



4TH ANNUAL JOAN KAGEZI MEMORIAL LECTURE REPORT

Courts not Guns: Combating Terrorism



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OPENING REMARKS



MIKE CHIBITA

Ugandan Director of Public Prosecutions

Following the singing of the Ugandan national anthem and a prayer ceremony, the 4th Annual Joan Kagezi Memorial lecture was opened with remarks by Ugandan Director of Public Prosecutions, **Mike Chibita**. He welcomed all of those present and acknowledged the sponsors of the event, namely the **European Union (EU)**, the **Wayamo Foundation**, and the **Office of the Director of Public Prosecutions (ODPP) of Uganda**. Chibita spoke to the theme of “*courts not guns*” and encouraged Ugandans to turn to the judicial institutions

and the rule of law instead of resorting to guns as a means to achieve conflict resolution and justice. He also noted that the theme of the Lecture was particularly relevant, given that Joan Kagezi was killed while leading the prosecution of terrorists.

Chibita proceeded to update the audience on how far his office had come in terms of investigating Kagezi’s death and said that “*steps to bring the murderers to book*” had been taken. He stated that “*this year, I’m more*

optimistic than ever before and I would hazard to say that by the time we have the 5th Joan Kagezi Memorial lecture, the culprits will have appeared before the courts of law.” He added that he could not say any more at this point but thanked the Kagezi family *“for having stayed strong”* and said he was proud of Joan Kagezi’s children for continuing – and completing – their education.

In conclusion, Chibita thanked all of those present and stressed his gratitude to the media for holding the government and the ODPP to account.

George Phillip Kagezi, Joan Kagezi’s son, spoke next. He invited his siblings to come to the stage so that the audience could *“see how far they have come”*. He thanked everyone who was present for attending the Memorial lecture year on year and expressed his gratitude towards the Lecture’s *“special partners”* including the ODPP, the Wayamo Foundation and the EU. *“Your consistency and commitment to keep our mother’s memory alive”* through the Memorial Lecture

“are a great source of joy for us.” He added, *“I don’t know if it is a coincidence or a magnificent skill of the organisers (most probably the latter) but almost every topic chosen for this year’s lecture has had a deep connection to an aspect of our mother’s values and beliefs. Joan Kagezi, as you all knew her, had deep convictions about upholding the rule of law and respect for due process. She was a firm believer that the world and Uganda in particular would be a better place if our societies’ deepest disputes were settled through the right judicial forum, and if we could bar extrajudicial measures to fight what we consider our greatest threats.”* Alluding to Joan’s commitment to fighting terrorism through the courts and by upholding the rule of law and due process, he said, *“she fought for this fiercely throughout her lifetime, so today’s topic could not be closer to what she stood for and fought for.”* The Lecture’s tradition of hearing from the best minds in the field made it a great learning opportunity for himself and others in attendance. He concluded by thanking everyone present for *“keeping the vision of one of our own alive.”*





BETTINA AMBACH

Wayamo Foundation Director

George Philipp Kagezi was followed by Wayamo Foundation Director, **Bettina Ambach**, who began by recognising the Kagezi family and thanking the sponsors from the EU and Uganda for their generous support of the event. She stated that it was a privilege for the Wayamo Foundation to work with the Ugandan DPP in order to honour Joan's life through this lecture series and to celebrate her tireless work for justice and accountability for international as well as transnational organised crimes. Here, however, Ambach warned the audience: *"let's not fool ourselves. We aren't here only to pay our respects to Joan. No, we're here because the work that she committed her life to remains unfinished. International and transnational crimes continue to be perpetrated around the globe. And those, like Joan*

Kagezi, who courageously seek redress for such atrocities and violations of human dignity continue to face severe danger."

Observing that those responsible for Kagezi's death had not been detained or prosecuted, Ambach went on to say that *"it is with deep sadness and disappointment that we note that Joan's murderers still enjoy impunity."* Indeed, this was precisely why she was so interested to hear DPP Chibita's remarks about imminent events regarding the alleged culprits.

She then addressed the theme of this year's lecture, *"Courts not Guns: Combating terrorism through the Law"*, declaring that *"we can and must do more to ensure that the scourge of terrorism does not breed more violence, which in turn encourages more terrorism. We must fill in the gaps and engender justice systems that can deal with terrorism within our courts."*

Turning to the work that the Wayamo Foundation does in collaboration with national authorities in the region to combat international and transnational organised crimes, Bettina Ambach stated: *"It is no secret that terrorists do not respect borders. They don't stop at checkpoints. It is thus clear that our response must be transnational. To address terrorism and other transnational threats in the East African region, the Wayamo Foundation has set up a network of Directors of Public Prosecutions and Heads of Criminal Investigations, to co-ordinate efforts across borders and to enhance co-operation among colleagues in Kenya, Rwanda, Tanzania and Uganda. We hope soon to add other states in the region to our network (especially the Horn of Africa) and have already begun to work with existing networks in Africa and in Europe to enhance cooperation even further. In doing this, we believe that we can foster collaboration and mutual support across borders in order to prove effective in preventing terrorist acts and bringing perpetrators of terrorism to account."* In a final appeal to the audience, she said *"it is important to remind ourselves that terrorists seek to divide people and to drive wedges between communities. We cannot let them. Only by coming together and working together can we identify and implement the means to address terrorism adequately and effectively. This, I believe, is what Joan would have wanted... May we heed the lessons of her courage and work together to continue her battle –not with guns, but in the courts!"*

KEYNOTE SPEECH



Courts not Guns: Combating terrorism through the law



NICOLAS GUILLOU

Judge at the Kosovo Specialist Chambers and Chef de Cabinet to the President of the Special Tribunal for Lebanon

The Memorial lecture's keynote speech was given by **Nicolas Guillou**, Judge at the Kosovo Specialist Chambers and Chef de Cabinet to the President of the Special Tribunal for Lebanon. He started by recalling that *"terrorism is not a new phenomenon"*: on the contrary, the commission of terrorist attacks goes as far back as four hundred years. He also reminded the

audience that terrorism often led to political leaders *"going after their political opponents"*, and that *"there is always a tendency to combat terrorism outside the rule of law. The main challenge is to avoid that."* Terrorism tends to be treated as a *"special"* crime and this is exacerbated by the resort to different kinds of law and special tribunals. Owing to this, NGOs and civil society are often



very critical of the means with which terrorism is fought, such as the collection of massive amounts of private data or the use of drones.

So what, he asked, could be done to avoid such controversial means of combating terrorism whilst also fighting this crime effectively? He identified three key issues.

- The first was the **need to define terrorism or to decide whether to use other criminal offences**. On this point, Guillou stressed the importance of identifying the “*scope of terrorism*”, which could include a number of different types of terrorism, ranging from political terrorism, anarchism and religious terrorism to separatism and freedom fighters. He noted that, unlike other crimes such as war crimes, genocide and crimes against humanity, there is no uniform or agreed definition of terrorism in international criminal law. Terrorism could be (and has been) prosecuted as one of these other international crimes but doing so without an international definition of terrorism, while useful, also has its drawbacks.

- Second, there is a **need to fight against terrorism at the international level**. Despite the lack of a common definition for terrorism under international law, states have developed multiple responses to the crime. International sanctions have been used through the imposition of sanction regimes, including travel bans, asset freezes, and arms embargos. When it came to the use of such sanctions, he stressed the need to ensure respect for the rule of law at all times. Terrorism has also been prosecuted in international courts and tribunals (e.g., the Lockerbie bombing, and the Special Tribunal for Lebanon). He also discussed the potential of establishing a permanent international court for terrorism. Finally, states have explored capacity building as a means to combat terrorism, focusing on co-operation between countries. Instances include the Global Counter Terrorism Forum (GCTF) and other UN agencies.
- Third, there is a **need to fight terrorism with efficient tools at the national level**, subject in all cases to respect for the rule of law. Guillou discussed how terrorism is investigated through the



collection of different kinds of evidence, including telecommunication evidence, electronic evidence and evidence sourced from intelligence agencies. With regard to prosecuting terrorism, multiple actors are involved at the national level, reflecting the different possible responses to terrorism. Here, he stressed the need for a specialised prosecutor's office with a legal framework specifically designed to prosecute terrorism effectively, judges who know how to adjudicate terrorism as a crime, and the possible need for specialised courts. Lastly, he mentioned the possibility of using bilateral and multilateral tools, including networks of legal officers, in order to foster a better exchange of information, liaison prosecutors to improve the execution of mutual legal assistance treaties and requests, as well as specific conventions relating to different types of terrorism.

Guillou concluded by stating that:

Guillou concluded by stating that, "when you fight against terrorism, the biggest threat is actually after the attack, because every time there is an attack, we need to pause; we see that two-thirds of the population are ready to renounce democracy for their safety and security. We, as practitioners and even politicians need to be strong enough and have the trust of the judicial system to say, 'No, we don't need to change our institutions! We don't need to give up the rule of law. We just need to have trust in efficient judicial systems.'"

TESTIMONY BY A SURVIVOR OF THE 2010 TERROR ATTACK IN KAMPALA



TAGOYA BERNARD

Police Officer

Following the keynote speech, **Bernard Tagoya** took the floor. He spoke of his experiences as a police officer and a survivor of the 11 July 2010 Kampala bombings. On the day of the bombings, he had deployed officers to provide security at the Kyadondo rugby ground. He described how the joyful mood there was violently interrupted by two explosions, followed by “total pandemonium” and “the air filling with the smell of gunpowder and flesh”. On the ground, people rallied to take the injured to ambulances but “a number of victims died in my hands when I was carrying them to

the ambulances. From that day... as one effect, I don't eat meat. I cannot stand the sight of beef! To date, I do not sleep as well as I used to.” He also noted how the families of victims, including his own, have also been affected. “*Nobody else should witness what I witnessed at Kyadondo! ... If, as a police officer the attacks could have such effects on me, how about those people who have never been trained, who have never heard gunshots or blasts?*” He said he was “*lucky*” not to have suffered physically, but the “*psychological scars left on us are deep and will be there for the rest of our lives*”.

PANEL DISCUSSION



Investigation and prosecution of terrorism cases using domestic and international law with a focus on victim participation

MODERATED BY:

CHARLES ELEM OGWAL

Deputy Director of Public Prosecutions



A panel discussion ensued on the topic of *“Investigation and prosecution of terrorism cases using domestic and international law with a focus on victim participation”*. The panel was moderated by Ugandan Deputy DPP, **Charles Elem Ogwal**, who noted that the public wants *“instant measures to combat the threat”* in the wake of terrorist attacks, and that *“we tend to respond to bombs by also*

bombing”. When innocent people get *“caught up in the event”* they are seen as *“collateral damage”*. Although people tend to think that the *“law is not the proper mechanism for fighting terrorism”*, this is the course which must be taken, even if it is a *“hard sell”*. With these brief remarks, he proceeded to hand the floor to his first panellist.



PHILIPP AMBACH

Chief of the Victims Participation and Reparations Section in the Registry of the International Criminal Court (ICC)

Philipp Ambach, Chief of the Victims Participation and Reparations Section in the Registry of the International Criminal Court (ICC), began by explaining that he would be speaking on the crime of terrorism as seen from an international law and international courts angle. It is critical to address terrorism because it has the potential to “*destabilise the public order and entire state structure*”. Aside from being acknowledged as a crime in many national laws/military manuals, terrorism is widely discussed at a supranational level, where it is viewed as a “*tremendous threat, not only to law and order on a national level, but also to peace and stability*

on an international level.” From a victims’ viewpoint, terrorism is “*not just a threat from the perspective of the direct target; the indirect objectives and terrorising effects of the crime are also what cause mass victimisation*”. Terrorism thus often causes mass victimisation in the civilian population and, because of this, “*it is essential to include victims in the relevant judicial process to allay the fear of (continued) terror, and to reassure the population that the rule of law can effectively combat terrorism.*” However, echoing Nicolas Guillou, Ambach conceded that there was no agreed-upon definition of terrorism at the international level. He discussed the different



definitions that currently exist, noting that the Special Tribunal for Lebanon is the only international tribunal to have made an effort to find international consensus on a definition of terrorism, which nonetheless remains disputed. Other international tribunals have only prosecuted what could be seen as acts of terrorism, if and where these were an expression of other crimes coming under their jurisdiction, most prominently the International Criminal Tribunal for the former Yugoslavia, with the crime of terror being adjudged as a war crime.

As regards victim participation, Ambach stressed that it was important for victims to be included in the justice process in order to shift the focus of justice from retributive accountability to restorative justice. Today, victims are not just the “*objects*” of criminal proceedings, but rather “*subjects*”, if and when mandated to participate in such proceedings in their own right. This empowers victims, makes proceedings more meaningful to them, and in turn legitimises international tribunals from a victim-centred perspective. However, with a lack of an agreed definition and the absence of “*strong help*” from the international level, national courts need to take the lead in prosecuting relevant acts. In this

respect, cooperation between states in combating terrorism through mutual legal assistance with due regard to the rule of law is key.

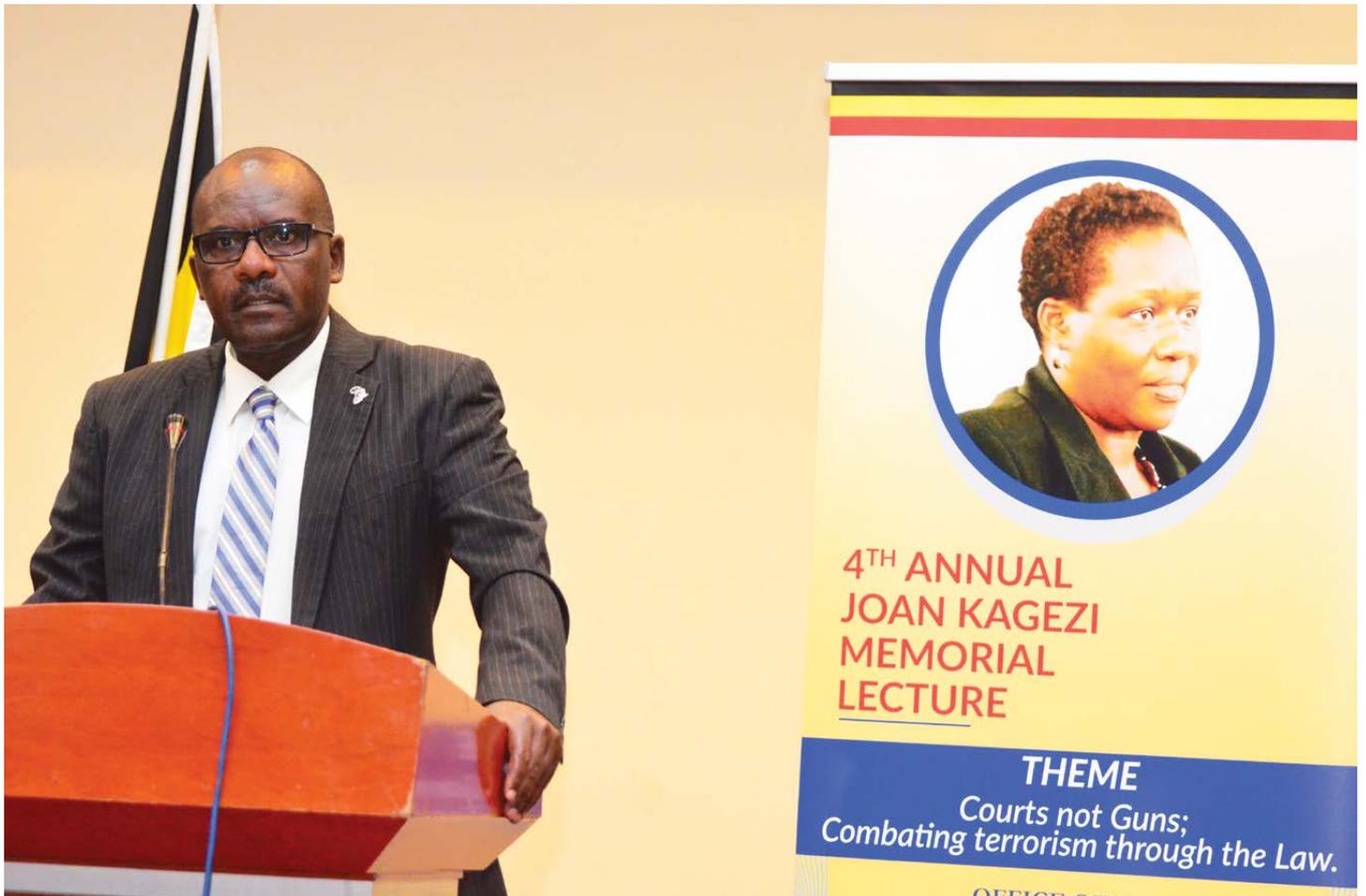


JUSTICE SUSAN OKALANY

Ugandan High Court Judge

Ugandan High Court Judge, **Justice Susan Okalany** addressed the issue of the rights of victims in cases of terrorism and her experiences, including pre-trial hearings in the trial of former Lord’s Resistance Army commander, Thomas Kwoyelo. She observed that victims’ rights are “*still evolving*”. The rules of Uganda’s International Crimes Division (where Kwoyelo is currently on trial) provide for victim participation. Notably, during the Kwoyelo hearings, Okalany relied on the ICC victim-participation regime. She observed that, to date, the “*victim is only relevant in terms of*





testimony” and victim’s experiences have generally been “*pushed under the carpet*”. Even so, Uganda is becoming “*increasingly sensitive to the rights of victims*”. She contrasted direct victims of terrorism, secondary victims (next-of-kin of those directly injured), potential victims, and members of the public (including hostages, eye-witnesses, or members of the public who experienced trauma). Okalany observed that following the 2010 Kampala bombing cases, the failure of the relevant actors to take care of victims had led to reparations or some form of compensation being given to victims, though not to the actual victims of the bombings. Moreover, victims were not relied upon for testimony, leading to their feeling of being neglected in the proceedings. There is a need to engage as well as protect all categories of victims in the wake of terrorist activities and attacks: “*We need to come up with a clear law and procedure and processes for victims to testify*” in such cases.



JOHN NDUNGUTSE

Assistant Inspector General of Police

The third and final panellist was **John Ndungutse**, Assistant Inspector General of Police. Ndungutse discussed how to use intelligence in terrorism cases, explaining that terrorism is a “*very rare crime*” but that in order to combat it, one needed to use intelligence by transforming it into evidence that is admissible in court. He described various forms of intelligence and how these could be made relevant to courts in an effort to combat terrorism effectively.

REMARKS FROM THE CHIEF GUEST



HON. MAJOR GENERAL KAHINDA OTAFIIRE

Minister of Justice and Constitutional Affairs

The day's events were brought to a fitting end by the **Hon. Major General Kahinda Otafiire**, Minister of Justice and Constitutional Affairs, who stated that he was honoured to speak at the 4th Joan Kagezi Memorial Lecture and to *"commemorate a gallant officer of this country who died on duty fighting terrorism"*. He stressed the need to focus on both Uganda as well as the international level, observing that *"terrorism is a transnational threat, and this means that states must work together in symphony."* With regard to Uganda's experience with terrorism, Otafiire cited attacks from both Al Shabaab and *"home-grown and localised groups"*, such as the Allied Democratic Forces (ADF) and the Lord's Resistance Army. He stressed the need for multiple institutions – the police, judiciary, military and ODPP, among others – to work together to deal with terrorism, focusing on preventing the crime, turning intelligence into evidence, handling victims and witnesses, and ensuring effective witness protection and support. Uganda respected the rule of law, he said, and this was evident from several cases that had been adjudicated in the Ugandan courts.

Otafiire enumerated many challenges facing the country, along with some of the best practices it had adopted. These included:

- the prosecution of preparatory offences;
- involving prosecutors early in the investigation of terrorism cases through prosecution-led investigations;
- adopting witness-protection measures;
- addressing the concerns of victims from the outset (including medical and psychosocial support, and keeping victims informed of progress in relevant cases);
- establishing and enabling legal and institutional



- frameworks that allow the full gravity of terrorist acts to be prosecuted via appropriate legislation, dedicated police and prosecution units, and having suitable detention and trial facilities;
- having a clear and organised system of record keeping;
 - effectively utilising international judicial co-operation (though here he noted that Uganda does not currently have a legal regime to facilitate this process);



- adopting a rule-of-law approach to prosecuting terrorism (with a focus on avoiding allegations of torture or mistreatment of suspects);
- encouraging witness co-operation;
- responding to threats against witnesses, prosecution and judicial officers; and
- having joint investigation teams.

In conclusion, Otafiire told the audience that *“in order to defeat terrorism, we need to involve the entire community. It should not be left to law enforcement. The ODDP has played a major role in the fight against terrorism despite the many challenges. We shall continue to support the ODPP and the Police, and Judiciary, to ensure that terrorism is effectively handled.”*

With these final remarks, the 4th Annual Joan Kagezi Memorial Lecture came to a close.





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