

Model Law for Protocol on Judicial Cooperation among ICGLR Member States

Preface

A Model Law is typically a detailed set of provisions embodying the international, regional or sub-regional standards on a particular subject, developed for the purpose of facilitating the adoption of national legislation. As the word 'model' suggests, a Model Law need not be adopted by States in its exact form, but could be adjusted to suit the legal and other realities of each State. Thus, unlike treaties, which are binding once ratified and impose obligations on States Parties, a Model Law is a non-binding document crafted specifically as a tool to guide law makers in translating obligations emanating from international treaties into detailed national legislation or may find it useful source of ideas for domestic legislation.

In adopting the Model Law of Protocol on Judicial Cooperation the ICGLR Conference Secretariat has therefore gone a step further by providing detailed and practical content to the legislative obligations of Member States to ICGLR. Ultimately, each State Party must determine the nature and scope of adjustments that may be required to the content of this Model Law based on the provisions of its Constitution and the structure of its own legal system. During the Kinshasa meeting in July 2012 the ICGLR Ministers of Justice and Ministers of Gender requested the ICGLR Conference Secretariat to formulate Model legislations with a view to assist the domestication process.

Aim of the Model Law

The following are some key reasons for developing this Model Law:

Guiding the development of new Judicial Cooperation legislation and the review of existing national legislation

In the absence of a regional legislative framework to guide the development legal collaboration, States Parties have relied on Judicial Cooperation legislation developed in other jurisdictions in their adoption process. This Model Law thus aims to ensure that legislative drafters and policy-makers address all issues relevant to the ICGLR context in their adoption or review of the Judicial Cooperation Protocol.

The Model Law is framed as an ‘Act/Law’ in order to serve as a ‘readymade’ example that could constitute the basis for national legislation. A State may however change this formation in line with the national domestic system by using, for example, ‘Decree’, ‘Edict’, ‘Law’ or ‘Code’.

The adoption of this Model Law has the potential to highlight the significant Protocol of Judicial Cooperation among ICGLR Member States within specific national contexts, thereby bringing to the fore the need for the adoption of Judicial Cooperation legislation or the review of existing legislation.

Compilation of best practices

Beyond guiding States in the adoption, review or amendment of existing laws, the Model Law also aims to build upon best practices, in terms of legislative drafting, that have emanated from the adoption and implementation of existing Pact and Protocols of ICGLR and around Africa. In this regard, the Model Law seeks to assist States Parties in mitigating potential challenges and avoid common pitfalls from relevant lessons learned in other jurisdictions, while strengthening provisions that have proven effective in the implementation of existing legislation within and outside the continent.

In addition, this Model Law thus seeks to reinforce a commonality of approach on Judicial Cooperation in Great Lakes Region, while at the same time leaving room for States Parties to adapt the Model Law’s provisions on the basis of their own legal systems and constitutional frameworks.

Eventually, efforts must be made to harmonize and domesticate the ICGLR Protocol of Judicial Cooperation therefore Member States may choose to adopt the principles and objectives of this Model Law as a whole or in part in the process of adopting or reviewing national legislation for the domestication of the Protocol.

Use of terminologies

Terminologies used in this Model Law may be adapted to suit the circumstances of the particular country. By way of example, the terms “Act” and “Section” which are ordinarily used in countries with a common law tradition may be replaced by the terms “Law” and “Article” “or others terms, more commonly used in countries with a civil law tradition.

**Judicial Cooperation by Member States of the ICGLR Act/Law,
[Chapter][Act/Law] No. / of the Laws of the Republic of ... of
...201..**

[Alternative 1 (Civil law jurisdictions)

The President of the Republic

Given the Constitution of the Republic;

Considering the Declaration of Dar-es-Salaam on Peace, Security, Democracy and Development in the Great Lakes Region, adopted and signed at Dar es Salaam on 20 November 2004;

Given the Pact on Peace, Security, Stability and Development in the Great Lakes Region, adopted and signed at Nairobi on 15 December 2006 amended November 2012;

Considering the existence in the Member States of the Great Lakes Region of police cooperation structures within the framework of the International Criminal Police Organization "ICPO-INTERPOL."

The Council of Ministers has deliberated;

The National Assembly has adopted;

Promulgates this Act:]

[Alternative 2 (Common law jurisdictions)

Commencement: Upon publication in the Gazette

An Act of Parliament to establish an institutional and legal framework for judicial and police cooperation among the Member States of the Great Lakes Region in the extradition of accused and convicted persons, in respect of investigations, prosecutions and the exchange of information and documents relating to extraditable offences and for related matters.

Be it enacted by the Parliament of the Republic as follows:]

CHAPTER I: PRELIMINARY

Section 1

Definitions

In this Act/Law, except where the context otherwise requires –

“**Competent authority**” means the public authority mandated under this Act/Law to implement and enforce its provisions;

“**ICGLR**” means the International Conference on the Great Lakes Region;

“**Extradition**” means 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 Act /Law or other laws in force apply;

“**Extraditable offence**” means any offence or attempt to commit an offence which under the laws of the State is punishable by imprisonment of not less than six months notwithstanding that a lesser punishment may be passed in relation to such an offence.

“**Joint Investigation Commission**” means a commission established under this Act/Law by two or more member states to carry out an investigation into allegations of the commission of an extraditable offence;

“**Member State**” means a Member State of the International Conference of the Great Lakes Region (ICGLR);

“**National**” means a citizen whether by birth, naturalization or other legal process;

“**Pact**” means the Pact on Peace, Security, Stability and Development in the Great Lakes Region, adopted and signed at Nairobi on 15 December 2006 amended on 24th November 2012 in Kampala, Uganda;

“**Person**” means natural person, legal person or corporate entity;

“**Protocol**” means the Protocol on Judicial Cooperation adopted as part of the Pact on Security, Stability and Development in the Great Lakes region adopted and signed by the Heads of State and Government of the International Conference on the Great Lakes Region at Nairobi on 1 December 2006;

“**Region**” means the territory of the member states of the ICGLR;

“**Requesting State**” means the state requesting extradition;

“**Requested State**” means the state to which the request for extradition is directed.

“**State organ**” means any public body exercising a statutory mandate.

Section2

Application of the Act/Law

1. This Act/Law applies to:

- (a) the extradition of persons against whom there is evidence of, or conviction for commission of an extraditable offence in one of the countries of the International Conference on the Great Lakes Region;
- (b) investigations, prosecutions and the exchange of information and documents relating to extraditable offences committed in the one of ICGLR Member States.

2. The Act/Law shall not be applied to:

- (a) nationals or citizens;
- (b) the extradition of persons who are sentenced or prosecuted only for offences which are political in nature;
- (c) offences in respect to which the commencement of proceedings or conviction, prosecution or punishment has become time barred under the applicable laws.

3. For the purposes of this Act/Law offences which are political in nature shall be deemed to be those offences which are prejudicial solely to the political order, or aimed solely against the internal or external security of the state.

Provided that this provision shall not exempt from extradition persons who are accused or convicted of a criminal offence at common law and includes grievous bodily harm, assassination, murder, poisoning, breaches of the public order, destruction of property by arson, explosion or flooding, theft, or armed robbery or attempts to commit such offences.

CHAPTER II: EXTRADITION

Section3

Obligation to extend judicial assistance

1. The state and all organs of the state shall extend judicial assistance on a reciprocal basis with respect to the extradition of fugitives or accused persons in accordance with the provisions of this Act/Law.

2. Extradition shall only be granted, in the case of an accused person, if the commission of the offence concerned is such that the laws of the state would justify the arrest and imprisonment of the accused person as if the offence had been committed in the territory of the Republic and, in the case of a convicted person, upon sufficient proof of conviction under the laws of the Member State.

Section 4

Procedure for extradition of an accused or convicted person

1. The Minister in charge of Foreign Affairs is responsible for receiving and transmitting requests for extradition of persons accused or convicted of committing extraditable offences in a Member State.
2. A valid request shall include:
 - (a) An extradition warrant signed by the Minister in charge of legal affairs in the Requesting State or by some other person duly authorised or competent to act on his or her behalf.
 - (b) A bench warrant or other equivalent legal or judicial document issued by a judge duly authorised to hear the charges brought against the accused person 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 connected with the alleged crime; and
 - (d) In the case of a convicted person, the judgement or conviction order shall specify the offence for which the person has been convicted, the facts, date, and place of judgement relating to the conviction.
3. After verifying that the request complies with subsection (2) above the Minister in charge of Foreign Affairs shall channel the request to the Minister in charge of Legal Affairs.
4. The Minister in charge of Legal Affairs shall transmit the request together with any other relevant documents, if any, to a court of competent jurisdiction.
5. In the case of an accused person, the court shall, following verification that the bench warrant is a valid warrant of a court of competent jurisdiction of the Member State requesting the extradition, render the said bench warrant enforceable by issuing a warrant for the arrest and extradition to the Requesting State of the accused person.
6. In the case of a convicted person, the court shall, prior to issuing the warrant of arrest, satisfy itself that the evidence produced is such as to establish that the person to be extradited was convicted of the offence with which he or she was charged.
7. Upon the issue of the warrant of arrest the person to be extradited shall be arrested and handed over to the competent authority of the Requested State for extradition.

Section 5

Preventive detention

1. An accused person or fugitive offender may be taken into preventive custody on the basis of denunciation, complaint, evidence, prosecution, or conviction which would justify the arrest of the person if the offence had been committed or the conviction had been secured in the territory of the Member State.
2. The detention of an accused or convicted person shall be notified to the competent authority of the Member State on whose territory the alleged offence was committed or whose courts passed a sentence of conviction.

3. In the case of an emergency, and in order to ensure prompt and effective punishment of the offender, an accused or convicted person may also be taken into custody on the basis of an urgent written request received from the competent authority of a Member State to take such accused or convicted person into custody.

4. The accused person arrested on the basis of an urgent written request shall be brought before a court of competent jurisdiction as soon as practicable and in any case within 24 hours of the arrest.

5. An accused or convicted person arrested under these provisions shall be released if within fifteen days from the date of notification of the Member State on whose territory the alleged offence was committed or whose court passed the sentence of conviction an extradition request has not been received by the Minister in charge of Foreign Affairs.

Section6

Release

A person arrested following a request for extradition shall be released if:

- (a) The documents justifying the request have not been produced within thirty days from the request for arrest;
- (b) If the documents have been produced but prove to be insufficient or incomplete and additional information requested has not been provided within thirty days of the date of receipt of the request by the competent authorities of the Member State in whose territory the offence is alleged to have been committed.
- (c) 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*.

Section7

Concurrent requests

1. If, in respect of the same offence extradition is requested concurrently by several Member States, priority shall be given to the Member State in whose territory the alleged 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 the national or failing that to the Member State seeking his or her extradition for the more serious offence.

Section8

Conviction in the State

1. If the individual sought is prosecuted or convicted by the courts of the State to whom the request for extradition is directed 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 this Act/Law.

2. Extradition following conviction in the State is to enable the individual sought to answer the charges brought against him or her by the courts of the Requesting State, provided that the Requesting State shall return him or her to the jurisdiction of the Member State in which he or she had been charged or convicted so that he or she serves out his or her first sentence, or faces prosecution before he or she is finally extradited to the Requesting State.

Section9

Seizures

1. Without prejudice to the rights of third parties with regard to items found in the possession of the individual sought at the time of arrest, such items shall be seized and handed over with his or her person when the extradition takes place.
2. Seizure and hand over 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 the circumstances where the extradition cannot be accomplished as a result of the escape or the death of the individual sought.
3. A third party claiming rights over any seized property shall pursue the process prescribed by law for lodging such claim and, upon conclusion of the trial of the arrested person, the property shall be returned to its rightful owner.

Section10

Costs of extradition

The Requesting State shall bear the costs 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 persons and transferring and consigning any items connected with their extradition.

CHAPTER III: COOPERATION IN RESPECT TO INVESTIGATIONS AND PROSECUTION

Section11

Obligation to cooperate

1. The State and all organs of the State shall cooperate with competent authorities of Member States by dealing with their requests and applying necessary measures to facilitate the procedures and formalities relating to investigation and prosecution of offences.
2. The State and all organs of the state shall cooperate with other Member States on a reciprocal basis by participating in the Joint Investigation Commission established by the ICGLR Member States.

Section12

Request for establishment of a Joint Investigation Commission

1. The Minister in charge of Foreign Affairs shall be the designated Minister for receipt and transmission of requests for the establishment of a Joint Investigation Commission.
2. Upon receipt of the request the Minister shall transmit the request to the competent authority.
3. The request may be refused if the competent authorities determine that it constitutes a threat to the sovereignty or internal security of the state in which case a reasoned decision shall be given to the Requesting State within ninety days of receipt of the request.

Section13

Procedure for Joint Investigation Commissions

1. The procedure for a request for the establishment of a Joint Investigation Commission shall:
 - (a) 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 measures required to be taken.
 - (b) 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 witness.
 - (c) If visits or searches to the homes of presumed perpetrators or 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 measures to the investigations that the requested measure is likely to establish.
 - (d) If the situation requires further investigation, the request shall contain statement of the facts on which it is based and a detailed description of the task to be assigned to the investigators.
2. The Joint Investigation Commission shall have the right to meet the persons to be interviewed or pose any questions which it may deem necessary.
3. Any investigation shall be conducted in accordance with the law governing investigations in the state.
4. Minutes, reports and other documents provided by the Joint Investigation Commission shall be provided as evidence to the Requesting State.

Section14

Exchange of information among the police forces

1. The police forces shall exchange information with the police forces of other Member States relating to the prevailing levels of crime and policies and strategies for preventing such crime.

2. As far as criminal investigations are concerned the police force shall seek and communicate with the police forces of other Member States on:

- (a) Perpetrators, co-perpetrators and accomplices involved in the 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 against the nationals of other Member States and persons residing in the territories of Member States.

3. The police force shall seek and communicate with the police forces of other Member States information concerning notices of frontier transit by protected persons, wanted persons, persons to be kept under surveillance, movement of suspected vehicles, dangerous and prohibited items and other similar activities.

CHAPTER IV.

FINAL PROVISIONS

Section 15

Implementation of the Protocol

1. Subject to the provisions of this Act/Law, the Protocol shall have legal effect within and throughout the state and shall be the basis for judicial cooperation with Member States of the IGLCR in the matter of extraditing accused or convicted persons and in respect of investigations, prosecutions and the exchange of information and documents.

2. In the case of conflict between this Act/Law and the Protocol, the Protocol shall prevail.

Section 16

Relationship to other instruments

Nothing in this Act/Law shall be construed as contrary to the ICGLR Pact, the Constitutive Act of the African Union and the United Nations Charter or other relevant international legal instruments which have been ratified by the Member States.

Section 17

Transitional Provisions

The state organs exercising a mandate over any aspect affected by this Act/Law shall take the necessary measures to introduce into Parliament such laws as are necessary to align the laws governing their areas of competence to the provisions of this Act/Law.