

**IGAD/ICPAT REGIONAL TRAINING OF TRAINERS: MUTUAL LEGAL ASSISTANCE & EXTRADITION
UNDER THE RECENTLY ADOPTED IGAD CONVENTIONS
23 – 25 MARCH 2010
INTERCONTINENTAL HOTEL
NAIROBI, KENYA**

BACKGROUND PAPER

This paper provides background for a 23-25 March 2010 training seminar in Nairobi on extradition and mutual legal assistance under the recently adopted conventions of the Intergovernmental Authority on Development (IGAD). Participants in the training seminar will include law enforcement officials, prosecutors, and judges from IGAD member states. The meeting will be facilitated by resource persons from the Center on Global Counterterrorism Cooperation, the IGAD Capacity Building Programme Against Terrorism (ICPAT), Amicus Legal Consultants Ltd., the African Centre for the Study and Research on Terrorism, the United Nations Office on Drugs and Crime's (UNODC's) Terrorism Prevention Branch (TPB), and the Pan African Lawyers Union, among others.

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Why does IGAD need improved mutual legal assistance and extradition?

Eastern Africa, including the states that make up IGAD, is dealing with a range of transnational security threats. Kenya, Somalia (and Tanzania) have all been targeted by transnational terrorists in the last two decades, with devastating results for their people and economies. And there are signs that the region is also increasingly beset by transnational criminal activity, some of it potentially funding political extremism and political violence.

The region's economy, governance institutions, and environments have all been under great stress in the last few years, creating additional incentives for some groups to look to illicit sources of funding and power. Porous borders, weakly regulated cross-border population movements, and traditional cross-border ethnic ties facilitate such activity. And there is a growing diversity in these activities.

UNODC reports growing trafficking in heroin, cocaine, cannabis and amphetamine-type stimulants and their precursors into and through Eastern Africa. It has identified airports in Nairobi and Addis Ababa, as well as seaports in Dar es Salaam and Mombasa, as key entry points for illicit drugs into the region. Cannabis seizures in the region rose by 40% between 2005

and 2006 alone, and heroin seizures in Pakistan destined for the region tripled between 2005 and 2007.¹

This steady flow of drug money may also be linked to the stimulation of other criminal markets and regional networks – in persons, money, arms, wildlife, and timber products. For example, UNODC and Kenyan authorities report development of new lines of criminal activity by Kenya’s Mungiki.² Consumption of illicit commodities – from cannabis, to cocaine, to counterfeit goods – appears to be on the rise throughout the region, undercutting state revenue and social services. Migrant smuggling is increasingly organized and connected to groups in the Sahel and Maghreb with extremist connections, and to criminal groups in Southern Europe and the Arabian Gulf – as well as extremist groups in Yemen. Human smuggling and human trafficking also appear increasingly to be an important source of income for the region’s warlords and criminal dons. The region’s conflicts stimulate the growth of regional arms markets, further facilitating the growth of secondary criminal markets and criminal entrepreneurialism. Somali pirates have recently developed new financing arrangements – including a community based stock investment system³ – and have turned from maritime piracy to terrestrial brigandage.⁴ Indeed, attempted acts of piracy by Somali pirates doubled from 2008 to 2009, from 111 attempts to 217 attempts, reaching into international waters and the maritime jurisdictions of numerous other states.⁵

Figure 1: Piracy attacks worldwide, 2009. *Source:* International Maritime Bureau.



¹ See UNODC, *Organised Crime in Eastern Africa: A Discussion Paper*, Vienna, 2009, p. 29.

² *Ibid.*, p. 13 and following.

³ Mohamed Ahmed, “Somalia Sea Gangs Lure Investors at Pirate Lair”, *Reuters*, 1 December 2009.

⁴ “Somali Pirates’ New Land Tactics Worry UN”, *BBC*, 4 March 2010.

⁵ International Maritime Bureau, “2009 Worldwide Piracy Figures Surpass 400”, 14 January 2010.

Tackling such transnational criminal activity is crucial to ensuring regional stability and long-term development prospects. Unchecked, such criminal activity fuels corruption and weakens democracy – a pattern West Africa is currently confronting, and other regions, such as Central America, have been struggling with for some time. Yet dealing with the growth of these criminal markets is not easy for African states – not least because Africa, as a region, has fewer police and judges per capita than any other region in the world.⁶ This means that effective and efficient cooperation across borders is all the more important for tackling transnational crime, its local manifestations, and the political extremism it can fund and fuel. Effective mutual legal assistance and timely, transparent extradition cooperation are key.

IGAD’s new Mutual Legal Assistance and Extradition Conventions

Advancing efforts to improve legal and judicial cooperation were among the goals of a 2008 project the Center on Global Counterterrorism Cooperation completed with the support of the Ministry of Foreign Affairs of Denmark and in cooperation with ICPAT aimed at identifying priority capacity gaps in the subregion in the context of the UN Global Counter-Terrorism Strategy. The final project report, *Implementing the UN Global Counter-Terrorism Strategy in East Africa*,⁷ contains a series of concrete recommendations aimed at enhancing the capacities of governments and other actors in the subregion, including ICPAT, to implement the different pillars of the UN Strategy. These recommendations were developed following a seminar the Center co-hosted with ICPAT in Addis Ababa, which included participants from governments in the subregion, partner countries, the UN system, and civil society.

A number of the recommendations from this process stressed the development of tools to allow for enhanced legal cooperation in the IGAD region (*e.g.*, recommendations 15-17, and 25). Consistent with these recommendations, a forum of IGAD judicial/legal experts was formed and met twice in 2008 to begin work on draft extradition and mutual legal assistance conventions for East Africa (recommendations 15 and 17). IGAD member states, meeting under the auspices of ICPAT, reached agreement at the political level on the texts of draft Extradition and Mutual Legal Assistance Conventions when IGAD Ministers of Justice met on 1-2 April 2009. Those conventions were adopted by the IGAD Council of Ministers at their 33rd ordinary session in Djibouti on 7 – 8 December 2009.

The IGAD Mutual Legal Assistance and Extradition Conventions provide an important platform for improved legal cooperation in the sub-region. Once implemented, they should help catalyze both formal and informal cooperation between counterterrorism and law enforcement officials in Eastern Africa, as promoted by the United Nations’ Global Counter-Terrorism Strategy. This will not only develop and improve the counterterrorism-related capacities of individual countries in East Africa, but also enhance the subregional capacities in this area.

⁶ Africa has 180 police per 100,000 citizens; Europe has 346, North America 325. Africa has 3 judges per 100,000 citizens; Europe has 18 (UNODC: “Crime and Development in Africa”, June 2005).

⁷ Available online at: <http://www.globalct.org/images/content/pdf/reports/eastafrica.pdf>.

Yet effective cooperation depends on the existence of a network of officials who understand the system, and use it.

About this train-the-trainers seminar

This three-day seminar, organized by Center on Global Counterterrorism Cooperation and ICPAT with the support of the Danish Ministry of Foreign Affairs, aims not only to train a leading group of regional officials in the use of these new IGAD instruments, but also to train them to train others. The seminar is designed to raise awareness of the new instruments among practitioners in the subregion and focus on actual cooperative and implementation arrangements by, among other things, strengthening and widening the network of IGAD judicial/legal experts.

To assist practitioners in using the IGAD Mutual Legal Assistance and Extradition Conventions, the Center commissioned Amicus Legal Consultants Ltd. and Donald Deya, CEO of the Pan African Lawyers Union, to prepare a draft *IGAD Practitioner Reference Manual for Mutual Legal Assistance and Extradition*. The reference manual includes descriptions of the provisions of those conventions as well as practical legal issues and difficulties that practitioners (be they prosecutors, government legal advisers, law enforcement officers, or judges) may face – and possible solutions. In addition, the manual also includes the complete text of both conventions and a reference guide to other resources on mutual legal assistance and extradition. This draft will be finalized after the conclusion of the workshop, once the comments and suggestions of the workshop participants have been incorporated.