



THOMAS KWOYELO'S TRIAL BEFORE THE INTERNATIONAL CRIMES DIVISION OF THE HIGH COURT OF UGANDA

Formerly known as the War Crimes Division, the ICD is a domestic court that was created in 2008 as part of the government's efforts to implement the Juba Peace Agreement (2007). It is within the ICD's jurisdiction to try serious offences such as war crimes, crimes against humanity, genocide, terrorism, human trafficking, piracy, and other international crimes, like the crimes committed during the LRA conflict.

The ICD is a special division of the High Court of Uganda. It is not the International Criminal Court (ICC), or a branch of the ICC.

Thomas Kwoyelo is currently facing charges of war crimes and crimes against humanity in front of the ICD.

With the support of



Director of Public Prosecutions (DPP)

Collects evidence and decides (or not) to initiate proceedings.

Brings charges before the Chief Magistrates' Court or directly to the High Court.

The DPP gathers evidence and presents it to the Court to prove that the accused is guilty.

Police Investigation Team

Initiates investigations into alleged crimes and collects evidence.

Defence lawyers

Present evidence to defend the accused's presumed innocence.

Victims' lawyers

Represent victims' interests during the pre-trial, the trial and sentencing.

Constitutional Court

If the ICD needs to obtain clarity on the constitutional norms, it refers the case to the Constitutional Court.

Chief Magistrates' Court (CMC)

Arraigns and reads the charges to the accused person; it may order pre-trial detention of the accused.

If the charges contain certain crimes, the CMC commits the accused to the High Court for trial.

High Court

Within the High Court, international crimes go before the International Crimes Division (ICD).

ICD pre-trial phase

A pre-trial judge rules whether there is "substantial ground to believe" in the charges. If the charges are not confirmed, the accused is set free.

ICD trial phase (if charges are confirmed)

Depending on the nature of the crime, a panel of 1 or 3 judges tries the accused.

Based on hearing of evidence, the panel decides whether the accused is guilty "beyond reasonable doubt". If the judgment is "not quilty", the accused is set free.

If the judgment is "guilty", the accused is convicted and the panel sentences the accused in line with international standards. The ICD may then order compensation to the victims.

ICD Registry

Headed by a Registrar, it provides administrative support to the ICD.

It is responsible to ensure victims' participation.

Court of Appeal

If the Prosecution or the Defence disagrees with the ICD's verdict, they lodge an appeal to the Court of Appeal.

Supreme Court

If the Prosecution or the Defence disagrees with the Court of Appeal's verdict, they appeal to the Supreme Court. During the appeal, the Supreme Court looks at matters of law and not at facts.

Victims' participation in court's proceedings

The ICD Registry is responsible to "assist the victims to participate in the proceedings". In 2016, the ICD granted victims the status to participate at all stages of the case, subject for them to file an application with the ICD. A template for application exists and is available with the two victims' lawyers appointed by the ICD or with the ICD Registry.

Subject to the approval of their application by the ICD, victims may seek compensation if the accused is convicted. In this case, the ICD may in its discretion "order the convicted person to pay compensation as the Court deems fair and reasonable" to "any person (who) has suffered material loss or personal injury in consequence of the offence committed". If compensations are ordered, their effectiveness shall depend on the accused's solvency (his financial capacity to pay the amount ordered by the ICD). In awarding reparations, the trial judge or trial panel takes into account the views of the victims on reparations.



The case of Thomas Kwoyelo: first LRA leader to face trial before the ICD

PROSECUTION CASE

Thomas Kwoyelo alias Latoni is the accused. According to the Prosecution, he got enlisted into the Lord's Resistance Army (LRA) rebel group under the overall command of Joseph Kony. The accused underwent military training and rose through the LRA ranks to become a 'colonel', a rank he held until his arrest. As LRA officer, he was based in Kilak hills (located in the present day Amuru District), until the LRA shifted the base to the Garamba National Park in DRC in 2005.

Between 1993 and 2005, a series of attacks from LRA fighters under the alleged command of the accused, raided the Abera Village, the Pagak camp for Internally Displaced People (IDP) and the Pabbo IDP Camp (in the present day Amuru District). The attacks resulted in abduction, killing, maiming and torture of dozens of people, including women and children.

4 April 2016-30 August 2018: Pre-trial phase

CASE BEFORE THE ICD

2009

Former LRA rebel leader Thomas Kwovelo is captured in the Garamba National Park (DR Congo) by the Uganda Peoples Defence Forces.

July 2011

proceedings against Thomas Kwovelo. The Defence raises several preliminary objections concerning the constitutionality of the case. The case is referred to the Constitutional Court Kwoyelo's trial and for interpretation. Among the issues raised is the matter of amnesty.

22 September 2011

The ICD commences The Constitutional Court holds that Kwovelo has acquired the legal right to amnesty and that his right to equal treatment has been violated. The Court directs the ICD to cease asks to process his amnesty certificate. April 2015

The Attorney General files an appeal before the Supreme Court against the ruling of the Constitutional Court. The Supreme Court rules that the trial of Kwoyelo by the ICD is proper and that it should proceed.

The ICD rejects the challenge to its jurisdiction to hear the case that is made by the Defence team. It also dismisses the challenge made against the participation of the victims counsel.

21 September 2016

1 February 2017

The ICD dismisses the Prosecution's irregular application for redacted disclosure and aives fresh quidelines to the Prosecution to make a new application.

22 November 2017

The ICD dismisses the Defence's objections and holds that the Constitution of Uganda does not prohibit the application of customary international law.

23 February 2017

The ICD grants the victims the status to participate at all stages of the case, subject to their application to participate.

23 September 2016

The Court allows the Prosecution to amend the first indictment. The Defence raises an objection to the indictment, arguing that customary international law is inapplicable in the Uganda legal regime and that it breaches the

principle of legality.

The ICD examines the summary of the case, the witness statements provided and other documentary evidence provided by the prosecution, and confirms all the 93 charges against Thomas Kwoyelo.

30 August 2018



WHAT NOW?

The pre-trial stage is now completed and the alleged charges against Thomas Kwoyelo are confirmed; the trial can now begin. The accused remains presumed innocent and shall face a panel of three judges from the ICD. The hearings will take place at the Gulu and Kampala High Courts and shall be open to the public. During the trial, the accused shall take a plea. He may either admit his guilt or deny it. The Prosecution shall organize and facilitate the presentation of witnesses to substantiate the grounds against the accused. The Defence may also present its own witnesses to defend the accused's presumed innocence. The Court has appointed two lawyers to represent the victims' interests. For these victims to participate, they must contact the ICD Registry or the victims' lawyers and ask to file an application with the ICD.



This brochure is published by Avocats Sans Frontières (ASF) with the support of the Belgian Development Cooperation.

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