



**GUIDE FOR THE DOMESTICATION OF THE PROTOCOLS
OF THE INTERNATIONAL CONFERENCE
ON THE GREAT LAKES REGION**

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List of Acronyms

TDB:	Transborder Development Basins
ICGLR	International Conference on the Great Lakes Region
ICPO-INTERPOL:	International Criminal Police Organization - Interpol
IDP:	Internally Displaced Person
NLS:	National Legislation Service
REC:	Regional Economic Communities
SRDF:	Special Reconstruction and Development Fund
SRDZ:	Specific Reconstruction and Development Zone
UNO:	United Nations Organization

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Foreword

The Executive Secretariat of the International Conference on the Great Lakes Region (ICGLR) has the mandate of promoting and implementing the *Pact on Security, Stability and Development in the Great Lakes Region* signed by the Heads of State and Government at Nairobi, Kenya on 15th December 2006 and, through it, promoting and implementing the other Protocols which are part and parcel of the Pact. To this end, the Executive Secretariat must contribute to the domestication process of the Pact and its Protocols by Member States.

Various studies and analyses carried out in ICGLR member States on Security, Human Rights, Gender, Democracy and Governance show shortcomings in the domestication and implementation of ICGLR Protocols and other regional and international instruments. It must be acknowledged that without adequately ownership of these instruments to which they have subscribed, Member States cannot guarantee to their citizens effective concretization of the priority policy options and guiding principles enshrined in the *Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region* signed by the Heads of State and Government in Dar-Es-Salaam on 20th November 2004.

The objective of the Executive Secretariat in preparing this Guide on the domestication of ICGLR Protocols is to contribute to capacity building of Member States' institutions in charge of legal instruments, especially by making available to them the necessary tools for carrying out this process. It is in this context that this **Guide for the Domestication of the Protocols of the International Conference on the Great Lakes Region** has been published, offering a set of guidelines for the domestication of these Protocols.

I hope this Guide will enable Member States to make up for these Protocol domestication and implementation related shortcomings and reaffirm their commitment to transform the Great Lakes Region into a space for lasting peace and security, political and social stability, growth and shared development.

Professor Ntumba Luaba



**Executive Secretary of the International Conference on the
Great Lakes Region**

Map of Member States and Co-opted States of ICGLR (2012)



*Boundaries and names shown on this map do not represent the official position of the ICGLR

I. General Introduction

The Pact on Security, Stability and Development in the Great Lakes Region² is a legal document which comprises, among others, ten (10) Protocols, namely:

1. Protocol on Non-aggression and Mutual Defense in the Great Lakes Region;
2. Protocol on Democracy and Good Governance;
3. Protocol on Judicial Cooperation;
4. Protocol for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of discrimination;
5. Protocol against the illegal Exploitation of Natural Resources;
6. Protocol on the Specific Reconstruction and Development Zone;
7. Protocol on the Protection and Assistance to Internally Displaced Persons;
8. Protocol on Property Rights of Returning Persons ;
9. Protocol on the Prevention and Suppression of Sexual Violence against Women and Children;
10. Protocol on the Management of Information and Communication.

In accordance with Article 31 (1) of the Pact, “Member States³ agree to apply all the provisions of this Pact according to the principle of non selectivity”. Since the Pact came into force on 8 June 2008, all its instruments came into force too as a result. However, the Member States are required to enact the necessary national laws for the full transposition of the provisions of the Protocols into domestic legislation and to put in place a legal framework in their respective legal systems to facilitate their implementation.

For those Member States which have already put in place a normative framework related to the various aspects of the Protocols, it is necessary to review and update it so as to comply with the commitment made by the Heads of State and Government in the Pact. In other words, this means domesticating the Protocols to facilitate their full implementation in the Member States. In the views of ICGLR, domesticating a Protocol means to have a law, a national policy and an action plan.

² The Pact on Security, Stability and Development in the Great Lakes Region was signed at Nairobi on 15 December 2006 by 11 Member States of the International Conference on the Great Lakes Region (ICGLR). This is a 35 articles international legal instrument which is supplemented and interpreted in detail by other five documents, three of which are legal in nature and two relating to policy. These are: Legal Documents: the ten (10) Protocols, the Regional Institutional Mechanism and the Special Fund for Reconstruction and Development. Policy Documents: the Dar-Es-Salaam Declaration, the four (4) Action Programmes based on the four themes of the Conference which include priority projects.

³ Member States are : Republic of Angola, Republic of Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Republic of Kenya, Republic of Rwanda, Republic of Sudan, Republic of Uganda, United Republic of Tanzania, Republic of Zambia

II. Domestication legal framework: Monism and Dualism

It must be underscored that domestication of protocols must take into consideration various legal frameworks, namely monism and dualism.

a) In monism

- Internal and international legal systems form one unit
- An international law does not need to be incorporated in a national legislation
- The ratification of an international law incorporates it directly in a national legislation which is applied by the judges

b) In dualism

- Dualism shows the difference between a national law and an international law
- An international law must be incorporated in a national law for it to be applied
- There is confusion in the application of treaties and protocols if they are not incorporated in the national legislation

For those countries applying dualism, this Guide will offer them a tool for the drafting of their bill, national policy and action plan.

III. Process for the development of a law, a holistic national policy and an action plan

No	Stages in the process of development and enactment of a law, a national policy and an action plan	Tasks to be carried out in each stage of the process
1.	Establishment of a Task Force/National Standing Committee	The Task Force may be established by a Ministerial/ Interministerial Order or at the initiative of the Civil Society. It may be set up as a National Standing Consultative and Coordination Committee with regard to the development of a law, a national policy and an action plan.
2.	Task force/Committee develops its Work Plan and budget	If the Task Force is established by a Ministerial/ Interministerial Order, the Ministry/Ministries in charge of the Protocol give it a mandate and clear Terms of Reference for developing a bill and a national policy. Based on the Terms of Reference, the Task Force develops an Action Plan and a related budget.
3.	Mobilizing resources to finance the work plan	Based on the Action Plan, the Task Force develops a draft document for resource mobilization to be submitted to donors/partners interested in the Protocol's theme. In this proposal, the following points must be specified: <ul style="list-style-type: none"> I. Background of the proposal II. Justification of the proposal III. Objectives of the proposal IV. Implementation strategies of the proposal V. Expected results VI. Activities VII. Monitoring indicators VIII. Duration of the implementation of the proposal IX. Institutional framework and partnership for implementation X. Financing of the proposal and follow up of the financial report XI. Overall cost of the proposal XII. Timeline of the implementation of the proposal
4.	Recruit a national Consultant for auditing the existing legislations	Using the collected funds, the Task Force sets out to develop the Terms of Reference of a Consultant to carry out an audit of the legislations. This audit will consist in verifying whether there already exist laws and national policies regarding the provisions of the Protocol. If this is the case, the Consultant will establish the existence of any divergences between these laws and national policies and the

		Protocol and make recommendations for the review of these existing instruments. After developing the Terms of Reference, the Task Force will proceed with the official publication of an invitation to tender and recruitment. The contract of the National Consultant in charge of auditing the legislations must not exceed three months so as not to delay the preparation of these documents.
5.	Restricted national workshop for the validation of the audit report	The Task Force meets once again to consider the audit report and its recommendations. It must either validate or not the report. The Consultant must improve the report within three (3) days maximum, based on the recommendations of the Task Force.
6.	Decide on the entity which must develop the bills, the national policy and the action plan (Consultant, Task Force)	Based on the validated report, the Task Force will recruit a consultant or keep the same consultant who carried out the audit to develop bills, national policy and action plan. But the Task Force may carry out this work itself N.B: We should state that if the initiative to develop these bills and national policy documents comes from the Government, it would then be logical to mention it in the draft bill and national policy.
7.	Inclusive national workshop for the validation of the draft documents (bill, national policy and action plan)	The Task Force will organize an inclusive national workshop to which will be invited all the stakeholders, i.e. Ministers, Civil Society Organizations, the Protection Group and International Organizations to consider and incorporate the various contributions, and then validate the draft documents.
8.	Submission of the report of the national workshop and bill and national policy documents to the Ministry in charge of the Protocol	After the validation of the draft documents, the Task Force will submit the report of the national workshop and the bill and draft national policy to the Ministry in charge of the Protocol.
9.	Submission of the bill and draft national policy by the Ministry in charge of the Protocol to Cabinet	The Minister in charge of the Protocol will submit the bill and draft national policy to Cabinet through the Chief Government Secretary or the National Legislation Service ⁴ for legal adjustments, i.e. refocus the text so that it is in line with the Constitution of the country and having the draft documents translated in the national language (this procedure will depend on the practice in each Member State). The documents will be included in the agenda of

⁴ In some countries, the Ministry in charge of the Protocol submits the draft documents, namely the Bill, the National Policy and Action Plan, to the Ministry of Justice for harmonization with the Constitution of the country before the document is considered by Cabinet

		<p>Cabinet meetings by the Chief Government Secretary.</p> <p>N.B: The titles of technical departments and/or Government departments may differ from one country to the other; it is important to adapt them according to the context.</p>
10.	<p>Consideration of the Bill, draft national policy and action plan in Cabinet meetings</p>	<p>When the bill, the draft national policy and action plan reach Cabinet, he latter considers them and makes amendment proposals, if appropriate. If Cabinet makes any recommendation, the documents must be sent back to the Ministry in charge of the Protocol for improvements according to the proposals made by Cabinet.</p> <p>Cabinet sends the draft documents (draft bill, draft national policy and draft action plan) to the Chief Government Secretary who forwards it to Parliament.</p>
11.	<p>Submission of the draft documents (draft bill, national policy and action plan) to Parliament⁵</p>	<p>The Chief Government Secretary submits the draft documents (draft bill, draft national policy and draft action plan) to Parliament or through the Ministry in charge of Parliamentary Affairs or the Ministry of Justice (this will depend on the procedures in force in the country).</p>
12.	<p>Consideration and adoption of the draft bill, draft national policy and draft action plan by Members of Parliament</p>	<p>The draft documents are sent by the Speaker of Parliament to the Parliamentary Commission in charge of the theme of the Protocol for consideration.</p> <p>The Commission invites the Ministry in charge of the Protocol to take part in the consideration of the draft bill.</p> <p>The draft bill, draft national policy and draft action plan are tabled by the Commission in the plenary session of Parliament.</p> <p>The plenary session of Parliament will invite the Minister in charge of the Protocol to present and defend the documents submitted to it for consideration.</p> <p>The plenary session may pass the law or reject it with amendments</p> <p>If it is rejected with amendments, the process will start afresh and goes through the stages followed earlier on.</p> <p>If it is adopted, the process continues as per point 13 below.</p>
13.	<p>Signature of a decree by the President of the Republic and enactment</p>	<p>The law is be passed by Parliament ;</p> <p>The Chief Government Secretary receives notification by</p>

⁵ Parliament is not required to necessarily consider the draft bill, draft national policy and draft action plan. It may consider the draft bill only, taking it that the draft national policy and draft action plan are tools of the application of the law

	of the law	<p>Parliament with copy of the law;</p> <p>The Chief Government Secretary submits the document to the Head of State for signature as well a draft Decree promulgating the law by the President of the Republic.</p> <p>The draft Decree is signed by the President of the Republic.</p> <p>N.B : Depending of the provisions of the Constitution of each country, the Head of State has limited time for enacting the law</p>
14.	Publication in the Official Gazette	The law is published in the Official Gazette of the country and disseminated everywhere it is needed.
15.	Monitoring enforcement	Texts for the enforcement of the law must be initiated by the Ministry in charge of the Protocol (Decree, Ministerial order, Interministerial order, etc...) for law enforcement.
16.	Implementation of the national policy and action plan	Once the law has been enacted, the Task Force/National Consultative and Coordination Committee for the development of the law, national policy and action plan must ensure that the national policy and action plan are implemented under the coordination, facilitation and monitoring of the Ministry in charge of the Protocol.
17.	End of the process	END

IV. Some important questions

Is it necessary to follow all the stages of the process?

As the name indicates, this is only a guide meant for stakeholders to enable them to avoid skipping a task that may affect negatively ownership of finished products, namely the law, the national policy and the action plan. Depending on the priority each country gives to the Protocol, the Committee may jump a stage, but the process must be inclusive and the search of consensus is the golden rule.

How long could the process take?

A process that follows all the stages may take a minimum of one year. But it all depends on the dynamics of the Task Force, the priorities given to the theme of the Protocol and the political will of the authorities of the Member State.

What is the implementation cost of the activities of the process?

Experience has shown that the domestication of a protocol requires considerable resources. That is why points 2 and 3 of the process talk of mobilization of resources for the process. It would not be wise to wait until all the resources have been secured before embarking on this exercise, but rather start with the available resources. With the products obtained at each stage, partners will be convinced of the usefulness of the initiatives and will offer assistance. What matters is to involve these partners from the beginning of the process. That is why the process must be inclusive.

V. Minimum elements of a national regulation of ICGLR Protocols

This section sets out a number of minimum elements to be taken into consideration during the development of the national policy for the implementation of an ICGLR Protocol.

A national policy that does not take into account these minimum elements will not be considered as one since it will not be concretizing the will of the Heads of State conveyed in the Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region⁶ and in the Pact on Security, Stability and Development in the Great Lakes Region.

In addition, the following tables contain minimum elements to be included in a national policy document with a view to their harmonization in the 11 Member States.

⁶ The Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region was signed by the Member States on 20 November 2004 under the auspices of the United Nations and the African Union. It is important to note that this Dar es Salaam Declaration was signed also by nine witnesses, including the UN Secretary General, the President of the African Union Commission, the Presidents Malawi, Mozambique, Namibia, Nigeria (in his capacity as President of the African Union), South Africa, Zimbabwe and the Prime Minister of Gabon.

Table 1: Non-aggression and Mutual Defense among Member States

Minimum elements of a national regulation on non aggression and mutual defense among Member States
<ol style="list-style-type: none">1. Definition of concepts of “Acts of subversion “, “Aggression”, “Armed Groups”, ”Designated zones for border security “;2. Guarantee of mechanisms for settling and preventing internal and interstate armed conflicts as well as subversives activities and a legal framework facilitating the eradication of persistent insecurity of whatever kind prevailing in and between Member States;3. Providing for mechanisms to eliminate threats against peace, security, stability sustainable development in the Great Lakes Region through collective security;4. Providing for mechanisms to ensure respect of States sovereignty and security, inviolability of their borders and their territorial integrity;5. Mechanisms for the protection of human and peoples’ rights, gender equality, the rule of law, democracy and sustainable development in the Great Lakes Region;6. Providing measures for ensuring that disputes between Member States and between Member States and armed groups are settled peacefully;7. Measures for forbidding any Member State to allow the use of its territory as a base for aggression or subvention against another Member State;8. Providing specifically for mechanisms relating to non aggression and mutual defense among Member States;9. Defining regional responsibilities for the management of security at common borders;10. Providing for measures to denounce all armed groups operating in the Great Lakes Region;11. Making provision for measures to put an end to the proliferation of small arms and light weapons.

Table 2: Democracy and Good Governance

Minimum elements of a national regulation on democracy and good governance
<ol style="list-style-type: none">1. Definition of concepts : African Charter on the Rights and Welfare of the Child; Convention on the Rights of the Child ; Convention on the Elimination of All Forms of Discrimination against Women ; Geneva Convention ; Solemn Declaration; Discrimination; Resolution 1325.;2. Mechanism for the separation of the powers of the Executive, the Legislative and the Judiciary;3. Mechanism for accession to power through regular, free, fair and transparent elections ;4. Mechanism for preventing any unconstitutional change and any undemocratic mode of accession to or stay in power5. Mechanism for people’s participation in decision making in strict compliance with democratic principles ;6. Provision for neutrality of defense and security forces;7. Provision for measures for the elimination of all forms of ethnic, religious, racial, gender or regional discrimination ;8. Provision for gender equality, including through policies and positive discrimination ;9. Provision for anti-corruption measures;10. Provision for measures for political pluralism;11. Provision for measures for freedom of association, assembly and/or peaceful demonstration ;12. Measures for the freedom of the press and the freedom of expression13. Provision for measures to ensure free movement, involving particularly prohibition of forced exile or keeping in exile.

Table 3 : Judicial cooperation

Minimum elements of a national regulation on judicial cooperation
<ol style="list-style-type: none">1. Reminder of the Constitutive Act of the African Union, the African Charter, the UN Charter and Dar es Salaam Declaration ;2. Definition of the following concepts : Requesting State, Requested State, Extradition, ICPO-INTERPOL;3. Mechanism allowing Member States to bring reciprocal judicial assistance to one another with regard to the extradition of accused and condemned individuals;4. Mechanism for extraditions and political offenses and conditions for their application;5. Measures for preventive detention and release from custody ;6. Provision for cooperation in investigations and judicial proceedings ;7. Provision for interpretation of the Protocol on judicial cooperation.

Table 4: Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes against Humanity and all forms of Discrimination

Minimum elements of a national regulation on the prevention and punishment of the crime of genocide, war crimes, crimes against humanity and all forms of discrimination
<ol style="list-style-type: none">1. Definition of the following concepts : Crime of genocide, African Charter on the rights and welfare of the child, Convention on the rights of the child, Geneva Convention, Convention on the genocide, Crime against humanity, War crime, Solemn Declaration, Discrimination, Requesting State, Requested State, Extradition, Remission;2. Measures for the fight against discriminatory ideologies and practices3. Measures for the fight against the crime of genocide, war crimes and crimes against humanity;4. Measures for the State Party competence ;5. Measures for judicial cooperation;6. Measures for Mixed Investigations Commissions ;7. Provision for protection measures by establishing a Committee for the prevention and punishment of the crime of genocide, war crimes and crimes against humanity, as well as all forms of discrimination ;8. Definition of the mission of establishing a Committee for the prevention and punishment of the crime of genocide, war crimes and crimes against humanity, as well as all forms of discrimination.

Table 5: Fight against the illegal exploitation of natural resources

Minimum elements of a national regulation on non-aggression and mutual defence among Member States
<ol style="list-style-type: none">1. Definition of the following concepts : Committee on the fight against the illegal exploitation of natural resources, Illegal exploitation, extradition, Regional Mechanism for the Certification of Natural Resources, Kimberley Process, Natural Resources, Permanent Sovereignty on Natural Resources2. Measures for the promotion and strengthening in each Member State of the development of effective mechanisms for the prevention, punishment and eradication of the illegal exploitation of natural resources3. Measures for intensifying and strengthening cooperation among Member States with a view to making measures for the fight against the illegal exploitation of natural resources more effective and sustainable ;4. Measures for promoting the harmonization of Member States' legislations, national policies and procedures for the fight against the illegal exploitation of natural resources ;5. Measures to ensure permanent sovereignty of States on natural resources ;6. Measures to ensure respect of the principle of sovereignty by investors ;7. Mechanism for international cooperation in the fight against the illegal exploitation of natural resources ;8. Mechanism for compelling Member States to protect human rights all the time, including during the exploitation of natural resources'9. Mechanism for defining States obligations ;10. Measures that encourage Member States to establish a mechanism for the certification of natural resources.

Table 6: Specific reconstruction and development zone

Minimum elements of a national regulation on the specific reconstruction and development zone
<ol style="list-style-type: none">1. Definition of the following concepts : Specific reconstruction and development zone, Transborder Development Basin, Local regional integration of border populations ;2. Mechanism for the establishment of a political, legal and institutional framework necessary and desirable for making the specific reconstruction and development zone operational;3. Mechanism for the promotion, growth and development of existing and establishment of new transborder development basins through revitalization and harmonization ;4. Mechanism for the establishment of a Special Reconstruction and Development Fund (SRDF) ;5. Mechanism for the SRDZ, including through TDB, cooperation with the Civil Society Fund, Youth Forum, Women Forum and forums of other socio-professional organizations and associations.

Table 7: Prevention and punishment of sexual violence against women and children

Minimum elements of a national regulation on the prevention and punishment of sexual violence against women and children
<ol style="list-style-type: none">1. Definition of the concepts of “Crimes against humanity”, “Gender”, “Genocide”, “Sexual violence”, “Trafficking in human beings”, “War crimes”;2. Ensuring protection of women and children against impunity following acts of rape and sexual violence ;3. Providing that sexual violence is punishable in times of peace and armed conflicts ;4. Establishment of a legal framework under which countries undertake to take legal action and punish perpetrators of sexual violence crimes;5. Provide for measures for the remission of individuals and fugitives accused of committing sexual violence offenses6. Putting in place a regional mechanism for offering legal, medical, material and social assistance, particularly counselling services; and7. Measures for indemnifying women and children victims and survivors of sexual violence.

Table 8: Protection and assistance to internally displaced persons

Minimum elements of a national regulation on the protection and assistance to internally displaced persons
<ol style="list-style-type: none">1. Definition of “internally displaced persons” , in line with the guiding principles;2. All aspects of displacement covered: prevention, response and lasting solutions;3. Recognition of the rights of the displaced persons: protection, assistance, lasting solutions and non-discrimination;4. Institutional focal points at local and national levels, definition of responsibilities;5. Allocation of the necessary human and financial resources ;6. Legal foundation of cooperation with national and international humanitarian partners, including clauses to facilitate their work ;7. Consultation and participation of displaced persons ;8. Systems for the collection of relevant data;9. Surveillance by a human rights national institution;10. Measures for instilling national awareness and disclosure to stakeholders.

Table 9: Property rights of returning persons

Minimum elements of a national regulation on the rights to property for returning persons
<ol style="list-style-type: none">1. Definition of “ Returning person” in line with the guiding principles2. Legal protection of the property of internally displaced persons guaranteed ;3. Guaranteeing through law that internally displaced persons and refugees will recover their properties, including their land on their return;4. Local administrative and traditional authorities guarantee to the returning persons the recovery of their properties;5. Establishment of a legal framework for settling disputes arising from the recovery of properties previously occupied or owned by the returnees;6. Special protection for women, children and returnees’ properties guaranteed for those who show special attachment to land ;7. Guarantee for legal compensation for the loss or destruction of properties belonging to IDP and returning refugees ;8. Guarantee for legal compensation for the loss or destruction of properties of resettled or relocated persons due to large scale construction or development projects.

Table 10 : Information and communication management

Minimum elements of a national regulation on information and communication management
<ol style="list-style-type: none">1. Definition of the following concepts : Council, Freedom of expression, Medias, Media freedom and independence, Media pluralism, Solemn Declaration, Millennium Declaration, Windhoek Declaration, Resolution 1325,2. Measures for the promotion of the freedom of opinion and the freedom of expression and free exchange of ideas in the Great Lakes Region ;3. Measures for the promotion of media freedom to enable them to receive and communicate information and ideas in the Great Lakes Region ;4. Measures for the promotion of media pluralism and new information and communication technologies and to broaden access to information in the Great Lakes Region;5. Mechanism for stimulating the emergence of independent and responsible media in the Great Lakes Region, particularly through the promotion of regulatory authorities and media self-regulation;6. Measures for the promotion of media professionalism, particularly through the establishment of adequate mechanisms of financial assistance and strategies for capacity building for the professionals in the media ;7. Measures for the promotion, through the media, of civic education in the Great Lakes Region;8. Measures for the promotion, through the media, of the use and dissemination of Kiswahili as a working language ;9. Measures for the promotion of cooperation between and among professionals of the media of the region ;10. Measures for the establishment of a Regional Information and Communication Council for the Great Lakes Region.

VI. Conclusion

The development of a normative national framework for the implementation of various ICGLR protocols must be an inclusive and participatory process spearheaded by National Authorities, with the support of the International Community, involving Civil Society Organizations and representatives of communities.

Indeed, ignoring the principle of inclusion and participation would result in certain Member States having better normative frameworks which will not be applied for the benefit of the country and the beneficiaries of the Protocol.

The signing and ratification of the Pact on Security, Stability and Development in the Great Lakes Region was a preliminary step in the search of important lasting solutions for the Great Lakes Region. But the domestication of the legal instruments it contains is one of the compulsory and indispensable steps for the Governments of Member States willing to concretize their political will and commitment for the benefit of their countries and their people.