



International Conference on the Great Lakes Region

Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity and all forms of Discrimination

29TH NOVEMBER 2006

PREAMBLE

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

Referring to the Dares-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region adopted and signed in Dar-es-Salaam (United Republic of Tanzania) on 20 November 2004;

Deeply concerned of the endemic conflicts and the persistent insecurity aggravated by the massive violations of human rights, the policies of exclusion and marginalisation, impunity with respect to the crime of genocide, war crimes, and crimes against humanity;

Mindful of the obligations arising from the Convention for the Prevention and Punishment of the Crime of Genocide, and that the United Nations' General Assembly, by its resolution 96 (I) dated 11 December 1946, declared that genocide is a crime against people's rights, in contradiction with the spirit and ends of the United Nations, and that the civilised world condemns genocide that, in all periods of history, has inflicted great losses on humanity and that, to free it of such an odious scourge, international cooperation is necessary;

Reaffirming the obligations from United Nations principles and directives under the terms of which all parties to an armed conflict are obliged to fully observe the international law applicable to the rights and protection of women and young girls, in particular as civil persons; noting the obligations under the Geneva Conventions of 1949 and the related Additional Protocols of 1977, the Convention of 1951 Relating to the Status of Refugees and its Protocol of 1967, the Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on the Elimination of all Forms of Discrimination against Women of 1979 and its Optional Protocol of 1999, the United Nations Convention on the Rights of the Child of 1989 and its two Optional Protocols of 25 May 2000, the African Charter on the Rights and Welfare of the Child of 1990 as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003, and taking into account the relevant provisions of the Statute of Rome of the International Criminal Court 1998;

Reaffirming, in accordance with the Statute of the International Criminal Court, that the most serious crimes which affect the whole international community should not remain unpunished and that their punishment must be effectively ensured by legislative and constitutional measures at the national level and by strengthening regional and international cooperation;

Mindful that it is each Member State's duty to exercise its criminal jurisdiction over the perpetrators of the crime of genocide, war crimes, and crimes against humanity;

Considering that Article 3 of the Statute of the International Criminal Tribunal for Rwanda affirms that rape is a crime against humanity when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds;

Referring to, the Beijing Declaration and Platform of Action, Resolution 1325 of the United Nations Security Council, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Solemn Declaration of the African Union on Equality between Men and Women in Africa which condemns rape and any other form of sexual violence;

Determined to put an end to the recruitment of children in national armed forces or in any other armed group or to their participation in any way in hostilities especially as reinforcements, to fight illegal labour, trafficking in women and children and the prostitution of women and children in the conflict zones of the Great Lakes Region;

Determined to promote and enshrine good governance and the rule of law and strengthen the protection of human and peoples' rights, and to consolidate democratic institutions and culture in order to combat all forms of discrimination;

Determined to put an end to such crimes in the Great Lakes Region and take effective measures to prosecute their perpetrators;

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) **Crime of genocide:** any one of the acts set out in article 6 of the Statute of the International Criminal Court, if it is committed with the intention of destroying in whole or in part a national, ethnic, racial or religious group;
- b) **The African Charter on the Rights and Welfare of the Child:** the Charter on the Promotion and Protection of the Rights and Welfare of the Child adopted by the Heads of State and Government of the Organisation of African Unity on 11 July 1990;
- c) **Convention on the Rights of the Child:** the Convention on the Promotion and Protection of the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989;
- d) **Convention against Racial Discrimination:** the Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on 21st December 1965;
- e) **Convention on the Elimination of all Forms of Discrimination against Women:** the Convention on the Elimination of all Forms of Discrimination against Women adopted by the United Nations General Assembly on 18 December 1979;
- f) **Geneva Conventions:** the four conventions on humanitarian law adopted on 12 August 1949 by the diplomatic Conference for drawing up international conventions and their additional protocols adopted on 8 June 1977;
- g) **The Genocide Convention:** the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948;
- h) **Crime against humanity:** any one of the acts set out in article 7 of the Statute of the International Criminal Court, when committed as part of a widespread or systematic attack directed against any civilian population and with knowledge of the attack;
- i) **War crime:** any one of the acts set out in article 8 of the Statute of the International Criminal Court;
- j) **Solemn Declaration:** the Solemn Declaration on Equality between Men and Women, adopted by the Heads of State and Government of the African Union on 8 July 2004;
- k) **Discrimination:** any distinction, exclusion, restriction or preference based on race, religion, gender, colour, ancestry or national or ethnic origin, the purpose or the effect of which is to destroy or undermine the recognition, the possession or the exercise, in conditions of equality, of human rights and fundamental freedoms in the political, economic, social and cultural fields or in any other area of life;
- l) **Requesting State:** the State which requests the extradition;
- m) **Requested State:** the State to which the request for extradition is addressed to;
- n) **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;

- o) **Beijing Declaration and Platform of Action:** the Declaration and Platform of Action adopted at the fourth global summit on women organized by the United Nations in September 1995;
- p) **Hand-over:** the fact of a State handing over a person to the International Criminal Court;
- q) **Resolution 1325:** the Resolution on the Involvement of Women in Peace and Security Operations adopted by the United Nations Security Council on 31 October 2000.

CHAPTER II

Combating Discriminatory Ideologies and Practices

Article 2

Non-discrimination Principle

All human beings are born free and equal in dignity and in law. Everyone may claim rights and freedoms set out in the relevant international and regional human rights instruments without any discrimination.

Article 3

Equality Before the Law

All persons are equal before the law and have the right, without distinction, to equal protection of the law and equal protection against any discrimination or any incitement to discrimination.

Article 4

Right to Equitable Justice

The Member States shall ensure that anyone within their jurisdiction will enjoy protection and effective recourse to the national courts and other competent State authorities, against any act of discrimination which, contrary to this Protocol, may violate his or her personal rights and his or her fundamental liberties, as well as the right to seek satisfaction or fair and adequate redress for any harm of which she or he might have suffered as a result of such discrimination.

Article 5

Undertaking of the States

The Member States shall condemn all forms of discrimination and shall immediately adopt measures to eliminate all forms of discrimination and promote harmony among all segments of the nation, and for this purpose:

- a) The Member States undertake not to engage in any act or practice of discrimination against persons, groups, or institutions and to ensure that all public authorities and, national and local institutions comply with this obligation;
- b) The Member States must, by all appropriate means, including by legislative measures if the circumstances so require, prohibit discrimination practised by groups or organizations and put an end to it;
- c) The Member States shall take effective measures to review national and local government policies and to amend or repeal any law or any regulatory provision having the effect of creating discrimination or perpetuating it where it exists;
- d) The Member States shall take, if the circumstances so require, specific and concrete measures in the social, economic, cultural and other fields to adequately ensure the development or protection of particular groups or individuals belonging to these groups in order to guarantee their full exercise of human rights and fundamental freedoms. These measures shall be maintained until the objectives for which they were taken have been achieved.

Article 6

Condemnation of Discriminatory Ideologies

1. The Member States condemn all propaganda and all organisations which are inspired by ideas or theories based on the superiority of a race or a group of people of a particular ethnic origin, or which try to justify or encourage any form of racial hatred and discrimination.

2. The Member States undertake to immediately adopt concrete measures intended to eliminate any incitement to such discrimination, or any acts of discrimination and, for this purpose, taking due account of the principles formulated in the Universal Declaration of Human Rights, in the Convention on the Elimination of All Forms of Racial Discrimination and in the African Charter on Human and Peoples' Rights. In particular, Member States undertake:

a) To declare that any circulation of ideas based on the superiority of one group over another, any incitement to hatred or discrimination and any act of violence or provocation to such acts directed against any race or any group of people of a given ethnic origin, as well as any help given to such activities, including financing them, is an offence punishable by law;

b) To declare illegal and ban organisations as well as organised propaganda activities and any other type of propaganda activity which incites discrimination and which encourages it and to declare that any participation in these organizations and activities shall be an offence punishable by law;

c) Not to allow public authorities, whether national or local, to incite discrimination or to encourage it.

Article 7

Combating Prejudices

The Member States undertake to take immediate and effective measures in the fields of teaching education, culture and information to combat prejudices leading to racial discrimination and to encourage understanding, tolerance and friendship between nations,

racial and ethnic groups, as well as to promote the aims and the principles of the United Nations Charter, the Constitutive Act of the African Union, the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.

CHAPTER III

Combating the Crime of Genocide, War Crimes, and Crimes Against Humanity

Article 8

Undertakings of States

1. The Member States recognise that the crime of genocide, war crimes, and crimes against humanity are crimes under international law and are crimes against people's rights which they undertake to prevent and punish.
2. In this respect, the crime of genocide and complicity in genocide as defined in Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide as well as in Article 6 of the Statute of the International Criminal Court, shall be punished by Member States.
3. The crimes listed in Articles 7 and 8 of the Statute of the International Criminal Court shall be punished by Member States as war crimes, and crimes against humanity.

Article 9

Combating Impunity

1. The Member States undertake, according to their respective constitutions, to take the necessary measures to ensure that the provisions of this Protocol are domesticated and enforced and in particular to provide for effective penalties for persons guilty of the crime of genocide, war crimes, and crimes against humanity.
2. Persons accused of genocide, war crimes or crimes against humanity shall be brought before the competent courts of the Member State on whose territory the crime was committed or before competent international judicial bodies.
3. The Member States particularly undertake to take appropriate measures to neutralize, disarm, arrest and bring before the competent courts the perpetrators of genocide, in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide, and authors of war crimes or crimes against humanity in accordance with the provisions of the Statute of the International Criminal Court and the relevant resolutions of the United Nations Security Council.

Article 10

Jurisdiction

1. Every Member State shall take necessary measures to establish jurisdiction over the crimes of genocide, war crimes, and crimes against humanity in the following cases:
 - a) When these crimes are or were committed on its territory ;

- b) When the presumed perpetrator of the crime is a national of the said State or is ordinarily resident on its territory ;
- c) When the victim is a national of the said State;

Article 11

Statutory Limitation

The prosecution of persons alleged to have committed the crime of genocide, war crimes, and crimes against humanity, shall not be limited by time.

Article 12

Applicability to Official Authorities

The provisions of this chapter shall apply equally to all persons suspected of committing the offences to which this Protocol applies, irrespective of the official status of such persons. In particular, the official status of a Head of State or Government, or an official member of a Government or Parliament, or an elected representative or agent of a State shall in no way shield or bar their criminal liability.

CHAPTER IV

Judicial Cooperation

Article 13

Undertaking by the States

The Member States undertake to mutually assist one another through cooperation of their respective institutions with a view to preventing, detecting and punishing the perpetrators of genocide, war crimes, and crimes against humanity.

Article 14

Legal Basis for Extradition

1. Crimes within the field of application of this Protocol shall be extraditable. Member States shall include these crimes in any extradition treaty applicable to them.
2. A Member State which receives a request for extradition from another Member State which has not concluded an extradition treaty with the requested Member State may consider this Protocol as a legal basis for requesting extradition, as long as the crimes in respect of which such extradition is sought are within the field of application of this Protocol.
3. Member States which do not subject the execution of an extradition measure to the existence of an extradition treaty shall recognise that the crimes covered by this Protocol shall be extraditable.
4. For purposes of extradition, the crime of genocide, war crimes, and crimes against humanity shall not be considered as political crimes to which the exception of political offences apply in matters of extradition.

Article 15

Conditions for 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 country in which the person is found would justify his or her arrest and imprisonment as if the offence had been committed in that country.
2. In the case of a convicted person, extradition shall be granted on production of proof which, under the laws of the country in which the person is found, sufficiently demonstrates that he or she has been convicted accordingly.
3. 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 prosecution against such a national. 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 prosecution.

Article 16

Concurrent Requests

1. If, for the same offence, extradition is applied for concurrently by several States, it shall be granted by preference to the State on the territory of which the crime was committed.
2. If the concurrent requests concern different offences, extradition shall be granted to the State of which the individual claimed is a citizen or, failing that, the State requesting the extradition for the most serious crime.

Article 17

Joint Commissions of Enquiry

1. The Member States undertake to cooperate in establishing joint commissions of enquiry and to take all necessary measures to facilitate the relevant and related procedures and formalities.
2. The establishment of a joint commission of enquiry may be refused only if the requested State deems it to be a potential threat to its sovereignty or its internal security.
3. In the event of such refusal, a carefully reasoned decision based on relevant evidence shall be taken by the competent authority of the requested State and the requesting State shall be notified of such a decision as quickly as possible.

Article 18

Request for Joint Commission

1. A request for a joint commission of enquiry shall be submitted through diplomatic channels by the Minister in charge of Legal Affairs of the requesting State to the Minister in charge of Foreign Affairs of the requested State.
2. As soon as the request is received, the said Minister will transmit it to the competent authority of the requested State who shall consider the request accordingly.

Article 19

Records and Other Documents

The minutes, reports and all other documentation supplied by the Joint Commission of Enquiry shall constitute valid evidence for the authorities of the requesting State in the same way as the requested State would consider such evidence to be valid.

Article 20

Exchange of Information

In order to prevent and effectively combat crimes of genocide, crimes against humanity and war crimes in the Great Lakes Region, the police forces of the Member States shall, in the framework of this Protocol, exchange information between themselves on:

- a) The perpetrators, co-perpetrators and accomplices involved in the commission of the crime of genocide, war crimes, and crimes against humanity;
- b) Any items of evidence connected to the crimes mentioned above, whether committed or attempted;
- c) The elements needed to establish the evidence for these crimes;
- d) Arrests and police investigations carried out by the competent authorities against the nationals of other Member States and persons residing in their territories.

Article 21

Cooperation with the International Criminal Court

The Member States shall endeavour to ratify the Statute of the International Criminal Court in accordance with their constitutional requirements.

Article 22

Legislative Measures

Member States shall ensure that procedures concerning all forms of cooperation with the International Criminal Court are established by way of national legislation.

Article 23

Undertakings by Member States

The Member States undertake to cooperate actively with the International Criminal Court with specific reference to:

- a) Requests to the arrest and hand over of persons alleged to have committed crimes falling within the jurisdiction of the International Criminal Court;
- b) Requests for transit through the territory of a Member State;
- c) Requests concerning other forms of cooperation mentioned in Article 93 of the Statute of the International Criminal Court;
- d) Requests for cooperation related to renunciation of immunity and consent to hand over indicted persons;
- e) Execution of prison sentences or fines and measures of confiscation.

Article 24

Requests from the International Criminal Court

1. If a Member State receives a request from the International Criminal Court for the surrender of an indicted person and a competing request from another State to extradite the same person for the same crime, the requested Member State shall give priority to the request of the International Criminal Court.
2. The status of the national of the requested State shall not constitute a bar to the hand over or surrender of such a national.

Article 25

Applicability of Articles 22, 23 and 24

Articles 22, 23 and 24 are binding only upon those Member States that have, or will have, ratified the Statute of the International Criminal Court when this Protocol will come into force.

CHAPTER V

Safeguard Measures

Article 26

Committee

1. A Committee for the prevention and the punishment of the crime of genocide, war crimes, and crimes against humanity and all form of discrimination shall be established.
2. Member States shall provide the Committee with sufficient resources to carry out its work effectively.

Article 27

Composition of the Committee

1. The Committee shall be composed of one person from each Member State, selected from male and female personalities known for their high moral standards, their impartiality and their competence.
2. Members of the Committee shall sit in their personal capacity.

Article 28

Candidates

Each Member State will present a maximum of two candidates at least one of whom shall be a woman.

Article 29

List of Candidates

1. The Conference Secretariat shall invite Member States to submit the list of candidates within ninety days before the selection of the members of the Committee.
2. The Conference Secretariat shall draw up an alphabetical list of the candidates and communicate it to the Member States, at least thirty days before the next session of the Summit.

Article 30

Selection

The members of the Committee shall be endorsed by the Summit upon the recommendation of the Regional Inter-Ministerial Committee from the list of candidates referred to in Article 29.

Article 31

Mandate

1. Members of the Committee shall serve for a period of four years, which will be renewable once.
2. In the event that a member of the Committee cannot complete his or her mandate, such a member shall be replaced by a new member from the same Member State from which the departing member was selected. The new member shall be appointed for the remaining period of the mandate held by the previous member.
3. Members of the Committee shall serve their mandate until their successors are chosen.

Article 32

Members' Declaration

After their appointment, the members of the Committee shall solemnly declare that they will carry out their functions impartially and loyally.

Article 33

Vacancies

In the event of the death or the resignation of a Committee member, the Chairperson of the Committee shall immediately inform the Conference Secretariat who shall declare the seat vacant as from the date of death or resignation.

Article 34

Suspension or Termination of the Mandate

1. A member's mandate can only be suspended or terminated if the other members of the Committee agree unanimously that she or he no longer meets the requirements of the mandate to serve on the Committee.
2. The decision to suspend or terminate the mandate shall be made by the Conference.

Article 35

Committee Staff

The Conference Secretariat shall appoint a Secretary of the Committee and will, in addition, provide the staff, means and services necessary for the effective operation of the Committee.

Article 36

Chairperson of the Committee

1. The Committee shall elect its Chairperson, Vice Chairperson and the Rapporteur for a period of two years, renewable once.
2. The functions of the Chairperson, the Vice Chairperson and the Rapporteur shall be defined in the Committee's internal rules.

Article 37

Committee Meetings

1. The Committee shall meet as often as necessary and at least twice a year when called upon by the Chairman. The quorum of the Committee shall consist of two thirds of its members.
2. Decisions shall be taken by an absolute majority of the members present and voting. In the event of parity, the Chairperson shall have the casting vote.

Article 38

The Committee's Mission

1. The Committee's mission is to prevent crimes of genocide, war crimes, and crimes against humanity in the Great Lakes Region.
2. For this purpose it shall be responsible for:
 - (a) Regularly reviewing situations in each Member State for the purpose of preventing genocide, war crimes, crimes against humanity, and discrimination;
 - (b) Collecting and analysing information related to genocide, war crimes, crimes against humanity, and discrimination;
 - (c) Alerting the Summit of the Conference in good time in order to take urgent measures to prevent potential crimes;
 - (d) Suggesting specific measures to effectively fight impunity for these crimes;
 - (e) Contributing to raising awareness and education on peace and reconciliation through regional and national programmes;
 - (f) Recommending policies and measures to guarantee the rights of victims of the crime of genocide, war crimes, and crimes against humanity to truth, justice and compensation, as well as their rehabilitation, taking into account gender specific issues and ensuring that gender-sensitive measures are implemented;
 - (g) Monitoring amongst the Member States, where applicable, national programmes on Disarmament, Demobilization, Rehabilitation, Repatriation and Reinstallation (DDRRR) for former child soldiers, ex-combatants and combatants;
 - (h) Carrying out any other tasks that the Inter-Ministerial Committee may entrust it with.

Article 39

Collaboration

In discharging its mandate, the Committee shall collaborate with the Member States, the African Commission on Human and Peoples' Rights, civil society organizations, agencies of the United Nations system and any body that is well placed to furnish it with information that is relevant to its mandate.

Article 40

Applicable Law

The Committee shall apply the provisions of this Protocol and any other relevant instruments ratified by the Member States respectively.

Article 41

Method of Investigation

The Committee may resort to any appropriate method of investigation that is consistent with this Protocol; in particular it may interview any person likely to provide it with useful information.

Article 42

Report on the Activities of the Committee

The Committee shall submit a report on its activities and make recommendations at the ordinary session of the Inter-Ministerial Committee preceding the ordinary session of the Summit.

CHAPTER VI

Article 43

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.