

STRENGTHENING JUDICIAL COOPERATION IN THE GREAT LAKES REGION: NATIONAL FRAMEWORKS IN LIGHT OF ICGLR PROTOCOL.

'UGANDA'S PROCEDURE ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE'

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BACKGROUND

Uganda is a common law country with very limited legislation on extradition and MLA. Extraditions are managed under the Extradition Act, which is a very old law of 1964.

Unlike states like Tanzania that have legislation on MLA, Uganda still relies on the Commonwealth scheme on MLA.

The recent wave of international crime, particularly terrorism has necessitated the need to urgently develop the much needed legislation both at national and regional level.

In Uganda, this wave of crime has necessitated the creation of The International Crimes Division handles crime which falls under the following categories:

- (i) Terrorism
- (ii) Human trafficking
- (iii) War Crimes
- (iv) Other crimes (like Genocide, crimes against humanity not applied in the on-going cases and investigation)

REGIONAL THREATS IN THE GREAT KAKES REGION

- ▶ LORD'S RESISTENCE ARMY (LRA).
- ▶ AL SHABAB/AL-QUEDA.
- ▶ ALLIED DEMOCRATIC FRONT (ADF).
- ▶ ISLAMIC STATE (ISS).

AREAS AFFECTED BY THE LRA/ADF AL SHABAB.



LAWS APPLICABLE IN INTERNATIONAL CRIMES INVESTIGATION & PROSECUTION.

- a) The Constitution of Uganda
- b) The Extradition Act, Uganda, CAP 117 of 1964.
- c) The Uganda Anti-Terrorism Act 2002.
- d) The Penal Code Act (for alternative charges of murder)
- e) The Geneva Conventions Act 1964 (war crimes)
- f) The ICC Act 2010.
- g) The Prevention of Trafficking in persons Act
- h) The East African community Treaty.
- i) The Harare Scheme (commonwealth)
- j) The Protocol on Judicial Cooperation (01/12/2006)
- k) Uganda's extradition treaty with Rwanda of 2005.

STRUCTURE OF THE ICD INVESTIGATIONS IN UGANDA

A. INTERNATIONAL CRIME DIVISION OF HIGH COURT

- ▶ This division has four resident judges permanently attached to the division.
- ▶ In war crimes are heard by a panel of 3 judges.
- ▶ Other crimes like terrorism, human trafficking, bail application are heard by single judge
- ▶ The division has a permanent registrar.

B. INTERNATIONAL CRIMES DEPARTMENT OF THE DIRECTORATE OF PUBLIC PROSECUTIONS-DPP

- It has full time prosecutors
- It has support staff
- It runs independently, receiving police files related to international crime from police directly
- It manages its own investigations and prosecutions

Contd.....

C. INTERNATIONAL CRIMES DEPARTMENT -POLICE

- ▶ **The police on the other hand has a team of 5 CID officers based at the headquarters and about 45 investigators based in different parts of the country who are used as focal points**
- ▶ **The police has a directorate of anti terrorism which deal with all terrorism cases and deployment; that directorates send it files to the ICD of DPP.**

STATUS OF INVESTIGATIONS AND PROSECUTIONS REALATED TO TRANSNATIONAL CRIMES.

- ▶ The war crimes case of *Uganda versus Thomas Kwoyelo* who is charged under the Geneva conventions act with 12 counts of war crimes. Trial of this case begins on 29/03/2016.
- ▶ Another ADF top commander Jamil Mukulu whose group burnt 80 students to death was arrested in Tanzania and extradited to Kampala in August 2015
- ▶ The July 2010 bombings, 15 accused persons were arraigned before court in 2011, 2 of them pleaded guilty to terrorism offences have been convicted and are now serving sentence.

Contd.....

- ▶ **Another matter involving trafficking of several girls to Saudi Arabia is under investigation and suspects are about to appear in court.**

UGANDA'S NATIONAL PROCEDURE ON EXTRADITION

- ▶ In Uganda like Kenya and Tanzania, extradition proceedings are regulated by the extradition act cap 117 of the laws of Uganda.
- ▶ The three east Africa countries have a similar act, inherited from united kingdom
- ▶ Our extradition act allows the process to commence for both accused and convicted persons.

PROCEDURE


- ▶ The application must be set to the Minister. Although the Minister is not defined in the ACT, this refers to Attorney General who is the official Legal Counsel for the country.
- ▶ The office of the Attorney General and Deputy Attorney General are established under articles 119 and 119A of the constitution.
- ▶ S.3 of the Extradition ACT, bars surrender of fugitives charged with offences which are political in character

STEPS IN EXTRADITION

- ▶ The extradition application is to be submitted to the Attorney Generals Chambers through diplomatic channels of the respective country.
- ▶ The office of the Attorney General and the Director of Public Prosecutions upon receipt of the application , reviews the same to establish if it has merit
- ▶ If the papers(application) have merit, then then same is filed the magistrates court for the hearing process to commences. The fugitive is given chance to defend himself before the magistrate before a final is made on whether the order for extradition is to be granted on not

CONTENTS OF THE EXTRADITION APPLICATION

- ▶ There should be a formal application submitted to the Attorney General, and it should be signed, dated and sealed.
- ▶ The application must state the case file number and facts of the case and the offence with which the fugitive is charged with. The application must specifically state that the offence charges is not of a political character
- ▶ The application must be backed by endorsed seal court documents, that is the charge sheet, the warrant of arrest, affidavit of the investigating officer, photos and passport/identity card of the fugitive and copies of the law under which the accused is charged.
- ▶ The duration of the hearing of the application depends on the nature of evidence adduced and arguments presented by the prosecution and defence teams.

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- ▶ Part 3 of the extradition Act refers to reciprocal backing of warrants issued in another country, return of the prisoners, provisional warrants, and discharge of prisoner if not returned

MANAGEMENT OF MLA APPLICATIONS IN UGANDA

- ▶ Uganda has no statute on MLA.
- ▶ However, Uganda being a member of the Commonwealth, The Commonwealth scheme on Mutual Legal Assistance is relied on whenever there is a request within the commonwealth.
- ▶ MLA has proved to be vital in cross-boarder investigation, securing foreign witnesses and expert, exhibits etc
- ▶ In the absence of statute, we receive and respond to requests using the Commonwealth scheme on MLA.

PROCEDURE FOR MLA

- ▶ There is no standard procedure for an MLA application.
- ▶ However, a good application should be initiated by central authority of the requesting state, indicate the case reference, summary of the facts and evidence, attach necessary documents and be filed/submitted through diplomatic channels.
- ▶ In East Africa, several request have been successfully handled through the police chiefs forum, the Prosecutors associations.

MANAGEMENT OF EXTRADITIONS AND MLA.

- ▶ In Uganda, the central Authority is the Attorney General. He receive all extradition and MLA and also initiates those to other states.
- ▶ In doing this, the Attorney General relies on detailed information and documents provided by the police and Director of Public Prosecutions.
- ▶ It should also be noted that management and tracking of these application is left to The Director of Public Prosecutions who works in liaison with the police.

BILATERAL AGREEMENTS



- ▶ Protocol on Judicial cooperation 1/12/2006, ICGLR
- ▶ The 2005 Extradition treaty between Uganda and Rwanda.

IMPLEMENTATION OF ICGLR PROTOCOL.

- ▶ Steps to domesticate the 10 ICGLR protocols have stalled. There was a proposal to domesticate all the protocols through a single miscellaneous Amendment Act, but this stalled for a while.
- ▶ However, the ICGLR protocol on judicial cooperation is a very important legislation that closes the glaring legal gaps in handling transnational crime in the region.

PICTURES OF RECENT ACTIVITIES IN TRANSNATIONAL CRIME

Joseph Kony
Leader of
LRA on ICC
warrant of
Arrest-
pursued by a
joint force of
UPDF/USA &
others.

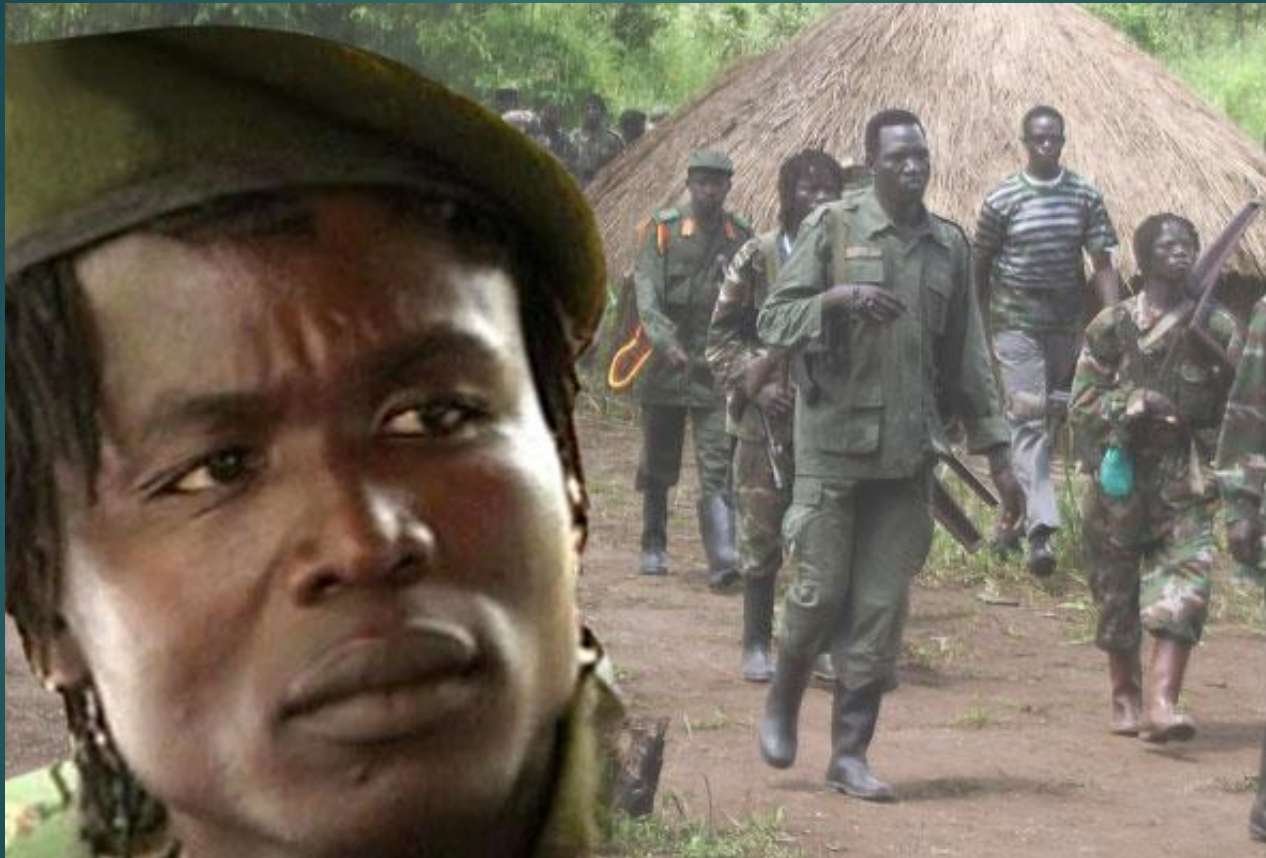


Col. Thomas Kwoyelo of LRA

- ▶ Captured on 2/3/2009 in Garamba forest DRC after sustaining injury in a battle and returned to Uganda.



Dominic Ongwen of LRA



A Burnt IDP camp in Gulu Uganda



Jamil Mukulu of ADF

- ▶ Arrested in Daresaalam in 2015 and extradited to Uganda. He has indicted for war crimes, terrorism and murder before the International Crimes Division of Uganda High Court and due to be prosecuted.



OTHER MECHANISMS IN INTERNATIONAL CRIMES

- ▶ Support from East African Police Chief Cooperation, the police in East Africa in several cases have arrested and sent back suspects, even without formal extradition.
- ▶ Cooperation of East Africa Association of prosecutors- enables speedy management of our work.
- ▶ East African Community Treaty; Art. 5 (6) (f) ...”the promotion of peace, security, and stability within and good neighbourliness among the partners.

CHALLENGES IN EXTRADITION APPLICATIONS

- i) Many terrorist groups and suspects on warrant of arrest operate across borders; eg ADF, Al-Shabaab, LRA. This calls for investigations across borders which is very difficult.
- ii) Most of the witnesses/victims of terrorism/ war crimes are traumatized interviewing them often just aggravates their problem.
- iii. Security threat to law enforcement officers, judges, prosecutors.
- iv. Disharmony in Laws. In some countries like TZ terrorism is punishable by life imprisonment; Uganda death

Challenges contd.....

- ▶ Investigations across borders very costly and risky
- ▶ Issues of funding of a joint investigation team is very challenging as well as prioritizing the investigation.
- ▶ Uganda still has the death penalty in our laws and this complicates regional cooperation in investigations and extradition.
- ▶ Bureaucracies in MLA procedures derail investigations.

- ▶ Lack of capacity for the Judicial officers to deal with the cases of transnational nature.
- ▶ Extradition delays investigations and prosecution. We have done several extraditions and MLA's
- ▶ Flight and hotel expensive, Chartering air crafts for return of fugitives

CONCLUSION

- ▶ In conclusion, regional cooperation is paramount to ensure speedy and efficient management cases. The protocol on judicial cooperation's of 1/12/2006, is little known in legal circles in East. Effort should be made to hold meetings of key stake holders in the region to sensitize them about the protocol.

END

Thanks For Listening

