

ANNEX 2

Public

Document ID : UGA-D26-0015-1901



KER KWARO ACHOLI

P.O. Box 54 Gulu, Tel: - 0471 435560

Office of Lawirwadi

25/02/2021

Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021

KKA the cultural institution of the Acholi people from among whom Dominic Ongwen hails, acknowledges the decision that the ICC reached that found Dominic Ongwen a war crime indicted ex LRA commander, guilty of most of the crimes he was accused of during the time he was with the LRA. As the case progresses on for sentencing, KKA finds itself obliged by virtue of its position over cultural and traditional matters of the Acholi people to make a submission to the ICC prior to sentencing. KKA hopes its submission will provide some insights helpful to the ICC as it goes forward in the case.

KKA acknowledges that during the times of the insurgency in Acholi particularly when the LRA an insurgent group that Dominic Ongwen found himself a member was most active, a number of war crimes were committed by the groups fighting that included the LRA. To KKA, the culpability of Dominic Ongwen in the commission of war crimes is evident as per the definition and understanding of the ICC in relation to the Rome Statute and the ICC processes based on the facts it adduced. On the other hand, KKA contends that other than the facts the ICC based its judgement on a lot of other considerations that influenced the trend of events should now be considered during the sentencing of Dominic Ongwen. This position emanates from the understanding of the unique nature of the conflict Dominic Ongwen and others was involved in and its complex dynamics. KKA further contends that much as the case is before the ICC, and universally prescribed standards are used, the Dominic Ongwen case is deeply intertwined with important aspects of the culture and the tradition of the Acholi people and is thus critical to the identity of the people. It is KKA's belief that the ICC in its decisions and actions takes care to guarantee protect the identity of a people who may be affected by circumstances such as the LRA conflict and especially if those

aspects of culture and tradition are critical for long term peace and stability of the community.

KKA makes its submission from a background of being an institution whose mandate is to protect and preserve the heritage and wellbeing of the Acholi. It should be noted that, the insurgency that compromised the wellbeing of the Acholi people was a central concern to KKA. KKA was actively involved in various initiatives pursuing the path for the restoration of normalcy and peace for all the time the conflict lasted. As a consequence, KKA was able to process and resettle a large number of ex-LRA fighters including senior commanders using predominantly its long-drawn-out traditional mechanisms of justice and accountability. KKA advocated strongly for the adoption by government and other formal entities for the incorporation of these traditional mechanisms to resolve the conflict. Through this effort, a number of peaceful approaches and institutions came to being, like the various dialogues that took place at various times in various places including the Juba Peace process, the amnesty declared by government of Uganda to all fighters who abandoned rebellion. It should be further noted that at no one point did the Acholi people conceive an idea of involving institutions like the ICC in the eventual resolution of the conflict. They maintained the path of peaceful resolution of the conflict and absence of retribution as was embedded in their cultures and tradition. It is clear to KKA and thus Acholi that retribution like in the case of the LRA which was extremely localized and involved largely local actors as perpetrators against the same locals as victims, only perpetrate hatred and enmity within a very small context.

KKA contends that the main ingredient of the processes that eventually restored relative normalcy in Acholi to date was borne out of the elaborate principles of traditional justice and accountability of the Acholi people. The successes of these mechanism are now known world over and has been a subject of extensive study by different individuals and entities around the world and has been acknowledged as viable in ascertaining justice and accountability including for crimes during war. The core tenets of Acholi Traditional justice hinges on the principle of restorative justice. For ages the Acholi have used these principles to solve many complex problems like war crimes. The fact that Dominic Ongwen and others were indicted by the ICC and Dominic Ongwen ended up before the ICC does not mean traditional justice had failed to deliver on justice and accountability for crimes committed during active insurgency. The ICC indictment arose out of a failed

attempt by the government of Uganda at the time to marshal efforts to end what was going on then.

Traditional justice processes continue to date as perpetrators and victims present themselves to have their issues sorted. In Acholi the three-tier understanding of justice, the physical, psychological and divine justice, leaves no room for one to fail to account for one's decisions and actions or failure to account led to dire consequences that included divine retribution. The fact that the crimes Dominic Ongwen is accused and convicted for happened in Acholi lends credence to KKA's position that part of processing post judgement decisions should take serious considerations on a number of issues that are only understood and can be dealt with using traditional justice. If there are cross cultural inferences in the Dominic Ongwen case then there would be a justification for the case not undergo Acholi traditional justice as the crimes involved other peoples as victims.

In light of all these and others it is clear that the Acholi have robust cultural practices that has been proven over ages to deliver justice to victims of different offences and breaches regardless of the magnitude of the complexity of the offences or breaches. KKA believes that, Dominic Ongwen having served over thirty-two years of incarnation in one way or another, either as a child abductee, an involuntary LRA operative and now 6 years as a suspect before the ICC, that any sentence to Dominic Ongwen be made in a manner that takes this duration into account but also recognizes that to come to closure the case, that Dominic Ongwen requires further processing through traditional justice processes. Since conviction and sentencing were ascertained and therefore attract reparations, the processes of reparations would still be possible.

A question would maybe be asked if Dominic Ongwen has received commensurate punishment for the crimes he is convicted of. This question is best answered by not providing a universal understanding of punishment. To the Acholi punishment is not an end product of justice and accountability but one that obtains itself all through the process of delivering justice. The instance of being named as a perpetrator, the shaming process of acknowledging guilt and accepting to atone for it has an in-depth intonation on both sides, the perpetrator and the victim, the compensation involved, the rites and rituals etc. in Acholi all portend as punishment and derive satisfaction to the victims that justice is served. Punishment in Acholi is deepened through the principle of collective guilt

and collective punishment, where the network of relations of a perpetrator will always suffer some form of societal or divine punishment for the crimes committed, punishment should not therefore be viewed as served only when a perpetrator suffers it. The perpetrators collective will always suffer alongside the perpetrator punishment in one form or another until injustice or offence is atoned. It is also believed that the dead will always seek revenge "*lato owot ki wiye*" if innocent death for instance is not atoned or ancestors and divine powers will exact punishment on behalf of the dead or offended. In line with this, KKA contends that Dominic Ongwen risks double punishment by both the ICC and traditional justice if Dominic Ongwen is incarcerated further by a long-term sentence. For traditional justice, justice transcends human bounds and therefore KKA's plea is that Dominic Ongwen and the victims be allowed to transcend these bounds to ascertain justice.

Related to the above and given the fact that communities are involved, there is a need to break the circle of hatred and enmity between communities affected. Using traditional justice to come to closure of the case against Dominic Ongwen even after judgement and sentencing is important. Traditional justice helps not only to break the circle of hatred and enmity but also restore normalcy. This then is an important recipe for long-term peace and harmony in the community and also opens up opportunity for people to work together towards recovery, growth and development.

KKA understands that much as the judgement determined that Dominic Ongwen bears a normal and stable mental state, this to the Acholi is not conclusive. The fact that he went through all that is attributed to him, the Acholi believe never leaves one with a normal mental state. This is because one becomes physically, mentally and spiritually affected and though may exhibit normal tendencies these circumstances have an impact on the mental state of a person. Today in Acholi, KKA is recording high instances of compromised mental condition of people who went through similar circumstances. Some of the compromised mental conditions are attributed to divine retribution. There are now high instances of unexplained suicides, drug abuse, domestic violence, crimes including murder etc. this understanding is not exclusive to traditional justice. The acknowledgement of the existence of Post-Traumatic Stress Disorders, Psychosocial problems and many other forms of mental disorientation in many modern-day disciplines and practice due to traumatic experiences justify that Dominic Ongwen indeed could be a

victim of some form of mental disorder. Fortunately for Dominic Ongwen traditional rites and rituals exists in Acholi to deal with any such condition only if allowed to by the court. It is known that Dominic Ongwen has experienced episodes of mental instability while in incarceration.

For most of the time Dominic Ongwen's case has been going on, KKA has maintained a position of recognizing the mandate of the ICC but also pointing out its limitations in delivering conclusive justice and accountability acceptable within the precinct of Acholi traditional justice. KKA is aware the ICC must act or be seen to acting in a manner that is acceptable to the "International community" using "International Principles", this is fine for as long as the definition of "International" takes into account that distinctions that exist in how people understand the world. For as long as people of the world are different suppressing their understanding and prescriptions to certain issues that concern them is in itself a sense of injustice. Despite the existence of institutions like the ICC opportunity must be granted to explore values in practices that have kept "those" other people going. All societies of the world have gone through episodes of extreme suffering, some to the extent of getting extinct but despite external support, the main foundation for any such society's resilience is in its internal capacities to develop mechanisms to survive and rebound. Acholi traditional Justice is proving its worth not only in Acholi but in Uganda as its principles have largely been adopted as the basis for the Transitional Justice Policy that the government of Uganda has instituted and also the upcoming transitional Justice Law in the offing. Very recently in the Ugandan judicial system in a case of presumed murder, because of the underpinnings of the case and the acceptance of the High Court to incorporate attributes of traditional justice facilitated by KKA, the position arrived at during traditional justice process was instrumental in a reduced custodial sentence for the perpetrator¹

The Acholi people are waiting to conclude on this matter in the way they have always done. It is KKA's appeal on their behalf that the ICC despite its imperatives, considers custodial reprieve for Dominic Ongwen considering all that he has been through and the fact that under normal circumstances he would have not been

¹ KANYAMUNYU MATHEW V UGANDA (CRIMINAL MISCELLANEOUS APPLICATION-2020/151) [2020] UGHCCRD 144 (09 NOVEMBER 2020)

responsible for what he is convicted of. But also, because it is the general call of the people of Acholi based on their long-drawn tradition. Acholi will not be alone many societies in the world that consider more the importance of healing torn apart people as important have opted for viable alternatives. Rwanda is such a case where traditional justice was used to the multitudes of perpetrators and victims. In Acholi, most of people involved in the insurgency and were probably involved in war crimes though granted amnesty or pardon by government were finally sorted out using traditional justice.

By Ker Kwaro Acholi

Under the seal of the Prime Minister of Ker Kwaro Acholi

