



Parliamentarians for Global Action
Acción Mundial de Parlamentarios
Action Mondiale des Parlementaires

Parliamentarians for Global Action's Roundtable Discussion as Side Event to the
23rd session of the Commission on Crime Prevention and Criminal Justice (CCPCJ), on:
"Ending Impunity for International Crimes through Multilateral Interstate Cooperation"

Hosted by the Parliament of Austria, Vienna, on Wednesday, 14 May, 2014, 9:30am-12:00pm, Palais
Epstein, Room E1-E3

**Commentary presented by: Hon. Abdu Katuntu, MP Uganda, Chair Legal Affairs Committee, Chair
PGA National Group Uganda, Member of the PGA Executive Committee.**

Ladies and Gentlemen, dear Colleagues,

It gives me great pleasure and honour to gather with you today at this important discussion, which lays the foundations for establishing an effective international legal framework for interstate cooperation in criminal matters, the final goal of which is to ensure the efficiency of investigations and prosecution of international crimes. These crimes are not just a concern of individual States but represent a serious threat to the whole, humanity and represent a threat to the international peace and security. It is thus our fundamental duty to combat them with resolve and efficiency.

It is recognized internationally that to fight impunity for the most serious crimes, proceedings are essential, and also that all states should be willing to participate in this effort. If an alleged perpetrator has sought refuge in a third country, the state should extradite the person if this is a possibility, and if not, the state should start a criminal proceeding against him.

More so, successful investigation, prosecution and adjudication of genocide, crimes against humanity and war crimes at the national level, depend not only on technical assistance and exchange of best practices, but, also mutual legal assistance in criminal matters and extradition. This is because it is the nature of these crimes that witnesses and perpetrators do not necessarily stay in the State in which the crimes have been committed.

It is also recognized that war crime proceedings are both complex and difficult, resource intensive and expensive, especially when they are carried out outside the country where the crimes were committed. When a national jurisdiction, a so-called third country, has to start such an investigation, most of the investigation will have to be performed in other countries. Mutual legal assistance is therefore necessary to enable prosecutors and investigators in gathering and providing evidence in order to prosecute the perpetrators.

Also, it is in the nature of these crimes that perpetrators – for a number of reasons - cannot always be brought to trial in the country where the crimes have been committed. These makes extradition and mutual legal assistance very crucial part of prosecution of international crimes.

PGA work in Uganda and the legal framework

Parliamentarians for Global Action (PGA) has been involved since June 2000 in the process that led Uganda to ratify the Rome Statute of the International Criminal Court (ICC), refer the situation in the North to the ICC's jurisdiction, and implement fully the Rome Statute's obligation under the ICC Act (2010). PGA remains interested and committed to the effective and efficient prosecution of international crimes committed with impunity. Under its complementarity project, PGA has been

contributing to building political will towards the legislative and policy development processes and implementation of the same.

The obligation for the International Criminal Court (ICC) to cooperate with states finds its legal basis, *inter alia*, in article 93 (10) of the Rome Statute. Under this provision, the Court may, upon request, cooperate with and provide assistance to a state conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the law of the requesting state.

The Ugandan ICC Act, 2010, section 20 provides a host of grounds under which assistance in any matter related to arrest, investigation, prosecution and punishments of international crimes can be sought.

Investigation and prosecution

In Uganda, under the leadership of Joseph Kony, the so-called Lord Resistance Army has abducted over 20,000 children under the age of 15. This number constitutes up to eighty percent of the rebel group's membership. The organization that I represent today, Parliamentarians for Global Action— including its Ugandan and Central African Republic National Groups – strongly supports the efforts of Madame Prosecutor Fatou Bensouda and of the International Community to arrest and surrender to the ICC Mr. Kony and the other indicted leaders of the LRA.

In another case, in the Democratic Republic of Congo, Thomas Lubanga Dyilo had been the first individual who had been found guilty as co-perpetrator of the charges of conscripting and enlisting children under the age of 15 into the “Union of Congolese Patriots” (The UPC) and the “Patriotic force for the liberation of Congo” (the FPLC) and of using those children to participate actively in hostilities in the DRC.

Lubanga has been sentenced by the ICC to 14 years in prison in July 2012. This has been the first sentence issued by the ICC.

Since the creation of the International Crimes Division in Uganda (ICD), investigations have been carried out in the Northern conflict and the Western Region of Uganda. This included the Barlonyo Massacre where over 200 people were hacked to death in a day by the LRA, the Pagak attack where a whole village was razed with fire and over 65 people killed, the Muchuni attack in Kitgum District where 56 people were hacked to death, the abductions of young girls and transfer to Sudan and the DRC and marrying them off to the rebel., the 1998 Allied Defence Forces (ADF) attack on Kichwamba technical institute where 80 students were burnt to death among others.

With Globalization of crime, we realize the increasing need from National Authorities for the assistance of authorities in other countries in order to ensure successful investigation, prosecution and adjudication of cases, in particular those cases of international and transnational nature.

All the above cases cited were to a great extent planned outside Uganda. Successful prosecution of the cases requires gathering evidence across the borders. For example the ADF have their bases in the DRC and, their leader Jamiru Mukulu as far back as 2011 was resident in Nairobi where he coordinated a lot of rebel activities and planned to attack civilians. He is now believed to be in the UK and occasionally travels to Congo incognito.

The LRA have for the past 23 years had bases in Sudan and have now moved to DRC and CAR terrorizing civilians. They continue to abduct and conscript young boys and girls into their rebel group.

The July 2010 twin bombing which left 79 people dead and many injured was mainly planned in Somalia, Kenya, Tanzania and executed in Uganda.

Mutual legal assistance and extradition

The security council in its resolution **1373 (2001)** decided that all states should afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings. The foregoing provision is binding for all states, including states that have not ratified all or some of the universal counter-terrorism instruments.

States within the East African region have of late most frequently made use of bilateral and multi-lateral treaties on mutual legal assistance in criminal matters, in addition to existing informal cooperation mechanisms. The informal and treaties used in the region include the;

- The OAU convention or IGAD conventions on Mutual Legal Assistance and Extradition,
- The UN Convention against Transnational Organized Crime (UNTOC) 2000.
- The Scheme relating to Mutual Assistance in criminal matters within the Common wealth (the Harare scheme).
- The regime of UN Conventions against terrorism including the convention for the suppression of terrorist bombings (1997) & the convention for the Suppression of Financing of terrorism (2000)
- The 2003 UN Convention against corruption (UNCAC)
- INTERPOL (International Police)

- The Extradition Act 1964 laws of Uganda

.We have found it necessary in a number of cases to use joint investigation teams in order to succeed in our work. The successful investigation and arraignment of the 15 accused persons in the July 2010 attack was greatly achieved through the joint investigations carried out by Uganda, Kenya, Tanzania police and prosecutors.

- The investigations into the atrocities committed by the LRA in Uganda, the DRC and CAR call for joint investigations by officers from CONGO, CAR, Sudan and Uganda.
- Some witnesses in foreign jurisdictions need protection during investigations, trial time and for a reasonable time after investigations.

Challenges and opportunities

1. Gathering evidence in some territories is challenging due to disharmony in laws or due to lack of enabling laws for law enforcement agencies to cooperate. More often than not, there is lack of common standards and accepted practices. As a result, some states take months and years to honor a request. Other times the response may come back even negative. E.g in 2009, Uganda made a request to UK Central Authority under the Harare scheme for witness statements and verifying documents and inspection of bank transactions, we received a final response to the request in February 2012 that the issues had not been investigated.
2. Requests get delayed and even misplaced at the various stages e.g the Diplomatic channel, the Central authority. This hinders obtaining evidence in real time.
3. Because many of the cases we are dealing with are organized across borders, the threat that the organizers of the crimes represent to witnesses as well as the collaborators of justice is not confined by national borders. Physical and

psychological intimidation of witnesses and their relatives can take place in different jurisdictions.

4. Victims are usually apprehensive of participating in the trials for fear of their safety. They also see no benefit in participating in the trial process. Most victims and witnesses often argue that the prosecution process will not repair the damage they suffered.
5. Joint investigations require a considerable resource. Issues arise with regard to who should provide the necessary resources; is it solely the state that has been affected by the crime under investigations, or should there be cost sharing?
6. Disharmony in laws. This hinders cooperation amongst states; in Uganda, we still have the death penalty in our laws and countries which do not have a death penalty are often reluctant to extradite or to offer mutual legal assistance.
7. Language barrier is yet another challenge in the area of cooperation and coordination of investigations. In Uganda the national language is English while in Congo they speak French and Lingala. Interpreters and their costs are not provided for in all the legal framework that have earlier been mentioned. The use of interpreters puts a strain on the resource put aside by the investigating state.
8. It takes long for states in the region to update laws; e.g. in Uganda the law of extradition is the Extradition Act 1964, it has not been updated since 1964 and hence does not reflect the new emerging crimes as extraditable offences.

Way forward and opportunities:

1. Establishing harmonious working relations across the globe. We also need to encourage personal contact between officials involved in the prosecution and investigation of these kinds of crimes to ensure timely cooperation and retrieval of evidence.

2. We could explore expediting cooperation through the use of alternatives to formal mutual assistance requests such as informal police channels, DPP to DPP, Interpol, and other communication mechanisms in particular if evidence is voluntarily given or publicly available or through the use of joint investigation teams with a capacity to directly transmit and satisfy informal requests for assistance.
3. We need to advocate for reviewing and enhancing our national law framework to enable extradition as required by all treaties to which our states are parties to ensure that appropriate criminal acts are extraditable and establishing our legal jurisdiction over those criminal acts.
4. Need to devise strategies to see how witnesses and victims leaving outside the investigating state can be protected in the foreign jurisdictions without inconveniencing them.
5. Another important area to consider is mobilizing resources for victim reparations. Successful prosecution is quite impossible when witnesses and victims are disgruntled. We could also explore ways of extending the cooperation to outreaches in foreign states to interest witness and stress to them the importance of participating in trials for this is one of the ways to fight impunity.
6. Issue of financing of joint investigations has to be addressed. Can states who are availing officers to jointly investigate cases contribute in part towards facilitating its nationals, or do we leave it to the aggrieved state to foot the expenses? How can states be obliged in this respect?
7. Need to set up fully pledged research units in the prosecution agencies and to empower them financially. The units can make follow up on laws that need updating, domestication and or recommending for the revision of laws.

8. In order to ensure timely response to requests, it is important to designate an officer in all prosecution agencies to deal with Mutual legal assistance matters and, to exchange the contacts of the designated officers to expedite coordination and cooperation.

I thank you for listening to me!