

## **THE ICC AND ICD**

(A presentation by Joan Kagezi head of the Prosecution Division of the ICD to Members of the 9th Parliament)

The establishment of ICD offers an opportunity for the victims of international crimes to have those who have committed crimes against them be held accountable.

It is also an opportunity for Uganda to close the impunity gap by having those committing international crimes be held accountable thus sending a message that crime does not pay and cannot be ever tolerated again.

A number of heinous crimes were committed by the LRA and the ADF throughout the 1990's to date. Both rebel groups have now moved across the boundaries of Uganda to the DRC, South Sudan and CAR.

Aware that the ICC is only a complementary court to national Jurisdictions Uganda's establishment of the ICD offers opportunity to hear majority of the cases.

The ICC can only deal with a handful of those suspected. In the Uganda situation, ICC versus the LRA, only 5 have been indicted yet there are many of the top and midlevel commanders who should be accountable.

There are those like Kweyelo (case before court), Ceaser Acellam, Jamil Mukuru of ADF, several commanders that can be tried before the ICD.

Moreover the ICC can only investigate and prosecute cases where the crimes were committed after 2002, yet the ADF and LRA rebels have been committing war crimes as far back as the 1980's. Before the ICD, they can be tried under the Geneva Conventions Act 1964 laws of Uganda.

There is also the opportunity of having the cases heard closer to where the atrocities were committed at the start of the Kweyelo case, the witnesses were apprehensive of travelling to Kololo Kampala to give testimony. They indicated that they preferred the case to be heard close to where the crimes were committed.)

A number of victims are traumatized and need social psycho support whose needs the ICC alone cannot address

Since the creation of the division, the ICC has in a number of ways supported the Uganda ICD prosecutors and investigators in building their capacity to deal with these kind of offences, there has also been sharing of information between the two entities which the prosecution has relied on to collect the evidence and build its cases. In 2009, the Head of the Prosecutor and police investigation unit visited the ICC and had fruitful discussions on how to deal with these crimes

which are novelty in our jurisdiction. issues of witness protection, social Psycho support as well as the importance of outreach were given due regard.

The attachment has greatly enhanced our work and Uganda needs to tap into the attained expertise.

### **What has been done so far?**

- Several incidents have been investigated e.g. the Omot massacre where 27 people were hacked to death and their body parts cooked in pots, the muchwini massacre a village of 56 people all killed, the lukodi abductions where 150 children and youths were abducted and conscripted into the rebellion, the pagak attack, the Barlonyo massacre of 200 people, the Aboke abductions, the kichwamba massacre and now the trafficking of children and conscription into the ADF have been investigated.
- The challenge is that a number of perpetrators were found to have accessed Amnesty. This meant that resources have been wasted in investigations and yet the amnestied people cannot be prosecuted.
- With the return of part 11 of the amnesty act, there is still no coordination between the Amnesty commission and the prosecution office.
- Where the returnee or captured person has not appeared in court, the DPP has no say whatsoever on the persons attaining Amnesty.
- The victims do not have a say whatsoever during the consideration of who to be granted Amnesty. The end result is that the offenders are amnestied with no recourse to being reconciled with the victims.
- The victims question the resettlement packages and the certificates handed out to the amnestied people. They wonder why no reparations are given to them but those who offended them and caused them great suffering are rewarded.
- The issue of victims is an area needing great consideration.
- They only participate in the trials as witnesses. The sentencing guidelines however now offer a great opportunity to the victims and to some extent their needs.
- We're however talking of victims se cases have been investigated and may be taken to court. How about those whose cases will never go to court? There is an urgent need to look into this issue.
- With the Amnesty law in place and the challenges it is posing to the effective prosecution of those who committed war crimes questions arise whether Uganda can be looked at a nation willing and able to prosecute war crimes, crimes against humanity and genocide.