



Conference on Strengthening Judicial Cooperation
in the Great Lakes Region
19-20 April 2016, Nairobi, Kenya

REPORT

I. Key points

- ICGLR Member States informed each other on their legal frameworks, procedural requirements, challenges and successes regarding judicial cooperation in general, and extradition and mutual legal assistance in particular.
- ICGLR Member States focussed on regional challenges to effective cooperation on judicial matters and made recommendation for Member States, and regional and international organizations.
- Priority action points were identified, including: designation of focal points and establishment of a network, creation of online databases, development and use of model legislation, regional responses to transnational crimes, and active follow up on the Conference on Judicial Cooperation.

II. Summary of discussions

1. Concept of the Conference on Judicial Cooperation: The Conference on Judicial Cooperation was organised by the International Conference on the Great Lakes Region (ICGLR) and the Office of the Special Envoy of the United Nations Secretary General for the Great Lakes Region (O/SESG-GL).

The Conference aimed to encourage technical action on commitments set out in the 2013 Peace, Security, and Cooperation (PSC) Framework for the DRC and the region and the 2006 ICGLR Pact on Peace, Security, and Development for the Great Lakes Region and its Protocols. Both the PSC Framework and the Pact call for Member States to fight impunity for crimes committed during conflict and facilitate the administration of justice through regional judicial cooperation.

2. Recent events and declarations confirm that there is increasing interest in moving forward with an agenda that promotes judicial cooperation among the Great Lakes countries in order to address complex cross-border and regional criminal activity. At the ICGLR 5th Ordinary Heads of State Summit held on 15 January 2014 in Lusaka, Zambia, the Heads of State recommended the promotion and strengthening of regional judicial cooperation in all areas. The Ministers of Justice of the ICGLR Member States highlighted the importance of judicial cooperation in combating transnational crimes during the Inter-Ministerial Meeting held on 25 – 26 August 2015 in Livingstone, Zambia. Following the meeting, the Ministers issued a Declaration reiterating their commitment to enhance judicial cooperation and promote mutual legal assistance. They called on all ICGLR Member States to put in place measures that strengthen judicial cooperation in extradition and legal assistance, and combat transnational crimes, specifically terrorism, in the GLR.
3. An ICGLR roadmap was also adopted by the Ministers of Justice in Livingstone, Zambia. It sets out a plan for the implementation and domestication of the Protocols, including the Judicial Cooperation Protocol, and an audit of the existing national legislations to promote mutual legal assistance in the region and combating the trans-border crimes and massive atrocities.

4. The Roadmap of the Office of the UN Special Envoy for the Implementation of the PSC Framework as well as the UNCT Great Lakes Regional Strategic Framework, recently endorsed by the UN Security Council, both prioritize the need to support regional initiatives that improve judicial cooperation across borders and address the variety of crimes prevalent in the GLR, including international crimes, sexual and gender-based violence, terrorism and crimes related to illegal exploitation of natural resources.
5. A number of recent criminal cases such as the extradition of Jamal Mukulu from Tanzania to Uganda in July 2015, or the transfer of Ladislas Ntaganzwa to Rwanda in March 2015 in accordance with an Order from the Mechanism for International Criminal Tribunals, have also demonstrated how important, at the technical level, a cohesive and coordinated network or system of judicial cooperation is for this region.
6. Purpose of the Conference on Judicial Cooperation: The Conference brought together prosecutors, and police officials, and other legal experts from the Great Lakes region to engage in technical discussions on judicial cooperation in general and on extraditions and mutual legal assistance (MLA) requests in particular. The Conference thus provided a platform for learning about legal frameworks and for meeting counterparts in person. Face-to-face meetings increase opportunities to build relationships among experts working in this area, which in turn can facilitate future cooperation on specific requests. Participants included representatives from nine ICGLR Member States: Burundi, Central African Republic, Democratic Republic of Congo, Kenya, Rwanda, South Sudan, Sudan, Uganda, and Zambia. Also in attendance were UN agencies including United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), United Nations Office on Drugs and Crime (UNODC), and United Nations Development Programme (UNDP), and representatives from the ICGLR Forum of Parliamentarians, the Levy Mwanawasa Regional Centre for Democracy and Good Governance, and the Regional Training Facility on Sexual and Gender Based Violence.

7. Opening Ceremony: The Conference opened with welcoming remarks from Mr Zachary Muita, former ICGLR National Coordinator for Kenya, Mr Abd Almageed Awad Eisa, Legal Advisor to the ICGLR on behalf of Professor Luaba, Mr Aniefiok Johnson, Chief of Staff to the O/SESG-GL, on behalf of the SESG Said Djinnit, and Ms Mary M. Wairagu, Senior Deputy Solicitor General for the Attorney General of Kenya.

8. Plenary Sessions: An overview of regional initiatives supporting judicial cooperation among ICGLR Member States was provided during plenary sessions. Speakers touched upon the following topics: i) Ms Madeleine Schwarz, Human Rights and Justice Advisor to the O/SESG-GL, highlighted the PSC Framework's commitments regarding judicial cooperation and the fight against impunity, ongoing initiatives such as the UN Great Lakes Regional Strategic Framework and various conferences and workshops, and recent legal cases which raised significant issues on judicial cooperation. ii) Mr Nathan Byamukama, Acting Director of the ICGLR Kampala Regional Training Facilities on Sexual and Gender Based Violence, elaborated on the ICGLR Pact, which contains ten Protocols and has been ratified by all ICGLR countries. iii) Dr Frank Okuthe, Executive Director of the Levy Mwanawasa Regional Centre for Democracy and Good Governance, expressed the Centre's interest in developing a manual on 'best practices' following the recommendations of this Conference and in supporting capacity building. iv) Simon Ridley, Programme Specialist – Justice and Human Rights, UNDP Regional Service Centre, provided insights into the UN Great Lakes Regional Strategic Framework, which includes a pillar focussing on Rule of Law, including judicial cooperation. v) Mr Julius Titi, Regional Specialized Officer at INTERPOL, spoke on INTERPOL's work in tracking fugitives wanted for international crimes as well as exploitation of natural resources, highlighting INTERPOL's tools, databases and red notice system. He recommended that ICGLR Member States should monitor INTERPOL databases provide input to INTERPOL on relevant cases in the Great Lakes region that INTERPOL can include in their databases (at this point, there are few countries in the

Great Lakes who have much interaction with INTERPOL). vi) Mr Abd Almageed Awad Eisa, Legal Advisor to the ICGRL Secretariat, emphasised that having ratified the Pact and the Protocols, including the ICGLR Protocol on Judicial Cooperation, all ICGRL Member States since 2008 have been required to harmonise, domesticate, and implement the Pact. If a country is unwilling or unable to fulfil these obligations, it can be held accountable before the ICGLR Summit. Also, he highlighted four model laws developed by ICGLR, one of them specifically relating to the Protocol on Judicial Cooperation, that Member States are legally bound to implement and use its provisions as legal basis for extradition. v) Ms Beverlina Ongaro, UNODC Consultant, presented some of the tools UNODC has developed to encourage and facilitate judicial cooperation.

9. Country Presentations: Burundi, Central African Republic, Democratic Republic of Congo, Kenya, Rwanda, South Sudan, Sudan, Uganda, and Zambia presented information on their legal frameworks, procedural requirements, and successes and challenges regarding judicial cooperation. The outline for the presentations is attached. Delegates were then able to ask questions on legal and procedural requirements in each country and consider similarities and differences among the Great Lakes countries in relation to judicial cooperation. The discussion also offered the opportunity to hear some of the ways challenges and differences might be overcome. The points and discussions raised during the presentations included the following:

- i) **Treaties**: - Some countries require a treaty with the requesting state, others do not. Some countries may be able to consider requests even if no treaty exists.
- ii) **Legal framework and reciprocity** - If a country does not have a law on judicial cooperation, it might use regional protocols. Uganda, for instance, has no law on MLA, and Sudan has no laws on extradition, but can rely on regional protocols, a scheme of reciprocity. Concern was expressed that the principle of reciprocity was based on political

will and the status of relations between countries, instead of on legal principles protecting the rights of the defence and fair trial rights.

- iii) **Practical challenges** - Representatives from South Sudan and the Central African Republic highlighted practical challenges their countries face in light of recent conflicts, respectively affecting means of investigations, the justice system and access to information within Government departments.
- iv) **President Declarations** - In the Central African Republic extradition is not only possible via a court order, but also via the President's Declaration. Discussions emphasised that in the latter case, special attention should be paid to the rights of the defence and fair trial rights.
- v) **Political offences** –In most countries, extradition requests could also be refused when concerning political offenses. Countries expressed the need for clarification on what defines such an offence.
- vi) **Death penalty and rights of the accused** –Most countries will require that the requesting country establish that their legal system will protect the rights of the defence and guarantee fair trial. For those countries that have abolished the death penalty, they either cannot extradite, or will require an undertaking that the death penalty will not be sought. Extradition therefore between countries who have abolished the death penalty and those that haven't is a significant challenge. A possible solution is to request extradition on the basis of lesser charges that will not bring on a sentence of death. Alternatively, the requested country could look to prosecuting the accused.
- vii) **Extradition of nationals** – Many countries do not allow for their nationals to be extradited. A possible solution is for the requested country to prosecute the accused.
- viii) The importance of platforms and networks such as INTERPOL, UNODC, the East African Police Chief Cooperation, and the Cooperation of East Africa Association of Prosecutors, were emphasised as valuable tools for judicial cooperation.
- ix) Those countries with more experience in judicial cooperation highlighted the importance of informal networks and informal

communication. The ability to phone a counterpart in a neighbouring country to discuss the case was seen as very valuable.

- x) Almost all countries provided examples of experience with judicial cooperation.

10. Breakout session: Following the presentations, two breakout groups (Burundi, the Democratic Republic of Congo, Uganda, Sudan, and Zambia in the one group and the Central African Republic, Kenya, Rwanda, and South Sudan in the other) engaged in action oriented discussions regarding the region as a whole. Representatives in both groups discussed challenges to judicial cooperation at the legal, political, and practical level, successes, and recommendations for improvement of judicial cooperation in the region. The groups thereafter reported back to the plenary, which resulted in the drafting of a list of all challenges, recommendations, and priority action steps.

11. Outcome from the Conference:

Acknowledgment of regional challenges: Representatives agreed that challenges to judicial cooperation in the region include: i) lack of harmonised legal systems, and delayed ratification or domestication of bilateral and regional legislation; ii) multitude of languages; iii) existence of death penalty in some countries and abolished by others; iv) lack of political will especially if relations between countries are tense; v) no definition of political offences, which are not extraditable; vi) bureaucracy dragging on processes; vii) lack of budget allocation; viii) lack of specialised skills in handling transnational crimes; ix) lack of follow-up between participants to meetings, including this Conference; x) poorly drafted requests; and xi) the security situation in the region.

Recommendations to address challenges: Participants formed key recommendations addressed to ICGLR Member States, ICGLR, and UN.

Recommendations to ICGLR Member States include:

- i) Harmonise laws (perhaps in accordance with ICGLR model law) and where necessary, create national legislations on judicial cooperation;
- ii) Designate a high level focal point in Prosecution services to act as focal point on judicial cooperation and be part of the Judicial Cooperation Network;
- iii) Take action to effectively implement the ICGLR Protocol on Judicial Cooperation;
- iv) Strengthen national capacity with the help of ICGLR and UN and other international partners;
- v) Provide ICGLR with information on judicial cooperation cases so that ICGLR can develop a databases;
- vi) Make more effective use of INTERPOL and UNODC tools;
- vii) Strengthen cooperation among regional police organisations;
- viii) Draft standard operating procedures for joint investigations;
- ix) Contact counterparts in neighbouring countries on an informal basis when considering making a request for legal assistance or extradition to ensure full understanding of the legal and procedural requirements;
- x) Be flexible in the characterisation of charges when requesting extradition from a country that has abolished the death penalty so that a lesser sentence may apply;
- xi) For the requested state, consider prosecution, with the assistance of the requesting state, if the accused is a national and cannot be extradited; and
- xii) Determine parameters of political offences.

Recommendations to ICGLR include:

- i) Create an online database with legislation and relevant contact points;
- ii) Draft Terms of Reference for and create a Great Lakes Judicial Cooperation Network, with assistance from partners, including UNODC;

- iii) Ensure ICGLR national coordinators are sharing information with key Ministries in the Member States;
- iv) Ensure follow up to the recommendations made by the Ministers of Justice in Livingstone, Zambia in August 2015, and this Conference, including:
 - a. Ensuring more effective monitoring by ICGLR Legal Focal Points regarding progress on the implementation of the ICGLR Protocol on Judicial Cooperation;
 - b. Analysing whether current model laws are relevant and being used, amend where necessary and introduce guidelines in support of these model laws;
 - c. Using good offices to garner the political will to meet obligations
 - d. under the ICGLR Protocol on Judicial Cooperation amongst ICGLR Member States;
- v) Obtain information from the judicial cooperation focal points in Member States and draft a report on the status of extradition and MLA in the region and on best practices; and
- vi) Continue to organize meetings such as this Conference to stimulate experience sharing and networking and build relationships among expert practitioners.

Recommendations to the international community and UN partners:

- i) Establish focal points in countries to support information sharing and networking on judicial cooperation matters.
- ii) UN Special Envoy for the Great Lakes Region Said Djinnit to meet with Ministries of Justice, prosecutors, and other relevant legal focal points in the ICGLR Member States.
- iii) UN partners and other partners to work together and in line with the SESG Roadmap and the UNCT Great Lakes Regional Strategic Framework to support action on the recommendations from this Conference, and on the Ministers of Justice Declaration of August 2015, and on the implementation of the program to be developed in accordance with Pillar 5, Justice and Conflict Prevention, of the Regional Strategic Framework.

III. Priority actions

In light of the challenges and recommendations highlighted by participants, the delegates decided to prioritize certain actions:

Report, Country Presentations and Contact List

- O/SESG-GL and ICGLR: Finalize Conference Report and compilation of country presentations (in English and French) and share with participants to the meeting who will in turn share with relevant Ministries and Departments;
- ICGLR: Draft letter to ICGLR Member States outlining priority actions and detailing what information they are required to provide in order to implement priority actions.

Judicial Cooperation Network

- ICGLR: Request Member States to designate a high level focal point from the Prosecution Services to participate in the Great Lakes Judicial Cooperation Network;
- ICGLR, with support from partners: Draft Terms of Reference for the Great Lakes Regional Judicial Cooperation Network;
- Establish/Launch the Great Lakes Judicial Cooperation Network by July, 2016.

Information sharing on Judicial Cooperation and Transnational Crimes

- ICGLR: Create a database of country presentations and other materials relevant to judicial cooperation in the Great Lakes, including information/statistics on all specific requests for legal assistance/extradition among the Member States, best practices, etc. Such information can help identify other next steps and action points, such as the creation of a common checklist/guidelines for judicial cooperation requests among Member States,
- ICGLR Member States: Share information with ICGLR on transnational crimes which they face, and the challenges and solutions linked to this; and

- ICGLR: Conduct research and develop a strategic framework for combating transnational crimes, encouraging ICGLR Member States to look at crimes from a regional perspective, instead of nationally.

Model Legislation on ICGLR Protocols

- ICGLR: Assess the usefulness of its model laws;
- ICGLR: Introduce guidelines in support of its model laws;
- ICGLR with support of MONUSCO, UNODC, O/SESG-GL *et cetera*: Create a review checklist, facilitating ICGLR Member States to check whether they have implemented all aspects of the ICGLR Protocol; and
- ICGLR Member States: Share results of the review checklist with ICGLR.

Other actions to consider:

- Consult on whether one Head of State might “champion” the issue of impunity and judicial cooperation.
- Organise a sectorial meeting of Ministers of Justice.
- Ensure future programming is coordinated among partners and supported by the UN Great Lakes Regional Strategic Framework.