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THE LEGAL PERSPECTIVE ON UNLAWFUL POSSESSION OF FIREARMS AND CATTLE RUSTLING IN KARAMOJA SUBREGION:

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Historical Background

Karamoja is located in the northeastern part of Uganda. It is a 27,200 square kilometer area of semi-arid savannah. It is bordered by the Turkana (Kenya) in the east, Sudan in the north and to the west and south it is bordered by Ugandan districts occupied mostly by the Acholis, Itesots and Sabiny people. The area being semi-arid, the Karamajong focus majorly on livestock—principally cattle. This explains their persistent nomadic life in pursuit for water and pasture. Their love for cattle bred a culture of raiding and warfare which has kept them at loggerheads with their neighbours. In the past, raids were mild but the situation worsened because of the proliferation of small weapons. Following the collapse of Amin's regime in 1979, Moroto barracks was abandoned thereby leaving weapons in the hands of the clueless civilians and violence as a result reached unprecedented levels.

Having assumed power in 1986, the government of Uganda under Y K Museveni, launched disarmament campaigns in 2001 and 2006. This led to the recovery of thousands of guns and by 2010, relative peace was restored. Later people illegally acquired through black-market and the situation worsened because little had been done to rehabilitate the young men who had given up their guns. In the words of Jino Meri, the LCV chairman of Kaabong District, 'they didn't have post-disarmament programmes to disarm the mind.' The government has since embarked on a more appealing disarmament programme whereby, whoever hands over his gun is appreciated with a number goats as a wealth creation mechanism. This is intended dislodging the absurd culture of cattle rustling that not only breeds insecurity but also causes under developed.

1. Steps taken by East African States to Combat Cattle Rustling

It has been established that cattle rustling or raiding is no longer a cultural practice but a form of organised crime committed by international criminal networks. It is facilitated by the proliferation of small weapons.

Criminals target small-scale pastoralists who are the backbone of the regional beef industry. Cross-border criminal networks use advanced logistics and market information to continue their illicit activities. A key step that has not delivered on its potential is the signing of the 2008 Protocol on the Prevention, Combating and Eradication of Cattle Rustling in Eastern Africa. It seeks to address cattle rustling by enhancing regional cooperation, harmonising legislation and adopting livestock identification systems and records.

Unfortunately, Uganda is the only state of the thirteen member states of the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO) that has ratified the protocol.

The protocol is premised on the provisions of Article 5 (1) (c) of the Agreement on Mutual Assistance in the Field of Combating Crime which provides for co-operation in the area of prevention and control of crossborder crime and Article 3 (7), (8) and (9) of the EAPCCO Constitution which specifies the objectives and provides for the drafting of legal instruments which may be necessary for the carrying out of those objectives. It further recognizes the negative social, cultural and economic consequences of cattle rustling and its role in the destruction of livelihoods and the part it plays in exacerbating internal and cross-border conflicts in the region.

preventing, combating and eradicating cattle rustling. Uganda has consequently established the said unit and the same operates majorly in Karamoja region. Article 1(e) defines “Cattle Rustling” to mean the stealing or planning, organising, attempting, aiding or abetting the stealing of livestock by any person from one country or community to another, where the theft is accompanied by dangerous weapons and violence. Under Article 1(f) ‘dangerous weapons’ includes firearms and any other instrument made or adapted for shooting, stabbing or cutting or any instrument which when used for offensive purposes is likely to cause serious injury or death. Some of the objectives of the protocol under Article 13 (a) and (d) are to prevent, combat and eradicate cattle rustling and related criminal activities in the Eastern Africa region, and to promote peace, human security and development in the region.

2. The Law on Cattle Rustling and Unlawful Possession of Firearms

In line with Article 1(e) of the protocol, Uganda’s position on the vice of cattle rustling is made clear by s 266 (1) (a-c) of the Penal Code Act which makes it an offence. It is to the effect that any person who moves from a community where he or she is ordinarily resident to another community and steals or attempts to steal any cow, bull, ox, ram, ewe, wether, goat, pig, ass, mule, horse, mare, gelding or camel, or the young of any such animal from that other community and who at the time of, or immediately before, or immediately after the time of the stealing or attempted stealing, uses or threatens to use a deadly weapon or causes death or grievous harm to any person; and any person who organises the stealing of the animals or is found in possession of any of the said animals without lawful excuses and, which is proved to have been stolen in the manner provided, commits an offence termed cattle rustling and is liable on conviction to imprisonment for life.

Section 266 (2) alludes to s 286(3) on the meaning of “deadly weapon and it includes any instrument made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes,

is likely to cause death. Being aware that weapons facilitate cattle rustling, s 3(1) & (2) of the Firearms Act provides that, any person who purchases, acquires or has in his or her possession any firearm or ammunition without holding a valid firearm certificate, or otherwise than as authorised by such a certificate, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years or to a fine not exceeding twenty thousand shillings or to both. In Uganda, a person who is found in unlawful possession of a firearm is subject to military law under s119 (h) of the UPDF Act and many cattle rustlers have been tried and convicted by military courts for that reason.

3. Trial of Civilians in Court Martial

The trial of civilians in Court Martials has attracted lot of criticism from human rights activists contending that military courts are command driven and therefore lack the requisite impartiality to guarantee fair hearing as envisaged by Art 28 of the Constitution of the Republic of Uganda. In the case of *Kabaziguruka v Attorney General* court held that whereas the Court Martial is a competent court, its powers are only limited to serving officers of the Uganda People's Defense Forces. It was therefore ordered inter alia, that all civilians who are serving sentences imposed by the military courts should have their files transferred to the High Court Criminal Division for either retrial or to be dealt with as court may deem fit. However the execution has been stayed by court in *Attorney General v Kabaziguruka* pending an appeal by the Attorney general in the Supreme court of Uganda to prevent likely prejudice. Unlike in the constitutions of Botswana and Lesotho, the Ugandan's Constitution does not stipulate the relationship between the High Court and Court Martials thereby creating confusion as to whether Court Martials are competent to try civilians.

In the civil setting, only the high court has got unlimited original jurisdiction to try capital offences i.e. offences punishable by death and imprisonment for life. In military setup, both the Division Court Martial under section 194 and the General Court Martial under section 197(2) of the UPDF Act have unlimited original jurisdiction to try capital offences although the latter also has appellate jurisdiction. One would then think that the General court Martial is the equivalent of the High Court in the Civil setting but the law is silent on the comparison. In fact, under Art 129(1) (a)(b)&(c), the only courts of Judicature are the Supreme Court, the Court of Appeal and the High Court. Article 129(1) (d) makes all the other court subordinate to the courts of judicature. This would therefore mean, that a civilian who having committed a capital offence like Cattle Rustling can only be tried by the High Court. The Constitution did not envisage a civilian being tried by the military court. This leaves a vacuum to be filled especially where a civilian is coaccused with a service man. In this circumstance, there is a likelihood of unfairness because parties who have equally contributed to the commission of the offence should be equally punished or to an extent commensurate to their level of participation yet it is hard to establish this where they are tried in different courts.

4. Conclusion

Having thus noted, it should be noted that most operations to arrest cattle rustlers and persons unlawfully possessing guns are conducted by UPDF soldiers either singly or in concert with the Uganda Police depending on the urgency of the matter. This puts the Court Martials in a better position to handle such cases because they don't have much case backlog unlike civil court. By so doing, it quickens justice within the meaning of Art 28(1) as to fair hearing and Art 126(2) (b) which is the effect that justice shall not be delayed. More so, there is need to quickly pacify Karamoja region by putting an end to cattle rustling and unlawful possession of firearms for peace to prevail. Matters of security go to the heart of the nation's general well-being and they need to always be treated with the urgency they deserve. Therefore, the constitution must not be interpreted with populist sentiments but with lenses that magnify the danger that comes with insecurity while striking a balance with the perimeters human rights.

References

¹https://www.irenees.net/bdf_fiche-experience-655_en.html

²Ibid.

³ <https://www.thenewhumanitarian.org/news-feature/2022/1/26/Uganda-Karamoja-cattle-rustlingmilitarised-violence-returns>

⁴Ibid.

⁵D.O. Gumba, Cattle rustling: from cultural practice to deadly organised crime, Institute for Security Studies (2020)p1; <https://issafrica.org/iss-today/cattle-rustling-from-cultural-practice-todeadly-organised-crime>

⁶EAPCCO Cattle rustling Protocol August 2008

⁷Ibid.

⁸Ibid.

⁹The Preamble to the protocol (n.6).

¹⁰bid (n.6)

¹¹Protocol August 2008 (n.6)

¹²Ibid.

¹³Ibid.

¹⁴Penal Code Act cap 120

¹⁵Firearms Act cap 299

¹⁶ Uganda Peoples Defence Forces Act No.7 of 2005

¹⁷The Constitution of the Republic of Uganda 1995 as amended.

¹⁸General Constitutional Petition 45 of 2016) [2021] UGCC 11 (01 July 2021)

¹⁹Constitutional Application 5 of 2021 [2021] UGSC 21 (05 August 2021)

²⁰J. D. Mujuzi, *The Trial of Civilians Before Courts Martial in Uganda* (2022): Analysing the Jurisprudence of Ugandan Courts in the Light of the Drafting History of Articles 129(1)(d) and 210(a) of the Constitution : *Potchefstroom Electronic Law Journal*, 25, (Published 5 April 2022) pp 1 – 32. <https://doi.org/10.17159/1727-3781/2022/v25ioa12023> ²¹ Ibid (n.16).

²² The Constitution of the Republic Of Uganda as amended ²³Ibid