

ANNUAL JUDGES' CONFERENCE
HELD AT IMPERIAL RESORT BEACH
HOTEL, ENTEBBE
26TH – 30TH JANUARY 2014
THEME:

‘ENHANCING PUBLIC CONFIDENCE IN
THE JUDICIARY’

INTERNATIONAL CRIMES DIVISION
ANNUAL REPORT 2014

INTRODUCTION:

The International Crimes Division (ICD) of the High Court of Uganda has come a long way from the War Crimes Division which was established in 2008. Since then the ICD has dealt with a number of cases and has made its' mark in the East African region where it is now being used as a bench mark on the African continent. The court has the mandate to try offenders on crimes against humanity, genocide, war crimes, sexual offences, terrorism, human trafficking, drug trafficking, cyber crimes and money laundering as well as many other international crimes that take place across borders committed during war or otherwise.

The importance of the International Crimes Division has been brought to the fore by the recent trials of the President and Vice President of Kenya in the International Criminal Court at the Hague in 2013.

As if to confirm this, the Kenyan judiciary and Kenyan prosecutors have visited the ICD on two separate occasions. The division expects a team from Burundi this year in 2014.

BACKGROUND:

In July 2008 the Hon. Justice James Ogoola the Principal Judge of the High Court (as he then was) pursuant to Article 141 of the Constitution of the Republic of Uganda 1995, established the War Crimes Division (now the International Crimes Division) of the High Court of Uganda. Its establishment fulfilled Government's commitment to the actualization of the Juba Peace Agreement on Accountability and Reconciliation. The division was therefore set up to try the perpetrators of war crimes and crimes against humanity, including commanders of the LRA and other rebel groups.

Little did the Uganda judiciary know that 5 years down the road, our neighbours in Kenya would be struggling to set up the same division following prosecution of their top leaders at the ICC in the Hague for crimes against humanity.

JURISDICTION OF THE ICD:

Section 6 of the High Court (International Crimes Division) Practice Direction No.10 of 2011 is to the effect that without prejudice to Article 139 of the Constitution, the

Division shall try any offence relating to genocide, crimes against humanity, war crimes, terrorism, human trafficking, piracy and any other international crimes as may be provided for under the Penal Code Act Cap. 120, the Geneva Conventions Act Cap 363, the International Criminal Court Act no.11 of 2010 or under any other penal enactment.

COMPOSITION OF THE ICD:

The division has 4 judges namely: Hon. Justice Moses Mukiibi (Head); Hon. Justice Ezekiel Muhanguzi (Deputy Head); Hon. Justice Elizabeth IbandaNahamya and Hon. Justice OwinyDollo. It has a Deputy Registrar: Harriet SsaliLule and 20 support staff.

CASES COMPLETED IN 2013 AND NEW CASES COMMITTED TO THE ICD FOR TRIAL (2014):

| DPP NUMBER | COURT CASE NUMBER | POLICE FILE NUMBER | ACCUSED'S NAME | OFFENCE | POSITION |
|-------------------|--------------------------|---------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------|----------------------------------|
| BUG-CO-1575/12 | A-17/2012 | SIU/E/188/12 | NATUKUNDA FAITH | AGGRAVATED TRAFFICKING TRAFFICKING | CONVICTED & SENTENCED TO 8 YEARS |
| NKW-CO-1129-13 | | E/307/2013 | A1. ONYAEKO UGOCHUKWU JOACHIM A2. ONYEKEDE DAVID A3. OBIORA SUNDAY A4. IYKE SAM AGAORDI MADU | KIDNAPPING WITH INTENT TO OBTAIN A RANSOM | PENDING FIXING |

| | | | | | |
|------------------|------------|----------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------|----------------|
| NKW-CO-1129-13 | CO-0529/13 | E/304/2013 | A1. ONYAEKO UGOCHUKWU JOACHIM A2. ONYEKEDE DAVID A3. OBIORA SUNDAY A4. IYKE SAM AGAORDI MADU | KIDNAPPING WITH INTENT TO CONFINE A PERSON | PENDING FIXING |
| HQS-CO-0364-2013 | AA-30/2013 | CID HQTRS/E/238/2013 | KAWEESI MOHAMMED | TERRORIST INSTITUTION TRAFFICKING IN PERSONS | PENDING FIXING |
| ACD-CO-056-2013 | | BUVUMA CRB 322/12 | WALUSANSA MOHAMMED MUZAAYA | AGGRAVATED TRAFFICKING IN PERSONS | PENDING FIXING |

OTHER CASES TO BE TRIED BY THE ICD:

1. UG Vs. A1 Hussein Hassan Agaba, A2 Ahmed Adam Abdul, A3 Idris Magondu
Alias Christopher & others 001/2010 (Kenyan Terrorism case on constitutional petition before the Constitutional Court)
2. Kwoyelo case (on appeal before the Supreme Court) 45 WITNESSES

OTHER ICD CASES BEING PREPARED BY THE DPP FOR COMMITTAL:

1. Achelam case (Kony's commander)
2. 19Kony soldiers who surrendered

RELIEF ASSIGNMENTS:

The Principal Judge has attached each judge in other divisions of the High Court namely the Family Division, Land Division, Execution Division, Nakawa HighCourt and Anti Corruption Court. The judges carry out assignments from the Division circuit where they are attached. The judges also handle assignments from the Criminal Division.

TRAINING AND EXPOSURE:

1. DAR ES SALAAM

In July 2013 the Institute for Security Studies (ISS) of Pretoria, South Africa organised a training program in Dar es Salaam for judicial officers in the region, with special focus on Counter Terrorism, Transnational Crimes and International Criminal Justice which the judges and registrar of the ICD benefited from. Participants were given useful resource materials boosting the ICD library. The Tanzanian Judiciary hosted the training. The judges did not get any top up allowance from the Judiciary.

2. SEYCHELLES

In September 2013 the Institute for Security Studies (ISS) of Pretoria, South Africa together with the International Commission for Jurists (ICJ) in Kenya organised a training program in Seychelles for judicial officers in the region, with special focus on Money Laundering, Drug Trafficking and Transnational Crimes which the judges and registrar of the ICD benefited from and were happily hosted by the Chief Justice Hon. Justice EgondaNtende on behalf of the Judiciary of Seychelles. The judges did not get any top up allowance from the Judiciary.

3. SOUTH AFRICA

In November 2013 the Institute for Security Studies (ISS) of Pretoria, South Africa organised a training program in Pretoria South Africa specifically for the ICD, with special focus on Cyber crimes, Human Trafficking and Transnational Crimes which the judges and registrar of the ICD benefited from. The Judges were given a modest top up. Hon. Justice Bart Katureebe, JSC also attended the training.

BENCH MARKING VISITS:

1. KENYAN PROSECUTORS

In October 2013 prosecutors from Kenya's equivalent of the DPP paid a 2 day visit to learn from the ICD experience. They expressed appreciation upon being briefed about the ICD set up. The visit was concluded by a visit to the former DPP Hon. Justice Buteera which visit the participants very much appreciated.

ICD RULES OF PROCEDURE:

The Avocat Sans Frontiere (ASF) together with JLOS have been providing technical assistance to the division since 2012 on a project to develop Rules of Procedure and Evidence for the ICD. The ASF has to date come up with draft rules which are now at the final stage of review by various stakeholders namely the ICD, DPP, JLOS and expert reviewers. The division believes this will be a huge step towards operationalising the ICD and hopes to launch the rules before the end of this year 2014. The last interactive meeting was held on Friday the 17th January 2014. Another meeting to come up a final draft will be held in February 2014.

CHALLENGES FACED BY THE ICD:

1. Magistrates failure of forwarding international crimes cases to the ICD

There is a serious problem at the magistrate level where they are unaware of ICD's mandate to handle cases on international crimes cases and therefore fail to forward files to the ICD.

2. Inadequacy of space:

The ICD is renting premises next to the Anti Corruption court which premises have proven to be too small. There is inadequate space for the judges chambers, the registry, the library and only one improvised courtroom. There is minimal office space for the registry staff and so the court has no proper system for keeping records as well as an absence of archives. The offices leak when it rains. There has been a cry to the Judiciary to work on the lighting with no results.

3. Lack of Facilities, need of repairs and renovation:

Judges' chambers have leaking ceilings and lack enough lights. The only one courtroom has peeling paint, no windows, no witness stand and no air conditioning. The judges are not protected at all from the accused persons.

4. Need for a stand-by Generator:

The division comes to a standstill when electricity goes off. There is need therefore, for a generator.

5. Lack of Witness Protection Law:

The Witness Protection Bill needs to be enacted urgently considering the nature and gravity of the crimes handled by this Division.

6. Capacity building/Training needs:

All trainings that the division has benefited from have come from foreign donor agencies. There is therefore need for more specialized training so that the ICD is in touch with the latest developments on the international scene. The ICD is not on JSI's training programmes.

7. Inadequate staffing:

The Head of Division lacks a legal assistant while the deputy Head lacks an office attendant. There is no Librarian.

WAY FORWARD:

- i. Magistrates should be sensitised about the ICD's mandate to handle cases on international crimes like cross border human trafficking, cross border cyber crimes, cross border terrorism and cross border drug trafficking as per Section 6 of the High Court (International Crimes Division) Practice Direction No.10 of 2011.
- ii. The ICD should be given greater support by the administration of the Judiciary and Government of Uganda especially now when we are seeing a high number of Kony soldiers surrendering and increasing intelligence reports that Joseph Kony himself is about to turn himself in. The ICD needs to be equipped so that it can handle cases arising in the region and references/requests from the ICC.

iii. There is a serious need for upgrade of the court facilities to international standards as the court is the face of Uganda in the international fora. With the necessary support the ICD has a great potential to earn Uganda a place as a regional centre for trials of international crimes in East African and Africa at large. This is the goal of the joint regional training which has been organised for the ICD.

CONCLUSION

There is a need both within the Judiciary and nationally for increased support to the ICD because it has a central role to play due to the nature of present day crimes. ICD could be a pillar in the whole of Africa if the Division is consciously supported and strengthened within the Judiciary and nationally. With the necessary support, there would be no reason for Uganda to defer cases to the ICC because we now have the competence to handle them.

We therefore urge the administration to do much more and house the Division properly and facilitate it better.

THANK YOU.

Hon. Justice Moses Mukiibi
Head of Division
2014