

TRIAL MONITORING IN THE CASE OF THOMAS KWOYELO BEFORE THE INTERNATIONAL CRIMES DIVISION OF THE HIGH COURT IN GULU

24-25.09.2018

After a long wait, the International Crimes Division of the High Court of Uganda (ICD) in Gulu held its first trial hearing on 24 and 25 September 2018 in the case of Uganda vs. Thomas Kwoyelo, alias Latoni.

The procedural rules of this special court require that there should be pre-trial, a preliminary phase which seeks to establish sustainable grounds to believe in the charges brought by the prosecution before the main trial is conducted. The ICD therefore concluded its [pre-trial hearing on 30 August 2018](#) with confirmation of 93 charges against the accused. The rules further require that once charges are confirmed then an accused shall appear before a trial panel of one or three judges depending on the nature of the case.



After a parade where the trial panel met with all the lawyers in the case, a stakeholders meeting took place, during which the court interacted with the public. This was followed by status conference and a plea-taking, which resulted in an adjournment.

The trial panel is composed of the Honourable Justices: Jane Kiggundu, Duncan Gaswaga and Michael Elubu.

Place: International Crimes Division

Date: 24-25 September 2018, 10:20am-3:40pm and 9am-2pm

Case Number: Case No 2 of 2010

Accused: Thomas Kwoyelo alias Latoni, former LRA commander

Civil parties: Victims from Amuru District in Northern Uganda

Summary of the case: Thomas Kwoyelo is a former commander in the LRA. The charges brought against him include: crimes against humanity and violations of Article 3 common to the Geneva conventions under Customary International Law and other offences under the Penal Code Act of Uganda. It is alleged that these crimes were committed in Northern Uganda during the conflict between the LRA and the Uganda Peoples' Defence Force (UPDF). The accused has been facing trial before the division since July 2011.

CHARGES-COUNTS: 93

- Murder
- Hostage taking
- Pillaging
- Robbery with aggravation
- Crimes against humanity
- Cruel treatment
- Outrages against dignity
- Enslavement
- Rape
- Torture
- Violence to life and person

SUMMARY OF HEARINGS

1. Stakeholders meeting

On 24 September 2018, the trial panel met with the various stakeholders before the commencement of the proceedings. This interaction session aimed at informing the public how the trial would be conducted; to answer questions which would arise as well as receive any recommendations from the stakeholders on how the trial should be conducted.

Hon Justice Jane Kiggundu started by giving a background to the case against Thomas Kwoyelo, before setting the standards which the panel should meet while conducting the trial:

- Conduct a fair and expeditious trial, with full respect of the rights of the accused and due regard for the protection of the victims, witnesses, children, women and all other vulnerable persons.
- Provide for disclosure of documents.
- Ensure adequate preparation for the trial.
- Appoint assessors on such terms and conditions as the court may decide.

She concluded by stressing that the court needs the support of the government and different stakeholders because the trial is special in all respects.

The meeting was followed by an interaction session, at which occasion the civil society raised a number of questions as to the estimated length of the trial, the court's degree of preparation to victims' participation, the measures put in place to ensure the protection of witnesses, and the provision of psychosocial support to the victims among others.

In response, Justice Duncan Gaswaga pointed out that in much as the people are yearning for an expeditious trial; the case involved a lot of issues which must all be addressed and ground rules would be set during a status conference. He noted that the prosecution alone had over 120 witnesses which could take 2-3 years, defense would require approximately one year and victims counsel would also need time to ensure participation of the victims. This latter aspect would further require the creation and implementation of new procedures. Lastly the court emphasized that although there was no law on witness protection in Uganda, the court had devised means of ensuring the safety of witnesses and victims.

Status Conference

The status conference, which was expected to commence at 2pm, started an hour late because there was no interpreter. The purpose of the conference was to ensure the proper planning of the case, setting down of the rules in order to ensure a speedy trial. It was pointed out that the reading of the indictment and taking plea would take two days.

Defense led by Dalton Opwonya informed the court that the accused had not been given anything to eat from the time he was brought to court and that the prison authorities had also denied his family to access him. Opwonya therefore asked that Kwoyelo be given his meal at the court instead of prisons. Defense also noted that they were served with the translated indictment just a few minutes to the status conference, depriving the accused of the chance to read and understand the charges brought against him.

Prosecution led by Charles Kaamuli confirmed to have taken all the steps required and was ready for plea taking to commence.

Victims counsel, led by Komakech Henry Kilama, also pointed out that they were ready for plea taking but that they needed guidance on the status of the victims' applications for participation, adding that 94 presumed victims were waiting for the trial. He stressed that prosecution ought to disclose all its evidence so as to enable them to know victims with dual status of victim and witness. Since the ICD Registry guidelines that provide for victims' participation had not yet been adopted, he invited the court to allow or enable the application of interim standards. He concluded by requesting facilitation to reach out to the victims on a regular basis so as to enable them represent the views of the victims before the court.

The trial panel resolved that a lot of disclosure had been done and it cannot be said the accused was not entirely aware of the case against him or the evidence that prosecution is going to lead. In terms of this therefore, the court ordered that the plea taking process would commence.

The matter was adjourned to 25 September 2018 at 9am for plea taking.

2. Plea Taking

On Tuesday 25 September, the trial commenced with the plea taking process. However as the process commenced, the accused's lawyer raised objections to the entire process arguing among others that the translation was insufficient. He also objected to the number of charges that had been brought against the accused, and that the accused had not been given an opportunity to go through the translated indictment since they had been served late. The Prosecution dismissed the argument, and the proceedings were adjourned.

Upon resuming, the trial panel noted that Article 28 (3) (f) of the 1995 constitution provided that every person who is charged with a criminal offense shall be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at trial. And that A.28 (3) (c) is to the effect that one should be given adequate time and facilities for the preparation of his or her defense.

For those reasons, the trial panel agreed with the defense that the accused was not given sufficient time to prepare his defense before taking plea.

In their ruling, the trial panel made the following orders;

- That a properly translated indictment be served on the accused and also on the other parties by 2 October 2018.
- The Registrar was directed to ensure that the defense is facilitated to prepare its defense not later than 12 October 2018.

The case was adjourned to **5 November 2018** while the accused was further remanded into custody.