

**INVESTIGATION AND PROSECUTION OF SEXUAL AND GENDER-BASED  
CRIMES:**

**ENSURING ACCESS TO JUSTICE FOR VICTIMS OF SEXUAL AND GENDER-  
BASED CRIMES AT THE NATIONAL LEVEL: THE UGANDAN EXPERIENCE**

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## **SEXUAL AND GENDER-BASED CRIMES IN UGANDA.**

The main legislation setting out the crimes that fall under this category is the Penal Code Act. The crimes include Rape, Defilement, Elopement, Trafficking in Persons to mention but a few.

The Government of the Republic of Uganda established the International Crimes Division of the High Court to deal with special categories of crimes, to wit, war crimes and crimes against humanity, among others.

The establishment of the court was in line with implementation of the spirit of the Rome Statute and the International Criminal Court.

At the same time the government had put in place a law, the Amnesty Act, to help in the fight against the insurgency of Joseph Kony and his so called Lords' Resistance Army.

The presence of Joseph Kony and his Lords' Resistance Army therefore meant that the government had to enforce law and order amidst this rebellion.

In a way, therefore, the law had to be enforced using a triple prong. There was law enforcement involving the ordinary civilians. SGBV crimes in this category are tried by ordinary criminal courts.

There was law enforcement involving insurgents of the Lords' Resistance Army and then separate law enforcement for surrendering insurgents and those who applied for amnesty.

## **STAKEHOLDERS IN THE ENFORCEMENT OF SGBV RELATED CRIMES**

- The Judiciary
- Prosecutions
- Defence Counsel
- Investigations
- Prisons Service
- Accused Persons
- Victims
- Complainants/Family
- Health Practitioners
- The Media
- Local Leaders
- Non-Governmental Organisations

## **CHALLENGES TO PROSECUTION AND INVESTIGATION OF SGBV**

### **THE AMNESTY ACT**

As already mentioned, the Parliament of Uganda passed the Amnesty Act as a tool to defeat the Lords' Resistance Army insurgency.

Apart from Kwoyelo, no high ranking commander of the LRA has been prosecuted in Uganda. This is because those captured immediately take advantage of the Amnesty Act by seeking amnesty from prosecution.

Most mid-level commanders applied for amnesty soon after or before capture. Once granted amnesty these criminals are no longer subject to prosecution, according to the Amnesty Act.

This means that victims and other stakeholders are left wondering what justice actually means. The perpetrators are rewarded with various goodies after surrendering.

The victims are not considered at all under the Amnesty Act. Not only are they denied justice, they don't get any goodies either.

While the Amnesty Act makes a lot of political sense and may have contributed in no small part to the defeat of LRA in Uganda, from a prosecution point of view it just seems to promote and reward impunity.

The Supreme Court of Uganda said as much in the landmark case of Kwoyelo. The Supreme Court decision has therefore paved the way for the trial of Kwoyelo and his ilk.

### **INTERNATIONAL CRIMINAL COURT**

There is supposed to be complementarity between the International Criminal Court and the International Crimes Division of the High Court of Uganda.

The reality on the ground is that there has been some tension between the two courts.

A number of judges of the ICD have felt slighted by what they saw as being denied the opportunity to try Dominic Ongwen.

There are numerous good reasons why the trial of Ongwen had to be done at the ICC. This however is not enough to placate judges of the ICD.

They reason that they are qualified, able and competent to handle such cases yet they have not been given the opportunity. Prosecution perfectly understands why at the time Ongwen had to be sent to the ICC.

## **TRADITIONAL METHODS OF CONFLICT RESOLUTION**

Many communities and families in the rural areas of Uganda have customary and traditional ways of resolving conflict.

In sexual offences especially, many rural communities do not see the reason why a man should be prosecuted or worse still why he should be imprisoned for a sexual or gender-based offence.

Traditionally a perpetrator of a sexual or gender-based crime is given the girl to marry in exchange for bride price. This is made even more complex if pregnancy results from the crime.

Even the victim of the crime becomes reluctant to participate in the prosecution of the accused.

She all of a sudden realizes that she will need a father to her child. She will need a bread winner. She will need to get security and protection in the community.

She does not want to perpetually be known as the one who caused the imprisonment of a neighbour, relative etc.

## **STIGMA**

Many victims fear to report cases of SGBV because of the stigma associated with this category of offences.

Society will either think that she is of loose morals, that she provoked the perpetrator or simply that she is uncooperative.

If she reports then all sorts of roadblocks are thrown in her way. Court is not always a very pleasant place for SGBV victims.

There is no guarantee of privacy from the media and other curious onlookers. Defence counsel can ask all kinds of embarrassing questions.

As a result of all this negativity many victims prefer to keep their suffering to themselves.

## **WITNESS AND VICTIM PROTECTION**

I will narrate a story to best capture this point.

A victim of defilement was brought to my office after allegations of evidence mishandling. She was brought for reassurance that we were committed to prosecuting her attacker.

We assured the victim of our commitment to prosecute and bring the perpetrator, who was in custody, to book.

As a final remark I informed her that she would be our first witness when the trial started. She said she would not be testifying. Without the victim in SGBV cases, prosecution is an exercise in futility.

Surprised I inquired why not.

She went on to tell us how she feared for her life. The accused person, according to her, had powerful friends who knew her home and she feared for herself and her family.

With no witness protection law in place there was not much that I could do to guarantee her security. After leaving office she went into hiding. Hiding from my office and from the perpetrators. In her view prosecution was as much a threat to her safety as the perpetrator and his cohorts were.

We urgently need to pass the law on witness protection, complete with the requisite infrastructure.

### **LACK OF CAPACITY**

The entities involved in enforcing law and order are usually ill equipped both in skill and in equipment.

SGBV like most offences requires specialized training in order to efficiently and effectively handle the case.

Lack of equipment like medical kits, forensic laboratories, safe storage for transportation and handling of exhibits and scenes of crime and victims contributes to failure to build up a fool proof case.

One of the most urgent requirements for a victim of sexual and gender-based violence is counselling. Majority of investigators, prosecutors and judicial officers lack the basic counselling skills necessary to assist a victim.

Many of them don't even know that it is a very important need for the victim. Stakeholders either need to be given basic counselling training or Counsellors have to be brought on board.

### **THE COURT ROOM**

Under our adversarial system of litigation the victim of sexual and gender-based violence is not shielded from the public or her attacker.

I have seen young girls freeze and lose their composure and confidence once their attacker enters the court room.

When I handled matters of SGBV, in my days as judge, involving minors I always made sure that the trial was held in camera. There is no requirement for such trials to be heard in camera.

Whether or not a trial is heard in camera therefore depends on the goodwill of the judge handling the matter or how persuasive prosecution is.

It should be made a mandatory requirement in cases of SGBV for trials to be held in camera. Or else victims should be shielded from facing their attackers in court.

## **CONCLUSION**

The struggle to ensure that victims of SGBV get access to justice continues. I am glad that this discussion has been put in place to address the challenges and to pursue workable solutions.

I thank the Swedish Embassy in Uganda and the government of Sweden for making it possible for me to attend this function.

Thank you.

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