



3RD ANNUAL JOAN KAGEZI MEMORIAL LECTURE REPORT

*Combating international and transnational organised crime:
Lessons learnt and best practices*



KAMPALA, UGANDA | 13 APRIL 2018

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TABLE OF CONTENTS



Opening remarks page 4

Keynote address page 7

Panel discussion: combatting transnational organised crimes page 8

Nicholas Koumjian (International Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia) in conversation with Mark Kersten (Deputy Director, Wayamo Foundation) page 11

Remarks from the chief guest page 14

Closing remarks page 15

OPENING REMARKS



“

A reason for organising this Memorial Lecture is to immortalise the memory of Joan so that her death does not bring an end to what she fought for. We are all here to say that it is not okay to kill a human being. We are here to say it is not okay to kill a mother in front of her children and to say it is not okay to kill a prosecutor or a law enforcement officer. And it is definitely not okay to kill one of us and expect that it will be business as usual. It is not okay and it cannot and will not be business as usual until the perpetrators and the killers of Joan Kagezi are apprehended, prosecuted, convicted, and sentenced to serve sentences as prescribed by law. Until then, it is not okay.

– Mike Chibita

”



Following the singing of the anthem and prayers, **Mike Chibita (Director of Public Prosecutions, Uganda)** began his opening remarks with a passionate plea to apprehend, prosecute and convict the killers of Joan Kagezi. Until that was achieved, he exclaimed, *“It is not okay!”* He spoke of the importance of the lecture theme, combating international and transnational organised crimes, welcomed all of the guests, and thanked all parties involved in arranging and funding the event. He then extended a warm welcome to Joan Kagezi’s eldest son, George, who had been invited to make some remarks, as well as other members of the family, who, he said, would always have a slot to address the yearly memorial lecture.

On behalf of the Kagezi family, **George Philipp Kagezi** said that they were all humbled by the fact that *“our mother continues to be honoured in such a fashion and that her unwavering commitment to the prosecution of international crime continues to live on through the thoughts and views cultivated in the lecture series.”* He said that the family was proud to see the memorial

lecture stand *“in its own right”* and was encouraged that the discussions held at the lectures were focused on addressing international crimes at both the domestic and international level. Kagezi stated that he looked forward to the contributions of all participants over the course of the afternoon.

He then welcomed **Wayamo Foundation Director, Bettina Ambach**, who had this to say by way of tribute: *“In the years that Joan and I worked together, travelling to places like Nuremberg and Pretoria, I regularly spoke to her about the challenges of the International Crimes Division (ICD) and what was being done to overcome them. What struck me most was her integrity and courage. She did not try to make it seem as though the ICD was perfect. She did not try to hide its imperfections and the challenges one encounters when one tries to hold powerful people accountable. She wanted it to succeed and believed that it could. But she understood that in order for it to do so, it had to confront its challenges head-on.”*

Someone recently complimented Joan, by saying she was almost more of an investigator than a prosecutor —getting to the real core of the issues. And she did that in her easy and unassuming style. There are not many people we come across in our work who combine such honesty, transparency and commitment.

She paid the ultimate price for her commitment to justice and accountability. We miss her today. We celebrate her work and her life.

I hope that in the very near future, the promise of accountability that she represented is brought to bear on the injustice of her death. I hope that someday in the not too distant future, we can return to Kampala to celebrate her life and work in the knowledge that those responsible for her murder have been brought to account.”

Joan participated with Wayamo in projects that supported the idea of international criminal justice being delivered domestically. This is what drives our work and this is the main idea underlying our two-year project, *“Fighting impunity and ensuring accountability in East Africa”*, which is generously funded by the German Federal Foreign Office.



We shall continue to work for the causes that she believed in and shall strive for that better world that she so diligently worked for.”

Petra Kochendörfer (Deputy Head of Mission, German Embassy) spoke on behalf of the German government and welcomed all participants and attendees. She spoke of *“the personal dangers that crime fighters face”* and, alluding to Kagezi, noted that *“some even pay the ultimate price. Our thoughts are with those and their families. Combating organised crime, be it international, transnational or domestic, requires bravery, passion for justice and the willingness to constantly learn, as attributes.”* Joan Kagezi very clearly had all of these qualities.

Kochendörfer went on to mention the need for greater co-operation and collaboration among relevant institutions and states dealing with cross-border crimes. This includes training investigators and prosecutors, encouraging cross-border co-operation, and funding the necessary technologies — all to keep up with the flexibility and sophistication of transborder criminal networks and the perpetrators of international crimes. She spoke highly of the Wayamo Foundation’s work in building and enhancing the capacity of domestic justice systems to combat international and transnational organised crimes.

KEYNOTE ADDRESS



The keynote address was given by **Dr. Grace Ononiwu OBE (Chief Crown Prosecutor for the West Midlands, Crown Prosecution Service, United Kingdom)**.

Dr. Ononiwu told the audience of the importance of Joan Kagezi's work. The late ICD Head had been *"hard-working, tenacious, and an accomplished prosecutor who had a reputation for taking on challenging criminal cases. She adopted a prosecution-led investigation strategy to ensure that strong cases were built from the outset, and that the evidence obtained was reliable and admissible in court."* Such efforts were *"critical"* to building strong cases.

While acknowledging that *"we don't have all of the answers"*, Dr. Ononiwu shared some lessons learnt and best practices drawn from combating international and transnational crimes in the context of England and Wales. In her view, the four *"key ingredients"* to effective prosecutions are:

I. having the right legislation, powers and tools;

II. having the right approach and expertise within the given organisation;

III. having the right relationship with our law enforcement partners;

IV. exploring how we work with our partners abroad. While there was no shortage of transnational organised crimes from which to choose in exploring these issues, her choice was to focus on human trafficking and forced labour. Not only have these been identified as a national priority by UK Prime Minister Theresa May, but they represent a *"global challenge"* that requires investigators and prosecutors to *"do more"* to disrupt and prosecute perpetrators and confiscate their significant profits. She stressed that what perpetrators really despise is *"when we take their stuff."*

After exploring each of the four ingredients in some depth, Dr. Ononiwu moved on to describe the efforts being made to build a network of actors working cohesively towards disrupting and prosecuting perpetrators of transnational organised crimes. The changing landscape and the sophistication of criminal activity heightened the level of complexity involved. In response, one has to build specialised skills and capacity, and set up a *"Complex Case Work Unit"* where prosecutors and investigators can work together from the very outset.

Lastly, Dr. Ononiwu turned to the work of Kagezi and her hopes for the future of efforts to combat transnational organised crimes. *"Now, Joan Kagezi displayed unwavering courage with uncompromising integrity. It is apparent that her sense of purpose was to do the right thing to protect the public that she served. Her legacy is that she leaves a footprint in the consciousness of prosecutors, both here and abroad, to capture the essence of what she stood for. We cannot allow criminals to exploit people. We cannot allow criminals to evade justice. And we most certainly shouldn't allow them to profit from their wrongdoing. So there is much work that we can do together to bring about improved co-operation between our countries, to learn from each other and agitate change where it is needed. I look forward to that."*

PANEL DISCUSSION: COMBATTING TRANSNATIONAL ORGANISED CRIMES



Charles Elem Ogwa (Deputy Director of Public Prosecutions, Uganda) spoke about the “*cross-border menace*” facing Uganda. In the last year alone, Uganda had experienced 857 or possibly even more cross-border crime cases, given that not all instances of crime are known or reported. In Uganda, cross-border crime mainly involves theft of motor vehicles, some of which are stolen and taken into South Sudan and the Democratic Republic of the Congo (DRC), while others are illegally brought into Uganda from neighbouring countries. There are also issues with drug-trafficking, where Uganda is an end-user country, and/or acts as a intermediary state. Wildlife trafficking, human trafficking, and movement of funds for the purposes of funding terrorism and other crimes, were other crimes also afflicting the country.

While many lose their businesses and funds, criminals, “*seem to be thriving*” because the region is “*conflict-prone*” and numerous areas have very little law-enforcement. “*The borders are porous and poorly defined... so even to*

check where the border of Uganda is can be difficult.” All of this, Ogwa observed, rendered law enforcement difficult and made the perpetration of transnational crimes easy for criminals.

Ogwa highlighted the importance of having “*the right legislation in place*” as well as strengthening national, regional, and international co-operation. These are very important, because “*all criminal enterprises are premised on the fact of monetary gain, so once you try to fight them, you must ensure that they don’t have the means, the funds, to go into crime; and where they have committed the crime, their funds must be confiscated, so that [crime] looks less attractive to ‘wannabe’ criminals.*”

Ogwa further stressed that “*we must have training, training, training,*” especially to strengthen inter-agency collaboration; “*where investigators, prosecutors and other stakeholders come together, share views, and chart a way forward.*” He added that work in this field is dangerous and that protection must be given to prosecutors. He





also insisted on the importance of reducing countryside poverty, as it often compelled youth into crime. He reiterated that *"assets and funds of those who indulge in crime must be seized and forfeited to the state. We must disrupt the flows of criminal funds and seize their assets. Only then can Uganda effectively fight transnational crimes."*

Rahel Gershuni (Consultant for the United Nations Office on Drugs and Crime/UNODC and former National Anti-Trafficking Co-ordinator) spoke on the topic of human trafficking, a crime which she described as *"a form of modern slavery"*. She said that trafficking was treating people as a means, not an end, and focused her intervention on the *"faulty mindsets"* that we hold, which prevent trafficking from being addressed.

- (i) *"Someone cannot be a victim of trafficking because he or she obviously consented to being trafficked."* She insisted that, on the contrary, victims only seemingly consent to being trafficked, and that this is due to their vulnerabilities. There is no real consent in such situations.
- (ii) *"This job, attained by the victim, clearly represented*

a better alternative to the victim of trafficking." In reality, Gershuni said, traffickers seek out workers with these vulnerabilities in order to exploit them. Even if circumstances may be better in the destination country, this does not obviate the exploitation or the crime. Trafficking in its broader sense, she insisted, is not just trafficking in persons, *"It is trafficking in persons, slavery, forced labour, servitude, peonage. All of those are part of our constellation of trafficking."*

- (iii) *"The conditions under which the victim worked are the norm for victims, for workers, in that framework."* This was not the case, Gershuni said. *"The prevalence of a situation does not negate that it fulfils the elements of trafficking... Prevalence does not mean that there is no trafficking but it does mean that we have become accustomed and we have our eyes closed."*
- (iv) *"He or she does not look like a victim. He is a strong man, capable of defending himself. She is a capable woman with full rights and privileges."* On the contrary, said Gershuni, *"victims come in many shapes and sizes."* Some are citizens with rights. Some are articulate. Some wear suits. Some

look and act like you and me. But they can fall into victimhood, as can we all under the right circumstances."

- (v) *"Violence or imprisonment must be exerted against the victim."* Gershuni denied that this was the case. Subtle means can be used, without any need for violence and imprisonment. Indeed, from the criminals' point of view this is preferable, since psychological means of exploitation require fewer resources than does the use of violence or imprisonment.
- (vi) *"There must be transnational movement across borders for trafficking to take place."* "Not so!", said Gershuni: trafficking can occur within the borders in states where there are "weak links."
- (vii) *"Trafficking must be characterised by organised crime syndicates."* Sometimes it is, Gershuni observed... but sometimes it is not. It can even be friends or people who pose as romantic partners. *"We have to open our eyes because the reality is that trafficking can be anywhere and can come in any form."*

(viii) *"The victim's story is not credible because she told falsehoods, issued delayed complaints, and contradicted herself."* We need to know that in complex crimes, victims may delay their claims. There are often contradictions and falsehoods. The challenge is to find the case despite these, rather than to throw out the case because of such difficulties or inconsistencies.

(ix) *"A blood relative could not have trafficked him or her."* Unfortunately, this is not the case, Gershuni stated. In many situations, relatives will be engaged in trafficking. Sadly, this can make victims less likely to report their being victims of trafficking in order to "protect" their relatives.

"What can we conclude from this?", Gershuni asked. "In order to combat trafficking, we need to open our eyes and ears. We need to reshuffle our stereotypes and our mindsets in order to cultivate a fresh way of looking at reality. Only in this way, can trafficking be fought by all of us."



NICHOLAS KOUMJIAN

(International Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia)

IN CONVERSATION WITH

MARK KERSTEN

(Deputy Director, Wayamo Foundation)



(i) **Mark Kersten (Mark):** You have worked in an impressive array of tribunals around the world. As a result, you've been able to witness first-hand the trials and tribulations that they face. It has not been any easy ride and they have become lightning rods for many types of criticisms from many types for critics. **Is international criminal law still relevant?**

Nicholas Koumjian (Nick): The answer to that is quite simple: absolutely! International criminal law is relevant today because the crimes that it deals with are happening, they are happening in outrageous numbers with tremendous suffering around the world -on this continent, in Syria, in places like Myanmar, and so on. There is certainly no indication that such crimes are slowing down. The challenge is: can international justice catch up and do something to deter these crimes, lower the number of crimes? I think it is already having that effect despite all of the challenges and shortcomings of international criminal justice. Every time there is a conflict, holding leaders responsible for these crimes is part of the conversation. It comes up immediately. So, I definitely think that international criminal law is as relevant today as ever.

(ii) **Mark:** We are often told that it is ideal to prosecute international crimes as close to victims and survivors as possible. But doing so is extremely difficult. After years of promising to do so, Kenya has still not created an International and Organised Crimes Division to investigate and prosecute crimes -and even if it does, it probably won't examine PEV (post-election violence) crimes. In places like Iraq, there are greater concerns that Islamic State fighters will go through sham trials and be executed en masse than that their trials will produce real

justice. Here in Uganda, the trial of Thomas Kwoyelo has still not reached the trial phase 10 years after he left the LRA (Lord's Resistance Army). There is no silver bullet, but in your experience, what can be done to overcome these hurdles and challenges? Should states continue to invest in the domestic prosecution of international crimes?

Nick: It's a matter of training and resources. When a country is faced with a major conflict, the demands on the justice system are tremendous. It is probably the case that following most conflicts, the national government is not going to have sufficient resources alone to handle that process. But we have seen in places that assistance is given. For example, for Syria, the United Nations General Assembly established the International Impartial and Independent Mechanism, an entity which has started to collect evidence for possible prosecution of crimes in Syria. In Iraq, the UN is moving towards establishing a mechanism for international assistance to the government of Iraq for prosecuting crimes by the Islamic State.

It is important to recognise that there is no world government. States are still sovereign and with prosecuting crimes, the first obligation and the primary jurisdiction is domestic. Because of the cost of international justice, there has been a reluctance to create new tribunals and there is a growing emphasis on encouraging states to prosecute their own crimes. I think that trend will continue, and that there will be an increasing trend towards international assistance and even the possibility, in appropriate cases, for some type of hybrid mechanism of justice where domestic prosecutors and judges can work with their international colleagues.



(iii) **Mark:** Given their obvious importance and the demand for them, **why is there such a struggle to get investigations and prosecutions properly resourced?** Why in your view is there this ongoing Sisyphean struggle to get sufficient resources to bring even a degree of justice and accountability to people in the wake of mass atrocities?

Nick: If you look at the world system of assistance for emergency situations, be it Ebola outbreaks, conflicts or natural disasters, the percentage that countries give to their foreign aid budgets is miniscule. One percent is a huge percentage to donate to international assistance. So, we do have to recognise that international justice is competing with other priorities, like providing mosquito nets to combat malaria and other things that can contribute to saving lives.

On the other hand, war is extremely expensive. An aircraft carrier costs US\$4 billion. A single peacekeeping soldier costs something like US\$40,000 per year, per soldier – if it's done by the UN. It's important to look at the costs of justice versus the cost of conflicts continuing and nations being obligated to carrying out more military interventions. In this context, it's important to continue investing in justice efforts.

(iv) **Mark:** Investigating and prosecuting international crimes is difficult work. It can also be very dangerous. We are here to celebrate and pay homage to the life of Joan Kagezi, one she dedicated to achieving justice for victims and survivors of mass atrocities. Yet three years after her death, there are still no results from an investigation into her murder. In your experience, **how can the dangers of investigating and prosecuting international crimes be mitigated and how important is it that the crimes against the administrators of justice are prioritised?**

Nick: There is no possible justice if the system is corrupt, whether it is corrupted by bribery or by violence. International courts have failed in places where they haven't been able to protect not only their own personnel but witnesses too. It is absolutely critical for a justice system to operate in an environment where the people who participate as prosecutors, investigators and victims can be assured of their safety. It has to be a very top priority in all courts. The same thing goes for attempts to corrupt the system through bribery. That also has to be addressed because, without the integrity of the justice system and the safety of its personnel, there is no rule of law.

(v) **Mark:** You have also worked in many situations where the relationship between core international crimes and transnational organised crimes is abundantly clear, including Sierra Leone where Liberian President Charles Taylor used diamonds in order to purchase weapons which were subsequently used against civilians. Here in Uganda, the International Crimes Division is rather novel, in that it has jurisdiction over both sets of crimes. The Malabo Protocol envisions a court that has jurisdiction over both sets of crimes. In addition, the ICC (International Criminal Court) has suggested that it would investigate human trafficking in Libya as well as other transnational organised crimes elsewhere, as possible war crimes or crimes against humanity. Should the investigation and prosecution of transnational organised crimes and international crimes be linked, and how might that happen in practice?

Nick: One of the things that I have noticed in many of the cases I have been involved in, particularly in Sierra Leone (at the Special Court), was that wars often happen because people are making money from conflict. That was the case in Sierra Leone where the evidence showed that rebel forces supported by Charles Taylor were capturing the areas where diamonds were mined, enslaving people to mine the diamonds, sending the diamonds to Taylor in return for arms and ammunition – all in a cycle that was perpetuating that campaign of terror against the civilian population. There was one gentleman from a diamond mining area, Ibrahim Fofana, who had both of his hands amputated. He testified in a case and said that before, without outside forces, none of this would have transpired; that had there been no diamonds, he would still have his hands. There was also the evidence of Taylor having given Naomi Campbell, a supermodel, rough diamonds related to the conflict in South Africa. Very shortly thereafter, a massive shipment of weapons was given to the rebels. These were clearly linked.

We also need to look at who is buying the diamonds. There is an NGO, Civitas Maxima, who worked with Belgian authorities to arrest a Belgian citizen, Michael Desaedeleer, who was buying diamonds to support rebels in Sierra Leone. He was imprisoned in Belgium, although died the day before his trial was set to begin.

It's important to go after those criminally responsible for fuelling a conflict.

(vi) **Mark:** From your experience and looking into the proverbial crystal ball and into the future of international criminal justice, **what is the one biggest challenge facing the prosecution of international crimes at any level; and, to end on a positive note, what is the biggest promise of prosecuting international crimes?**

Nick: The biggest challenge is always going after those who are most responsible, at the top, because these are massive crimes. In places like Cambodia, our situation involves crimes that happened over four years across the country. Most of them happened in very small villages that the top leaders never visited. The victims that had their parents or children starve to death or were subjected to forced marriage, rape or slavery – never met the accused persons. Even the perpetrators, those who carried out the torture and the actual executions – the accused never met them either. So, how do we show that they are responsible? That's a very complicated process of demonstrating how the policies that are set at the top trickle down to where the crimes are actually committed.

As far as why go to these efforts, I have spoken to victims from Bosnia, from Sierra Leone, Darfur, Cambodia – and what they all have in common is that they want to have what they've seen recognised as a crime, to see the harm they experienced acknowledged as something that really happened to them, and for someone to be held responsible. I remember a man who talked about the death of his brother in the Charles Taylor case. He began to weep, but amazingly, given that he was in the room with Taylor, the man who he thinks is most responsible, he says, *"God will punish those who supported these rebels. God will bring justice."* Many who come to testify just want justice. And when that does occur, it changes a whole society's outlook, changes how individuals fit into society, whether there is fairness, whether there is law. And it makes us all behave better.

REMARKS FROM THE CHIEF GUEST



Justice Alfonse Owiny-Dollo (Deputy Chief Justice, Uganda) opened his remarks by stating that, *“At a personal level, I am happy to be here on a day that we have set aside for Joan Kagezi.”* He paid homage to her life, one that had been cut short three years ago, *“one that was in my hands. She was the lead prosecutor in the terrorism trial that I was presiding over.”* Joan’s murder was *“devastating”*, he said, adding that it was more devastating still because, *“In our cultural setting, as Africans, it is unthinkable to kill a woman for any reason... Women are never killed, even in the heat of deadly war.”* While noting that Uganda and the ICD had seen that case through until the end, he nevertheless said that the trial had *“nothing to do with her death”*. He exclaimed that *“the long arm of the law will catch [the perpetrators] one day”*, and that they would stand trial. Owiny-Dollo also spoke about what he saw as the particular severity of the murder of Kagezi, calling it a *“first-class murder”* since it had sought, not only to kill Kagezi, but to kill the rule of law itself. He then suggested that Uganda should

perhaps think about categorising classifications of murder *“because prosecutors and investigators carry such a burden on their shoulders that there is need to protect them.”* He added that the Memorial Lecture in Joan’s name was a way to repeat our resolve and that *“We are one person less, but that will not deter us from fighting for a crime free country.”*

The Deputy Chief Justice also insisted that Uganda had to combat corruption and *“make it an anathema”* in order to combat transnational crime effectively. He observed that corruption had adversely affected Uganda and the ability of Ugandans to travel because it had undermined the trust that institutions held in Ugandans.

Owiny-Dollo concluded by thanking the organisers for inviting him on this auspicious occasion, *“Thank you so much. Joan lives on, in us. She’ll remain an indelible mark in our minds!”*



CLOSING REMARKS



Following the closing speech, by **Deputy Director of Public Prosecutions, Amos Ngolobe**, the Ugandan anthem was played and the Memorial Lecture came to an end.





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