

CONFERENCE OF THE MINISTERS OF JUSTICE OF THE MEMBER STATES OF THE INTERNATIONAL CONFERENCE ON THE GREAT LAKES REGION (ICGLR)

16 June 2022, Kinshasa, Democratic Republic of the Congo

Kinshasa Declaration on Enhancing Judicial Cooperation in the Great Lakes Region

We, the Ministers of Justice from the countries of the Great Lakes Region, gathered in Kinshasa on 16 June 2022, at the invitation of Her Excellency Rose Mutombo Kiese, Minister of State, Minister of Justice and Keeper of the Seals of the Democratic Republic of the Congo,

Mindful that over the past decades, transnational organised crime – including terrorism – has increased in magnitude and impact to become a major challenge particularly for Africa’s Great Lakes region;

Highlighting the importance of strengthening regional and international cooperation between criminal justice sector stakeholders in transnational organised crime cases, including through the use of multilateral and bilateral agreements for mutual legal assistance and extradition;

Welcoming, in preparation of the present Conference, the holding of the 6th meeting of the Great Lakes Judicial Cooperation Network (“the Network”), a mechanism of the International Conference of the Great Lakes Region (ICGLR) and the main vehicle supporting the work of Central Authorities in criminal justice matters in the Great Lakes Region, resulting in faster and more effective responses to requests for assistance and increased successful investigations and prosecutions;

Referring to the ICGLR Pact on Security, Stability and Development in the Great Lakes Region, signed in 2006, and its related ten Protocols, notably the Protocol on Judicial Cooperation, and encouraging their ratification without delay by Member States who have not yet done so;

Recognising that in view of supporting the implementation of the regional commitments of the Peace, Security and Cooperation Framework (PSCF), signed in 2013, as well as the recently published Strategy for Peace Consolidation, Conflict Prevention and Conflict Resolution in the Great Lakes Region, the United Nations (UN) Office of the Special Envoy of the Secretary-General for the Great Lakes (O/SESG-GL), has played an important role in promoting the Network through coordinated support of different UN and non-UN entities, such as the International Institute for Justice and the Rule of Law (IIJ), co-facilitator of the present Ministerial Conference;

Taking into consideration the internationally recognised recommendations outlined in the *IIJ Good Practices for Central Authorities*, aimed at guiding the work of Central Authorities and laying out the institutional, legal, and practical considerations needed to establish and support strong and durable institutions responsible for mutual legal assistance and extradition;

Noting the Network’s call for the harmonisation of national legal frameworks on mutual legal assistance and extradition and for sufficient resources so as to allow for Central Authorities to function effectively;

Reaffirming our unwavering commitment to implement the Nairobi Declaration on Justice and Good Governance adopted in May 2019;

Welcoming the holding of the 7th meeting of the Great Lakes Judicial Cooperation Network and the recommendations agreed on during the meeting and **encouraging** the Network to ensure their timely implementation;

Underlining that, despite important progress achieved, further concerted efforts are required to respect, protect and fulfil human rights, advance justice, strengthen accountability and rule of law, and eradicate impunity and serious human rights violations in the Great Lakes region;

Having examined the options for strengthening judicial cooperation, **agree on** the following:

In relation to the legal framework governing mutual legal assistance:

- a) To adopt coherent and comprehensive national Mutual Legal Assistance Acts or update existing ones to provide legal certainty and clarity on procedures for processing incoming and outgoing requests, promote regional and international cooperation, and ensure the implementation of the measures in this Declaration;
- b) To promote the standardisation of domestic legislation and harmonisation of procedures related to mutual legal assistance, including by developing procedural guidelines that follow the *Standardised Set of Guidelines for Mutual Legal Assistance in Criminal Matters for the Great Lakes Region* annexed to this Declaration;
- c) To encourage the Network to adopt uniform guidance applicable to common and civil law systems with a view to bridging differences that may hinder judicial cooperation in the Great Lakes region and facilitate the widest measure of cooperation between Member States; and
- d) To ensure that supplementary documents — such as internal regulations, manuals, standard operating procedures and best practices on mutual legal assistance — are drafted, include clear references to existing ICGLR frameworks, namely the ICGLR Protocol on Judicial Cooperation, and take into account the recommendations listed in the outcome documents from previous Network meetings, as well as other regional and international standards and norms, particularly multilateral conventions.

In relation to internal institutional mechanisms and procedures for mutual legal assistance:

- a) To establish a designated national Central Authority whose sole function is to receive, transmit and ensure the effective execution of mutual legal assistance requests to facilitate international judicial cooperation in criminal matters;
- b) To designate the said Central Authority as the national point of contact for mutual legal assistance in all relevant domestic legislation, bilateral treaties and multilateral conventions, in accordance with regional and international obligations;
- c) To equip it with adequate financial and technical resources and properly staff it with specialised and well-trained legal experts and administrative personnel so that it may carry out its functions effectively;
- d) To provide Central Authority staff and other relevant practitioners, including prosecutors, judicial authorities and law enforcement officers, with comprehensive and accessible guidelines on the applicable national mutual legal assistance procedures and policies;
- e) To provide Central Authority staff and other relevant practitioners, including prosecutors, judicial authorities and law enforcement officers, with training opportunities on matters related to mutual legal assistance, with the support of the ICGLR, the IJJ, the United Nations and other relevant partners;
- f) To set up and maintain a case management system to monitor progress that includes a prioritisation mechanism to enable the efficient execution of serious and/or urgent incoming mutual legal assistance requests;

- g) To consider the stationing of Central Authority staff, liaison magistrates and/or legal attachés in neighbouring jurisdictions; and
- h) To encourage the use of informal methods of law enforcement cooperation and intelligence-sharing, including joint investigations, where permissible under national law and where formal mutual legal assistance is not required.

In relation to the issuance, transfer and receipt of mutual legal assistance requests:

- a) To encourage direct communication between Central Authorities to improve the efficiency with which mutual legal assistance can be provided and help build trust and overcome legal barriers to cooperation created by communication through diplomatic channels;
- b) To allow for the direct transmission of mutual legal assistance requests to and from other Central Authorities, including via electronic means;
- c) To allow for technical exchanges between Central Authorities prior to the transmission of formal mutual legal assistance requests in order to increase the quality of their content and facilitate their subsequent execution;
- d) To ensure that the Central Authority conducts an expert review of all outgoing mutual legal assistance requests prior to transmission to ensure they meet the legal and procedural requirements of the requesting state;
- e) To ensure that the Central Authority registers all incoming mutual legal assistance requests as soon as practically possible after receipt and before examining in detail the legal and practical viability of formally accepting the request and that the Central Authority confirms receipt of the request and keeps the requesting state informed about its execution status; and
- f) To establish secure electronic platforms for communication and the transmission of mutual legal assistance requests, including the set-up of government domain e-mails for all Central Authority staff.

In relation to the execution of mutual legal assistance requests:

- a) To empower the Central Authority to take action on or coordinate the execution of mutual legal assistance requests by a competent authority;
- b) To ensure that, once a mutual legal assistance request has been accepted and forwarded to the competent authority for execution, the Central Authority shares with the requesting Central Authority information about the development of the request and the contact details of the executing authority;
- c) To ensure that the Central Authority complies with the formalities and procedures for execution expressly indicated by the requesting authority unless they are contrary to national or international law;
- d) To ensure that Central Authority staff maintain the confidentiality of mutual legal assistance requests according to national legislation and international norms and standards as a means to protect the integrity of investigations, and prosecution and adopt measures to punish breaches of confidentiality; and
- e) To ensure that the Central Authority informs the requesting Central Authority as expeditiously as possible and whenever it is required under national law to notify a party of a mutual legal assistance request, as a means to avoid compromising an ongoing criminal investigation or prosecution.

In relation to refusing execution of mutual legal assistance requests:

- a) To encourage the widest measure of regional and international cooperation in criminal matters between countries and not prohibit or place unreasonable or unduly restrictive conditions on the provision of mutual legal assistance;
- b) To minimise the grounds for the refusal of execution of mutual legal assistance requests, particularly the ground of dual criminality;
- c) To ensure whenever possible that the Central Authority, where it considers that it is unable to execute a mutual legal assistance request or that execution is not possible within the indicated deadline, does not give formal refusal before consulting the requesting Central Authority to determine whether the impediments to execution can be overcome or the request modified to enable assistance to be given; and
- d) To ensure, where the execution of a mutual assistance request cannot be granted, that the Central Authority provides the requesting Central Authority with the grounds for refusing execution and explores ways that the request might still be executed without contravening domestic laws and international law.

In relation to the next priority steps for the effective implementation of the Nairobi Declaration:

- a) To instruct the ICGLR, with the support of O/SESG-GL, to establish a follow-up committee, meeting at least once a year, with a view to assessing the implementation of the Nairobi Declaration, including compliance by ICGLR Member States with the measures of this Declaration and encourage the holding of a first meeting of the said follow-up committee before the end of 2022;
- b) To instruct the Network to continue to encourage communication and exchange of experiences among Network focal points as a means of contributing to the implementation of the measures of this Declaration;
- c) To request the Network to initiate consultations on the development of a common policy in response to cross-border crime in the region;
- d) To strengthen transitional justice measures and mechanisms at the national and regional levels and establish direct linkages between transitional justice mechanisms and Disarmament, Demobilization, Repatriation, Resettlement and Community Rehabilitation programmes;
- e) To support the establishment and implementation of special protection measures for judges and prosecutors handling sensitive cases, as well as for victims and witnesses;
- f) To emphasise the need to work on guarantees of non-repetition to break the cycle of violence, and ensure that a victim-based approach is central to the process;
- g) To request the Network to focus on a human rights-based approach, including compliance with all regional and international human rights instruments, effective participation of all stakeholders among the accused in the design, implementation and evaluation of judicial cooperation mechanisms;
- h) To request the Network to work with the ICGLR Genocide Prevention Committee to develop specific judicial cooperation measures to effectively prevent and combat serious crimes, hate speech and incitement to violence while respecting the conditions necessary for the exercise of fundamental freedoms, including freedom of opinion, association, expression and peaceful demonstration;

- i) To request the Network to work in close consultation with all relevant stakeholders to ensure that the rights of victims as litigants are taken into account in the framework of judicial cooperation and that seizures, sequestrations and other precautionary measures provided for in the implementation of judicial cooperation contribute to guaranteeing the rights of victims to truth, justice, reparation and guarantees of non-repetition, as well as to ensure access to justice for survivors and/or their dependents, including through the provision of legal and holistic assistance and establish legal protection measures for survivors and other victims; and
- j) To request the United Nations, IIJ, and other technical partners to support the implementation of specific capacity-building programmes to improve the capacity and technical knowledge of judicial and other relevant actors to better implement national, regional and international human rights instruments, fight impunity, and combat harmful gender stereotypes, including the implementation of the measures of this Declaration.

Done in Kinshasa, Democratic Republic of the Congo, on 16 June 2022