

African Union Model National Law on Universal Jurisdiction over International Crimes

EXECUTIVE COUNCIL

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EXECUTIVE COUNCIL DECISION

EX.CL/Dec.708(XXI)

Decision on the African Union Model National Law on Universal Jurisdiction over International Crimes – Doc. EX.CL/731(XXI)C

The Executive Council,

1. TAKES NOTE of the Report of the Meeting of Ministers of Justice and/or Attorneys General and APPROVES the draft national model law on universal jurisdiction for international crimes and ENCOURAGES Member States to adopt or strengthen their national legislations on the prosecution of those accused of international crimes;
2. ENDORSES the recommendations of the meeting of Ministers of Justice/ Attorneys General on the abuse of the principle of universal jurisdiction
3. WELCOMES the steps taken by the Commission to follow up on various Assembly Decisions on the Abuse of the Principle of Universal Jurisdiction by some non-African States, including the elaboration of a Model National Law on Universal Jurisdiction over International Crimes;
4. ENCOURAGES Member States to fully take advantage of this Model National Law in order to expeditiously enact or strengthen their national laws in this area;
5. REQUESTS the Commission to explore ways and means through which the capacity of relevant officials and institutions of Member States may be strengthened to enable them effectively perform their duties and mandates under the AU Model Law;
6. ALSO REQUESTS the Commission to follow-up on this matter and to report regularly to the Executive Council.

African Union Model National Law on Universal Jurisdiction over International Crimes

This model national law has been prepared pursuant to concerns expressed in successive Decisions of the Assembly of Heads of State and Government of the Union in Decisions:

- Assembly/AU/Dec.199(XI),
- Assembly/AU/Dec.213(XII),
- Assembly/AU/Dec.233(XIII),
- Assembly/AU/Dec.292(XV) and
- Assembly/AU/Dec.335(XVI).

The intention and expectation is that Member States will adopt this Model Law and will legislate accordingly, in accordance with their national constitutional arrangements.

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Preamble

Recognizing that certain crimes are of most serious concern to the Member States of the African Union and the international community as a whole that they must not go unpunished;

Recalling the Constitutive Act of the African Union, and in particular Article 4(h) which provides for the right of the Union to intervene in respect of grave circumstances namely genocide, war crimes and crimes against humanity;

Further recalling the African Charter on Human and Peoples' Rights;

Mindful of the need for effective prosecution to be ensured by taking appropriate measures at the national level in order to enhance international co-operation;

Recognizing also that the primary responsibility for the prosecution of international crimes rests with States;

Now be it enacted by (Parliament, etc of the country) as follows:

1. Purpose

A law to provide for the exercise by (name of the country) of universal jurisdiction over international crimes and for connected matters and to give effect to its obligations under international law.

2. Definitions

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the law:

"Court" means the highest Court with original jurisdiction;

"1961 Convention" means Single Convention on Narcotic Drugs adopted in 1961 and entered into force on 13 December 1964;

"1961 Convention as amended" means Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs;

"1972 Protocol" means the Protocol amending the Single Convention on Narcotic Drugs, 1961.

3. Objectives

The objectives of this law are to:

- a Combat impunity for crimes under this law, and prevent and punish such crimes;
- b Confer jurisdiction on the courts to try crimes under this law;
- c Define the jurisdiction of the courts over such crimes;
- d Define the crimes that are punishable under this law, and provide for the power to prosecute those responsible for such crimes;
- e Ensure fair trial of persons accused of such crimes;
- f Give effect to immunities enjoyed by foreign State officials under international law;
- g Provide for the extradition of persons accused of committing the crimes in this law;
- h Provide for mutual legal assistance and co-operation amongst States;
- i Provide for the punishment of the persons convicted of the crimes under this law; and

- j Provide for rehabilitation and reparation for victims.

4. Jurisdiction

- a The Court shall have jurisdiction to try any person alleged to have committed any crime under this law, regardless of whether such a crime is alleged to have been committed in the territory of the State or abroad and irrespective of the nationality of the victim, provided that such a person shall be within the territory of the State.
- b In exercising jurisdiction under this law, a Court shall accord priority to the court of the State in whose territory the crime is alleged to have been committed, provided that the State is willing and able to prosecute.

5. Power to Prosecute

The Prosecuting Authority shall have the power to prosecute before the Court any person in the territory of the State who is alleged to have committed an offense under this law where the information available to the Prosecuting Authority provides a reasonable basis to believe that a crime under this law has been or is being committed.

6. Rights of an Accused Person

A person alleged to have committed a crime under this law shall have the highest standard of rights guaranteed to any accused person in the State.

7. Witness Protection

The Prosecuting Authority and the Court shall ensure that any witness is accorded the necessary protection.

8. Crimes

The following crimes shall be punishable under this law: Genocide, Crimes against humanity, War Crimes, Piracy, Trafficking in drugs and Terrorism.

9. Genocide

For the purposes of this Law, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a Killing members of the group;
- b Causing serious bodily or mental harm to members of the group;
- c Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d Imposing measures intended to prevent births within the group;
- e Forcibly transferring children of the group to another group;
- f Acts of rape that are intended to change the identity of a particular group.

10. Crimes against Humanity

For the purposes of this Law, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack or enterprise directed against any civilian population, with knowledge of the attack or enterprise:

- a Murder;
- b Extermination;
- c Enslavement;
- d Deportation or forcible transfer of population;
- e Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f Torture, cruel, inhuman and degrading treatment or punishment;
- g Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- i Enforced disappearance of persons;
- j The crime of apartheid;
- k Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health.

2. For the purpose of paragraph 1:

- a ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- b ‘Extermination’ includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- c ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- d ‘Deportation or forcible transfer of population’ means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- e ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- f ‘Forced pregnancy’ means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This

definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

- g 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- h 'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- i 'Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

11. War Crimes

For the purposes of this Law, 'war crimes' means any of the offences listed, in particular when committed as part of a plan or policy or as part of a large scale commission of such crimes.

- a Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - i Wilful killing;
 - ii Torture or inhuman treatment, including biological experiments;
 - iii Wilfully causing great suffering, or serious injury to body or health;
 - iv Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - v Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - vi Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - vii Unlawful deportation or transfer or unlawful confinement;
 - viii Taking of hostages.
- b Grave breaches of the First Additional Protocol to the Geneva Conventions of 8 June 1977 and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - i Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - ii Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - iii Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peace-

- keeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- iv Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- v Intentionally launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects which will be excessive in relation to the concrete and direct overall military advantage anticipated;
- vi Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- vii Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- viii Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- ix The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- x Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- xi Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- xii Killing or wounding treacherously individuals belonging to the hostile nation or army;
- xiii Declaring that no quarter will be given;
- xiv Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- xv Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- xvi Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

- xvii Pillaging a town or place, even when taken by assault;
- xviii Employing poison or poisoned weapons;
- xix Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- xx Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- xxi Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict
- xxii Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- xxiii Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- xxiv Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- xxv Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- xxvi Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- xxvii Conscripting or enlisting children under the age of eighteen years into the national armed forces or using them to participate actively in hostilities;
- xxviii Unjustifiably delaying the repatriation of prisoners of war or civilians;
- xxix Willfully committing practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination.
- xxx Making non-defended localities and demilitarised zones the object of attack;
- xxxi Slavery and deportation to slave labour;
- xxxii Collective punishments;
- xxxiii Despoliation of the wounded, sick, shipwrecked or dead;
- c In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- i Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - ii Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - iii Taking of hostages;
 - iv The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- d Paragraph c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- e Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
 - i Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - ii Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - iii Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peace-keeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - iv Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - v Pillaging a town or place, even when taken by assault;
 - vi Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - vii Conscripting or enlisting children under the age of eighteen years into armed forces or groups or using them to participate actively in hostilities;
 - viii Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - ix Killing or wounding treacherously a combatant adversary;
 - x Declaring that no quarter will be given;
 - xi Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital

treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

- xii Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
 - xiii Employing poison or poisoned weapons;
 - xiv Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - xv Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions
 - xvi Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies;
 - xvii Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - xviii Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage;
 - xix Making non-defended localities and demilitarised zones the object of attack;
 - xx Slavery;
 - xxi Collective punishments;
 - xxii Despoliation of the wounded, sick, shipwrecked or dead
- f Paragraph e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
- g Using nuclear weapons or other weapons of mass destruction.

12. Piracy

For the purpose of this law, Piracy consists of any of the following acts:

- a any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private boat, ship or a private aircraft, and directed:
 - i on the high seas, against another boat, ship or aircraft, or against persons or property on board such boat, ship or aircraft;
 - ii against a boat, ship, aircraft, persons or property in a place outside the jurisdiction of any State
- b any act of voluntary participation in the operation of a boat, ship or of an aircraft with knowledge of facts making it a pirate boat, ship or aircraft;

- c any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

13. Trafficking in drugs

1. For the purposes of this Law, trafficking in drugs means:

- a The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;
- b The cultivation of opium poppy, coca bush or cannabis plant;
- c The possession or purchase of drugs with a view to conducting one of the activities listed in (a);
- d The manufacture, transport or distribution of precursors knowing that they are to be used in or for the illicit production or manufacture of drugs.

2. The conduct described in paragraph 1 shall not be included in the scope of this Statute when it is committed by perpetrators for their own personal consumption as defined by national law.

3. For the purposes of this Article:

- a “Drugs” shall mean any of the substances covered by the following United Nations Conventions:
 - i the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961;
 - ii The 1971 Vienna Convention on Psychotropic Substances.
- b “Precursors” shall mean any substance scheduled pursuant to Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

14. Terrorism

For the purposes of this Law, ‘terrorism’ means any of the following acts:

1. Any act which is a violation of the criminal laws of a State Party, the laws of the African Union or a regional economic community recognized by the African Union, or by international law, and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

- a intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
- b disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

c create general insurrection in a State.

2. Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in sub-paragraph (1.a) to (c).

3. Notwithstanding the provisions of paragraphs 1 and 2, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.

4. The acts covered by international Humanitarian Law, committed in the course of an international or non-international armed conflict by government forces or members of organized armed groups, shall not be considered as terrorist acts.

5. Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

15. Individual Criminal Responsibility

An offence is committed by any person who, in relation to any of the crimes or offences under this law:

- a Incites, instigates, organizes, directs, facilitates, finances, counsels or participates as a principal, co-principal, agent or accomplice in any of the offences set forth in the present law;
- b Aids or abets the commission of any of the offences set forth in the present law;
- c Is an accessory before or after the fact or in any other manner participates in a collaboration or conspiracy to commit any of the offences set forth in the present law;
- d Attempts to commit any of the offences set forth in the present law.

16. Jurisdictional Immunities

The jurisdiction provided under Article 4 of this law shall apply subject to any national or international law on immunities.

17. Extradition

The crimes under this law shall be extraditable offences.

- a The State shall endeavour to expedite extradition requests, provided that fair trial standards and other procedural guarantees are assured.
- b Where the State does not extradite a person alleged to have committed a crime prohibited under this law, the Prosecuting Authority shall prosecute such a person, subject to jurisdictional immunities as provided for in this law.

18. Mutual Legal Assistance

1. The Prosecuting Authority shall request and afford other States, to the extent possible, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the prosecution of the crimes in this law.

2. Mutual legal assistance to be afforded in accordance with this clause may be requested for any of the following purposes:

- a Taking evidence or statements from persons;
- b Effecting service of judicial documents;
- c Executing searches and seizures;
- d Examining objects and sites;
- e Providing information and evidentiary items;
- f Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
- g Identifying, tracing or confiscating proceeds, property, instrumentalities or other things for evidential and preservation purposes.

3. The Prosecuting Authority may afford other States any other forms of mutual legal assistance under this law.

4. The provisions of this clause shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

19. Punishment

1. Any person convicted under this law shall be liable to a sentence commensurate with the gravity of the offence and the individual circumstances of the convicted person.

2. In imposing a sentence, the Court may deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. In addition to imprisonment, the Court may order:

- a A fine
- b A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

4. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

5. Before making an Order the Court may invite and take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

20. Entry into force

This law shall enter into force at such time as the State or Minister responsible shall determine.