society wants to do away with impunity and to send messages to perpetrators that impunity is unacceptable. He closed by saying as leaders, we must always do what is right even if it is difficult. We have risked our lives, many, many times for the good of society.

### Questions from Participants

During this session, the following questions, comments and concerns were raised by participants:

1. *Is it possible that Kwoyelo asks for the trial to be held 'in camera' or to be closed to the public? What will happen if he asks for that?*
2. *Because the Government and the LRA both signed Agenda Item 3 on Accountability and Reconciliation, can't both be tried under the WCD?*
3. *Do we need to engage the Government more so that they can understand what we're talking about? Why don't we form a forum to engage Government on the justice issues in our communities?*
4. *What crimes are eligible in the military court? Are they crimes of international character?*
5. *Which offices can we contact to tell them about us and our victims' associations?*
6. *If the UPDF caused atrocities on civilians, the military tribunal in most cases holds their proceedings behind closed doors. How will a victim really know that he or she is getting redress in a military tribunal if it is behind closed doors?*

7. Will the accused in the WCD be treated like a king with security while the victims and witnesses have none?
8. Can the WCD brochures be translated to other languages so the grassroots communities can understand them?
9. How does this meeting and consultation feed into others?

## 8. Contact Us

For more information on this report or the meeting, please contact:

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