

**LEGAL MECHANISM OF THE EAST AFRICAN TREATIES  
IN FIGHTING CROSS BORDER CRIMES**

**Case study: Gatuna border**

A Thesis

Presented to the College of  
Higher degrees and Research  
Kampala International University  
Kampala-Uganda

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In partial fulfillment of the requirements for the degree  
Master in Public International Law

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LLM/35886/113/DU

October, 2012



## **DECLARATION A**

"This Thesis is my original work and has not been presented for a Degree or any other academic award in any University or Institution of Learning".

  
\_\_\_\_\_  
MAZIMPAKA Eddy

\_\_\_\_\_  
October, 2012

## **DECLARATION B**

"I confirm that the work reported in this Thesis was carried out by the candidate under my supervision".

A handwritten signature in blue ink, appearing to read 'NABISINDE Winifred', is written over a horizontal line.

Dr. NABISINDE Winifred


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October, 2012

## APPROVAL SHEET


This Thesis entitled " **Legal Mechanism of the East African Treaties in fighting cross border crimes: A case study of Gatuna border**" prepared and submitted by **Mr MAZIMPAKA Eddy** in partial fulfillment of the requirements for the degree **of Masters of Public International Law (LLM)** has been examined and approved by the panel on oral examination with a grade of.....

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## **DEDICATION**

This study is dedicated to my Almighty God,

My Late Parents,

My brother and sisters

## ACKNOWLEDGEMENT

First and foremost I offer my sincerest gratitude to my supervisor, **Dr NABISINDE Winifred** who has supported me throughout my Thesis with her patience and knowledge whilst allowing me to work in my own way. Without her encouragement and commitment and effort my Thesis would not have been completed or written.

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## **ABSTRACT**

In this study, the researcher has focused on four questions mainly: in order to ascertain the measures to promote and enhance peace and security of general interest, what are the mechanisms adopted by EAC Partner States? With respect to the Treaty for the establishment of the EAC strategies which emphasizes peace, security and good neighborliness, explain the EAC strategies in the maintenance of regional peace and security. Despite their willingness to cooperate, what is the quality of the said cooperation of EAC member state in security matters? and lastly, as an EAC Partner State and according to its position while ratifying the Treaty, what is the role of Rwanda in implementing Treaties and Protocols in terms of tackling cross border crimes in the region? The research follows the assumption that there is a link between cross border crime and the cooperation of EAC Partner States in fighting against it.

The research project consists of five chapters. Chapter one consists on the problem and its scope where the author describes the background of the study, the history of East African Community and its States in order to provide a better understanding of the course of events in the of East Africa Region. Chapter two deals with the review to the related literature to the study. Different ideas from various authors and scholars were studied and critically analyzed. Chapter three provides the methodologies used to collect data. The main methodology was qualitative methodology which consists on consultation of documents such as books, legal instruments and reports in conformity with the topic. Chapter four is the core examination of legal analysis of international and regional instruments that are applicable in the region. It also analyses national instruments and strategies adopted by Partner States. Finally chapter five provides a conclusion and recommendations. The author tries to summarize the key concepts in general and gives his point of view about what should be done.

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### **List of acronyms**

AML	:	Anti Money Laundering
Art	:	Article
AU	:	African Union
BNI	:	Bureau of National Investigation
CEPS	:	Customs Exercise and Preventive Service
CPMR	:	Conflict Prevention and Management Resolution
CPS	:	Customs Preventive Service
EAC	:	East African Community
EAPCCO	:	East African Police Chief Cooperation
ECOWAS	:	Economic Community of West African States
EU	:	European Union
FDLR	:	Force Democratique pour la Liberation du Rwanda
IGP	:	Inspector General of Police
NRA	:	National Resistance Army
OAU	:	Organisation of African Union
PRG	:	Police Research Group
REC	:	Regional Economic Community
SALW	:	Small Arms and Light Weapons
Vol	:	Volume



## **List of Cases**

Case The Prosecutor versus HAKIZIMANA Joel/ RP 0099/11/HC/Mus

Case The Prosecutor versus MATEO Daniel/ RP 0026/ 2010/ TGI/ RBV

## **International instruments**

Universal Declaration of Human Rights, 1948

Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace Keeping and Security, 1999

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

Political Declaration and Action plan against Money Laundering, 1988

United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000

International Convention for the Suppression of the Financing of Terrorism, 1999

United Nations Convention Against Transnational Organized Crime and the Protocol Thereto, 2004

## **Regional Instruments**

Treaty for the Establishment of the East African Community, 2000

Treaty of the Accession of the Republic of Rwanda into the East African Community, 2007

Protocol on Establishment of Custom Union, 2004

Protocol on Combating Drug Trafficking in the East African Region, 2001

Protocol on the Establishment of the East African Common Market, 2009

Protocol on Decision Making by the Council of the East African Community, 2001

East African Draft Protocol on Foreign Policy Coordination, 2010

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Bilateral Agreement for the Establishment and Implementation of a one stop Border Post at Rusumo (between Rwanda and the Government of the United Republic of Tanzania, 2010).

### **National Laws**

The Constitution of the Republic of Uganda, 1995

The Constitution of the Republic of Rwanda of June 2003

Rwandan Organic Law no 01/2012/OL of 02/05/2012 instituting the Penal Code

Uganda Penal Code Act

## **CHAPTER ONE**

### **THE PROBLEM AND ITS SCOPE**

#### **1.1 Background of the study**

Eastern Africa comprises of three diverse and culturally different geographical areas, namely the East African region (Kenya, Tanzania, Uganda, Burundi, and Rwanda), the Horn of Africa (Djibouti, Eritrea, Ethiopia and Somalia) and the Indian Ocean Islands of the East African coast (Seychelles, Comoros, Mauritius and Madagascar). The East African Community (EAC) is an intergovernmental organization with the six countries mentioned above namely Kenya, Tanzania, Uganda, Burundi, Rwanda including Southern Soudan. The organization was originally founded in 1967, however it collapsed in 1977, and was officially revived on July 7, 2000. In 2008, after negotiations with the Southern Africa Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA), the EAC agreed to an expanded free trade area including the member states of all three organizations. The EAC is an integral part of the African Economic Community. Burundi and Rwanda joined the EAC on 6th July 2007.

The East African region is composed of six states, three of which (Kenya, Uganda, and Tanzania) were the founding partners, while Burundi and Rwanda joined in 2007 and finally Southern Soudan is a part of it after it successfully succeeded from Sudan. There is a concern of cross border crimes in the region but there is also the co-operation of East Africa Partner States also known as regional integration and this is a process in which states enter into a regional agreement in order to enhance regional cooperation through regional institutions and rules. The objectives of the agreement could range from economic to political, although it has generally become a political

economy initiative where commercial purposes are the means to achieve broader socio-political and security objectives<sup>1</sup>.

Past efforts at regional integration have often focused on removing barriers in the region, increasing the free movement of people, labour, goods, and capital across national borders, reducing the possibility of regional armed conflict (for example, through Confidence and Security-Building Measures, and adopting cohesive regional stances on policy issues, such as the environment, climate change and migration.

Crime is a particularly interesting problem because it is in many respects the obverse of altruism. This is especially true if we define crime broadly as behavior in which individuals obtain resources from others via force, fraud, or stealth<sup>2</sup>. Cross border crime on the other hand is the fact that an offender crosses the border through the police force boundary to perpetrate a crime or an offence<sup>3</sup>.

Closer integration of neighboring security is seen as a first step in creating a larger regional confidence by reducing other crimes and risks. The community has established fundamental principles and objectives to fight against cross border crimes. As said above, a criminal who committed an offense in Rwanda could take asylum in Uganda or in any other country through Gatuna border, but now as we are looking for cooperation in security matter, he/she will be caught by Uganda police also known as East African Police Chief Cooperation (EAPCO). Bilateral and sub-regional interchange arrangements are advocated as development tools of the region. In broad terms, the desire for closer integration is usually related to a larger desire for opening to the outside world. Regional security cooperation is being pursued as a means of promoting development through greater efficiency, rather than as a means of disadvantaging others. The nation-State system, which has been the predominant pattern of international relations

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<sup>1</sup> This means the legal mechanism of the EAC Treaties and their provisions to counter cross border crimes

<sup>2</sup> Crime, classification and categorization, in [www.wikipedia.com/crime/html](http://www.wikipedia.com/crime/html) consulted on 23/May/2012

<sup>3</sup> MIKE Porter(1996), Tackling cross border crimes, paper 79,

since the Peace of Westphalia in 1648 is evolving towards a system in which a regional groupings of States is becoming more important than sovereign States.

The community has underscored the importance of peace and security in order to ensure a successful process of regional integration in regarding the control of cross border crime. In order to enhance cooperation in fighting cross border crimes, a council on Interstate security has been established and some key areas of focus are:

- i. Implementation of the Protocol on illicit drug trafficking
- ii. Small arms and light weapons management program and finally
- iii. Cooperation in police matters

As the world is facing terrorism acts, the region is also threatened with the same issues. As an evolution against terrorism we need to mention the Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED) which are actively engaged in developing closer ties with international, regional and sub-regional organizations. The above two play an important role in assisting States with the implementation of resolution 1373 (2001). Cross border crime in itself refers specifically to that point at which transnational crime impacts on the border, the point at which goods crosses the border.

Since 2003, the Committee has held five special meetings with these bodies to discuss closer cooperation and other issues. Experts from various organizations also take part in the country visits conducted by CTED on behalf of the Committee, and they play a key role in ensuring follow-up to the conclusions and recommendations of the mission.

## **1.2 Statement of the problem**

The EAC region is one of those characterized by internal disturbance. Moreover, it is situated in the category of developing countries where a lot of people commit crimes in order to get something to survive. Several causes of criminal acts which can be a danger to the security of the region have been identified among them:

- i. Poverty
- ii. Unemployment which contributes to crime through looking ways to earn money by any means.
- iii. Population density and degree of urbanization, etc...

In order to promote the achievement of the objectives of the Community as set out in Article 5 of this Treaty particularly with respect to the eventual establishment of a Political Federation of the Partner States, the Partner States shall establish common foreign and security policies<sup>4</sup> as its common objectives, these are:(a) safeguard the common values, fundamental interests and independence of the Community;

(b) Strengthen the security of the Community and its Partner States in all ways<sup>5</sup>;

There is concern on the possibility of rising insecurity due to opened borders. The infiltration of illegal firearms from conflict areas and the possible free movement of criminal elements are some of the concerns. The security threat posed by rebel movements in the Great Lakes and the conflict in Northern Uganda are cases in point. The issue of incompatibility of the security forces of the partner states due to differences in discipline and accountability is also a challenge. The entry of Rwanda and Burundi into the Community has raised these fears as these countries are considered as 'danger prone' states. However, Rwandans and Burundians feel that the formation of the Federation would adequately deal with the issue of instability in the region. Let us mention that cross border crimes constitute an obstacle on the cooperation among States. On that issues, customs administration recognize that very early on that customs would be a key agency in any fight against transnational organized crime.

### **1.3 Purpose of the study**

The main purpose of the study is to analyze the cooperation of East African member States when combining their effort to fight against cross-border crimes. This

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<sup>4</sup> Treaty for the establishment of the East African Community (2000) Art 123,par.1

<sup>5</sup> Idem, Article123 par.3.a & b

means that as the cooperation is strengthened, crimes are more and more eradicated in the region.

#### **1.4 Research objectives**

#### **1.5 General objectives**

The study will discuss how these States will co-operate in order to fight against cross border crimes, the way to undertake constant review and implementation of measures in combating crime and maintaining peace and security in the region.

#### **1.6 Specific objectives**

Among specific objectives, this research is focused on:

- i. Understanding the level of cooperation of E.A.C members and the level of these members in fighting cross-border crimes
- ii. Analyzing the provisions of E.A.C Treaty about the security in the region
- iii. Examining the efforts and weaknesses of E.A.C members in acting against crimes in the region
- iv. Presenting the actual position of Rwanda as a member of E.A.C, in his policy against cross border crimes.
- v. Explaining in detail the result of the cooperation of EAC member States in coordinating their effort in fighting against crimes that cross the border specifically of Gatuna because it is one among the joint border of the community.

#### **1.7 Research questions**

The researcher based his research of the following questions:

1. In order to ascertain the measures to promote and enhance peace and security of general interest, what are the mechanisms adopted by EAC Partner States?



2. With respect to the Treaty for the establishment of the EAC strategies which emphasizes peace, security and good neighborliness, explain the EAC strategies in the maintenance of regional peace and security.
3. Despite their willingness to cooperate, what is the quality of the said cooperation of EAC member state in security matters?
4. As an EAC Partner State and according to its position while ratifying the Treaty, what is the role of Rwanda in implementing Treaties and Protocols in terms of tackling cross border crimes in the region?

## **1.8 Hypothesis**

The researcher commenced on the research with the following hypothesis

There is no significant relationship between legal mechanism of EAC Treaties and the fight against cross border crimes.

There is no significant relationship between cross border crimes and current cooperation of EAC member States.

## **1.9 Scope of the study**

### ***Geographical scope***

This study was conducted in Rwanda, especially at Gatuna in Kigali, because it was easy to access different offices such as; the Ministry of East Africa, Ministry of internal security and the Police Headquarters in Kigali.

### ***Theoretical scope***

The cooperation of EAC member states to prevent cross border crimes was measured by the knowledge for stabilizing the region. Once countries concerned strengthened their effort, there is a guarantee that this cooperation will be successful to

fight against crimes in the interest of all members. The present study will be based on the different measures to be taken by Partner states to fight against crimes that cross the border of Gatuna as one of the East African border. However, it will describe the level of (IV) co-operation of East African member States in terms of conceptual skills.

### **1.10 Significance of the study**

Considering the types and the number of crimes that happen across the border of Gatuna, the study is expected to demonstrate the attitudes and the measures of EAC Partner States to harmonize the region. Furthermore, it will create an opportunity to highlight what each country, and civil society shall benefit from it. This study is also expected to offer scholars including researchers, the real advantages of cooperation in fighting cross border crimes.

### **1.11 Operational definitions of key terms**

The following terms have been defined in the context of this research, as follows:

**Treaty:** according to the Article 2 of the Vienna Convention on the Law of Treaty, a Treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

**Border:** line dividing two areas, a line that officially separates two countries or regions, or the land on each side of it. Paradoxically, borders serving as the line that links and at the same time separates one country from the other could be a source of benefit and of detriment to a state depending on the extent to which they are secured.

**Crime:** according to Encarta dictionaries (2004) crime means an illegal act, an action prohibited by law or a failure to act as required by law. It is the breach of rules or laws for which some governing authority can ultimately prescribe a conviction.

**Trans-border crime**" refers to all crimes organized or perpetrated by individuals, organizations or networks of local and/or foreign criminals operating beyond the national boundaries of a Member State, or acting in complicity with associates based in one or several States adjoining the country where the crimes are actually committed or having any connection with any Member State;

**Co-operation** includes any undertaking by the Partner States, jointly or in concert, of activities undertaken in furtherance of the objectives of the Community, as provided for under the Treaty or under any contract or agreement made under the Treaty or in relation to the objectives of the Community;

**Customs area**" means that area licenced by a competent authority for purposes of specific customs operations;

**Customs Union**" means the East African Community Customs Union established by Article 2 of the Protocol on establishment of Custom Union<sup>6</sup>.

**Partner States**" means the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty; ( Rwanda, Burundi)

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<sup>6</sup> Protocol on the establishment of the East African Custom Union Protocol, art. 2

## **CHAPTER Two**

### **2.1 Review of related literature**

#### **2.2 Concepts, opinions, ideas from Authors**

In the present chapter the researcher discusses the literature review and related studies in connection to the variables.

The present chapter considers the review of related literature to the study. It outlines the conceptual frame and the related literature by looking at (i) factors of cross border crimes, (ii) Provisions of EAC Treaties and Protocols (iii) mechanism adopted by States member in fighting against those crimes through cooperation especially those passing through Gatuna border.

A border in the technical sense implies an area or region closer to a boundary<sup>7</sup>. As popularized in Anglo American literature it refers more commonly to the boundaries between politically sovereign territorial entities<sup>8</sup>. In this perspective, it is viewed in terms of the main line that demarcates one country from the other. As such, they define geographical boundaries and legal jurisdiction of political entities such as sovereign states, federated state, governments and sub national entities. In Africa, the existence of linear boundaries is linked to the Berlin conference of 1884-1885 where the European imperialist (Britain, France, Germany, Spain and Portugal) decided to divide African space between themselves as their sphere of influence<sup>9</sup>.

Legally, as defined by Sampson and Laub 1993; crimes usually are defined as acts or omissions forbidden by law that can be punished by imprisonment and/or fine. Here we understand cross border crime constitutes one among crimes which punishable by the society where it was committed. The researcher also agrees with the author because

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<sup>7</sup> Prof. Ian BROWNLIE: A legal and diplomatic encyclopedia, London, C. Hurst, 1979, p.3

<sup>8</sup> Asiwaju (2004): Ethics Relations across Africa's International Boundaries, 1884-1984 C. Hurst and company, London, University of Lagos Press, Lagos Nigeria, pp252-259

<sup>9</sup> Margaret Mansa Sosuh (2011), Border security in Ghana: Challenges and Prospects, Occasional Paper no 32, p.6

punishment is a prevention of the crime and when criminal individual or groups are punished it makes a better society in the future.

The work of Gottfredson and Hirschi (1990), for example, suggests that crime is of a consensual nature given that everyone has the potential to break rules and that those who transgress the law make a rational choice to do so (based on the need for excitement, risk taking, or immediate satisfaction). In this instance the law necessarily differentiates appropriate from illegal behavior.

In summary the study about regional cooperation against cross border crimes is any more considered new as for example it have been discussed by Anadi Sunday KACHIMA McDonald of Nigeria in his Thesis entitled " Regional integration in Africa, the case of ECOWAS<sup>10</sup>" where he states that ECOWAS mandate was to promote cooperation and development in economic, social and cultural activities and indeed in all fields of human endeavor, to raise the standard of living of the peoples of the region, expand and maintain economic growth and stability as well as coordinate better relations among member states and generally contribute meaningfully to the development of Africa.

Meanwhile, Mike Porter<sup>11</sup>, argued that cross border crime is characterized by an offender crossing a police force boundary to perpetrate a crime or commit an offence in such a way as to require the police to cross boundaries to investigate it. The public rely on it is to stop dangerous people from entering the country, prevent illicit, dangerous goods, such as drugs and weapons from reaching their communities and take effective action against those that break rules. The researcher notes that the whenever a an offender crosses the border to another country this may result of insecurity not only in the country he/ she is from but also in the entire region and the solution is the investigation of the police and the security personnel.

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<sup>10</sup> Anadi, Sunday Kachima McDonald, Regional integration in Africa, the case of Ecowas, 2005

<sup>11</sup> Mike Poter, Tackling Cross Border Crime, 1996

Egger (1990) identifies a number of factors relevant to the investigation of cross border crime. He argues that the fundamental problem is the lack of sharing of information and personal networking between law enforcement officers and their agencies. This statement of Egger is true in a way that in most of cases the institutions in charge of preventing illicit cross border movement still lacking information equipment. For this statement, there is complementarity with the researcher's findings to emphasize the importance of sharing information among Partner States and exchange of visits and training by security authorities together with security personnel

Furthermore, various legal instruments have provided about cross border crimes, in other words, East African Treaties and Protocols are against those cross border crimes.

### **2.3 Theoretical perspectives**

This part of the literature review provided theoretical perspective of interrelated variables in light to the research objectives by specifying relations among variables with the purpose of explaining this phenomenon.

The present study is based on the integration theory as it have been done by Sunday Kachima M. Anandi<sup>12</sup>. The movement of person and goods is inevitable in undertaking these cross border activities. It is not easy to arrest all criminals who cross the border because the border is nowadays used by a big number of people from everywhere in the region. Another issue is that some goods may be legal in one country and illegal in another. Let us take an example of kanyanga a local beer which is forbidden by Rwandan law and is most used in Uganda, it sometimes crosses Gatuna border to Rwanda and most of the time the offenders are arrested by Rwandan police.

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<sup>12</sup> Anadi, Sunday KACHIMA McDonald, Regional integration in Africa, the case of ECOWAS, PhD Dissertation, 2005

Studies conducted in West Africa by Lamine, Cisse, 2006; have shown that between 4 and 5 million ECOWAS citizen ply the highway and frontiers of the community's territory every month. The researcher agrees with Lamine because even an average of not less than 2000 people cross Gatuna border every day. This is to show that the free movement of people and goods is a facility to reinforce co-operation among states because these cross border activities are essential for ensuring peace and stability, and for promoting pertinent political and social-economic activities needed for integrating regional economies.

The aim here is to undertake a short summary of different forms and processes of regional integration in order to have a clearer picture of EAC performance in relation to its stated objectives. The process of regional integration involves joining together different economies into large economic areas for the purpose of free trade while at the same time removing all discriminatory barriers between them. This in turn creates the necessity for some degree of cooperation and coordination of policies between them. In addition, a short overview of different regional schemes will be undertaken while striving to ascertain the real motives behind their formation.

Writers like Garland (2001) have argued that crime and its control are no longer considered the sole responsibility of the state. On the contrary, the state has retreated from its claim to be the "chief provider of security" and has reconceived its response to crime "on a more dispersed, partnership basis. In this arrangement the state works through civil society and not upon it, and emphasizes proactive prevention rather than the prosecution and punishment of individuals".

## **2.4 Related studies**

There are many researchers who have studied different aspect of cross border crimes. In this part the researcher will refer to some of the previous researchers related to this issue.

The work of Krasner compliments the researcher's findings where he states that "a State that cannot regulate what passes across its borders will not be able to control what happens within it<sup>13</sup>." This line of argument underscores the need for Rwanda and Uganda as East African Partner States to identify the challenges and tackle them to ensure effective security at the borders especially when issues that threaten border security such as money laundering, human, drug and weapon trafficking are on the increase.

Rwanda and Burundi join the East African Community in 2007 and this event was characterized by another stride when these two countries were accepted into the EAC on 18 June 2007. KIOKO argued that this calls for a modification of the laws of Rwanda starting with the constitution to comply with the requirements of the EAC.

David HAMILTON, in *An East African Federation*, "The Journal of Modern African Studies", state the role of the unification of EAC member states and its security concern. The researcher found that the unification is the reinforcement of the cooperation in order to find a solution together on security issues.

The law 29/2007 of 27/06/2007 authorizing the Treaty of accession of the Republic of Rwanda to the East African Community, signed in Kampala, in Uganda, on 18/June 2007, Official Gazette special, 28 June 2007.

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<sup>13</sup> Krasner(1999), *Sovereignty and Organized hypocrisy*, Princeton, Princeton University Press, p.13



## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Overview**

This chapter provides the methodology, methods and techniques that the researcher used in this study. It entails the research design, sample procedure, research instruments, validity and reliability, data gathering procedures, data analysis, ethical consideration and limitations of the study.

#### **3.2 Research design**

This study employed the descriptive survey design specifically the descriptive correlation. This design was chosen such that establishment of relationship between variables, testing of hypothesis and development of generalizations and use of theories that have universal validity could effectively be determined.

#### **3.3 Research Population**

The population comprised of 4 organizations operating in Rwanda. They were chosen at targeted population because of their capabilities to participate in East African Community legal affairs. The target population size for this study was 79 and this comprised of four categories. These included travelling criminals sued for their crimes committed at Gatuna border post; the Ministry of East Africa in Kigali which has the attributions of regional relations;; the Rwandan Immigration authorities who are responsible for the entry and exit of the country through Gatuna border; and the National Police which has security in its attributions. In a specific way, a total of 36 travelling criminals were interviewed, 8 staff members of MINEAC, 12 Rwandan Immigration Staffs were interviewed from the office of immigration in Rwanda specifically from Gatuna border and Rubavu border, and 23 Rwandan police staffs working with border control were interviewed also.

### 3.4 Sample Size

The research sample size was 41 respondents which included 14 travelling criminals, 4 MINEAC staff members, 7 Rwandan Immigration Staffs interviewed and 16 Rwandan police staffs working with border. The sample size for this study was determined by the Sloven's formula as shown below:

$$n = \frac{N}{1 + N(e^2)}$$

Where; n = the sample size; N = the population size; and e = the level of significance, which is = 0.05. This can further be illustrated as below:

**Table 1**

**Target Population and Sample Size**

<b>Population Category</b>	<b>Population</b>	<b>Sample size</b>
Travelling criminals	38	14
Ministry of East Africa	8	4
Rwandan Immigration Office	12	7
Police staff	23	16
<b>Total</b>	<b>79</b>	<b>41</b>

### 3.5 Sampling Procedure

In this study, respondents were sampled using purposive sampling. This method were used since the issue under investigation is critical and needs people who have rich knowledge and experience about the crimes that cross the border. As a procedure, cases of education level, experience and knowledge regarding issues concerning crimes will be considered. The availability was administered during data collection and also considered as a way of sampling respondents through purposive sampling technique. Alongside the present study, it has been necessary for the researcher to determine the profile of respondents. The researcher determined the gender, age group, educational level, marital status and the nationality of the respondents. Before answering research

questions, this study determined the profile of respondents. This was done in regard to respondents' gender, age groups, education level, marital status and their nationality. The findings regarding the profile of respondents are indicated in frequencies and percentages as shown in a Table.

**Table 2: Respondents' Profile (n=109)**

<b>Gender</b>	<b>Frequency</b>	<b>Valid Percent</b>
Male	29	70.7
Female	12	29.2
<b>Total</b>	<b>41</b>	<b>100.0</b>
<b>Age group</b>		
20-29	4	9.7
30-39	22	53.6
40-49	11	26.8
50-59	4	9.7
60 and above	0	0
<b>Total</b>	<b>41</b>	<b>100.0</b>
<b>Education Level</b>		
Primary	0	0%
Secondary	19	46.3%
Diploma	6	14%
Bachelor	12	29.2%
Masters and above	4	9.7%
<b>Total</b>	<b>41</b>	<b>100.0%</b>
<b>Marital Status</b>		
Single	9	21.9%
Married	21	51.2%
Separated	1	2.4%
Divorce	6	14.6%
Widowed	4	9.7%
<b>Total</b>	<b>41</b>	<b>100.0%</b>
<b>Nationality</b>		

Rwandese	41	100%
Others	0	0%
<b>Total</b>	<b>41</b>	<b>100.0%</b>

**Source: Primary Data**

As indicated in Table 2, females formed 29.2 percent of the respondents while males formed 70.7 percent. The findings from this are that much as both men and women were involved in this study as respondents, most of the respondents were men. Both men and women were sampled to participate in this study because issues under investigation such as fighting cross border crimes. Thus, information from the two genders was complimentary to each other and this enabled fairly balanced findings based on their gender differences.

Table 2 also indicates that the majority of the respondents (53.6 %) were at the age group of 30 to 39, next was those in the age group of 40 to 49 (26.8 %), then the last participants were those by the age groups of 20 to 29 and 50 to 59, each composed of (9.7) Differences in age group of respondents also helped in obtaining different ideas and perceptions about East African laws to fight cross border crimes.

The education qualifications of respondents indicates that the majority of the respondents (46.3 %) had attained secondary school; followed by those who had bachelor (29.2 %); and then those who had diploma with (14 %); then those who had from master degree and above formed 9.7% percent; and lastly, those who dropped out of primary school were the least participants in this study with only 0% percent. Differences on education level helped in analytical research since some of the findings were influenced by education levels of respondents.

About the marital status of respondents, the finding indicated that the majority of the respondents were married (51.2 %), this was followed by those who were single who formed (21.9%) and then those who were divorced forming (14.6 %); and the last group was composed of the widowed with (9.7%) of the respondents. Difference in

marital status helped in tracking information about the study variables that is influenced by the difference in marital status.

Basing on the nationality of the respondents, it was noted that the entire respondent were Rwandan with the average of 100%.

### **3.6 Research Instruments**

The main research instrument used in this study was the interview. This interview was carried out face to face to respondents. It has been chosen because it was considered appropriate tools to collect qualitative and quantitative data. Part one of the question consisted of face sheet and this was about the profile of respondents; part two of the questionnaire strictly determined the level of effectiveness of East African Treaties part three determined level of fighting cross border crimes.( A copy of the interview guide is attached see annex)

### **3.7 Validity and Reliability**

The interview is a reliable instrument to collect qualitative data in a survey design because observation, experiment or the instruments cannot be suitable for collecting desired data. The validity of research instrument was measured using content validity Index and is concerned with whether the data are really about they appear to be while the reliability was done through pre-test of the research instruments and refers to the extent in which data collected techniques or analysis procedure will lead to consistent results. In the process of determining the validity of questionnaire, two raters or experts in the area of research instrument were asked to set the content in the questionnaire.

Reliability is a measure of the degree to which a research instrument yields consistent results or data after repeated trials. Reliability of the instrument was established through a test-retest technique. The researcher conducted a pre-test of the

instrument on group of subjects and wait one week then administered the same test to the same subjects a second time.

### **3.8 Data gathering procedures**

An introductory letter was obtained from the College of Higher Degree and Researcher (CHDR) of Kampala International University. This letter gave a go ahead to the researcher to seek permission from the different administrators of the selected institutions that have been targeted for this study. This paved way for sampling of the intended respondents.

Data collection started with a face to face interview administration towards respondents. This was also done with the help of research assistants within the institutions. The researcher gathered information given immediately in the field and then cross-checked if all the questions were well answered.

### **3.9 Data analysis**

Data analysis of this study was done using the help of SPSS (Statistical Package for Social Sciences software package). This package helped in establishment of means, standard deviation, and use of frequencies as well as percentages. Questions were coded and data entered into computer system.

Quantitative data were presented into tabular form and frequencies. For qualitative data, the researcher incorporated it into paragraphs as part of the findings.

For quantitative data, researcher used percentages and cross tabulation analysis where the researcher quantifies the responses and express them as frequencies using descriptive.

### **3.10 Ethical Considerations**

In order to get confidentiality of the information provided by the respondents and to ascertain the practice of ethics in this study, the following activities were implemented by the researcher:

- Seeking permission to adopt the standardized questionnaire on cooperation among States and also on character of crimes that cross through Gatuna border
- The respondent and institutions were coded instead of reflecting the names.
- Permission was solicited through a written request to the concerned officials of the institutions included in the study
- The respondents were requested to sign in the Informed Consent Form (Appendix 3)
- The authors quoted in this study were acknowledged and the author of the standardized instrument through citations and referencing.
- The findings of the research were presented in a generalized manner.

The research began immediately when a testimonial letter was secured from Kampala International University. Thereafter, copies of the letter were used to introduce the researcher to the respondents, after getting the testimonial letter; the researcher made sure that the instruments of the research were developed and ready for work. Then the researcher proceeded to the field and visited the Ministry of East Africa in Kigali, the Ministry of Internal Security which has Immigration Office in his attribution and, the National Police and different custodies where are travelling offenders.

### **3.11 Limitations of the Study**

In view of the following threats to validity, the researcher will claim an allowable 5% margin of error at 0.05 level of significance. Measures are also indicated in order to minimize if not to eradicate the threats to the validity of the findings of this study.

*.Extraneous variables* which will be beyond the researcher's control such as respondents' honesty, personal biases and uncontrolled setting of the study.

*.Instrumentation:* The research instruments on resource availability and utilization are not standardized. Therefore a validity and reliability test was be done to produce a credible measurement of the research variables.

*.Testing:* The use of research assistants can bring about inconsistency in the administration of the questionnaires in terms of time of administration, understanding

of the items in the questionnaires and explanations given to the respondents. To minimize this threat, the research assistants were be oriented and briefed on the procedures to be done in data collection.

*.Attrition/Mortality:* Not all questionnaires were returned neither were all of them completely answered nor even retrieved back due to circumstances on the part of the respondents such as travels, sickness, hospitalization and refusal/withdrawal to participate. In anticipation to this, the researcher reserved more respondents by exceeding the minimum sample size. The respondents were also reminded not to leave any item in the questionnaires unanswered and were closely followed up as to the date of retrieval.

The threats to validity in this study included the following:

Intervening or confounding variables were somewhat beyond the researcher's control. Some of these involved honesty of the respondents and personal biases. To minimize such conditions, the researcher requested the respondents to be as honest as possible and to be impartial/ unbiased when answering the questionnaires.

The use of research assistants somewhat rendered inconsistencies such as differences in conditions and time when the data was obtained from respondents. This limitation was minimized by orienting and briefing the research assistants on the data gathering procedures.

There was also some limitation in the area of time whereby the time given was insufficient to complete it qualitatively as needed by the researcher, and there is also a limitation based on finance to facilitate the different affairs of this study. The researcher mobilized more money from his sponsor and friends to cover up all the expenses met in terms of transport, lunch, communication, typing, and printing among others.



## **CHAPTER Four**

### **Legal analysis of International and Regional Instruments**

#### **4.1 Introduction**

The aim of the present work is to explore particular cross border crimes in East Africa, and recommended options for effective responses. In doing this, it seeks to identify and discuss the different categories of cross border crimes; review efforts aimed at curbing cross border criminal activities by looking at the levels States collaborative processes and regulatory frameworks, and then, recommended effective options for government and civil society action on the issue. This present chapter will focus on analyzing different legal instruments, statement of the data in answer to research questions, discusses the achievements and legal analysis of the EAC Partner States to tackle cross border crimes. It also establishes the interpretations of the study in relation to the research objectives and the literature reviewed. Findings are derived from various legislations, legal documents, reports and the interviews done with various categories of respondents.

#### **4.2 The significance of border controls**

Borders have various connotations. First of all, they create effective barriers to human activity. Cross border crimes are an obstacle to freedom of movement, which is considered a fundamental right since 1948<sup>14</sup> and it's fighting still facing practical difficulties due to scare resources in Member States and the ability of criminals to move freely from one country to another. Frontiers have always been "conceived as the outer limits of the power of a sovereign state upon a population in a specific space"<sup>15</sup>. They define the physical limit within which a state may exercise its jurisdiction and enforce its authority upon those individuals who are present. Originally, nation state frontiers were

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<sup>14</sup> Art 13 of the Universal Declaration of Human rights of 1948

<sup>15</sup> Malcolm Anderson, Didier Bigo, "What are EU frontiers for and what do they mean?" ,p.8

first and foremost barriers against external military threats. They are traditionally considered in relation to concepts such as sovereignty, security and citizen allegiance. Borders were also long seen as an effective tool to control trafficking and criminality within a country. It comes as no surprise that emphasis has been given to possible security risks once borders are abolished since the very beginning of the discussions leading to the Schengen Agreement<sup>16</sup>. As Frontex Director Ilkka Laitinen put it, the absence of borders makes it more difficult to stop criminals as "border control is a very effective instrument for stopping those who you don't want coming in. Without that, you have to have concrete suspicions before you can stop people<sup>17</sup>. It is interesting to note that Laitinen seems to regret the divergence between both forms of check, i.e. border and police controls. While border controls target all individuals who cross the line, police controls must be related to crime. According to this statement, police should be allowed to conduct checks at internal borders among member states without concrete suspicion.

#### **4.3 Gatuna border control improvement in combating cross-border crimes**

Cross border crime means any serious crime with a cross border dimension committed at or nearby the external borders of Member States<sup>18</sup>. Normally the EAC borders still face challenges with respect to the quality of basic border infrastructures and procedures relating to their operational management. Border crossing need to facilitate the movement of goods and people to contribute to wider economic and social objectives beyond the adjacent regions. At the same time, they need to provide security and be effective with respect to illegal migration and organized crime. Border controls and the fight against cross-border crime demand very considerable human, material and financial resources beyond the capacity of individual East African states. There are

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<sup>16</sup> Didier Bigo, *Police en réseaux, l'expérience européenne*, Paris: Presses de la fondation nationale des sciences politiques, 1996, p. 101.

<sup>17</sup> "Passport-free travel from Estonia to Portugal", *Spiegel Online*, 19 December 2007 (retrieved on 22.02.2008 from <http://www.spiegel.de>).

<sup>18</sup> Regulation of the European Parliament and of the Council, Art 3(d)

many institutions that are involved in border security management. The Police Service, immigration Service all fall within this category. Customs administrators recognized very early on that customs would be a key agency in any fight against transnational organized crime. They are considered as the main agencies directly involve in border security together with the Ministry of Foreign Affairs. The Ministry of Foreign Affairs involvement in border security is by virtue of the fact that it authorizes the issue of visas to foreigners who enter the country and the police are stationed at the entry points of the country. Therefore, the border requires different modes of control and the presence of some specialized security agencies. Inter-state cooperation is thus a necessary part of combating this form of crime efficiently. Two levels of cooperation are possible here national and sub-regional. At the national level, states must:

- Reinforce border controls through the adequate and efficient presence of customs and border security personnel; and
- Abandon in part the sacrosanct principle of national sovereignty which makes a border a sacred, intangible, inalienable and impassable boundary. Useful results can only be hoped for if neighboring states establish common areas for border controls, particularly in "sensitive" zones.

In fact, effective border management requires that Gatuna border must be efficient in facilitating legitimate trade and transit and preventing illegitimate trade and transit. Still, the EAC has an important role to play for example in upgrading border crossing infrastructure.

The Gatuna Border Agency is responsible both for facilitating legitimate travel and trade, and for helping protect the EAC from the harm caused by terrorism and other crimes, including organized criminal activity, and individuals that seek to exploit ou. Gatuna border is one of the common border of the region, among others are: Namanga between Tanzania and Kenya; Rusumo between Rwanda and Tanzania; Busia between

Kenya and Uganda<sup>19</sup> and Kanyaru between Rwanda and Burundi all are highly frequented.

Under article 11 of both the Trafficking in Persons Protocol<sup>20</sup> and the Migrants Protocol, States parties are required to strengthen border controls to the extent possible and, in addition to measures pursuant of the Organized Crime Convention<sup>21</sup>, to consider strengthening cooperation between border control agencies, including by the establishment of direct channels of communication. Under article 12 of both Protocols, States parties are required to ensure the integrity and security of their travel documents.

Furthermore, as it expected at Gatuna border, under article 13 of both Protocols, States parties are also required, at the request of another State party, to “verify within a reasonable time” the legitimacy and validity of documents purported to have been issued by them. Staffs of the border liaison offices established by countries participating in the project come from a range of law enforcement agencies (specialized police, border police, border army, customs, local police, immigration, etc.). The border liaison offices are staffed by between two and five officers for a sustained period, to foster strong cooperation between individuals. On average, 2,000 people cross Gatuna-Katuna every day as well as 200 trucks, 40 buses and 35 small vehicles and this remain a hard task to a small group of custom officers<sup>22</sup>.

Borders were also long seen as an effective tool to control trafficking and criminality within a country. Border control agencies and border police lack staff, infrastructure and funding. Criminal networks benefit from that situation and are transporting groups

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<sup>19</sup> Rapport of the meeting of the Chiefs of immigration held in Kampala Uganda from 27<sup>th</sup> -28<sup>th</sup> July 2010 ( Ref:EAC/C/IMM/01/2010), p.9

<sup>20</sup> Trafficking in Person Protocol as well as the Migrant Protocol, art 11

<sup>21</sup> Organized crime convention, art 27

<sup>22</sup> Ivan R.MUGISHA, Rwanda, Uganda begin joint surveillance at Gatuna border, *The New Times* “Kigali, July 14, 2012”

across borders where there are no regular inspections. They need to be strengthened. The absence of borders makes it more difficult to stop criminals as "border control is a very effective instrument for stopping those who you don't want coming in. There are, however, many practical pressures on the EAC to agree at least a minimum of coordination of policies and to improve practical cross border cooperation between border control and immigration authorities

The practical outcome of the requirement to strengthen basic border controls is to make it more difficult for traffickers to use conventional means of transport to enter countries. Strengthening measures include making border controls more effective and preventing the misuse of passports and other travel or identification documents. Cross-border cooperation is recommended. Many of the issues raised by cooperation between border-control agencies in different States will be similar to those raised by cooperation between law enforcement agencies. There are however, many practical and political pressures on the EAC to agree at least a minimum of co-ordination of police and to improve practical cross border co-operation on border control.

#### **4.4 An overview of the crimes that occur across the Gatuna border**

Most of the respondent confirmed that the Gatuna Border Agency is responsible both for facilitating legitimate travel and trade, and for helping protect the EAC from the harm caused by terrorism and other crimes, including organized criminal activity, and individuals that seek to exploit our public services and private businesses. Some of those crimes are the following<sup>23</sup>;

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<sup>23</sup> Interview with BUTERA MUGABE John, Policy Researcher Political and Legal Affairs, Ministry of East African Community, MINEAC, (Kigali, Rwanda, 14 August 2012)

#### **4.4.1 Smuggling of goods**

Smuggling is an activity which involves the importation or exportation of goods by wrong or unlawful means with the objective of evading taxes<sup>24</sup>. Smuggling of illegal goods, natural resources and cash crops is very rife across the borders especially the land borders. It is the main and lasting survivor forms of cross border crimes since the beginning of the definition and demarcation of boundaries. Smuggling could manifest in a “plain” or “concealed” form.

#### **4.4.2 Drug Trafficking**

Drug trafficking is still gaining ground in the country. Some individuals are involved in the trafficking network in neighboring countries for example from Uganda to Rwanda or from Rwanda to Uganda and elsewhere in the region<sup>25</sup>. Several arrests were made but the extremely slow judicial procedures coupled with the lack of proper mechanisms to investigate the issues led either to the culprits being acquitted or that the cases were dropped for lack of evidence<sup>26</sup>.

With the issue of human trafficking, Gatuna border has been identified as a transit for human trafficking. Unemployed women and children of poor social status are often the victims. Most of them are trafficked on behalf of the developed countries and mostly involves younger women who are taken to countries with the understanding that they have been recruited for jobs in those countries, and most of the time they are recruited for slavery and prostitution. About children, they are often trafficked through the Gatuna border from or to neighboring countries where a lot of them are used as cheap laborers in activities such as farming, fishing, and street hawking<sup>27</sup>.

The victims within this category are also promised job opportunities and better prospects of life. In reality, such promises turn out to be false and they end up

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<sup>24</sup> Uganda Revenue Authority, Smuggling and its effects, F\Y 2008/09

<sup>25</sup> Interview with Octave, custom officer at Gatuna border, (Gatuna, Rwanda, August 2012)

<sup>26</sup> David Collins, Cross border crime and customs, “4<sup>th</sup> National Outlook Symposium on crime in Australia, Canberra, June 2001)

<sup>27</sup> ibid

becoming victims of sexual exploitation, prostitution, street children and hazardous conditions of life<sup>28</sup>.

#### **4.4.3 Refugee Influx**

Displaced persons seeking asylum across borders also pose a threat to border security. The displacement of people could occur anywhere in the world for natural or manmade reasons. In East Africa, eventual armed conflict, civil strife and political instability are the chief causes of social dislocation. Six of the world's major refugee producing countries is in Africa and millions of Africans live as refugee in foreign land<sup>29</sup>.

Refugee influx has implications for internal security. They put strain on the economy, environment and social infrastructure, and can be predisposed to crime especially those coming from civil war situation<sup>30</sup>. They could bring their weapons and use them for criminal activities.

#### **4.4.4 Money laundering**

Closely linked to all the border crimes is the issue of money laundering. It is the practice of engaging in financial transactions to conceal the identity, source, or destination of illegally gained money<sup>31</sup>. This practice relates to how monies are illegally transferred to criminals through legitimate means into assets that cannot be traced back to the underlying crime<sup>32</sup>. The phenomenon thrives in countries where there are flexible security rules, ineffective monitoring, thriving black market, limited assets seizure and confiscation authority and established non-banking institutions. Money Laundering is the end result of a successful and profiting criminal act. Most often, it is not easily detected unless the financial dealings in suspected criminal cases are delved

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<sup>28</sup> Interview with a policeman in the Intelligence Department, (Kigali, Rwanda, July 2012)

<sup>29</sup> United Nations High Commissioner for Refugees (UNHR) Global report of 2004 in Nyaradzo M in search of solutions: Advancing Refugees Protection in Twenty-first century Africa Conflict Trends(2)2005 p10

<sup>30</sup> Margaret MANSA Sosuh, 'Border security in Ghana, Challenges and Prospects', (occasional paper no 32, Ghana, March 2011)

<sup>31</sup> Simon Odey Ening, Trans-border crime and its socio-economic impact on developing economies(2011),p.3

<sup>32</sup> Margaret Mansa Sosuh (2011) Border security in Ghana: challenges and prospects,p 15

into. As such its influence is subtle and difficult to determine. Also, money laundering could serve as a means used to perpetuate the cycle of other criminal activities especially where they fund and support the very illegal acts they gain their proceeds from. Measures to combat money laundering are established by the Convention whereby each State Party shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions<sup>33</sup>.

#### **4.4.5 Arms Trafficking**

As the region is facing disturbance caused by different rebel groups, the borders of Gatuna is also classified as one of the transit points for illicit Small Arms and Light Weapons (SALW) to neighboring countries such as Democratic Republic of Congo, Burundi, Uganda, Kenya, and Tanzania, and even from those countries to Rwanda Most of these weapons are manufactured abroad. These weapons become the major tools used in armed robbery, ethnic and civil conflicts.

#### **4.4.6 Trafficking in persons**

Trafficking in persons is a crime against humanity, defined as the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat, use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the receiving or giving of payment...to a person having control over another person, for the purpose of exploitation<sup>34</sup>.

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<sup>33</sup> United Nations Convention Against Transnational Organized Crime, art.7

<sup>34</sup> United Nations Protocol to Prevent, Suppress and punish Trafficking in persons, especially women and children, supplementing the UN Convention Against transnational organized crime, art.3



The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in November 2000, is the main international instrument in the fight against cross-border crime. The Convention's supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, entered into force in December 2003.

As a prevention tool, it encourages states to educate potential victims and address the socioeconomic issues which face many of those trafficked. Moreover, as the first global legally-binding instrument with an agreed definition on trafficking in persons, the Protocol allows for a much-needed convergence of national approaches, supporting efficient international cooperation in investigating and prosecuting human trafficking cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

For those States that are Parties to the Protocol on Trafficking in Persons, article 5 requires them to establish the offence of trafficking in persons<sup>35</sup>. Trafficking in persons is defined, and for the first time internationally, in article 3 of this Protocol. Any legislation that criminalizes trafficking in persons must consist of three basic elements:

- The action of: recruitment, transportation, transfer, harboring or receipt of persons;
- By means of: the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- The purpose of exploitation, which include, at a minimum: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

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<sup>35</sup> UNODC, Legislative guide for the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in person, especially women and children, supplementing the United Nations Conventions Against Transnational Organized Crime(2003)



This can be done as a single offence or a combination of offences that cover the full range of conduct. It should be remembered that trafficking is the combination of constituent elements and not separate elements themselves.

The majority of those trafficked are female. Gender-based discrimination of women and girls, and the often resulting poverty, places them at higher risk of becoming targeted by traffickers, who recruit their victims with false promises of opportunity. Human trafficking is in most cases a trans-border crime affecting all regions of the world.

#### 4.5 Summary of crimes

It can be helpful for States to identify crimes in order to establish measures to combat them. The table below presents some predominant crimes in EAC.

**Table**

Predominant border crimes	Border zone of activity	Actors involved
Drug trafficking	Gatuna border	
Human trafficking	Gatuna border	Traffickers who serves sometimes as middle men, trade and business partners
Smuggling of illegal goods	Gatuna border	Individuals, business men and women, business partners
Fraud	Gatuna border	Business men and women, business partners, fraud offenders.
Theft and handling	Gatuna border	Traffickers who serves sometimes as middle men and drivers of cars

Table illustrating the predominant border crimes, at Gatuna border and the actors involved.

#### **4.6 United Nations Conventions against transnational organized crime**

Very few States have adopted laws on extradition and mutual legal assistance. This limits their ability to respond positively to related requests from other states. The agreement on a Convention on extradition and a Convention on mutual legal assistance would enhance cooperation in criminal matters among a large number of East African States. The Convention stipulates that extradition shall be subjected to the conditions provided for by the domestic law of the requested State Party or by applicable extradition Treaties<sup>36</sup>, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested States Party may refuse extradition.

#### **4.7 Provisions of EAC Treaties and other legal texts**

Cross border crime in itself refers specifically to that point at which transnational crime impacts on the border, the point at which goods and persons cross the border<sup>37</sup>. The protocol on the establishment of the East African custom union in its article 9<sup>38</sup> provides that the Partner States shall: exchange information on goods and publications known to be the subject of illicit traffic and maintain special surveillance over the movement of such goods and publications. This surveillance normally concerns those who try to escape border control because of the illicit product they bring or to escape taxes. It is at the same time characterized by an offender crossing a police force boundary to perpetrate a crime or commit an offence in such a way as to require the police the police to cross boundaries to investigate it. This study establishes whether effectiveness in fighting cross border crimes through legal mechanism of EAC Treaties measures significantly determines the extent of EAC legal system to fight these crimes all over the

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<sup>36</sup> United Nations Conventions against transnational organized crime, art 16

<sup>37</sup> David Collins, cross border crime and customs, Canberra, 21-22 June 2001

<sup>38</sup> Art.9 par.2(b)

region. In achieving this major purpose, the researcher found necessary to critically analyze these Treaties.

#### **4.7.1 The Treaty on the Establishment of the East African Community**

Article 124 of The Treaty for the Establishment of the East African Community<sup>39</sup>, recognizes the need for peace and security within the East African States. The same article spells out wide-ranging approaches for implementation in order to have a stable and secure environment within the region. This kind of environment is geared towards promoting development and harmonious living of the people of East Africa.

Therefore, Partner States try their best to put into practice what the Treaty provides. There are many examples among them, the establishment of the East African Police Chief Cooperation (EAPCCO), which operates in the whole region and the two neighboring countries, Rwanda and Uganda enhance their cooperation in security matters by exchanging visits and trainings.

#### **4.7.2 The Common Market Protocol**

The Protocol on the Establishment of the East African Community (EAC) Common Market entered into force on 1 July 2010, following ratification by all the five Partner States: Burundi, Kenya, Rwanda, Tanzania and Uganda. It provides for "Four Freedoms", namely the free movement of goods; labour; services; and capital, which will significantly boost trade and investments and make the region more productive and prosperous. It represents the second stage of the regional integration process as defined by the Treaty for the Establishment of the East African Community. The Common Market is guided by the fundamental and operational principles of the Community as enshrined in Articles 6 and 7 of the Treaty. Creation of the EAC Common Market is envisaged to deepen the integration, accelerate economic growth and promote development. It is aimed at strengthening, coordinating and regulating the

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<sup>39</sup> The Treaty for the establishment of the East African Community (2000)

economic and trade relations among partner states in order to promote their accelerated harmonious and balanced development<sup>40</sup>. The article 5.2(b) states that Partner States agreed upon ease cross border movement of persons and eventually adopt an integrated border management system, all of this is about scope of cooperation in the Common Market.

The overall objective of the Common Market is to widen and deepen cooperation among the Partner States in the economic and social fields for the benefit of the Partner States. For this purpose, the article 47 of this Protocol commits Partner States to approximate laws and harmonize policies and system. This approximation of laws and harmonization of policies and systems is a crucial element of the success of the common market. The harmonization of national policies and laws are referred to the objectives of the community as stipulated in the Treaty establishing the East African Community<sup>41</sup> in its Art 5(3) (f), the promotion of peace, security, and stability within, and good neighborliness among Partner States.

The free movement of capital may be restricted upon different justified reasons related to:

- (a) Prudential supervision;
- (b) Public policy considerations;
- (c) Money laundering<sup>42</sup>; and
- (d) Financial sanctions agreed to by the Partner States.

It is hoped that the Common Market will sustain expansion and integration of economic activities, whose benefit shall be equitably distributed. But where the movement of capital leads to disturbances in the functioning of the financial markets in a Partner

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<sup>40</sup> Art 4(1) of the East African common market protocol

<sup>41</sup> Treaty establishing the East African Community (2000), art,5(3)(f)

<sup>42</sup> Art 25(c) of the EAC Common Market Protocol

State, the Partner State concerned may take safeguard measures subject to the conditions provided under Article 27 of this Protocol. This is when there are prohibited goods all goods the importation of which is for the time being prohibited under the Act, or by any written law for the time being in force in the Partner State or false money and counterfeit currency notes and coins and any money not being of the established standard in weight or fineness, narcotic drugs under international control, hazardous wastes and their disposal as provided for under the base conventions.

In summary, the Common Market Protocol is one of the achievements of a secured region but once it is not well managed the negative consequences should be higher than advantages because as seen above it provides for free movement of persons and goods and this movement itself can cause insecurity in the region.

#### **4.7.3 Analysis of custom union Protocol**

Transnational crime affects every law enforcement agency but none more so than Customs. Like many police agencies Customs administrations world-wide are being encouraged to adopt the United Nations Convention against Transnational Organized Crime. Customs administrators recognized very early on that Customs would be a key agency in any fight against transnational organized crime. In this regards, the objectives of the Customs Union shall be to:

- (a) Further liberalize intra-regional trade in goods on the basis of mutually beneficial trade arrangements among the Partner States;
- (b) Promote efficiency in production within the Community;
- (c) Enhance domestic, cross border and foreign investment in the and
- (d) Promote economic development and diversification in industrialization in the community<sup>43</sup>.

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<sup>43</sup> Art 3 of the Protocol on establishment of Custom Union

Customs has traditionally operated at the international border and has responsibility for identifying the movement of illegal drugs, firearms, cigarettes, and people: the same commodities that are the stock in trade for transnational crime syndicates. Altogether, the relevance for a theoretical analysis of regional integration effects is limited within the trade models in the above-mentioned tradition. Yet those models are relevant for integration issues since they deal with the impact of trade liberalization on national production patterns. But within the framework it is not analyzed how changes in the macroeconomic production structure affect the regions within a country. Therefore, conclusions cannot be drawn on how trade liberalization affects border regions. It is very likely that the reallocation of production factors among sectors will have spatially differing effects within countries.

Under the provisions of Articles 2 and 5 of the Treaty, Partner States undertook to establish a Customs Union as an entry point of the Community. Its objectives included *inter alia* liberalisation of intra-regional trade in goods on the basis of mutually beneficial trade arrangements among Partner States; Promotion of efficiency in production within the community; enhancement of domestic<sup>44</sup>, cross border and foreign investment; Promotion of economic development and diversification in industrialization.

In more recent years, international crime syndicates have shown more than a passing interest in a range of new trafficking opportunities such as commercial fraud, stolen motor vehicles, nuclear materials and waste, chemical weapons and weapons of mass destruction, human body organs, pornography, works of art and money laundering. As a result of this expansion, Customs has had to these broaden its focus as it goes about the business of monitoring cargo crossing the border.

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<sup>44</sup> Hon. Beatrice B. KIRASO, Deputy Secretary General East African Community at the EAC Peace and Security Conference, EAC integration process and the enabling peace and security architecture, Kampala, Uganda, 5<sup>th</sup> October 2009

There are two significant factors in every international transaction that are important to Customs. The first is that in order to sell an illegal commodity and derive a financial benefit the goods must cross an international border. Secondly, the goods are most often transported in an identical manner to a legitimate consignment of cargo. Transnational crime affects every law enforcement agency but none more so than Customs. To be effective Customs administrations worldwide must work more closely together. Customs has not cornered the market in developing sources of information. The key to success in locating contraband is the development of cooperative information and intelligence exchanges between all law enforcement agencies.

Until recently there has been no powerful international instrument to combat all forms of transnational organized crime. This gap will now be filled by the "United Nations Convention against Transnational Organized Crime" and its three protocols to combat illicit firearms prevent illicit trafficking in persons and the trafficking and illicit transport of migrants.

To sum up the present section, it will be important for Customs and police in the region to monitor developments regarding this Convention so that each agency can identify opportunities to get involved in the process, propose changes to national legislation and benefit from any new measures that might be adopted. To be successful this will depend on the cooperation between regional and domestic law enforcement agencies and the use of specialist teams of police and customs officers provided by the Government under the National Illicit Drug Strategy. The customs aspect deals with the examination of documents covering both imported and exported goods, the excise function deals with the collection of duties on both locally manufactured and imported goods.



#### **4.7.4 Protocol on Combating Illicit Drug Trafficking in the East African region.**

A Protocol on Anti-Narcotics was concluded in 2001. Implementation of its action plan has since been in progress and heads of anti-narcotics units have continued to meet regularly to evaluate progress in its implementation. This Protocol criminalizes illicit drug trafficking, subscribes to international conventions on Narcotics, provides for domestic legislation, mutual legal assistance, law enforcement, drug demand reduction and institutional arrangements in areas of implementation and execution. The preamble of this Protocol states that Partner States are committed to the establishment of regional institutional framework in combatting illicit drug supply, demand and related corruption in Partner States through legislative and social policies, and conscious of the fact that illicit drug trafficking is a serious international problem, Partner States were convinced even that cooperation between Partner States is necessary to eradicate illicit drug production and trafficking and were also convinced that cooperation can only be effected through implementation of coordinated, comprehensive and integrated drug control and prevention programs that address both supply and demand involve the public , the private sector, business and Non-Governmental organizations. Its objectives include inter alia reduction and eventual elimination of illicit drug trafficking, money laundering; elimination of illicit drugs production<sup>45</sup>; and protection of the EAC region from being used as a conduit for drugs destined for international markets.

To operationalize the Strategy for Regional Peace and Security, EAC has developed a Protocol on Peace and Security, particularly to provide a legal framework and to ordinate cooperation. Under Article 124 of the Treaty, the EAC Partner States agreed that peace and security are pre-requisites to social and economic development within the region and vital to the objectives of the Community.

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<sup>45</sup> Protocol on combating drug trafficking in the East African region, art 2

Basing on the study objectives, the description of findings clearly indicated that the legal mechanism of EAC Treaties measures against cross border crimes on Gatuna border are generally effective much as some items were noted to be effective. The effectiveness in countering cross border crimes measures is confirmed ineffective in the measurement scale. The finding on fighting cross border crimes measures at Gatuna border indicates that Partner States strengthen their efforts in respect of laws and regulations of the region.

It can also be said that the Rwanda and Uganda are the most responsible for the transactions that passes through the Gatuna- Katuna border. Consequently, very few States have adopted laws on extradition and mutual assistance. As a result, this limits their ability to respond positively to related requests from other States. The agreement on a Convention on extradition and a Convention on mutual legal assistance would enhance cooperation in criminal matters among a large number of East African States.

#### **4.8 Rwandan positive laws in fighting cross border crime**

From the point of view of Rwanda, an attempt should be made to establish the necessary foundations, make an original contribution to handling cross border crime. That refers to participation in defining and interpreting the phenomenon and in various stages of the development of control measures. While there are a number of international and regional instruments dealing with cross border crimes, the primary tool used by government in EAC to combat those crimes include their own domestic legislation. The Rwandan Penal Code criminalizes cross border crimes in its provisions where it stipulates that will be punished of a three months imprisonment to five years and of a fine of two hundred and fifty thousand francs to the maximum, or one of these sentences only, those which will have contravened the regulations concerning the substances classified like narcotics. Case the Prosecutor Vs HAKIZIMANA Joel<sup>46</sup> accused and found guilty of illegal trafficking of kanyanga drug from Uganda to Rwanda. The

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<sup>46</sup> Case RP 0099/11/HC/Mus

offence consists in the illicit production, importation, manufacture or export of the aforesaid substances, the incurred sorrows could be carried to the double. The sorrows will be incurred while at the same time the various acts constituting the elements of the infringement will have been accomplished in different countries<sup>47</sup>. This justifies the primary role of the domestic laws.

Another case in point concerns trafficking in persons, especially, in the Prosecutor Vs Mateso Daniel<sup>48</sup>, the accused was found guilty of trafficking Niyonkuru Dieu Merci, an albino from Rubavu District, Rwanda to DRC. This act is considered illegal and punished by the Organic law no 21/77 of 18/07/1977 Rwandan criminal code in its articles 21, 22 and 24.

#### **4.9 Ugandan Penal Code Act**

Uganda Penal Act has different provisions that punish crimes considered to be crossing the border. For example concerning the acts of terrorism, any person who engages in or carries out acts of terrorism commits an offence and is liable to imprisonment for life<sup>49</sup>. The Penal Code Act also punishes the act of smuggling whereby it provides that any person who export or imports any goods from or into Uganda, in any manner by which he or she evades the control of customs over such exportation or importation, commits the offence of smuggling and is liable on conviction to a term of imprisonment of not less than three years and not more than fourteen years<sup>50</sup> (...). This shows that EAC Partner States condemn cross border crimes in their positive laws.

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<sup>47</sup> Rwandan penal code book II, art.272

<sup>48</sup> Case RP 0026/2010/TGI/ RBV, The prosecutor Vs Mateso Daniel

<sup>49</sup> The Penal Code Act, Chap 120, Art, 26(1)

<sup>50</sup> The Penal Code Act, chap 120, Art.319(1)(c)

#### **4.10 Mechanism adopted by EAC Partner States to promote and enhance peace and security**

Peace and security has been acknowledged as a critical to creation of the right environment upon which regional integration in all aspects can be fostered. The EAC joint meeting of the sectorial councils on cooperation in defense, Inter-state security and foreign policy coordination adopted the protocol on peace and security and the EAC Conflict Prevention, Management and Resolution (CPMR) mechanism during a four day meeting in Arusha.

#### **4.11 EAC strategies in the maintenance of peace and security in the region**

The Regional Strategy on peace and security adopted in 2006 by the 13<sup>th</sup> Council of Ministers meeting in order to guide EAC level interventions in the peace and security sector and lists goals for fostering regional peace and security. There is need for support for an implementation plan for the EAC strategy for regional peace and security, whose goals, objectives and activities are elaborate and capable of fostering peace and security in the region. These strategies go a long way in enhancing the East African Community spirit of co-operation in regional peace and security, which brings into reality the collective responsibility in provision of security by the Partner States. It covers collaboration on cross border crimes, auto theft, drug trafficking, terrorism, money laundering and other crimes. Now we are going to enumerate and explain some of the themes which are concerned with peace and security. It also identifies the strategies for the fulfillment of each of these goals. The goals are:

##### **1) Enhance the exchange of criminal intelligence and other security information between Partner States;**

In a bid to crackdown on smuggling and tax evasion by cross border traders, Rwanda and Uganda have agreed to begin joint surveillance at the Katuna-Gatuna border crossing. Establishing databases that are shared by Partner States would facilitate the exchange of criminal intelligence among these States.

This goal has as objectives:

- i. Establishment of database by Partner States; the appropriate use and appreciation of existing information and intelligence may require the establishment of a multi-disciplinary forum to take stock of existing intelligence and information.
- ii. Enhance technical capacity for production of criminal intelligence
- iii. Exchange criminal intelligence/ information among Partner States
- iv. Incorporate intelligence in joint operations

There are also strategies:

- i. To ensure all Partner States jointly design the appropriate databases
- ii. Acquisition of hardware like computers, servers, routers, etc
- iii. Standardization of data input the Partner State in order to benefit from uniformity.

Practically, local operations mounted by both countries, Rwanda and Uganda are largely successful due to optimal use of intelligence; information on criminals is usually gathered and analyzed to identify links between crimes, associations among criminals, and individuals' role in criminal activity.

## **2) Enhance joint operations and patrols;**

Rwanda and Uganda are not just geographical neighbors but countries that share the same challenges of negative forces as well as emerging crimes such as terrorism, human and drugs trafficking that affect our people and national development agenda.

The Governments of Rwanda and Uganda have appointed joint committees to analyze the security situation at Gatuna and Cyanika border posts, which will inform decisions to enhance security at the two Northern Corridor outlets. The committees were established during a meeting held at the two borders, chaired by the two police chiefs, Inspector General of Police Emmanuel Gasana and his Ugandan counterpart, Inspector General Kale Kayihura.

## Objectives:

- i. Hot pursuit of criminals and suspects in enhancement of border security<sup>51</sup>
- ii. Encourage joint operations against narcotics, robberies, theft of motor vehicles, smuggling, etc

As Partner States need to mount well-coordinated joint operations and share intelligence, this has been approved by a joint meeting by Rwanda and Uganda police bodies held on August 16 and 17<sup>th</sup> in Musanze Rwanda, to stamp out security challenges, which is a move aimed at combating crimes in both countries. Also this joint operation will supplement other regional and international organizations such as the EAPCCO and the international body, Interpol.

### **3) Install common communication facilities for border and interstate security;**

The aims are:

- i. To install a common interstate radio communication system and improve the existing communication system between Partner States.
- ii. Install a common interstate radio communication system between Partner States.

One of the result of the East Africa is the conference of East African Police Chiefs held in Nairobi, Kenya, in 1999, where a resolution was passed to achieve the installation of common radio communication system at established border posts for quick information flow response in curbing crime along the common border.

A rapid and dedicated communication system between the police agencies of East Africa will remain a vital instrument in the fight against sophisticated cross border criminality as well other forms of international crime.

### **4) Adopt the U.N model law on mutual assistance on criminal matters;**

This U.N model law which is in conformity with the UN Convention against Transnational crime is an important instrument in harnessing international cooperation

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<sup>51</sup> East African Community, *Report of the meeting of EAC experts to review the regional strategy on peace and security*, Dar-Es-Salaam, Tanzania, June 2012, p.4

among the world's law enforcement agencies in the fight against transnational crime. Partner States require the incorporation of the provisions of the UN model into national legislation.

The aim of a UNODC project entitled "Development of cross-border law enforcement cooperation in East Asia" was to strengthen cross-border law enforcement cooperation to address drug trafficking, in particularly by helping to build relationships between local border officials and their counterparts on the other side of the border<sup>52</sup>.

Partner States legislate on U.N Model law on mutual assistance in criminal matters. The UN Model Law on Mutual Assistance, which is in conformity with the UN Convention against Transnational Crime (the Palermo Convention), is an important instrument in harnessing international cooperation among the world's law enforcement agencies, in the fight against transnational crime. It provides for assistance in relation to evidence, the identification of witnesses and the forfeiture of property.

## **5) implement the Protocol on combating illicit drug trafficking;**

The main objective of the present goal consists on Partner State to promulgate and adopt the provisions of the EAC Protocol on combatting illicit Drug Trafficking into national legislation.

The problem of drug trafficking is the concern not only of EA region but also of the whole world. Several measures have been taken by Partner States aimed at combating this problem. The Partner States have partially complied with the requirements of the relevant International Conventions such as the UN Conventions on Psychotropic substances of 1971 and the UN Convention against Illicit Traffic in Narcotic drugs and psychotropic substances 1988, have been ratified by all member States.

The strategies taken to tackle this problem include<sup>53</sup>:

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<sup>52</sup> Border control measures, [www.unodc.un.or.th/law/D91](http://www.unodc.un.or.th/law/D91)

<sup>53</sup> Annex IV of the Strategy for regional peace and security in East Africa; Report of the meeting of EAC experts to review the regional strategy on peace and security of 6<sup>th</sup> – 9<sup>th</sup> June 2012

- i. Partner States convened to conduct joint training and operations for law enforcement agencies in the region.
- ii. Establish mechanism for coordination and liaison with other regional and international bodies involved in combatting illicit drug trafficking and
- iii. Sensitize communities on the dangers of drug trafficking.

In conclusion, EAC Partner States improved by incorporating international other Conventions.

## **6) Exchange visits by security authorities;**

A successful partnership can only be achieved if players develop physical contact and get to know each other. This can only be achieved by regular exchange visits to share ideas and experiences on matters of regional peace and security.

For The periodic and reciprocal visits by security Chiefs, Technical and operational Personnel, the two IGPs Gasana from Rwanda and Kayihura of Uganda held a meeting with border staff of both sides at Gatuna and Cyanika. The aim was to evaluate border security and look into matters that affect security along the borders, ranging from illegal crossing and migration.

Gasana's visit to Uganda was part of the evaluation of the implementation of the resolution adopted during the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO) meeting held in Kigali in 2011. He is the current chair of the regional police body. And the visit was also a reciprocal following IGP Kayihura's recent visit to Rwanda.

About the exchange of visits there are considerable achievements as the meeting of the President of Rwanda and the President of Uganda they met and agreed that they should interact so that they look at the security along their common border. Thus, Uganda People's Defense Force (UPDF) and Rwanda Defense Forces (RDF) have signed a security agreement with the focus to maintain peace and security along their common



borders. Here we add several visits between the chiefs of police and the meeting of the chiefs of immigration office. Authorities even do sometimes plan cultural sport activities. The said reciprocal visits by security chiefs demonstrates good partnership and involves personal contact in order to enhance relationship and confidentiality exchange ideas, challenges for the mutual benefit of the parties. Regular visits help to share ideas and experiences on matters of regional peace and security.

## **7) Exchange training programs for security personnel;**

Article 6(2) of the EAC Police Cooperation<sup>54</sup>; spell out agreement in respect of cooperation and mutual assistance in the field of combating crime, rendering advice support or assistance relating to training. Partner States have developed training with a need to exchange the training programs in order to benefit from each other. In a bid to improve standards and cooperation within the region, Partner States require support relating to training of their staff.

By improving training and exchanging experiences, the policing standards are improved and developed among the member States leading to good performance<sup>55</sup>. About this goal, the objectives of EAC Partner States are the exchange of specialized instructors and to carry out joint training in identified areas.

To produce acceptable standards there will be transfer of skills especially of trainer in specialized field. Specialist trainers will be identified from Partner States to train in their area of specialization. It will be important for the region to identify trainers with required skills, identify areas of weaknesses, and develop the framework to facilitate exchange process.

About the exchange of training programs for security personnel, on 05<sup>th</sup>, 03, 2012, thirty military officers from the EAC Member States officially kicked off an international

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<sup>54</sup> The Protocol on East African Community Police Cooperation, art 6(2)

<sup>55</sup> EAC, *Report of the Meeting of EAC experts to review the regional strategy on peace and security*, (Dar-Es-Salaam, Tanzania, June 2012,p.9)

course on military ethics and the law of armed conflict at the Rwanda Military Academy Nyakinama which takes three weeks. The training took place in Rwanda because Rwanda Defense Forces are recognized as experienced forces in the region so they have to share education and exchanging programs as the primary means of ensuring in-service development and maintaining a high level of professionalism as well as experience with others in the region.

## **8) Establish common mechanisms for the management of refugees;**

Partner States are signatories to the 1951 UN Convention on Refugees and its 1961 Protocol. There are also signatories to 1960 OAU Convention governing the specific aspects of refugee problems in Africa. There is therefore need to have uniform national legislation governing refugee matters in the region.

According to the World Refugee Survey 2009 statistics, the five East African Community States host a combined population of 949,000 refugees. Of this number, about 300,000 are citizens of East African States living as refugees in the territory of other Community member States<sup>56</sup>. As conflicts in traditional refugee-producing Community member states abate and their citizens return home, conflict in previously tranquil states like Kenya have injected more refugees into the Community pool. Globally, there seems a consensus among states on finding durable solutions to refugee situations and minimizing the circumstances that forcibly displace people and force them to cross international borders in search of refuge. The question on the lips of many community refugees is what their status will be under an East African Federation.

## **9) Formulate security measures to combat terrorism;**

The EAC needs to formulate security measures to fight against terrorism after the Kenya, Tanzania US Embassies and the bombing attack in Kampala on 11<sup>th</sup> July. These

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<sup>56</sup> The Forum Society for International Development, The East African Community and refugee question, <http://www.sidint.net/node/4980>. Accessed 13<sup>th</sup> October, 2012

terror bombing are a reminder that the region needs to enhance the capacity for all Partner States and stakeholders in managing migration while particularly exercising caution and security vigilance in the implementation of free movement principles under EAC Common Market Protocol dispensation. All countries within the region are making efforts in terms of human and non-human resources to enhance institutional capacity to combat terrorism. However, countries within the region may not be moving at the same pace and there is a very high possibility of duplicate of the resources, which could otherwise be shared. There is urgent need to enhance capacity in the region.

EAC Partner States need an increased solidarity to fight terrorism and other forms of cross border crimes as the region enters the implementation phase of the Common Market<sup>57</sup>. It is upon Partner States to strengthen their cooperation between them on counter terrorism initiatives within the EAC region and with other regional and international bodies. EAC Partner States need to develop capacity to combat terrorism in all its forms, develop standing operation procedure on counter terrorism exchange studies, research and expertise on terrorism and this will be helpful on behalf of Gatuna custom offices in terms of preventing terrorists to cross Gatuna border entering any other country of the Community. On the infiltration at border crossings, terrorists have taken advantage of the porous border crossings to enter other countries. It is important to find means to control borders and secure them better, for example by harmonizing biometric data on passports, visas, cards, etc.

About the establishment of the counterterrorism mandate, the three EAC founding heads of States namely Kenya, Uganda and Tanzania, agreed in 1999 memorandum of understanding to set up a mechanism to deal with terrorism in the region.

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<sup>57</sup> Anaclet KALIBATA, Director General Immigration and Emigration Republic of Rwanda in his remark in the meeting of the chiefs of immigration of EAC, 27<sup>th</sup>-28<sup>th</sup>, July 2010, Kampala-Uganda



Furthermore, the EAC created a terrorism and counterterrorism task force to study the national, regional and international legal framework relating to counterterrorism and the protection of human rights in the region.

#### **10) Establish measures to combat proliferation of illicit small arms and light weapons;**

The international instruments require states parties to adopt such legislative measures as may be necessary to control possession and use of small arms, regulate manufacturing, trade and transfers, and measures to prohibit illicit trafficking.

The African Union adopted Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons to strengthen coordination and cooperation between and among all implementing regional bodies with the objective of improving implementation at national, regional and continental levels.

The overall objective of this Strategy is to prevent, combat and eradicate the illicit proliferation, circulation and trafficking of small arms and light weapons in an integrated and holistic manner across all regions of Africa<sup>58</sup>.

The EAC strategies on harmonization of law relating to small arms are to develop guidelines for formulation and review legislation and conduct workshops and trainings on new legislation and regulations in regards to small arms and light weapons.

There is also a need for harmonizing the law to promote legal uniformity and set minimum standard to govern trade, transfers, manufactures and other illicit activity. This will facilitate inter-state action to combat illegal activity between Partner States and that is why Ministers for Foreign Affairs of the countries of the Great Lakes Region and the Horn of Africa namely Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Uganda and United Republic of Tanzania held a meeting at Nairobi also known as The Nairobi Declaration on the Problem of the

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<sup>58</sup> African Union, African Union strategy on the control of illicit proliferation, circulation and trafficking of small arms and light weapons, Lome, Togo, September, 2011

Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa 15 March 2000<sup>59</sup>.

Finally, The proliferation of light weapons and illicit arms trafficking do not in themselves cause the conflicts and criminal activities in which they are used, the wide availability, accumulation and illicit flows of such weapons tend to escalate conflicts; undermine peace agreements; intensify violence and impact on crime; impede economic and social development; and hinder the development of social stability, democracy and good governance.

### **11) develop a mechanism for conflict management and resolution;**

The EAC's conflict prevention, management and resolution mechanism(CPMR) on the other hand includes initiatives towards prevention of conflicts, making early warning an integral part. It provides for mechanisms of managing and resolving conflicts when they occur. Partner States have witnessed several conflict internally and externally and neighboring countries like Al-Shabab in Kenya, NRA of Joseph Kony in Uganda, FDLR in Rwanda and many others. This calls for a mechanism for peaceful resolution of disputes and conflicts amongst the Partner State and forum under which the EAC can participate in resolution of disputes within the region.

The political objective of conflict management is to promote trust and confidence, and with respect to displaced persons, ensure peace, security, and stability to allow for voluntary repatriation and internal replacement<sup>60</sup>. Conflict management is the most important conflict maintenance process because it is the one most integral to the physical and legal protection of displaced people.

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<sup>59</sup> The Nairobi Declaration on the problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 15 March,2000, [www.recsasec.org/pdf/Nairobi](http://www.recsasec.org/pdf/Nairobi) , accessed on 13<sup>th</sup> August,2012

<sup>60</sup> Jeremy LEVITT, Conflict Prevention, Management and Resolution: Africa- Regional strategies for the prevention of displacement and protection of displaced persons: The cases of OAU, ECOWAS, SADC, and IGAD, Vol 11:39, p.46

The most effective and sustainable way to prevent coerced population movements and protect displaced persons is to establish comprehensive conflict maintenance systems at the local, national, regional, and international levels.

## **12) Develop a conflict early warning mechanism.**

The field of conflict early warning seeks to forecast the outbreak of armed conflict, or, at minimum, to detect the early escalation of violence, with the objective of preventing the outbreak or the further escalation of violence in order to save lives.

An implementation plan of the Peace and Security Strategy has been developed and adopted. EAC Partner States may first establish national early warning focal points and then develop a regional coordinating mechanism for the national early warning focal point. All this will be helpful to prevent, mitigate and manage conflicts and threat in the region. Meanwhile, there is need to ensure timely collection of date and relevant information that decision makers can use. In achieving this major purpose, five research objectives were formulated and these were to determine the effectiveness of EAC Treaties measures on cross border crimes.

Nowadays early warning occurred in several instances but did not precipitate any action. Strong expectations of potential conflict or even the outbreak of violence were not in themselves sufficient to generate preventive action.

## **Summary**

This chapter deals with legal analysis if international regional and national instruments with the aim to fight cross border crimes. This explains in legal terms about cross border control and measures taken either by neighbouring countries ,Rwanda and Uganda by explaining improvement made on Gatuna border. Even if this border still lacking quality of basic border infrastructure, there are some improvement like the use of modern technologies as now they instituted computers for finger print.

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Nowadays it is not easy for individual criminals and other organized criminal group to travel with false documents because they reinforced border controls through the adequate and efficient presence of customs and border security personnel.

This chapter also summarizes predominant crimes at Gatuna border and Cleary analyzes strategies of EAC Partner States in the maintenance of peace and security. After the EAC mechanism to promote and enhance peace and security in the region there also exist international instruments to enhance peace and security through a joint cooperation.

## CHAPTER Five

### 5.1 Conclusions, Recommendations

#### 5.2 Conclusion

The EAC is an intergovernmental organization of five countries as seen above. The vision of the EAC is to attain a prosperous, competitive, secure, stable and politically united East Africa. The mission is to widen and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value added production trade and investment.

In this study entitled “ **Legal mechanism of the East African Treaties in fighting cross border crimes**” the researcher’s attention focuses on legal analysis of the EAC Treaties and its different Protocols, conclusions of conferences and reports of EAC members about peace and security in the region. The issues of cross border crime related to EAC were already topical before the current enlargement of the EAC. We may note that majority of criminologists and experts who contributed during this work claim that crimes between the EAC Partner States most of them are economic crimes and have increased considerably diversified and become more organized. What will happen in cross border crime after the accession of the five countries, including Rwanda, is a question to which various answers have been given.

In line with that, border security is entirely about border development where there is improvement in the issues and activities that enhance security at the borders. The East African Community effort is required to manage the risk of crime.

An effective response on cross border criminal activities in East Africa will greatly enhance peace and stability in the sub region for the much needed free movement of goods and persons, vibrant economic and social activities and human security.



Neighbouring countries like Rwanda and Uganda cooperate closely and are entitled to perform joint operations and controls on both sides of their common border. Examples include controlled drug deliveries as well as joint police cooperation.

The implementation of the work plan has big financial implications which require urgent attention and commitment of all the Partner States. The key EAC achievements and successes is summarized in signing of the Treaty for the Establishment of the East African Community in 1999, joint military exercises by East African Community Partner States Defense Forces, establishment of fora for chiefs of Police, Directors of CID and Directors of Operations and Intelligence to coordinate peace and security matters and the joint patrols, sharing of criminal intelligence and surveillance to combat cross-border crime.

Border management ensures that all the resources available are employed to regulate the movement of people and goods across the borders. Its effectiveness depends to a large degree on the rules and procedures established to enforce the conditions under which entry is permitted including commitment to locating and removing those that breach the conditions of their stay. There is the need for balancing the two security imperatives that is facilitating the movement of legal persons and goods to enable the region to benefit from the open relationship within itself and the rest of the world and at the same time preventing the situations that threaten the security of the region.

Cross border activities done by criminal groups or individuals pose serious and increasing concerns for the international community. Their activities affect our joint security, stability of the entire region and of the EAC economy. Furthermore, there is a need for the countries of EAC to employ coordinated and comprehensive strategies to fight these crimes wherever they manifest themselves. And then, with the adoption of international instrument and the ratification of more regional instruments, these will

entail developing strong law enforcement approaches, and enhancing EAC cooperation through public-private partnership.

### **5.3 Recommendations**

Governments of the East African sub region must be able to strengthen their governance capacity, support committed reformers, and strengthen the ability of citizens to monitor public functions and hold leaders accountable for providing safety, effective public services, and efficient use of public resources. This can be achieved through; the practical implementation of new and ground breaking conventions and protocols that define and promote international standards and create roadmaps for domestic implementation. And also, through the use of a broad range of bilateral, regional and global training and technical assistance programs aimed at strengthening the law enforcement and prosecutorial capacity of our foreign partners, and their capacity to implement those shared standards and best practices.

The all East Africa governments need to adopt and implement the United Nations Conventions against Transnational Organized Crime and Corruption (and its Protocols). The importance of these international instruments is that they create a broad framework for mutual legal assistance, extradition and law enforcement cooperation and the Convention Against Corruption contains an innovative chapter that promotes international cooperation for asset recovery cases.

Organized criminal groups or individuals carry out their illicit activities using major technological tools such as information networks, the financial system and other sophisticated means. With this reason, there is need for the EAC Partner States to strengthen public private partnerships in the fight against individual and organized crime and corruption in the society which will be a form of eradication of cross border crime in the region. In a globalized world, where illicit criminal activities and their actors, threaten both our international security and private sector interests, public and

private non-governmental entities can be crucial allies. A number of international NGOs and private firms have already been helpful in terms of bringing to light important issues such as corruption in the extractive industries and illegal logging, the production and trafficking of counterfeit goods, and trafficking in persons, and others. NGOs may also transform themselves into engines of capacity building in the developing world.

Regional governments must strengthen their national criminal justice systems. This could be done through a co-ordinated and comprehensive response systems based on a number of measures. One is, measures that address the conditions conducive to the spread of terrorism, and through measures that prevent and combats terrorism.

The legislatures of the different sub-regional states should work to put in place an Act that will deal with the increasing activities of terrorism. This could be done within the broad framework of the East African Community (EAC).

Measures are being taken to prevent and control border threats to ensure security at Gatuna border. Lack of commitments on the part of the government and all stakeholders in the business of border security to contribute their quota to find concrete and lasting solutions to the problems explains different anomalies.

-There is a need for forces to identify the extent and nature of cross border crime in their areas; this will be helpful to protect Gatuna border and our national interest and even EAC interests.

-The Member States especially Rwanda and Uganda, the two neighboring of Gatuna border need strong collaboration and cooperation between the border agencies and their counterparts in neighboring countries to strengthen their ability to provide fast and efficient services. This cooperation will be very important to tackle border tax fraud, smuggling and immigration crime, high risk individuals, drugs, weapons and other harmful goods from entering the country.

The issue of language barrier to most of the officials stationed at the borders. As established, Gatuna is crossed by people from the whole region and are characterized by different languages most of them use English Swahili and French Speaking and therefore needs officials who can communicate effectively in all those languages.

- Where specific problems of cross border offending are identified neighboring forces should look to establish collaborative arrangements along the lines identified.

- Consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

- Encourage States to criminalize the financing of terrorism in accordance with resolution 1373 (2001) and the Convention

- Encourage States not only to become party to all the international counter-terrorism instruments, but also to incorporate the elements of those instruments into domestic law

- Forces should consider appointing inter-force liaison officers, setting up short term exchanges and/or secondments of officers and mounting more joint operations. By doing this networking opportunities for officers can be developed and exploited to the full, thus improving the prospects for future co-operation.

- Encourage States to strengthen their legal framework encourage them to continue enhancing border security at points of entry in order to prevent the illegal cross- border movement of persons, cargo and arms/explosives, as well as currency and other bearer instruments, and to implement the international best codes and standards established by specialized agencies.

- EAC Partner States shall take measures as may be necessary, within available means, to extradite an offender who committed a crime in one of the Partner States and to have a trial where he committed the offence and there should be joint collaboration,

trainings and information exchange to provide an opportunity for fast tracking cross border crimes and criminals.

-Promote best practices and facilitate capacity-building and training for members of the judiciary, law enforcement agencies and other relevant civil servants in procedures for requesting and offering assistance in criminal investigations, mutual legal assistance and extradition matters

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## **APPENDICES**

### **Appendix I**

#### **Research instrument: Interview guide**

1. Do the Governments and other institutions in charge increase public awareness of the existence of the East African Community and its aim?
2. How do the population of the region benefit from the Community?
3. Is this cooperation of East African Partner States helpful for emerging business trends, poverty reduction and common market ?
4. Are you convinced that the process of regional integration involves joining together different activities?
5. Is there any advantage for the expansion of East African Community in inviting other countries for Membership?
6. Do EAC regional integration has something to resolve in security matters in the region?
7. Do the cooperation constitutes one of the challenges in responding to criminal activities in the region ?
8. Are there measures to enable the existence of civil society bodies that can work closely with Partner States in the fight against cross border crimes?
9. Gatuna- Katuna border is one of the East African border. Is it an easier one for facilitating criminal activities?
10. What are the predominant border crimes at Gatuna border and the actors involved?
11. What is the contribution of Rwanda and Uganda against crimes at Gatuna border and in the region?
12. Do Rwanda and Uganda have laws cross border crimes?

13. Are East African Partner States making effort to ensure peace and security in the region? if yes in which manner?
14. What are the strategies adopted by EAC Partner States to enhance peace security and good Governance?
15. East African Community has a Treaty of its establishment, what do the Treaty provides in terms of security in the region?
16. Is true that each Partner States shall apply its domestic laws to resolve security matters in the region?
17. East African Community has a Treaty for its establishment and protocol thereto and it provides for security in its article 124, do the region needs other international instruments for its stability?

