



Republic of Rwanda  
National Public Prosecution Authority  
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**NATIONAL LEGAL FRAMEWORKS AND  
PROCEDURES FOR JUDICIAL COOPERATION AND MUTUAL LEGAL  
ASSISTANCE: PERSPECTIVES FROM RWANDA**

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# A. LEGAL FRAMEWORK: Overview of National legal framework relating to extradition and MLA

- The Constitution of the Republic of Rwanda under Art. 142 establishes the National Public Prosecution Authority(NPPA) and mandates it for investigating and prosecuting offences throughout the country.
- The NPPA is a single institution that Prosecutes Domestic Crimes , International Crimes and Cross Border/trans-national organized Crimes.
- Rwanda has established an International Crimes Chamber (ICC)at the High Court that deals with International Crimes such as Genocide, War Crimes, CAH.

# Legal basis/ Framework in Rwanda



1. The Extradition Act: Law N° 69/2013 of 2<sup>nd</sup> September 2013 on Extradition is the basic national legal framework in Rwanda relating to extradition law and mutual legal assistance procedures.
2. Law on transfer of cases from the ICTR/MICT: Law N° 47/2013 relating to transfer of cases to the Republic of Rwanda
3. International Conventions
4. Sub-Regional Legal instruments
5. Existing Extradition treaties
6. Memorandum of Understanding (MoU's)
7. Mutual Legal Assistance (MLA)

# Legal Framework Cont'd



□ In this regard, article 26 of the law n° 04/2011/OL of 03/10/2011 determining the organization, functioning and competence of NPPA provides that NPPA is competent to:

4. “...Cooperate with other countries in the fight against criminality...”; *inter alia*.

and to “Perform any other duties provided for by the law”.

# International Conventions or National Laws on the basis of which regional coop can be sought



- ❑ Rwanda like many other Countries is a party to some of international treaties which oblige states to prosecute international crimes, and the following treaties are in force:
- ❑ **Crime of Genocide:** *Convention on the Prevention and Punishment of the Crime of Genocide*(1948).
- ❑ A state harboring a genocide fugitive is requested to prosecute or extradite the fugitive to Rwanda for trial based on articles 6 & 7 of Genocide Convention.
- ❑ Art 6: “*Persons charged with genocide shall be tried by a court of the state in the territory of which the crime was committed or by International Court with the jurisdiction*”. (e.g. ICTR).

## (Cont'd)



- Art 7: Stresses that “ *Contracting parties pledge themselves in such cases to grant extradition in accordance with law and treaties in force*”.
- **Geneva Conventions and Additional Protocols:** (for War Crimes), Rwanda signed all the Four Geneva Conventions and their Additional Protocols.
- Articles 49 of the First Geneva Convention, Article 50 of the Second G.C, Article 129 of the Third G.C, Article 148 of the Fourth G.C, and articles 85 and 88 Add, Protocol 1, oblige High Contracting parties to enact legislation ...

## (Cont'd)



...necessary to provide effective penal sanctions for those committing grave breaches regardless of nationality, and to search for, and prosecute offenders.

- Rwanda has domesticated War Crimes in the Penal Code (Art 125 PC) and this is a legal framework under which Rwanda applies to prosecute the perpetrators of War crimes in Rwanda or requests states to prosecute those found on their respective territories.

# International Human Rights Conventions ratified by Rwanda



- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention Against Torture and Other Cruel, or inhuman degrading treatment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- Convention on the Elimination of all forms of discrimination against women
- International Convention on the Elimination of all forms of Racial Discrimination



# Human Rights Conventions (Cont'd)



- International Convention on the Protection of all Migrant Workers and Members of their Families
- Optional Protocol to the UN Convention against Torture and cruel, inhuman or degrading treatment or punishment (OPCAT).

# Bilateral Agreements on Regional Judicial Cooperation(as of 2015)



- Rwanda is a member of the Economic Community of the Great Lakes (CEPGL) with DRC and Burundi.
- On 21 June 1975, a Judicial Cooperation Convention was adopted and on one part relates to extradition matters while on the other one relates to rogatory Commissions.
- It gives a definition of “extraditable offences” which includes crimes with a punishment of no less than six (6) months (Articles 11 &15 of the Convention).
- Convention does not march with the current *status quo* and emerging crimes

# Situation of Extradition agreements and MLA between Rwanda and ICGLR(as of 2015)



- In the Great Lakes Region, Rwanda has extradition in existing treaty with:
  - **Tanzania:** signed on 25 January 1963 but this treaty needs amendments to include crimes like Genocide and CAH. A request to conclude a new Treaty was sent to the Ministry of Foreign Affairs.
  - **Uganda:** Existing treaty signed with Uganda 05/09/1988 - New Treaty signed 2005.
  - **DRC:** There is also an existing treaty with DRC which was signed on 4 March 1966. Existing Treaty signed 30<sup>th</sup> March 1973(Convention Judiciaire).

# ICGLR extradition treaties(Cont'd)



- There has been negotiations of judicial cooperation between *Tripartite Plus Countries*(*Rwanda, Burundi, DRC and Uganda*). Last meeting held in Kampala on 9<sup>th</sup>-13<sup>th</sup> June 2008.
- **Burundi**: Convention signed on 30 August 1973 “*Convention Judiciaire*” between *Rwanda* and *Burundi*. Existing treaty signed on 21 June 1971.
  - Negotiations closed on 05/06/2009 by members of the “*sous commission technique Rwando-Burundaise charge de la cooperation en matiere Judiciaire*”
  - Draft Extradition Treaty validated by the JPC. Still waiting Treaty to be signed.

# ICGLR Extradition Treaties (Cont'd)



- **Angola**: Request to conclude an extradition Treaty sent on 3<sup>rd</sup> November 2008.
- **Central Africa Republic**: Request to conclude an extradition Treaty sent 3<sup>rd</sup> November 2008.
- **Zambia**: Existing Draft Extradition Treaty-process is underway.
- **Kenya**: An extradition Treaty with Rwanda was signed on 30<sup>th</sup> September 2009
- **Republic of Congo**: Request to conclude an extradition treaty sent on 3<sup>rd</sup> November 2008.
- Rwanda has sent requests to conclude agreements with other States in **Africa, Oceania, Europe, Asia, and Americas** and negotiations are underway.

# Brief overview of legal system



- **Establishment of Specialized Units to ease MLA**
  - GFTU(est. 2007)charged with investigations and issuing of indictments and International Arrest Warrants against the fugitives.
  - ICU(est. 2014) leads prosecutions of international crimes before the High Court
  - Both units charged with MLA issues and cooperation in criminal matters.
  - Specialized prosecutors and investigators-in terms of training, qualifications and experience make up these units.

# GFTU and ICU



- Establishment of both GFTU and ICU is to investigate and prosecute cases of fugitive suspects & track them to current countries of residence. This requires robust cooperation in criminal matters.
- These are mainly genocide cases tracked in cooperation with countries of their residence, liaising with foreign jurisdictions to arrest & either extradite to Rwanda/prosecute (*Aute dedere aute judicare*)
- Assisting foreign judicial officers investigating & trying persons accused of genocide, crimes against humanity & war crimes

# Doing this by working Closely With:



- Police & investigation authorities in various countries, through Interpol
- ICTR's investigation division in Kigali
- US Office of Global Justice that has provided a \$5 million reward for information leading to the arrest of the “big fish”
- Execution of MLA requests from various countries
- Engaging diplomatic missions in Rwanda of countries where suspects reside
- Investigators, defence & prosecution teams and judges from different national & international jurisdictions



# International Treaties on regional judicial cooperation in force in the state



## Monist or Dualist System

- Based on the two theories:-Rwanda is a *dualist system* with regard to its relationship between international law and national law. Rwanda also considers its *home grown initiatives in relation to its experience and tragic history*.
- Only international law that has been translated into national law will be applicable.
- Domestication of international treaties and conventions through ratifications gives force to the application of international law in the municipal law.
- Rwanda is a civil law system but recently hybrid civil and Common law practices have been accommodated in the wake of the ICTR Transfer of cases to Rwanda and extraditions from other States.

## B. PROCEDURES: overview of national procedures applicable to extradition and MLA requests

### Conditions for extradition and grounds for refusal under Rwanda Extradition Act

#### □ Extraditable Offence(Art. 4 Extradition Act )

- Extradition in Rwanda shall be requested in case of the following offences:
  - International Crime
  - Trans-boundary crime
  - Felony
  - Crime of Genocide

# Procedures Cont'd



- Other offences may be added to this list as agreed upon by the parties-the act giving rise to the extradition request shall constitute an offence under Rwandan law or violate international law.
- Request shall be ignored if it is not through diplomatic channels
- **Double Criminality:** *“The act giving request to the extradition request shall constitute an offence under Rwanda law or violate international law”*(Art. 4)

# Procedures Cont'd



- **Evidentiary test:** Evidentiary tests may apply for cooperation while a person is sought for extradition from Rwanda to a requesting State. Rwanda requires *prima facie* evidence of the underlying offense before it will grant extradition. The Extradition Act specifically requires that High Court will hear any extradition case and therefore evidence will be examined among others.
- **Existence of a Treaty/or not:** Extradition between Rwanda and another country shall occur where there is an extradition treaty between Rwanda and that Country.(a principle)

# Procedures (Cont'd)



- However, if no extradition treaty exists, extradition shall take place by agreement between the two countries(MOU's)(exception)
- Rwanda has signed MoU's with Britain and Netherlands in cases of Genocide, and MLA with Sweden, Norway and Denmark. MLA's with these countries are based on the ***principle of reciprocity***.
- **Rule of Speciality:** An extradited person in accordance with the extradition treaty *shall not be prosecuted, tried, provisionally detained or re-extradited to a third State for an offence other than the one the extradition was requested for.*

# Grounds for refusal



Minister in charge of Justice shall not grant extradition in any of the following circumstances:

- ❑ If Rwanda has evidence that request was made for the purpose of prosecuting or punishing the requested person on basis of that person's race/ethnicity, nationality, origin, political opinions
- ❑ If the requested person would be subjected to torture(e.g prison torture), cruelty, inhuman or degrading treatment-or if such a person would not receive minimum guarantees in criminal proceedings provided under ICCPR.

## Grounds for refusal (cont'd)



- ❑ If Rwanda, while taking into account the *necessity of the nature of the offence and interests of the requesting State*, **considers that *such extradition does not respect guarantees of human treatment on the basis of age, health, or other personal conditions of the requested person incompatible with humanitarian considerations.***
- ❑ When offences for which extradition is requested are of ***political nature*** or if the extradition is based on political motives(Art. 16(4) Extradition Act).

## Grounds for refusal (Cont'd)



- Generally, extradition law distinguishes between ***common crime*** and ***political crime***. In particular focusing on the political offense exception to the obligation to extradite.
- Conduct that represent a direct challenge to the government in power and its political establishment/system will be examined under **Art. 16(4)** of the Extradition Act-by a court of law(High Court) to have it qualified as a political offence or not-once extradition proceedings commence.



# Grounds for refusal (cont'd)



- ❑ **Death Penalty:** When the offence for which extradition is requested is *punishable by death*(Rwanda abolished death penalty in 2007).
- ❑ When the act giving rise to the request for extradition is ***not considered crime by the Rwandan and foreign law***
- ❑ When the act constituting the offence for which extradition is requested is ***still pending under criminal prosecution in Rwandan Courts*** or when ***the judgment was finally pronounced.***

# Grounds for refusal (cont'd)



- ❑ ***Ne bis in idem principle***: When the requested person has already been **tried by another court for the same offence** and was acquitted, convicted or already served his/her sentence.
- ❑ **Statute of limitations/Time prescriptions**: If person whose extradition being requested cannot be prosecuted or punished due to the *prescription of the offence or amnesty or any other reason as provided by one of the laws of such countries.*

# Extradition of a national



- No Rwandan shall be extradited from Rwanda to a foreign State(Art.5 Extradition Act Rwanda).
- Also Anti-Constitutional to extradite/surrender a Rwandan national to the jurisdiction of a foreign State(Art. 25 of the Constitution of the Republic of Rwanda as amended to date).

# Applicable criteria to evaluate multiple extraditions requests(Art. 15 Extradition Act)



- When several States request extradition, either for the same offence or for different offences-The Minister of Justice shall determine for which State the extradition to be granted.
- **Criteria to be considered:**
  - Existing treaties between Rwanda and the requesting States
  - Time and place of the commission of the offence
  - Order in which requests are received
  - Nationality of the requested person and of the victim

# Criteria to evaluate multiple extradition requests(Cont'd)

- Whether extradition is requested for the purpose of prosecution or serving of a sentence.
- Severity of the offence.

# Procedures and Conditions with regard to search and seizure(Art. 65 &70 CCP)



- **Search Procedure:** *is governed by the Criminal Procedure Code:-* Depending on evidence required, Search is usually **conducted by a Judicial Police Officer**, if he finds that the evidence required is made up of **papers, documents** and other items held by the person under investigations.
- Search warrant is *obtained from the Prosecution* with view to visit and search the place where such items are kept.
- The Prosecutor in charge of case file preparation **may** conduct a search at the scene of the offense or at any other place where any evidence necessary for the determination of the truth can be found(**Art.65 CPP**).

# Search & Seizure (Cont'd)



- If a home search is required, it can be conducted neither before 6 am nor after 6 pm unless there are serious grounds for believing that evidence may disappear. However, the search can only be conducted in the presence of a representative of the authorities of the place where it is conducted.
- **Seizure:** Police may *seize objects* wherever they are found if the confiscation provided for by law can be enforced on such objects and seize *all items which can serve as evidence*, incriminating or exculpating the suspect.
- Objects seized shall be shown to the owner for acknowledgment.

# Taking witness statements



- A Judicial Police Officer(JPO) may interrogate any person presumed to have some clarification and compel him/her to give testimony under oath.
- Article 56 of this Law(CCP) provides for statement taken under oath.
- JPO may also prevent any person from moving away from a specified area until completion of the statement and, if necessary, to compel him/her to stay in that area.



# While Rwanda is the requested State/Received Extradition request/Art. 6



- **Entities where request for cooperation is submitted**
  - ❑ Request shall be *made in writing* and *submitted to the Ministry of Foreign Affairs* after all requesting documents are *duly certified*, clear and detailed.
  - ❑ Request is submitted through *diplomatic channels*
  - ❑ In case of emergency-request may be made through *Interpol(I-24/7)*
  - ❑ Or by *relevant authorities of foreign States* and sent to the Judicial authority by *registered mail*
  - ❑ or other *expeditious means* which has a written record or its equivalent.
  - ❑ In such a case, unless confirmation through diplomatic channels is given, the *request shall be ignored*.

# Extradition request (Cont'd)/Art.7



- **Requirements to be transmitted in support of extradition:**
  1. A document *disclosing the identity* of the authority from which the request emanates
  2. Document *indicating the authority* to which the request is addressed
  3. The *identity of the requested person*, his or her nationality and any other information that might indicate his or her whereabouts

# Requirements (Cont'd)



4. A *description of the offence(s)* for which extradition is requested and the *constituent elements*, the place and time of its commission, *legal provisions* under which it is punishable and *penalties* attached thereto
5. An *arrest warrant* issued by a court or any other competent organ, if the arrest of the requested person is requested
6. A *statement of the legal means available to the requested person to prepare his/her defence* or to lodge an *opposition* if the judgment was rendered *in absentia*.

# Requirements (Cont'd)



7. *A statement establishing that the requested person is wanted to face justice or for the enforcement of the sentence*

8. *A statement describing the assistance needed and details of any particular procedure that the requesting State wishes to be followed.*

**□ Request for extradition of a person convicted of an offence**

- *The extradition request shall be accompanied by the original or a certified copy of the judgment or any other document setting out the conviction and the sentence imposed, whether sentence is enforceable and extent to which the sentence remains to be served.*

# Language requirement in the request (Art. 8 Extradition Act)



- The documents/requirements referred to shall be translated in one of the official languages of the Republic of Rwanda(Kinyarwanda, English, French).
- Language issues continue to be critical in MLA requests and Extraditions where national language is neither English, nor French.
- We have had requests translated to official languages of the requested State and this goes with huge financial implications and time factor.
- This delay may give room for suspect to disappear if not in custody.

# While Rwanda is requesting State (Art. 24 Extradition Act)



- **Competent Authority to Request: Prosecutor General or Military Prosecutor General** in case of Military Offences shall be the ones to sign extradition warrants
- Request is prepared in writing and submitted through the Minister of Justice to the Minister of Foreign Affairs.
- Minister of Foreign affairs shall communicate the request to the requested State's authority in charge of foreign affairs.
- Rwanda adheres and submits to the laws of the requested State while requesting extradition and MLA issues as required.

# Rwanda as a requesting State (Cont'd)



- Once request has been successfully received and subject extradited; **matters are adjudicated by the High Court/Military High Court** (if the requested person is a Military).
- Follow up of extradition matters: at technical level these matters are handled by the **International Crimes Unit** and the **Fugitives Tracking Unit** of the Prosecutor General's Office.
- **Different Procedures:** Procedures for requests for extradition are different from those of MLA's. While extradition procedures are lengthy in time, MLA's can be executed through communication through diplomatic channels through letters of Rogatory.

# Few examples



- **MLA and Extradition in criminal matters in State Practice**
  - ❑ Requests through official communication(for MLA)
  - ❑ Rwanda has offered assistance to various countries carrying investigation in Rwanda-for Rwandan cases in their respective countries
  - ❑ Central authority is the Prosecution Authority in Rwanda-The ICU and GFTU Prosecutors and investigators give assistance to MLA teams
  - ❑ No time limits applicable but deadlines are met whenever provided.
  - ❑ Multiple requests are handled by case-case basis.



# Examples (Cont'd)



- **Legal and practical obstacles**
  - ❑ Different legal systems: Rwanda is a civil law system but recently applying some common practices in the wake of extraditions and transfers to Rwanda. A hybrid system
  - ❑ Language issues
  - ❑ Lengthy procedures/no responses from requested countries
  - ❑ Lack of bilateral agreements/Extradition treaties and MoU's
  - ❑ Lack of resources
  - ❑ Fugitives locations, changing addresses and locations
  - ❑ Lack of political will to execute requests in genocide cases

# Successful case of judicial cooperation



- So far from 2007, 521 indictments were issued in 33 Countries of all continents (except Asia and South America).
- Thirteen (13) Fugitives were brought back to Rwanda through transfers from ICTR, Extraditions from Norway, Canada Denmark(Genocide cases), Kenya(ordinary crimes case/drug trafficking) and Deportation from USA, Netherlands and Uganda(genocide cases).
- Seventeen (17) Fugitives were prosecuted from the host Countries; Belgium, Netherlands, Norway, Sweden, Germany,Finland, France and Canada(based on the principle of “Universal Jurisdiction”).

# Transfer and Extradition Law on Genocide cases



- ❑ Rwanda also has enacted a transfer Law No. 47/2013 of 16 June 2013 relating to transfer and extradition of cases to Rwanda from ICTR and other States.
- ❑ It is this law that regulates the prosecution of extradited genocide fugitives and highlights the fair trial guarantees and other related issues like defense witness, use of video link facilities, depositions etc.

## C. Implementation of ICGLR Protocol on Judicial cooperation in National Legal framework.



### **Measures taken by Rwanda to implement ICGLR Protocol on Judicial Cooperation**

- Rwanda ratified ICGLR Pact in August 2008
- As of 2015 Law Reform Commission is currently undertaking a broad study on the status of implementation of international obligations of Rwanda including those contained in ICGLR Pact and Protocols.
- International Justice and Judicial Cooperation Division(IJJCD) was created at the Ministry of Justice.

# Implementation (Cont'd)



- IJJCD mandated to follow up and implementation of international and regional obligations in relation to judicial cooperation.
- Establishment of this unit will facilitate the frequent follow up of the implementation of ICGLR obligations.

# CONCLUSION



- While there are regional guidelines for judicial cooperation in the ICGLR commitments through various Protocols notably Judicial Cooperation and extradition treaties exist between a number of countries, there is need to enhance action to effectively foster regional judicial cooperation

I THANK YOU FOR YOUR ATTENTION



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