

Regional judicial cooperation in the fight against impunity for international crimes: Analysis of national regulatory systems and internal procedures in view of the Protocol on Judicial Cooperation of the ICGLR

Kinshasa, March 15-16, 2016

CONFERENCE REPORT by ICTJ¹

Hosted by His Excellency the Minister of Justice, Human Rights and Keeper of the Seals of the Democratic Republic of the Congo (DRC), the International Center for Transitional Justice (ICTJ), with the financial support of the European Commission, and the UN Joint Human Rights Office (UNJHRO), in collaboration with the Office of the Special Envoy of the Secretary-General of the United Nations for the Great Lakes Region, organized a high-level regional conference of experts from 15-16 March 2016, in Kinshasa. This conference was organized to discuss the regulatory and procedural framework and the operational opportunities and challenges linked to regional judicial cooperation in the Great Lakes Region.

Objectives of the conference

The general objective of the conference was, on the one hand, to allow the national authorities of the DRC, Rwanda, Uganda, and Tanzania opportunity to analyze the national regulatory and procedural frameworks of their respective States applicable to regional judicial cooperation. Furthermore, the general objective was to enable them to discuss measures to implement this cooperation through various legal and diplomatic channels that were illustrated by concrete examples of extradition and mutual legal assistance processes in cases of international crimes.

In order to achieve this general objective, the specific objectives included the following:

- Analyzing the relevant provisions of the regional, sub-regional, and bilateral agreements applicable to regional judicial cooperation between the States that had been invited to the conference;
- Analyzing the national legislative frameworks applicable to regional cooperation in each of the States that had been invited to the conference from a comparative point of view;
- Presenting and discussing the procedures that applied to mutual legal assistance and extradition requests in each of the States that had been invited to the conference;
- Presenting and discussing the procedures that applied to the implementation of mutual legal assistance and extradition requests in each of the States that had been invited to the conference;
- Analyzing the achievements and challenges of the mutual legal assistance and extradition cases between the States that had been invited to the conference;
- Discussing the advantages and drawbacks of the commitment made by the Heads of State and the Ministers of Justice concerning the use of the protocols of the International Conference for the Great Lakes Region (ICGLR) as the cornerstone of regional judicial cooperation;
- Discussing the advantages and drawbacks of using the protocol of the Economic Community of the Great Lakes Countries (CEPGL) as the legal basis of cooperation for Burundi,² the DRC, and Rwanda;
- Discussing what is necessary in order to encourage the States to use the ICGLR protocols as the cornerstone of regional judicial cooperation;

¹ Although the conference was organised jointly with the UNJHRO and in collaboration with the Office of the Special Envoy of the Secretary-General of the United Nations for the Great Lakes Region, this report only reflects the interpretation of ICTJ.

² In view of the political context in Burundi when the conference was held, to the fact that there were no pending extradition files between the DRC and Burundi to the organisers' knowledge and for logistical reasons, the national authorities of Burundi were not invited to attend this conference.

- Discussing the legislative reforms that are necessary to harmonize the legislative framework and criminal procedures in order to facilitate regional judicial cooperation;
- Creating a list of focal points in charge of judicial cooperation in each State that attended the conference;
- Connecting the national authorities and the focal points of the executive, legislative and judicial bodies as well as police and security services involved in mutual legal assistance and extradition requests of the States that had been invited to attend the conference.

The general objective and the specific objectives of the conference were discussed beforehand with the national authorities of the DRC, Rwanda, Uganda, and Tanzania and with all the presenters and moderators. They were also emphasized again during the conference. The organizers insisted on a technical — and not a political — focus for discussions on the regional judicial cooperation theme. Bilateral discussions between regional participants were also encouraged during the conference.

Participants

Senior government officials from the DRC attended the conference, notably the Minister of Justice, Human Rights and the Keeper of Seals, senior judges from the Military High Court, the Military Public Prosecutor's Office, and the Public Prosecutor's Office of the Republic, legal advisors from the Ministry of National Defense and the National Intelligence Agency as well as Members of the Parliament. Prosecutors with experience in prosecuting international crimes, senior representatives of the "Genocide Fugitive Tracking Unit" and of the General Inspectorate of the National Public Prosecution Authority (NPPA) of Rwanda, the International Crimes Department of the Office of the Director of Public Prosecution (DPP) of Uganda and the Office of the Director of Public Prosecution (DPP) of Tanzania involved in regional judicial cooperation contributed during the conference.

The United Nations Mechanism for International Criminal Tribunals, INTERPOL, the UN Team of Experts on sexual violence in armed conflict, the Office of Global Criminal Justice of the US State Department and several embassies also contributed during the conference.

Opening session and keynote addresses

During the opening session, keynote addresses were given by Mr. Howard Varney, ICTJ; Mrs. Madeleine Schwarz, Office of the Special Envoy of the United Nations for the Great Lakes Region; Mr. José Maria Aranaz, Director of the UNJHRO; His Excellency Mr. Jean-Michel Dumond, Ambassador of the European Union; and Mr. David Gressly, Deputy Special Representative of the Secretary General of the United Nations, MONUSCO. The conference was officially launched by His Excellency Mr. Alexis Thambwe Mwamba, DRC Minister of Justice, Human Rights and Keeper of the Seals. The opening session provided the general framework and background to the discussions on regional judicial cooperation in the Great Lakes Region.

The Great Lakes Region has unfortunately experienced some of the most difficult and turbulent conflicts in Africa. With the signature of the Framework Agreement for Peace, Security and Cooperation in the DRC and the region (hereinafter the Framework Agreement),³ 11 States committed to take concrete measures in order to "put an end to the recurring cycles of violence" that have affected the civil populations in eastern DRC. In order to achieve this objective, the States in the region committed not to harbor or provide protection of any kind to persons accused of international crimes (*commitment 6*) and to facilitate the administration of justice through judicial cooperation (*commitment 7*).⁴

In his strategic road map for the following three years, the Special Envoy of the Secretary-General of the United Nations for the Great Lakes Region encouraged judicial cooperation between the countries of the region as a priority in order to help to reinforce criminal justice, build confidence in the region and

³Framework Agreement for Peace, Security and Cooperation for the DRC and the region, 24 February 2013.

⁴Regional commitments under the Peace and Security Framework Agreement for the DRC and the region, Benchmarks and Indicators of Progress, Final Version of 13th September 2013.

improve the rule of law.

In September 2013, the signatory States also agreed on benchmarks and indicators of progress to assess the implementation of the Framework Agreement.⁵ The commitments of the Framework Agreement reinforce the Pact of the ICGLR on Peace, Security, Stability and Development for the Great Lakes (hereinafter the ICGLR Pact) and the key ICGLR protocols relating to judicial matters that were signed by the Heads of State in 2006.⁶

Further to the commitments made with the signature of the Framework Agreement and the ICGLR Pact, the Ministers of Justice of the Member States of the ICGLR decided to accelerate the national implementation of the ICGLR protocols, including the Protocol on Judicial Cooperation⁷ and the Protocol for the Prevention and the Punishment of the Crime of Genocide, Crimes Against Humanity and War Crimes and all forms of Discrimination.⁸ The Ministers committed to promote judicial mutual assistance in order to fight against the transnational crimes committed in the Great Lakes Region, and in particular terrorism.⁹

Despite the expression of these political commitments, the investigation and prosecution of national and international crimes continue to face numerous challenges, including the lack of appropriate judicial cooperation between the States of the region. Obstacles to judicial cooperation continue to fuel the impunity of military leaders and other superiors who are accused of international crimes as they benefit from protection in their own State or in neighboring States.

Holding the authors of international crimes responsible is essential in order to dismantle the structures that allow for the recurrent commission of international crimes and to restore the security of the victims and their communities. The punishment of international crimes is also important in order to reinforce the confidence of citizens in their governments, security services and judicial institutions. It would also help to improve the relationships between neighboring States and the stability of the region, lending them confidence in one another and facilitating cooperation.

All emphasized and thanked the specialized prosecutors who were involved in regional judicial cooperation procedures – senior representatives of Rwanda, Uganda and Tanzania – for their presence.

When addressing these special guests, his Excellency the Minister of Justice, Human Rights and Keeper of Seals, emphasized that “(their) presence in Kinshasa bore witness to the commitment that (their) respective States show to advance the cause of peace, security and development of [the] region of Central Africa” and insisted on the fact that “the aim of these discussions is to streamline and pool [the] joint efforts to effectively fight against the impunity of serious crimes that are unfortunately carried out in [the] region.”

⁵ The benchmarks and indicators of progress include: Benchmark 6.1.: Facilitating the prosecution of all those suspected of violations of human rights (...); Indicator 6.1. (a): Developing and/or implementing national criminal legislation to prosecute international crimes and serious violations of human rights (...); Benchmark 6.2.: Refraining from harbouring or protecting individuals accused of war crimes, crimes against humanity, genocide and crimes of aggression; Indicator 6.2. (c): Prosecuting, transferring, extraditing and remitting the presumed authors of international crimes and serious violations of human rights to the appropriate international, regional and national courts and tribunals; Benchmark 7.1.: Effective implementation of the provisions contained in the Protocol of the International Conference on the Great Lakes Region (ICGLR) on Judicial Cooperation; Indicator 7.1. (b): Implementing the provisions of the Protocol of the ICGLR on Judicial Cooperation in national legislation; *Indicator 7.1. (c):* Facilitating the transmission and execution of arrest warrants and the extradition of persons who are prosecuted for various crimes pursuant to the Protocol of the ICGLR and in accordance with other international instruments; Benchmark 7.2.: Establishment of Joint Investigation Commissions in accordance with the Protocol of the ICGLR on Judicial Cooperation; *Indicator 7.2. (b):* Conducting joint investigations, where necessary, in accordance with the Protocol of the ICGLR on Judicial Cooperation.

⁶ The Pact includes 10 Protocols and 4 programmes of action with 33 priority projects, see: <http://www.icglr.org/index.php/fr/le-pacte>.

⁷ ICGLR, Protocol on Judicial Cooperation, 1 December 2006.

⁸ ICGLR, Protocol on the Prevention and Punishment of the Crime of Genocide, Crimes against Humanity and War Crimes and all forms of Discrimination, 1 December 2006.

⁹ Paragraphs 7 and 8 of the Declaration of the Ministers of Justice, Livingstone, in Zambia, on 25 -26August2015, see Appendix III.

Introductory themes: Analysis of the various regional, sub-regional and bilateral agreements on regional judicial cooperation between the States of the Great Lakes Countries

Regional judicial cooperation: extradition, mutual judicial cooperation and the importance of having an adequate legislative and procedural framework

The fight against impunity is universal and must be pursued and coordinated across all levels. Addressing serious crimes — those that are defined by the Rome Statute as international crimes — as well as other criminal offences and violations of human rights requires concerted multinational efforts. In numerous geographical regions the borders are porous and those most responsible easily move from one country to another.

This coordination and judicial cooperation are even more important for investigations of international crimes in view of the scale of the consequences of these crimes in the societies. These crimes destroy relationships between citizens and between citizens and the State. In addition to the personal injury and material damage they cause, they fuel instability. This is true in all continents and in all circumstances. Serious crimes present serious political, legal and institutional challenges. Inevitably, real progress is only achieved if mutual cooperation and confidence can be developed between the States involved. When this occurs, the authors may be brought to justice — while at the same fully respecting the rights of the defense.

To achieve this objective, it is necessary to develop clear and adequate legislative and procedural frameworks. These frameworks must allow for a dialogue between the States and must define clear and transparent benchmarks governing the decision to grant or refuse extradition and mutual assistance requests.

In order to facilitate judicial cooperation between States and between States and international organizations, a certain number of international treaties are already in place, particularly, the United Nations Convention against Transnational Organized Crime (2000),¹⁰ the United Nations Convention against Corruption (2003),¹¹ and the Convention against Enforced Disappearance (2006).¹² These instruments provide for a complete legal framework for international cooperation in criminal matters with regard to these particular crimes. As far as genocide, crimes against humanity and war crimes are concerned, there is not yet an international instrument to facilitate this cooperation. Certain treaties, however, provide for a general obligation of the States to cooperate based on the well-known principle of “extradite or prosecute.”

The regional and sub-regional organizations have been particularly active in developing the legal tools necessary to facilitate judicial cooperation. The regional African economic communities, and in particular those that have a peace and security mandate such as the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS)¹³, the Southern African Development Community (SADC)¹⁴ and the Intergovernmental Authority for Development (IGAD), have developed treaties in their regions on both extradition and mutual judicial assistance. In addition, the main regional economic communities, sub-regional organizations, including the Economic Community of the Great Lakes Region (ECGLR)¹⁵ and the ICGLR¹⁶, have also developed similar treaties.

¹⁰ Convention against Transnational Organized Crime and its protocols, adopted by the United Nations General Assembly, 55/25 of 15 November 2000, that came into force on 29 September 2003.

¹¹ International Convention for the Protection of all Persons against Enforced Disappearance, adopted by the United Nations General Assembly of 20 December 2006, that came into force on 23 December 2010.

¹² United Nations Convention against Corruption, adopted by the United Nations General Assembly, 58/4 of 31 October 2003, that came into force on 14 December 2005.

¹³ Convention on Judicial Cooperation and Mutual Assistance of the ECCAS.

¹⁴ SADC Protocol on Extradition (3 October 2002); SADC Protocol on Mutual Judicial Assistance in Criminal Matters (3 October 2002); Southern African Police Chiefs Cooperation Organisation (SARPCCO) (SARPCCO Multilateral Cooperation Agreement on Combating Crime within the Region was signed on 1 October 1997 by the Member States and came into force on 29 July 1999).

¹⁵ Judicial Convention between the Republic of Burundi, the Rwandese Republic and the Republic of Zaire (21 June 1975); Protocol to the Judicial Convention.

Although the regional and sub-regional tools have progressed, they continue to be hindered by several challenges including:

- i) The absence of national legislation on regional judicial cooperation;
- ii) The absence of harmonized national laws on regional judicial cooperation;
- iii) The absence or the lack of knowledge of the designated focal points in the national institutions in charge of facilitating the requests for regional judicial cooperation;
- iv) The non-development of specific mechanisms that are recommended by regional conventions;
- v) Poor record keeping (registers and archives);
- vi) Overly bureaucratic procedures and slow response times from national authorities to requests for regional judicial cooperation;
- vii) The lack of knowledge, awareness and training of the national authorities in charge on the various requirements and extradition procedures;
- viii) The lack of political willingness to establish regional judicial cooperation as a priority — that is shown by the failure to operationalize the international agreements.

Finally, emphasis was placed on the fact that this objective went beyond merely analyzing the various legal systems of the region with regard to mutual legal assistance. What was identified as being as important was that the specialized prosecutors, senior representatives of their States, exchange information in order to explore all the avenues and means to support each other in the pursuit of justice in the region. It was said that a certain number of positive measures could be taken even with very limited resources via multi-institutional networks in accordance with legislation and a formal or informal procedure.

Pact of the ICGLR on Peace, Security, Stability and Development for the Great Lakes

This presentation began with a quote, “The end of the genocide [in Rwanda] [...] marked the opening of a whole new chapter that is as appalling as the first, but enveloping all the Great Lakes Region in a brutal conflict before turning into a war that has directly or indirectly involved the governments and armies of all the parts of the continent.”¹⁷

Certain factors that contribute to the conflicts in the Great Lakes Region were briefly discussed: impunity; poor governance; policies of exclusion; interference of neighboring States; constant travelling and movement of the populations; constant violations of fundamental rights; lack of involvement of women in the decision-making process; unemployed youth; difficulties of access to livelihood, resources and land; exploitation of natural resources in favor of some; and massive poverty.

The Framework Agreement that was signed by Angola, Rwanda, Burundi, Tanzania, the Central African Republic, South Sudan, the DRC, Sudan, Kenya, Uganda, the Republic of the Congo, Zambia and South Africa, was presented as a tool that the States could use where required for judicial cooperation. It was signed under the auspices of the United Nations, the African Union, the ICGLR and the SADC. The commitments made by the DRC,¹⁸ by the States of the region¹⁹ and by the international community²⁰ under this agreement were discussed in detail.

¹⁶ Protocol for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination (29 November 2006); Protocol on Judicial Cooperation (1 December 2006).

¹⁷ Rwanda: The preventable genocide, International Group of Eminent Persons, (Appointed by the Organisation of African Unity) par. 20.1

¹⁸ Under this agreement, the States, including the DRC, committed to: Intensify the reform of the security sector; Consolidate Government authority, in particular in the DRC; Improve decentralisation and economic development; Continue the structural reform of governmental institutions; Pursue reconciliation, toleration and democratisation

¹⁹ The States of the region committed to: Not to interfere in the internal affairs of neighbouring countries; Not to tolerate or provide assistance or support of any kind whatsoever to armed groups; Respect the sovereignty and territorial integrity of neighbouring countries; Reinforce regional cooperation, including economic integration with particular attention for the exploitation of natural resources; Not to provide protection or protect in any manner whatsoever persons who are accused of war crimes, crimes against humanity, genocide, aggression or persons who are subject to UN sanctions; Facilitate the administration of justice through judicial cooperation in the region.

²⁰ As far as the international community is concerned, it committed: That the Security Council would remain committed to seeking long-term stability for the DRC. A commitment that was renewed by the bilateral partners to keep abreast of the region: Renew the commitment to support the Economic Community of the Great Lakes Countries (ECGLC) and economic integration;

To this end, the ICGLR should allow for a regional response to the challenges of the Great Lakes Region to transform the region into an area for long-term peace and security, political and social stability, economic growth, development and multi-sector cooperation. The ICGLR indeed has four regional programs of action: (1) peace and security (2) democracy and good governance (3) economic development and (4) regional integration. This objective and these programs are based on a series of key documents including the Dar es-Salaam Declaration (2004)²¹, as well as the Pact on Security, Stability and Development in the Great Lakes Region (2006) and its 10 protocols.²²

The Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination was discussed in further detail. Its articles 13 to 20, concerning mutual judicial assistance through cooperation in order to prevent, identify, and punish international crimes, provide a legal basis that the States can use for extradition requests related to international crimes. These articles do not provide for any obligation whatsoever to extradite the nationals of their own States, but ask that the requesting State be informed of the outcome of the prosecution. These articles also provide for the implementation of joint investigation commissions and the exchange of information.

Articles 26-42 of the protocol provide for the creation of a regional committee for the prevention of genocide, war crimes, crimes against humanity and all forms of discrimination that is to examine the situations in each Member State in order to: prevent international crimes and discrimination; collect and analyze information; alert the ICGLR so that it may take emergency prevention measures; suggest measures to effectively fight against impunity; provide national and regional peace and reconciliation awareness and education programs; and take specific gender measures to guarantee the rights of victims.

The Protocol on Judicial Cooperation was also analyzed in detail. This protocol acknowledges the need to adopt measures to fight against impunity at regional level and ensure that all those suspected of crimes are prosecuted. It is a detailed protocol that provides a legal framework for the extradition of all the crimes that are punished by at least 6 months in prison. Joint investigation commissions that aim to facilitate investigations, prosecution, and the sharing of information between the States are also provided for in this protocol.

By the Declaration of the Ministers of Justice of the Member States of the ICGLR made in Livingstone, Zambia on 25-26 August 2015, the latter committed their States to:

- Accelerate the complete domestication process of four priority protocols,²³ including the Protocol on Judicial Cooperation
- Accelerate the drafting of standard laws, in order to implement the domestication of three protocols,²⁴ including the Protocol on International Crimes
- Use standard laws
- Submit six-monthly reports to the Secretariat of the ICGLR on the measures implemented to reinforce judicial cooperation, in particular with regard to the extradition of fugitives or accused persons and mutual judicial cooperation.

Review the United Nations Organisation Stabilisation Mission in DRC (MONUSCO); Appoint a UN Special Envoy to favour long-term solutions.

²¹ ICGLR, Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004

²² Protocol on the Non-Aggression and Mutual Defence in the Great Lakes Region; Protocol on Democracy and Good Governance; Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination; Protocol on Judicial Cooperation; Protocol on the Fight against the Illegal Exploitation of Natural Resources; Protocol on the Specific Reconstruction and the Zone of Development; Protocol on the Prevention and Punishment of Sexual Violence against Women and Children; Protocol on the Protection of and Assistance to Displaced Persons; Protocol on the Property Rights of Returning Persons; Protocol on the Management of Information and Communication.

²³ Protocol on Non-Aggression and Mutual Defence in the Great Lakes Region; Protocol on Judicial Cooperation; Protocol on the Fight against the Illegal Exploitation of Natural Resources; Protocol on the Prevention and Punishment of Sexual Violence against Women and Children.

²⁴ Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination; Protocol on the Protection of and Assistance to Displaced Persons; Protocol on the Property Rights of Returning Persons.

- Promote mutual assistance in order to fight against transnational crimes, and in particular terrorism, in the Great Lakes region.
- Commit to meet each year to assess the implementation of the Pact, the national implementation process of the protocols, judicial cooperation and judicial mutual assistance between the Member States.
- Submit this declaration to the next ordinary summit of the ICGLR.

It was reiterated that the findings of this technical conference would be sent to the Secretariat of the ICGLR and would contribute to a conference that would be attended by the representatives of all the signatory countries of the Framework Agreement.

Challenges regarding the investigations, “tracking,” and arrests of the suspects of serious crimes: the role of INTERPOL

This presentation was first of all an opportunity to present INTERPOL as an international police organization with the primary purpose to promote international police cooperation. The discussion focused on the ways in which INTERPOL can support States in implementing regional cooperation. Emphasis was placed on the fact that the INTERPOL Statute stipulates that international police cooperation must be conducted within the spirit of the Universal Declaration of Human Rights. For example, this commitment to human rights is expressed through INTERPOL’s cooperation with international criminal tribunals and through the careful processing of personal data.

In order to ensure increased cooperation, the resolution of the INTERPOL General Assembly adopted in 2004:

- *Recommends* that, within the limits of national and international law, the member countries cooperate with each other and with international organizations, international criminal tribunals and non-governmental organizations as appropriate in a joint effort to prevent genocide, war crimes and crimes against humanity, and to investigate and prosecute those suspected of having committed these crimes;
- *Asks* the General Secretariat to assist member countries in the investigation and prosecution of these crimes.

With the resolution of the INTERPOL General Assembly of 2010 (Cooperation with new requests concerning genocide, crimes against humanity and war crimes), the General Assembly *encourages* all member countries to continue their cooperation in the investigation and prosecution of the perpetrators of genocide, crimes against humanity and war crimes using *inter alia* INTERPOL channels.

The prosecution of persons who are suspected of international crimes requires expertise and particular experience. Often the suspects, the victims, the witnesses and the evidence are located in various countries. The crimes were committed a long time ago and the identification of the suspects is made difficult by the absence of biological material. For the justice process to succeed it requires available evidence and a good identification of the suspects.

INTERPOL provides operational support to national and international judicial institutions through the exchange of information (I-24/7 global communication system, including direct access to information), the compilation and structuring of information (management of INTERPOL databases), the analysis of information, the sharing of information (INTERPOL notices and dissemination) and the proactive collection of information (open sources and media).

Presenters examined operational projects including the Project BASIC (Broadening Analysis on Serious International Crimes) that strategically targeted fugitives wanted for crimes such as genocide, war crimes,

and crimes against humanity. The Rwandan Genocide Fugitives Project was also presented. This project is jointly conducted by national authorities in Rwanda and the United Nations Mechanism for International Criminal Tribunals / International Criminal Tribunal for Rwanda (UNMICT / ICTR) to target the outstanding fugitives wanted by these two bodies. INTERPOL has drawn up a list of suspected war criminals that includes details about these individuals. This list includes more than 1,000 Red Notices.

INTERPOL also presented its basic rules for a successful investigation of a fugitive case: good documentation; validity of the arrest warrant with identity and personal details; information (judicial and substantive) provided; formulation of request and reliable central point of expert contacts; use of INTERPOL channels and contact keeping and updating of the file.

Legislative and procedural frameworks at national level on regional judicial cooperation

DEMOCRATIC REPUBLIC OF THE CONGO: Legislative and procedural framework

The conference also featured a presentation on the DRC's unique context, including its geostrategic position in the heart of Africa with abundant minerals in its subsoil and surrounded by 9 countries. Emphasis was also placed on the troubled history of the DRC since its independence, which has been characterized by decades of armed conflicts and serious violations of human rights. Despite the various peace agreements, national and foreign armed groups are still present and active mainly in the east of the country. There remains a vital need for justice for the victims and communities who have been affected. A relentless fight against impunity is necessary to establish long-term peace in the Great Lakes Region through mutually advantageous regional judicial cooperation.

As far as the legal-judicial cooperation framework in the DRC is concerned, the DRC belongs to the Romano-Germanic legal family (civil law) with the Constitution at the summit of its legal system. The latter set forth the essential principles of the organization and functions of the government.

- The Constitution of 18 February 2006 created the legal monist system in that treaties take precedence over national law (article 215) and requires the Congolese courts to directly apply the duly ratified treaties (article 153 *in fine*).
- The Congolese regulatory framework thus includes the duly ratified treaties (including amongst others: the Rome Statute; the four Geneva Conventions and their additional Protocols; the Convention on the Prevention and Punishment of Genocide; the Convention on the Punishment of Torture; and the International Pact relating to Civil and Political Rights). Additionally, it adopted specific domestic legislation (the Military Criminal Code, the Military Judicial Code and the Organic Law of 11 April 2013, that created a sharing of jurisdiction between civil and military courts with regard to international criminal matters).

The procedural framework mainly comprises:

- The Decree of April 12, 1886 on extradition
- ECGLC: Judicial Convention of the ECGLC June 21, 1975 and its Protocol
- ICGLR: Pact on Security, Stability and Development in the Great Lakes Region (June 2008) and its 2 Protocols: see articles 7, 8 and 9.
- SADC: Protocols on extradition and mutual legal assistance in criminal matters of 3 October 2002
- Framework Agreement: see paragraph 5

The extradition procedure has to be provided for by a bilateral agreement or a multilateral convention. Extradition nevertheless remains a sovereign decision of the requested State, which is never under any obligation to carry it out (see International Court of Justice case law in the Lockerbie case).

Regarding the implementation procedure of judicial cooperation requests, it was indicated that according to the ICGLR Protocol on Judicial Cooperation (article 7): The request for extradition has to be signed by the judicial authority and sent to the Ministry of Justice. It has to be supported by a legal decision (arrest warrant or decision), a description of the person sought, a description of the alleged facts and particulars of the alleged crime as well as the evidence of the facts in line with the standards of the requested State. The Minister of Justice forwards the request to his counterpart at Foreign Affairs. The latter then sends a *Note Verbale* to his counterpart in the requested State. The execution of the request is carried out in the opposite direction.

Due to a lack of archives, the only information available regarding the results of regional judicial cooperation in the DRC concerns:

- On August 10, 2009: transfer of Grégoire Ndahimana, a Rwandan perpetrator of crimes of genocide, from the DRC to the ICTR
- Execution by the DRC of letters rogatory from the Stuttgart Court in the case of Ignace Murwanashyaka and Straton Musoni, two Rwandan perpetrators of crimes of genocide who were judged by this court
- On March 1, 2016: note from the Chief Public Prosecutor of the Military High Court transferring the Rwandan perpetrator of crimes of genocide, Ladislas Ntaganzwa to the Residual Mechanism for the ICTR
- Failure of the requests for extradition sent by the DRC to Rwanda (CNDP and M23), to Uganda (M23), to South Africa (Mukungumbila) and to Tanzania (Jamil Mukulu).

These results seem mixed in view, on the one hand, of the turbulence that characterizes the region and, on the other, of the fairly complete legal cooperation framework applicable in the countries involved.

In this respect, certain challenges were presented: Difficulties linked to the fact that the States of the region belong to different legal cultures (common law, Romano-Germanic law or both); mutual lack of knowledge of national legislations of certain States; absence of specific laws on extradition or a lack of clarity around them; absence of bilateral extradition agreements; and difficulties accessing the texts due to a lack of records, administrative bureaucracy and political suspicions.

The regional legal tools may allow for effective and mutually advantageous judicial cooperation provided that:

- the various national legislations on such specific matters are harmonized;
- the signature of bilateral extradition agreements, that have for this purpose transparent benchmarks, are promoted;
- the political obstructions based on the belief that the requests for judicial cooperation are politically motivated are removed;
- a central authority is designated in each State with the task of facilitating the execution of the various requests for cooperation and ensuring the traceability and flexibility of the cooperation by freeing it from an excessive dependence on administrative formalities.

UGANDA: legislative and procedural framework

In Uganda, the Protocol of the ICGLR on Judicial Cooperation was not known before this conference was held. Compared with the other relevant legislation on the prosecution of international crimes, the protocol was thus not applied. The representatives of Uganda suggested that the prosecutors of the region should indeed analyze it in order to understand how to apply it and thereby facilitate judicial cooperation in the region.

Regarding the legal framework, Uganda is a Common Law country and the treaties signed by the Ugandan Government do not take precedence over domestic legislation. The treaties have to be introduced or incorporated into national law in line with the procedure. The Constitution remains the superior law of

the country. It is thus not possible for a requesting State to establish judicial cooperation with Uganda if it did not acknowledge the Constitution. However, if Uganda have signed a treaty it would comply with it fully.

The legislation that applies to the prosecution of international crimes in Uganda is the following:

- Constitution of Uganda
- Extradition Act, Uganda
- Uganda Anti-Terrorism Act 2002
- Penal Code Act (for alternative charges of murder)
- Geneva Conventions Act 1964 (war crimes)
- ICC Act 2010
- Prevention of Trafficking in Persons Act
- East African Community Treaty
- Harare Scheme (Commonwealth)
- Protocol on Judicial Cooperation (01/12/2006)

The International Crimes Department was established in 2008 following the failure of the peace negotiations between the Ugandan Government and the rebel movement of the Lord's Resistance Army (LRA). During these negotiations, it was decided that the parties were to establish a special court to prosecute the authors of atrocities committed in the north of Uganda. In 2008, the judicial authority created the War Crimes Division to prosecute war crimes, crimes against humanity, and genocide. In 2009, the mandate of this division was extended to include terrorism, human trafficking, piracy, and other transnational crimes.

It has now become the International Crimes Division and thus handles the following crimes:

- Terrorism
- Human trafficking
- War crimes
- Other international crimes (such as genocide and crimes against humanity)

The International Crimes Division of the High Court has four resident full-time judges. The bench that hears war crimes comprises of three judges. Crimes involving terrorism, human trafficking and applications for bail are heard by a single judge. The division has a permanent Clerk's Office.

The International Crimes Department of the Directorate for Public Prosecutions (DPP) operates independently, and is in charge of collecting police files that are linked to international crimes. It is comprised of prosecutors and support staff and manages its own investigations and prosecutions.

The International Crimes Department of the Police Force has a team of 5 agents based at the head office and approximately 45 investigators based in various regions of the country who are used as focal points. The police force has a department to fight against terrorism that handles all the cases of terrorism and deployment. This department sends the files to the International Crimes Department of the DPP.

The Ugandan Government recently submitted a bill on the International Crimes Division that governs all the key players in the management of the sector. This bill provides for standards and procedures that are similar to those applied by the International Criminal Tribunals. The Government has also drawn up the Rules of the International Crimes Division (ICD-Rules) in order to guide procedures before the High Court.

Some investigations and prosecutions have already been carried out and brought, in particular:

- Thomas Kwoyelo, member of the armed group of the Lord's Resistance Army (LRA), was accused pursuant to Geneva Conventions Act of 12 charges of war crimes;

- Jamil Mukulu, supreme commander of the armed group Allied Democratic Forces (ADF), including the group that burned 80 students to death, was arrested in Tanzania and extradited to Kampala in August 2015;
- Following the terrorist attacks of July 2010, 15 accused were brought before the court in 2011 and 2 of them pleaded guilty to terrorist offences. They were found guilty and are currently imprisoned.
- The César Acellam case, who was a close associate of Joseph Kony, the leader of the Lord's Resistance Army (LRA), was also registered at the court.
- Regarding the cases of human trafficking, several suspects had been accused and sentenced.
- Another case regarding the trafficking of several girls to Saudi Arabia was under investigation and the suspects were about to be brought before the court.

The investigations are conducted by the prosecution, in other words the War Crimes and Antiterrorism Unit that is comprised of a team of six prosecutors. This unit is strengthened by the police force as has already been mentioned.

Regarding requests for extradition, in Uganda the extradition procedures are laid down by an Extradition Act, that is similar to those of Kenya and Tanzania, bearing in mind that these acts had been inherited from Great Britain. This Act prohibits the extradition of fugitives accused of political crimes.

In terms of procedures, these requests have to follow certain stages:

- The request has to be sent to the Attorney General who are the official legal advisors of the State;
- The request has to be submitted to the Attorney General's Chambers via the respective diplomatic channels of each State;
- As soon as the request is received, the Attorney General's Office and the Directorate for Public Prosecutions reviews the request to determine whether it is admissible;
- If the request is found to be admissible, it is submitted to the judges for the beginning of the hearings. The accused person has the possibility of presenting a defense before a decision is made on his extradition. The length of the hearings depends on the type of evidence and the arguments put forward by the prosecution and the defense.

For the extradition judges to be able to act, the request has to:

- Be official (come from an authorized official authority in the requesting country), signed, dated, sealed and presented to the Attorney General;
- Indicate the file number, the facts against the accused and the offence for which the fugitive stands accused;
- Specifically indicate that the crimes prosecuted are not political in nature and that the person would only be judged for the facts stipulated in the legal documents;
- Include the legal documents in support of the request (seals): the arrest warrant; the document describing the precise charges; the affidavits of the investigating officer; the photograph and identity card of the accuse; and photocopies of the acts under that the person was accused;
- Indicate whether the investigations would be conducted with or without the police and whether an investigation is in progress;
- Indicate the contact persons;
- Be in English; all the documents have to be submitted in English;
- Give assurances that the principle of reciprocity would be complied with, as no assistance whatsoever is possible without a commitment to be able to offer the same assistance to the requesting state if it made such a request.

The representative of Uganda then indicated that there are also other useful cooperation mechanisms in Africa: for example, the Southern African Police Chiefs Cooperation Organization (SARPCCO). Cooperation already exists between the Ugandan police force and the national forces of the DRC.

Cooperation also exists through the Africa Prosecutors Association that allows for a quick management of the work and a forum for sharing important information and documents.

The representative of Uganda then presented a certain number of challenges to regional judicial cooperation. In addition to legal considerations, political considerations also have to be taken into account. However, to begin with, it is necessary to understand and use the legal texts of the State receiving the request. At the same time, the prosecutors has to implement the procedure in view of the law and demands of the requesting State and the government have to be concerned about the said request and support political initiatives. This is what Uganda did in respect of its request for extradition in the case of Jamil Mukulu.

In addition, the execution of requests for extradition often requires regular and costly trips between the States concerned since inter-State procedures sometimes require that certain authorizations or certain document are completed before they can proceed. This was also the case for Uganda regarding Jamil Mukulu.

Prosecution of international crimes implies many financial challenges and enormous risks that created a security challenge for judges and prosecutors. Traumatized witnesses, the problem of the harmonization of the laws between the requesting country and the requested country, and the death penalty are often presented as obstacles. The expertise required for the judges and the prosecutors in the prosecution of international crimes could also be a challenge.

Judicial cooperation is very important to facilitate this mutual assistance. The most important thing is to know who to work with and how to do it. It is indispensable to have focal points who know each other in order to facilitate easy exchange of information. In this respect, it would be preferable that ICTJ supports the prosecutors to facilitate contacts. During his presentation, the representative of Uganda insisted on the importance for the prosecutors of the region to communicate with each other and encouraged the prosecutors to communicate with each other. He illustrated the importance that the collaboration between the prosecutors of Uganda and Tanzania had in the procedures connected to the extradition of Jamil Mukulu from Tanzania to Uganda.

Questions & answers to the representatives of Uganda:

1. *Q/ Regarding the matter of Mr. Dominique Ongwen before the International Criminal Court (ICC), why did you transfer him to the ICC when the mandate of the ICC is complementary? Why did you feel it was necessary to transfer him? What challenges were you faced with?*

A/ Uganda was not faced with any major challenge whatsoever in the Dominique Ongwen case. His transfer to the ICC was solely dictated by the collaboration of Uganda with the ICC. There was an agreement by which Uganda was to judge the intermediate commanders. What matters for Uganda is justice wherever it comes from.

2. *Q/ Regarding the Jamil Mukulu case, a significant delegation from Uganda went to Tanzania. The Congolese were there too. Why was there no collaboration rather than a competition between the Ugandan and Congolese prosecutors? What were the bases for the extradition?*

Regarding the Jamil Mukulu case, there were two competing requests for extradition: the request from Uganda and the request for the DRC. The Ugandan request was received and now a Ugandan court is going to judge him. What can Uganda offer for the victims in DRC and what impact will the decision delivered in Uganda have for the victims?

A/ Regarding the competing requests, the answer needs to be given at the same time as all other matters relating to the Jamil Mukulu case. It should not be forgotten that this file was the first case where a request for extradition was made and that Uganda followed it very closely. Uganda made a request and was either more expeditious or diligent to obtain the extradition without really knowing if the DRC had made the same request.

It is important to have a clear legislative framework for deciding which request shall be accepted and why in the event of competing requests from two States. Our states should commit to solve this matter once and for all.

Regarding the Congolese victims, we also wonder what would happen if Jamil Mukulu were extradited to the DRC, what would happen to the victims in Uganda and what would the DRC do for the victims of Uganda. We believe that the victims of the DRC can provide proof of their suffering and injuries to be examined by the Ugandan judge and possibly receive compensation.

The main question must be asked from a regional point of view. Let's collect all the proof and complete the file that has already been opened in Uganda. In this particular case, 28 witnesses will come from Kenya as we can do nothing without the help of our neighbor. In this respect, evidence from the DRC could contribute. Justice is the same, whether it is given in Uganda or elsewhere, provided it is just and true. There is an obvious need for joint commissions.

For the time being, we must make an effort to discuss matters relating to judicial cooperation between our respective States and not discuss issues relating to political cooperation that are to be dealt with at another discussion forum.

We must question and ascertain whether there are laws on regional judicial cooperation in our respective States, whether they are implemented and whether the mechanisms in place in the respective States are compliant with each other. We must create an institutional and operational framework and identify strategies to maintain communication between States.

3. *Q/ Based on the experience of the Uganda, what must be done to improve relations between States so that the entire region is able to take advantage of this experience? To fight against international crimes, we have to work together.*

A/ In Uganda, we asked for the assistance of the United Kingdom against a Kenyan subject. Our UK partners helped to judge him. The United Kingdom asked us to commit not to sentence him to death. It is thus necessary to draw inspiration from the case of the DRC regarding the moratorium on the death penalty and in Uganda where a death sentence has not been delivered since 1999.

RWANDA: legislative and procedural framework

The representatives of Rwanda gave a brief overview of the Rwandan genocide to show the need for regional judicial cooperation between the States of the Great Lakes Region to punish serious crimes. Certain suspects of genocide in Rwanda are still abroad. They fled to several countries, including African countries such as the DRC, Kenya, Uganda and Zambia.

Since 2007 to the present day, 521 indictments have been issued in 33 States of all the continents apart from Asia and South America. 12 fugitives have been transferred to Rwanda from the ICTR and extradited from Norway, Canada and Denmark, and deported from the United States, the Netherlands and Uganda. 17 fugitives had been prosecuted by the "host" countries in particular based on the principle of universal jurisdiction and the application of the principle of *aut dedere aut judicare* by Belgium, the Netherlands, Norway, Sweden, Germany, France and Canada.

Regarding the competent authorities for the prosecution of international crimes, article 142 of the Rwandan Constitution established the National Public Prosecution Authority (NPPA) and entrusted it with the mandate of investigating and prosecuting offences throughout the country.

Article 26 of the Organic Law n° 04 / 2011 / OL of 03/10/2011 determining the organization, function, and competence of the NPPA and the Military Prosecutions Department provided that the NPPA is competent to:

- Investigate offences in relation to that it is conducting proceedings and/or investigations carried out by Judicial Police Officers
- Prosecute criminal offences before all ordinary courts and military courts
- Contribute to the formulation of criminal prosecution policies
- Cooperate with other countries in the fight against crime
- Perform any or all other duties provided for by law

The NPPA is a unique institution that prosecuted domestic crimes, international crimes and cross-border crimes. Rwanda has set up an International Crimes Chamber at the High Court that handles international crimes such as genocide, war crimes and crimes against humanity.

On 14 November 2007, via the NPPA, Rwanda created a unit in charge of investigations and issuing international indictments and arrest warrants against fugitives. It is called the “Genocide Fugitives Tracking Unit” (GFTU).

The unit was created to coordinate the extradition of suspects to Rwanda and transfers from the International Criminal Tribunal for Rwanda (ICTR) in order to prosecute these crimes before Rwandan courts. The unit will also handle other transnational crimes provided for by the Rwandan Criminal Code. The cases of money laundering and human trafficking are also handled by the chamber of the High Court in charge of international crimes.

By establishing this unit, the NPPA ensures that the investigations, which were first of all conducted by the national police force and then by the prosecutors, are of a high quality. Drawing on its experience, Rwanda has learned that specialized prosecutors and judges are necessary to prosecute international crimes. As a result, senior prosecutors were assigned to this unit so that they could acquire the knowledge and experience required to ensure that the prosecution of international crimes complies with international standards. The International Crimes Chamber is currently handling five cases, including two that had been transferred by the ICTR.

As far as the legislative framework is concerned, Rwanda has ratified various international tools to protect human rights²⁵ and refers to them in the handling of cases of alleged perpetrators of genocide and other serious crimes. Rwanda, like many other countries, is also a party to certain international treaties that require the States to prosecute international crimes and the following treaties in force:

- Convention on the Prevention and Punishment of the Crime of Genocide. According to this convention, a State that shelters a fugitive of genocide in Rwanda has to prosecute or extradite a fugitive to Rwanda to be tried based on articles 6 and 7²⁶
- Convention of 1948 on Genocide
- Geneva Conventions and additional Protocol (for war crimes)²⁷

Rwanda has incorporated war crimes in its Criminal Code (article 125). Rwanda prosecutes the perpetrators of war crimes in Rwanda and formulates requests to prosecute the perpetrators of crimes who are to be found in other territories on this basis. Rwanda also has an Act on Extradition dated September 2, 2013. It is this Act that determines the manner in that the extradition has to be requested, the manner in that the request has to be handled, and the requirements and the procedure to be followed.

Rwanda has also enacted Act n ° 47/2013 of 16 June 2013 relating to the transfer and extradition of authors of genocide in Rwanda from the ICTR and other States. This Act regulates the prosecution of fugitives of genocide who were extradited and highlights the guarantees of a fair trial and other related issues such as the witnesses of the defense, the use of video liaison installations, filing complaints, etc.

²⁵ International Covenant on to Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on Child Rights; Convention on the Rights of Disabled Persons; Convention on the Elimination of all forms of Discrimination against Women; International Convention on the Elimination of all forms of Racial Discrimination; International Convention on the Protection of all Migrant Workers and the members of their Families; Optional Protocol to the United Nations Convention against Torture and Inhuman, Degrading or Cruel Treatment.

²⁶ Article 6: “Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of that the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties that shall have accepted its jurisdiction.

Article 7: Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

²⁷ Article 49 of the 1st Geneva Convention, article 50 of the 2nd Geneva Convention, article 129 of the 3rd Geneva Convention, article 148 of the 4th Geneva Convention and articles 85 and 88 of the Additional Protocol 1, require the contracting parties to enact legislation.

Regarding sub-regional tools, Rwanda is a member of the Economic Community of the Great Lakes Countries with the DRC and Burundi. On June 21, 1975, a judicial cooperation convention was adopted. A section of this convention concerns matters of extradition and the other section concerns letters rogatory. It provides a definition of cases of extradition that includes crimes that carry a sentence of not less than six months' imprisonment (articles 11 and 15). This convention could be a good legal framework basis for Rwanda, the DRC and Burundi to extradite the authors of violations of international law, international humanitarian law as well as domestic crimes if it is used properly by the three countries. The representative of Rwanda emphasized that the three States should examine further the manner in which this convention could be implemented in order to foster better cooperation between technicians, and then work with the political framework.

Additionally, the resolutions of the meeting held in Kampala from June 9–13, 2008, concerning negotiations for judicial cooperation between Uganda, Rwanda, Burundi and the DRC, need to be reviewed.

In the Great Lakes Region, Rwanda has an agreement on extradition with Tanzania, signed on January 25, 1963, but this treaty needs to be amended to include crimes such as genocide and crimes against humanity. There is also an agreement with Uganda that has been signed in 2005, one with the DRC that has been signed on March 4, 1966, and a Judicial Convention that has been signed on August 30, 1973, with Burundi after the signature of the treaty of June 21, 1971.

Rwanda has signed several memorandums of understanding and several mutual legal assistance agreements to allow for the extradition of fugitives of genocide from countries with that Rwanda had not signed extradition treaties. This was the case of memorandums of understanding signed with the United Kingdom and the Netherlands and mutual legal assistance agreements with Sweden, Norway, and Denmark. The mutual legal assistance agreements with all these States were based on the principle of reciprocity.

Rwanda has received mutual legal assistance requests from countries such as the United States, Canada, France, Germany, Sweden, Denmark, Belgium, Finland, Great Britain, Switzerland, the Netherlands, and New Zealand. These mutual legal assistance agreements were linked to investigations on fugitives of genocide who had been identified in the territories of the said States.

There are a number of challenges to international cooperation in criminal matters and obligations resulting from treaties. To successfully prosecute the accused who have been extradited at an international level, Rwanda needs the cooperation of the States that harbors the accused persons. However, this is no easy task because Rwanda has no extradition treaty with the majority of the States involved. The NPPA thus relies on the obligations of the States under international law and asks for cooperation in criminal matters in order to extradite to Rwanda if there was no trial in the countries that harbor these authors. By doing so, Rwanda constantly reminds several countries of their obligations under customary international law and the Convention on Genocide.

It should be noted that there is mutual legal and technical assistance between the Rwandan Public Prosecutor and the European countries in investigations that led to the arrest and prosecution of several suspects of the Rwandan genocide in Europe. However, much remains to be done and more efforts are necessary to exploit a similar cooperation with the African States.

Example of cooperation between the United Nations Mechanism for International Criminal Tribunals (UNMICT) and Rwanda

The International Criminal Tribunal for the former Yugoslavia (ICTY) was created in 1993 to hear crimes committed in former Yugoslavia. In November 1994, the ICTR was created to hear the atrocities committed during the genocide in Rwanda. Both tribunals had very little experience as an ad hoc institution to investigate and prosecute crimes on a regional scale, but they played a key role in establishing international justice framework.

In December 2010, the residual mechanism of the international criminal tribunals was created to continue the work of the ad hoc courts. Its mission is to: ensure that the sentences are executed; protect the victims and witnesses; manage the archives of both ad hoc tribunals; protect all the information for the future; prosecute the fugitives against whom proceedings are pending; and provide assistance to national courts through the access to information that can support ongoing cases (see resolution 1966 of the Security Council). As a mechanism, the UNMICT is still relatively new and must ensure that its mandate is known so that each country is aware of its role and the work accomplished by the mechanism.

The representative of UNMICT gave as an example of cooperation between UNMICT and Rwanda, the quick and simplified access to prisoners in Rwanda at the request of the Office of the Prosecutor of UNMICT.

The UNMICT was involved in the Ladislav Ntaganzwa case and worked with the DRC on the file. The presence of the Congolese authorities at this conference and in particular their willingness to continue the collaboration on this pending case was commended.

Questions and answers to the representatives of Rwanda and the MICT

1. *Q/ You have developed relations with the European states with which you have not signed a treaty or cooperation agreement, but since 1966, there are cooperation tools with the DRC. Why is it difficult to make contact with the States of the Great Lakes Region, and in particular with the DRC?"*

*A/ Everything depends on how the request is made and we apply the principle of *aut dedere aut judicare*: "whether the State prosecutes the offence or extradites the person to be prosecuted." Everything is carried out on the basis of the additional protocols to the Geneva Conventions to ensure that fugitives do not go unpunished.*

It is thus high time that the DRC and Rwanda sit at a table to implement this mechanism.

2. *Q/ There is no legal impediment for judicial cooperation according to the delegation from Rwanda. So what prevents the extradition of Laurent Nkunda and other fugitives who are accused of international crimes in DRC and who are in Rwanda? Regarding Laurent Nkunda, the DRC complied with nearly all the demands of Rwanda but he has never been extradited. The DRC in particular made the commitment not to sentence him to death if he was found guilty. In the event that Laurent Nkunda was ill, a cell had been prepared for him in the clinics of Kinshasa where he could stay. The extradition has still not taken place. This means that in addition to the legal procedure, the extradition is more a diplomatic and political matter?"*

A/ The delegation from Rwanda indicated that the only thing Rwanda could do was to comply with the law and for that it was fundamentally necessary to respect or ensure that the fundamental rights of the accused or suspect were guaranteed and in particular the right to life. As long as the death penalty forms part of the Congolese legal arsenal, it would be difficult for Rwanda to extradite a citizen who is prosecuted or wanted by the DRC.

3. *Q/ A representative from the DRC emphasized that the Ladislav Ntaganzwa case was a step forward in judicial cooperation between the DRC and Rwanda."*

A/ We commend the cooperation of the DRC with the ICTR and the UNMICT. Such cooperation should be encouraged.

4. *Q/ How does criminal prosecution work and who leads the prosecutorial initiative when the UNMICT provides assistance to national courts? What is the nature of this assistance?"*

A/ Regarding assistance to national courts, pending or ongoing cases linked to the Rwandan genocide must be before national courts. It is the States that prosecute the authors of genocide on their territories.

5. *Q/ Regarding the challenges and the absence of cooperation, the conditions of detention are included in the demands made by Rwanda, but African countries do not have as many resources as European States. At your level, have you*

improved prison and detention conditions in Rwanda or only for the perpetrators or those accused of serious crimes? Does this create segregation between prisoners?"

A/ In this respect, a lot of conditions have to be examined. As far as extradited persons are concerned, we have to take into account their dietary needs, the living conditions but everything also depends on the rule of specialty. It must be noted that no country will extradite if it has not received assurances that the requested conditions have been met regarding compliance with the rights of the accused.

6. *Q/ Several arrest warrants have been issued by the DRC. Following the closure of the ICTR, there have been changes and reforms in Rwanda. What should the DRC do to ensure that the Congolese subjects who are to be found in Rwanda are judged objectively in the DRC? What should be changed in the DRC?*

A/ There is an Extradition Act in Rwanda. It requires amongst others:

- *Compliance with the fundamental rights of man and the right to life*
- *An extradition agreement with the requesting State – agreements exist between Rwanda and the DRC*
- *The rule of reciprocity must be complied with: the offences that the accused is to be prosecuted for must be punishable in both States*
- *The request for extradition must contain the precise wording of the offence and a very clear summary of the facts must be established. There thus must be clear facts against the accused in such a way that the constituent elements of the offence that he is accused of are also clear*

To conclude, as far as Rwanda is concerned, the death penalty in DRC's legal arsenal poses a serious problem. The right to life must be respected and to achieve this it is important that the DRC abolishes the death penalty.

While Rwanda was emerging from genocide, it had to adopt legal reforms that included the abolition of the death penalty to satisfy countries that would have been against the extradition of alleged genocide perpetrators if the death penalty had been maintained in the Rwandan legal arsenal. Rwanda had thus to comply with international standards in this respect. The DRC should do likewise to hope to achieve the same result as Rwanda and not content itself with a moratorium. It should take certain measures that comply with the prevailing circumstances.

Regarding the M23, the fourth condition is very fundamental. It is imperative to have precise facts against M23 members for whom arrest warrants or requests for extradition have been issued. The modus operandi, the mens rea and the actus reus must be ascertained as, "the culpable act does not make an individual a criminal unless the spirit of this individual is also culpable". Once this has been ascertained, the court that receives the case or the request for extradition will be able to decide on whether the accused should be extradited or not."

7. *Q/ Have you called upon the cooperation of the police forces? If yes, was it beneficial?*

A/ We often call upon INTERPOL to search for information. If we go to other States, we call upon the cooperation of the police forces to put us in contact with the administrative authorities. Our contacts with the police authorities and INTERPOL help us to work well with the national authorities. Rwanda believes that it is important to note that a certain experience may help countries to understand how police cooperation may be more useful than administrative burdens.

TANZANIA: legislative and procedural framework

The representative of Tanzania indicated that mutual legal assistance is the main form of international cooperation in criminal matters in Tanzania. It is formal in nature and requires the issue of a letter of request by a requesting State and the transmission of the said letter to the requested State. National legislation is essential for mutual legal assistance.

The request for mutual legal assistance is based on key points. Any request for mutual legal assistance from Tanzania regarding a criminal matter has to be sent to the Attorney General by the competent authority of the requesting State. The request has to indicate as precisely as possible the nature of the

criminal case in question and provide a summary of the facts and pertinent basic laws. It has to specify or clearly indicate its purpose and the type of help sought.

The process begins with a request for extradition of the fugitive by the requesting State. The request has to be sent by the requesting State to its mission abroad (Embassy or High Commission) in the receiving State. The High Commission or the Embassy that receives this request then has to forward it as diplomatic correspondence (generally by that of a diplomatic note) to the Ministry of Foreign Affairs and International Cooperation which in turn transmits it to the office of the Attorney General for further consideration.

The Attorney General then sends the request to the office of the Director of Public Prosecutions (DPP). The subsequent decision taken by the DPP depends on the content of the initial request, whether it was a request for a provisional arrest or a full request for extradition.

In the case of a request for a provisional arrest:

1. The request for extradition has to be drawn up in a diplomatic note (in other words correspondence from the Mission of Foreign Affairs). All the documents giving the facts of the case against the fugitive are not provided with this initial request. After having briefly set forth the case, the requesting State simply requests that the fugitive be provisionally arrested as a matter of urgency and in diplomatic language committed to provide all the documents containing the proof in support of its request.
2. When the request is sent to the Office of the DPP in the form described above, the DPP contacts the resident magistrate at the chamber of summons with a sustained request for the issue of a provisional arrest warrant.
3. Before issuing the provisional arrest warrant, the resident magistrate has to be convinced that there is a basis for the request for extradition. (N.B.) A recent modification of the law has waived this requirement if necessary by the circumstances (article 13 of the Extradition Act).
4. Once the resident magistrate has launched the provisional arrest warrant, he sends it to the DPP who in turn sends it to the police forces to be executed (to arrest the accused or the fugitive).
5. Once arrested, the fugitive is presented before the resident magistrate as quickly as possible. At that time and before the judge or chamber rules on the request, the requesting State has a few days to submit the complete documents relating to the case against the fugitive. That deadline begins from the date of execution of the provisional arrest warrant against the fugitive.
6. The requesting State is informed by the usual diplomatic channels and asked to forward the supporting documents as quickly as possible.
7. When all the authenticated documents have been submitted (by the aforementioned channel), a request is filed before a court for the issue of an arrest warrant (a complete arrest warrant and not a provisional one) of the fugitive as would be stipulated in the application.
8. Once the fugitive has been arrested, he is presented before the resident court of first instance as quickly as possible. The court hears the case and conducts its proceedings as far as possible in the same manner as in a preliminary investigation.
9. If at the end of the hearing, the proof submitted on behalf of the requesting State did not constitute a *prima facie* case, i.e. a link between the fleeing criminal and the offence, the resident magistrate is required to acquit the fugitive. When, on the other hand, the resident magistrate finds that a *prima facie* case has been established against the fugitive, he is remanded in custody before being extradited to the requesting State. The fugitive is not extradited before a period of fifteen days from the date of the order, so that he or she could appeal the decision.
10. The appeal follows the normal procedure for the filing of an appeal before the High Court. This decision is final.

Certain requirements have to be met for a request for extradition to be successful. These include:

- Sending a formal request to the Attorney General
- Having all the documents authenticated by the Attorney General
- The request has to be made by the competent civil authority of the requesting country

- The request has to clearly present the nature of the charges against the accused or the suspect had
- It is recommended to make preliminary enquiries before making the request to obtain a list of documents to be included in the file
- The request is to indicate the legislation in force and that would be applied to the suspect
- Even if the Minister of Justice does not interfere, the request has to be sent to the Ministry of Foreign Affairs and then forwarded to the Ministry of Justice that in turn transmits it to the Attorney General. The latter then submits it to the Office in charge of extradition matters to be examined
- There are two possibilities: either the accused was imprisoned or not. If he was not imprisoned, it is possible to make the request for him to be arrested while the documents are established. In such a case, an arrest warrant has to be issued
- Submitting an accusation document indicating the legislation that has been breached
- Submitting a document describing the charges against the suspect and describing the elements of the crime
- Attesting that the suspect is known and the charges against him
- The arrest warrant has to explain the grounds for the prosecution
- Determining the legal basis for the extradition and appending the documents issued by the competent authority. But a substantive issue has to be dealt with: the document has to establish the link between the accused and the alleged facts. The accused can appeal the decision that ordered his extradition, but once he is arrested he has to be extradited within 15 days of his arrest. He cannot be extradited after this deadline. If there was no appeal, the extradition takes place within the fifteen days.
- Ensuring that the information would only be used for the ongoing investigations and not for other purposes
- Indicating in the request, the nature of the assistance required
- Ensuring that the clause of reciprocity would be implemented in this context
- In all events, always informing the Attorney General of any request

Discussions: The Jamil Mukulu case

Regarding the Jamil Mukulu case, the representative of Tanzania explained that the DRC took the first step but that it never made a formal request. Work was carried out by both teams but there was never any agreement with the DRC on the case. The only decision that was made was to set up a team to review the case. The delegation of the DRC that had come was comprised of military officials despite the fact that the request had to be made by a civil authority.

Uganda was thus quicker and complied with the procedure. It was thus not possible to say that there had been a competing request because the request of the DRC was never made or formally sent to Tanzania for this case. There was a monitoring shortfall on the part of the Congolese as Tanzania had no reason not to cooperate with the DRC.

A participant also noted that the protocol of the SADC, which was sufficiently detailed, could be used as the basic law to extradite Jamil Mukulu. This protocol imposes an obligation to extradite and stipulates the cases where an extradition has to be refused. The participant indicated that there was a problem of understanding the systems by both States. In Tanzania, the request has to be made by a civil authority while in the DRC this task was up to courts and tribunals, which included the military prosecutor's office. This explains why military officials joined the Congolese delegation in Tanzania.

Mention was also made of the fact that the DRC had asked that Jamil Mukulu be questioned by the Congolese officials in Tanzania but that this request was unsuccessful. This was perhaps due to non-compliance with the terms and conditions of Tanzanian law.

Another participant insisted on the fact that the links between the DRC and Tanzania were very solid that was why the Tanzanian military had taken part in operations in the DRC and that people had even lost their lives. When he was arrested, the DRC, Uganda and even MONUSCO were looking for him. The DRC and MONUSCO contacted the Tanzanian Embassy in the DRC.

Regarding the ongoing investigations against him to determine how he could be confronted with the Congolese victims, the DRC should make a request in this respect to the Ugandan authorities, determine the type of investigation, the precise identity of the suspect, the procedural law applicable in the case of judicial assistance and formally lodge a request provided that the said investigation did not call into question the ongoing investigation in Uganda. The formal request has to show that the investigations undertaken in the DRC cannot be closed as long as the investigators have not gained access to the suspect.

Thus, it is necessary:

- To read the Ugandan Extradition Act
- To submit the request with all its appendices
- To specify that the request did not fall within the scope of political or military exceptions: it could not be for political purposes
- To have the possibility of contacting the attorneys of Uganda

Regarding the death penalty, Uganda is faced with the same difficulties as the DRC. Ugandan law had not yet changed to abolish the death penalty. However, regarding the transfer of prisoners, it should not be forgotten that there was a bilateral agreement between both States on the matter.

Questions to INTERPOL and Answers

1. *Q/ What can INTERPOL do to help the DRC to fight against the crime organized by armed groups in the east of the DRC which very often flee to other countries?*

A/ The INTERPOL system allows for information to be requested on suspects. INTERPOL can help the country to understand the case. It is only required to issue a red notice for the police of the requested State to be able to use it to arrest and send the suspect to the country where the suspect will be judged.

2. *Q/ What is the structure of INTERPOL? What text lays down its organizational rules? Is it a private detective? Are its members judicial police officers (JPOs) and are they under oath?*

A/ The members of INTERPOL are not JPOs. They are civil servants of the member governments of this structure. They act as facilitators in the exchange of police information. They do not arrest or question suspects. INTERPOL acts according to the agreements between States. There are currently 190 member States to help police officers look for fugitives and help countries share information. INTERPOL is not responsible for the information at its disposal. It is the States that are responsible. INTERPOL simply makes this information available to States. Each State is bound by the confidentiality principle.

INTERPOL is managed by a Secretariat General that is based in Lyon, France. The national central bureaux (NCB) in the Member States are units of the organization but they belong to the government of the States.

Questions to the Prosecutors of the Great Lakes Region & Answers

1. *Q/ Regarding the application or use of article 17 of the protocol of the ICGLR on the use of joint commissions, are there investigations conducted by national courts that allow for this protocol to be used?*

A/ Uganda has never used this protocol. It has no experience to share on this question. As far as the joint commissions are concerned, the process seems to be very long and detailed; it requires that we wait for the reply to the request. It would be useful in the event of a disagreement between both States on some elements of proof or actus reus or facts. In such a case, joint commissions could be set up. It is thus possible for these commissions to be operational.

As far as Rwanda is concerned, there are channels through police cooperation, but they have never used article 17 of the protocol of the ICGLR. There is no ongoing investigation in Rwanda that would require the use of the principle of the

protocol or joint commissions. Regarding the obstacles that prevent the execution of the protocol of the ICGLR, Rwanda believes that it is imperative to adapt national legislations.

Regarding the DRC, there are several regional mixed commissions between the DRC and Zambia for example. There are also sub-commissions between the persons in charge of various neighboring public prosecution offices. For the DRC, this mechanism is most welcome and as monism is applied, it will be easy to use it.

2. *Q/ When you make a request for extradition, do you contact the lawyers of the requested country to ensure a full understanding of the applicable laws?*

A/ In Tanzania, the fact is that the services recourse to colleague public prosecutors from a neighboring country. It is rather the defense that uses a Tanzanian attorney.

In Rwanda, we often use the services of local lawyers who are specialized in criminal law. In the past, Rwanda has sent attorneys and prosecutors to work with the authorities of the public Ministries of other States on the procedural rules. We thus need attorneys who are much respected to work with the team in place.

In Uganda, we have not used the services of a lawyer for cases concerning judicial cooperation on extradition. Otherwise, attorneys demand fees. There are rather contacts with experienced colleagues and in this respect Kenya and Tanzania have always collaborated. The proposal is quite interesting to further the understanding of the laws of the requested country beforehand.

In the DRC, the extradition procedure is a judicial phase and in all events, each party must be represented by an attorney of his choice. However, a lawyer from the requested State is indeed necessary to explain the procedures of this State in advance before any step is taken to give every chance to the request.

3. *Q/ What about the death penalty? Can this obstacle to requests for extradition be overcome?"*

A/ Based on a sharing of comparative experience, several persons have put forward the idea that the death penalty should not be an insurmountable obstacle insofar as assurances are given that the suspect will not be sentenced to death. The representatives of Rwanda nevertheless added that extradition is a judicial decision based on the texts of the law and that it is imperative to recommend that the states abolish the death penalty.

Closing Session and Speeches

During the closing session, speeches were given by Mr. Howard Varney, ICTJ; Mrs. Madeleine Schwarz, Office of the Special Envoy of the Secretary-General of the United Nations; Mr. José María Aranz, Director of UNJHRO; and His Excellency Mr. Jean-Michel Dumond, Ambassador of the European Union. The work was officially closed by His Excellency Mr. Christophe Mbose N'kodia Pwanga, Vice-Minister for Justice, Human Rights and Keeper of the Seals.

Recurrent conflicts in the east of the DRC constitute a destabilizing factor for the Great Lakes Region and means that a constantly high number of violations of human rights and international humanitarian law are committed. The participants confirmed that they are convinced that judicial cooperation between the States of the sub-region would effectively fight against the impunity of all these violations and would improve the confidence of the populations in their national institutions. This high-level technical regional conference allowed the authorities of the region to carry out an in-depth analysis of the national legislative frameworks that applied to regional cooperation in each of the States that had been invited to the conference, to present and discuss the procedures that applied to requests for mutual legal assistance and extradition and their implementation, and to analyze certain successes and challenges.

The participants indicated that the conference has highlighted the fact that there were times when we have to take off our national hats and replace them with a regional hat. Indeed, the Great Lakes Region belongs to all those who live there. We have to work together if we want to protect the region. In certain respects, this conference was a microcosm of the wider region with all its complexities. Others also commented that it was good that the representatives present had felt free enough to engage in robust exchanges. This has highlighted the issues that have to be addressed in the future.

Many pointed out that for them this conference was the first time that certain senior representatives of the States of the region have found themselves face to face with their counterparts from other countries of the region and have been informed about the applicable laws and procedures of those countries, as well as regional protocols. The specialized prosecutors, top-level representatives of their States, now have a better idea and understanding of what was required to meet the conditions for extradition and legal mutual assistance in the said countries. It was hoped that there would be a direct contact between the participants in the future. ICTJ once again informed the conference that it was available to continue to support the work of the specialized prosecutors with regard to regional judicial cooperation.

All those present extended their gratitude for the presence and particularly active participation of the specialized prosecutors, top-level representatives of Rwanda, Uganda and Tanzania. They also emphasized the support and involvement of the DRC Ministry of Justice, Human Rights and Keeper of the Seal in the organization and holding of this regional conference that showed the interest of the Government of the DRC in the matters discussed. His Excellency the Vice-Minister of Justice, Human Rights and the Keeper of the Seals asserted that “[the] results [of] the work will enable our respective governments to further reinforce the mechanisms of judicial cooperation in the fight against impunity for serious crimes in the region.”

ICTJ and the UNJHRO also confirmed their commitment to prepare a joint technical note proposing an inventory and a preliminary analysis of the legal framework on extradition and legal mutual assistance in criminal matters in the region. The aim of the said note is to act as a practical tool to support the States in the preparation and implementation of requests for extradition and legal mutual assistance.