



# **International Conference on the Great Lakes Region**

## **Protocol on Judicial Cooperation**

**1<sup>st</sup> DECEMBER 2006**

## **PREAMBLE**

**We, Heads of State and Government of the Member States of the International Conference on the Great Lakes,**

**Referring** to the Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region adopted and signed in Tanzania on 20 November 2004;

**Bearing in mind** the objectives and principles of the United Nations Charter, those of the Constitutive Act of the African Union and those contained in the ICPO-INTERPOL Constitution, and taking into account the provisions of the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the African Charter on Human and Peoples' Rights;

**Considering** that in the United Nations Charter the peoples of the world resolved, notably, to establish conditions that would promote justice and international cooperation by fostering respect for human rights and fundamental freedoms;

**Reaffirming**, in the terms of the Dar-es-Salaam Declaration, the need to respect the fundamental principles enshrined in the United Nations Charter and the Constitutive Act of the African Union such as territorial integrity, sovereignty, non-interference and non-aggression;

**Considering** that respect for human rights is a fundamental guarantee against threats to the peace and internal security of States;

**Determined** to build a Great Lakes Region that is open to other regions of the continent by enhancing cooperation in the following priority areas: peace and security, democracy and good governance, economic development and regional integration, and humanitarian and social issues;

**Deeply** concerned by the upsurge in crime aggravated by impunity which together exacerbate a climate of insecurity in the Great Lakes Region;

**Aware** of the particular need for measures to combat impunity at the regional level and to ensure that all persons against whom there is evidence to show that they have committed offences in one of the countries of the Great Lakes Region shall be prosecuted and convicted;

**Considering** that for this purpose it is necessary for the Member States to extend reciprocal judicial assistance to one another in the matter of extraditing accused or convicted persons;

**Considering** that in order to facilitate the trial of the individuals referred to above, States must also cooperate with one another in respect of investigations, prosecutions and the exchange of information and documents;

**Considering** the existing bilateral agreements on extradition and cooperation in respect of investigations and prosecutions;

**Considering** the existence in the Member States of the Great Lakes Region police cooperation structures within the framework of the International Criminal Police Organization “ICPO-INTERPOL”;

**Determined** to fill the institutional and legal gaps noted to date in the area of judicial and police cooperation among the States of the Great Lakes Region and desirous of enhancing the protection of citizens of the countries of the Region and their property;

**Agree as follows:**

## CHAPTER I

### General Provisions

#### Article 1

##### Definitions

For the purposes of this Protocol, unless the context otherwise requires, the following mean:

- (a) **Constitutive Act of the African Union:** the Act establishing the African Union;
- (b) **The African Charter:** the African Charter on Human and Peoples' Rights;
- (c) **United Nations Charter:** the Charter creating the United Nations;
- (d) **Dar-es-Salaam Declaration:** the Declaration of the Heads of State and Government of the Great Lakes Region on Peace, Security, Democracy and Development adopted and signed in Dar-es-Salaam, Tanzania, on 20 of November 2004;
- (e) **Requesting State:** the State requesting extradition;
- (f) **Requested State:** the State to which the request for extradition is addressed;
- (g) **Extradition:** the formal transfer or removal, from the territory or jurisdiction of a requested State to that of the requesting State, of a fugitive or persons alleged to have committed an offence to which this Protocol, or other treaties and conventions, or legislation, in force apply;
- (h) **ICPO-INTERPOL:** the International Criminal Police Organization instituting the system of international police cooperation;

## **CHAPTER II**

### **Extradition**

#### **Article 2**

##### **Undertaking of the Member States**

The Member States undertake to extend reciprocal judicial assistance with respect to the extradition of fugitives or accused persons in accordance with the provisions of this Protocol.

#### **Article 3**

##### **Extradition**

Any offence or attempt to commit an offence which, under the laws of each of the Member States, is punishable by an imprisonment of not less than six months shall be extraditable, notwithstanding that a lesser punishment may be passed in relation to such offences.

#### **Article 4**

##### **Political Offences**

1. Political refugees who are sentenced or prosecuted only for offences which are political in nature shall not be liable to extradition.
2. Within the meaning of this Protocol, offences which are political in nature shall be deemed to be those offences which are prejudicial solely to the political order, that is to say aimed solely against the internal or external security of the State.
3. Criminal offences at common law shall not be considered as political offences for the purpose of providing immunity from extradition, even if such offences may have a political character. These include grievous bodily harm, assassination, murder, poisoning, breaches of public order, attempts to commit such offences, as well as criminal offences relating to the destruction of property by arson, explosion or flooding, and theft or armed robbery.

#### **Article 5**

##### **Conditions of Extradition**

1. In the case of an accused person, extradition shall be granted if the commission of the offence concerned is such that the laws of the Member State in which the person is found would justify his or her arrest and imprisonment as if the offence had been committed in the territory of such a Member State.
2. In the case of a convicted person, extradition shall be granted upon sufficient proof of conviction under the laws of the Member State in whose territory the convicted person is present.

## **Article 6**

### **Non-extradition of Nationals**

The Member States shall not be obliged to extradite their nationals. Where a request for the extradition of a national is made, the requested State shall submit the request to its competent authorities with a view to commence criminal proceedings against such a national if sufficient evidence to warrant such proceedings exists. For this purpose, records, information and exhibits supporting the request shall be sent to the competent authorities of the requested State. The requesting State shall be informed of the outcome of any such proceedings.

## **Article 7**

### **Procedure**

1. Extradition procedures shall apply separately to accused and convicted persons.
2. In the case of an accused person, the request for extradition shall be addressed through diplomatic channels to the Minister in charge of Legal Affairs in the requested State. The extradition request shall include:
  - (a) An extradition warrant signed by the Minister in charge of Legal Affairs in the requesting State or by a person duly authorized and competent to act on his or her behalf;
  - (b) A bench warrant or other equivalent legal or judicial document issued by a judge duly authorized to hear the charges brought against the accused in the requesting State;
  - (c) The description of the person sought and all particulars of such a nature as to establish his or her identity and connection with the alleged crime.
3. The Minister in charge of Legal Affairs to whom the request is made shall transmit these and other relevant documents to the judicial authority competent to render the said bench warrant enforceable in conformity with the legislation in force in the requested State.
4. In the case of a convicted person, the course of procedure for extradition shall be the same as in the case of an accused person, except that the judgment or conviction order furnished in support of the extradition request shall clearly specify the offence for which the person sought has been convicted and shall indicate the facts, the date, and the place of the judgment relating to such a conviction.
5. The evidence to be produced shall be such as to establish, in conformity with the laws of the requested State, that the person to be extradited was convicted of the offence with which he or she was charged.
3. With respect to the extradition of accused and convicted persons respectively, as soon as the necessary warrant of arrest or judgment has been rendered enforceable, the person

sought to be extradited shall be handed over to the authority mandated for this purpose by the Government of the requesting State.

## **Article 8**

### **Preventive Detention**

1. The competent authorities of any Member State may take an accused or fugitive offender into preventive custody on the basis of denunciation, complaint, evidence, prosecution or conviction known to the competent authorities of such a Member State as would, in their informed opinion, have justified the said arrest if the offence had been committed, or the conviction had been secured, in the territory of their own State.
2. Such detention shall be notified to the competent authority of the Government on whose territory an alleged offence or offences were allegedly committed or whose courts passed a sentence of conviction.
3. In case of emergency, and in order to ensure prompt and effective punishment of the offender, any competent authority in one of the the Member States may send an urgent written message to a competent authority of another Member State, giving the details of the offence committed and requesting that the alleged perpetrator of the offence be taken into custody. Receipt of such an urgent message shall be confirmed in writing by the requested Member State within forty-eight hours.
4. Any person held in custody by virtue of paragraph 3 above shall be brought as quickly as possible before the competent judicial or administrative authority of the Member State concerned.
5. An accused or convicted person arrested in conformity with this Article shall be released if, within fifteen days from the receipt by a Member State of the notification of detention referred to in paragraph 2 of this Article, an extradition request is not duly made by such a State.

## **Article 9**

### **Release**

1. If the documents justifying the request for extradition have not been produced within thirty days from the request for arrest, the person detained shall be released.
2. If such documents have been produced but prove to be insufficient or incomplete, additional information needed shall be requested by the competent authority of the requested Member State to which the dossier has been referred. If the additional information requested has not been provided within thirty days of the date of receipt of the request, the person detained shall be released.
3. The person detained shall also be released if, within thirty days from the day when the person was made available to the requesting Member State, he or she has not been transferred to that State for any reason other than an act of *force majeure*, of which the requesting Member State shall provide evidence before the expiry of the said period.

## **Article 10**

### **Signature or Certification of Authenticity**

Warrants, depositions, statements and other evidence issued or obtained in the territory of one of the Member States, certified copies thereof, and certificates and judicial documents establishing the commission of the offence or the fact of conviction, shall be accepted as valid proof in the proceedings of another Member State if they are signed by or accompanied by attested authenticity of the competent authority of the Member State in which they were issued or obtained.

## **Article 11**

### **Statutory Limitation**

Extradition shall not take place if, since the commission of the acts charged, the commencement of proceedings or the conviction, prosecution or punishment has become time-barred under the legislation of the requested State.

## **Article 12**

### **Concurrent Requests**

1. If, in respect of the same offence, extradition is requested concurrently by several Member States, extradition priority shall be granted to the Member State in whose territory the offence was committed.
2. If the concurrent requests relate to different offences, extradition shall be granted to the Member State of which the individual sought is a national, or failing that, to the State seeking his or her extradition for the most serious offence.

## **Article 13**

### **Conviction in the Requested Member State**

If the individual sought is prosecuted or convicted by the courts of the requested Member State, his or her extradition may only take place on a temporary basis before the date of his or her release following the normal course of the extradition procedure laid down in the national legislation of the requested Member State. This shall enable him or her to answer the charges brought against him or her by the courts of the requesting Member State, provided that the said Member State shall return him or her to the Member State which extradited him or her so that he or she serves out his or her first sentence, or face prosecution before he or she is finally extradited to the requesting State.

## **Article 14**

### **Seizures**

1. Any item found in the possession of the individual sought at the time of arrest shall be seized and handed over with his or her person when the extradition takes place.
2. This transfer shall not be limited to items which are the product or instrument of the offence, but shall extend to all items which might serve as evidence, even in circumstances where the extradition cannot be accomplished as a result of the escape or the death of the individual sought.
3. The rights of third parties with regard to any such items shall nevertheless be preserved.

## **Article 15**

### **Costs of Extradition**

The requesting Member State shall bear the cost incurred as a result of the arrest and detention of a person who is the subject of extradition, as well as the cost of transporting extradited persons and transferring or consigning any items connected with their extradition.

## **CHAPTER III**

### **Cooperation in Respect of Investigations and Prosecution**

## **Article 16**

### **Undertaking**

1. In conformity with the provisions of their national legislation and the applicable international legal instruments, the Member States undertake to assist one another by dealing with requests from respective competent authorities, and to apply necessary measures to facilitate the procedures and formalities relating to the investigation and prosecution of offences.
2. In this respect, the Member States undertake to cooperate in police investigations conducted by Member States in their respective territories.
3. The Member States undertake to accord each other mutual legal assistance in criminal investigations with a view to strengthening the measures necessary to prevent, investigate and punish crimes.

## **Article 17**

### **Joint Investigation Commission**

1. The Member States undertake to extend reciprocal legal cooperation by establishing Joint Investigation Commissions.

## **Article 18**

### **Transmission of the Request for the Establishment of a Joint Investigation Commission**

1. The request for the establishment of a Joint Investigation Commission shall be transmitted through diplomatic channels by the Minister in charge of Legal Affairs in the requesting State to the Minister in charge of Foreign Affairs in the requested State.
2. Upon receipt of the request, the said Minister shall transmit it to the competent authority of the requested State who shall consider the request accordingly.
3. The establishment of a Joint Investigation Commission may be refused only if the requested State deems it to be a potential threat to its sovereignty or its internal security.
4. In the event of such refusal, a carefully reasoned decision taken by the competent authority of the requested State shall be notified to the requesting State within ninety days.

## **Article 19**

### **Procedure**

1. The request for the establishment of a Joint Investigation Commission shall describe the offence sought to be investigated and the purpose of the investigation, and shall indicate the names and addresses of the alleged perpetrators, and the investigative measure or measures required to be taken.
2. If the measure required is to hear the accused person or witnesses, the request shall indicate their names and addresses and shall contain a list of the questions to be put to each person to be interviewed.
3. The Joint Investigation Commission in charge of conducting the interview shall have the right to meet the persons to be interviewed and to pose any questions which such a Commission may deem necessary.
4. If visits or searches at the homes of presumed perpetrators or in other places are requested, the request shall indicate the names and addresses of the persons concerned, and shall specify the places to be visited and the useful elements to the investigation that the requested measure is likely to establish.
5. If the situation requires further investigation, the request shall contain a statement of the facts on which it is based and a detailed description of the task to be assigned to the investigators. Any such investigation shall be conducted in accordance with the procedure of the requested State.

## **Article 20**

### **Records and Other Documents**

Minutes, reports and all other documents provided by the Joint Investigation Commission shall constitute valid evidence for the authorities of the requesting State in the same way that the requested State would consider such evidence to be valid.

## **Article 21**

### **Exchange of Information**

1. In order to effectively prevent and combat crime, the police forces of the Member States shall, within the framework of this Protocol, exchange information relating to the prevailing levels of crime and policies and strategies for preventing such crime.
2. So far as criminal investigations are concerned, the police forces of the Member States shall seek and communicate to one another information on:
  - (a) Perpetrators, co-perpetrators and accomplices involved in the preparation or commission of international crimes;
  - (b) Any item of evidence related to an international crime actually committed or attempted;
  - (c) Materials needed to establish the proof that an international crime has been committed;
  - (d) Arrests and investigations conducted by respective police services against nationals of other Member States and persons residing in their territories.
3. With respect to crime prevention, the police forces of the Member States shall seek and communicate to one another information concerning notices of frontier transit by protected persons, wanted persons, persons to be kept under surveillance, movement of suspected vehicles, dangerous or prohibited items, etc.

## **CHAPTER IV**

### **Interpretation and Implementation**

#### **Article 22**

##### **Interpretation of this Protocol**

No restrictions or exceptions to fundamental human rights recognized or in force in any country by virtue of laws, conventions, regulations or custom may be accepted on the pretext that this Protocol does not recognize them or recognizes them to a lesser extent.

#### **Article 23**

##### **Dissemination**

The Member States shall ensure that this Protocol is disseminated and implemented at the national level.

## **CHAPTER IV**

### **Article 24**

#### **Final provisions**

1. This Protocol shall be an integral part of the Pact and shall not be subject to separate signature and ratification by the Member States.
2. For any Member State which has ratified the Pact in terms set out in Article 30 of the Pact, this Protocol shall automatically enter into force at the same time as the Pact in accordance with Article 33 of the Pact.
3. Nothing contained in this Protocol shall be construed to be contrary to the provisions of the Pact, the Constitutive Act of the African Union, and the Charter of the United Nations.