

FINAL DOCUMENT

**Conference on International Criminal Court (ICC)  
Ratification and Implementation for the  
Southern African Development Community (SADC) Region**

Windhoek Country Club Resort  
Windhoek, Namibia  
28-30 May 2001

*HOSTED BY*



**The Ministry of Justice of the Republic of Namibia**

*IN CO-OPERATION WITH*

**The Namibian Parliament**

*CO-ORGANISED BY*

**PARLIAMENTARIANS FOR GLOBAL ACTION (PGA)**

**&**

**The International Criminal Court Technical Assistance Program (ICCTAP)**

*SPONSORED BY*

**The Government of Canada**

**&**

**The European Commission, EU**

---

**“Windhoek Plan of Action  
on ICC Ratification and Implementation in SADC”**

PREAMBLE

***Recognising*** that millions of people have been victims of crimes against humanity, war crimes, genocide and the crime of aggression and that such crimes threaten the peace, security, and well-being of the world;

***Determined*** to put an end to impunity for the perpetrators of these crimes and to guarantee lasting respect for the enforcement of international criminal justice and the rule of law;

**Welcoming** the adoption of the Rome Statute of the International Criminal Court (ICC) on 17 July 1998;

**Re-affirming** the principles expressed in Articles 4 and 5 of the SADC Treaty on the promotion of human rights, democracy, the rule of law and the enhancement of common political values, systems and institutions within SADC;

**Recalling** the decision of the SADC Ministers of Justice/Attorneys General at their meeting in Swakopmund (Namibia) of 29 April 1998 affirming the early establishment of an independent, effective, impartial and permanent International Criminal Court;

**Further Recalling** the Pretoria Statement of Common Understanding on the ICC adopted by the delegates from the SADC States on 9 July 1999, which recommended –amongst other things – the expeditious ratification of the Rome Statute and the use of the “Ratification Kit” as a model law;

**Applauding** the ratification of the ICC Statute by 32 States, including 8 African countries, of which 3 are Member States of SADC;

**Considering** that the Rome Statute will enter into force upon ratification by 60 States;

**Urging** all Member States of SADC to ratify, as early as possible, the ICC Statute in order to enable SADC to participate as a regional block in the ICC Assembly of States Parties;

**Now, therefore**, we, the understated participants, hereby agree on the following Plan of Action -

1. The Chairperson of the SADC Legal Sector shall submit for discussion, consideration and possible adoption the final documents of this Conference and of the Pretoria Meeting of Legal Experts (5-9 July 1999) to the Annual Meeting of the Ministers of Justice/Attorneys General of SADC to be held in Gaborone, Botswana, on 25-29 June 2001.

2. Participants to this Conference will provide the necessary briefing to the relevant Minister, in their countries, in order to facilitate the informed adoption of the documents mentioned in paragraph 1 by the SADC Ministerial Meeting in June 2001.

3. Participants recommend that the SADC Ministerial Meeting mandates the Executive Secretary of SADC, to address letters to Member States, urging the ratification of the ICC Statute, in order to ensure the presence of a strong SADC representation to the first

meeting of the Assembly of States Parties. This would allow SADC States to play a major role in the decision-making process of the Court, including the election of the Judges and the Prosecutor, and the appointment of relevant personnel, from SADC Member States.

4. Participants further recommend that SADC Member States give priority to the drafting of implementing legislation of the Rome Statute in order to effectively co-operate with the ICC and give effect to the principle of complementarity.

5. Participants recommend that the SADC Ministerial Meeting considers a common position on the crime of aggression and mandates the SADC experts at the UN Preparatory Commission for the ICC to agree upon a SADC common position on the basis of the following principles<sup>1</sup>:

(i) DEFINITION

There shall be a general definition of what constitute crime of aggression followed by a non-exhaustive list of incriminating conduct, including facilitation of acts of aggression by providing financial resources to the aggressor(s).

(ii) EXERCISE OF JURISDICTION

It is recognised that, in accordance with the UN Charter, the Security Council is vested with the primary responsibility in the determination of an act of aggression, but this is not an exclusive responsibility of the Security Council.

Therefore, in case of inaction by the Security Council on a given situation which may give rise to the prosecution of individual perpetrators of the crime of aggression, ambit shall be given to the Court to proceed with investigation and – if appropriate – prosecution.

6. Participants agree that there is need to establish “capacity-building” programmes to assist Members States in the process of ratification and implementation of the ICC Statute. They call upon Parliamentarians for Global Action and other interested Non-Governmental and Inter-Governmental Organisations to develop projects which would, amongst other things, entail the deployment of a “legal researcher” to assist relevant branches of Government and Parliament in the preparation of ICC-related legislation<sup>2</sup>.

---

<sup>1</sup> Please see annexed “Explanatory Note on the Crime of Aggression”, which contains basic background information on the process relating to the insertion of the definition of the crime of aggression in the Rome Statute, as well as on the conditions for the exercise of the Court’ jurisdiction over this crime.

<sup>2</sup> An example of a project of this type is provided by the successful deployment of a “Legal Researcher” seconded by PGA within the Ministry of Justice of Namibia. The Project received support from the Government of Switzerland and the Coalition for an ICC.

7. Participants recommend SADC Member States to maintain a strong level of SADC participation in the meetings of the UN Preparatory Commission for the ICC, in light of the importance of the issues to be dealt with in that forum.

#### FINAL CLAUSE

The SADC Legal Sector shall continue to co-operate with Members States on their process of National ratification and relevant action, as well as on the harmonisation of the National legislation to the principles and norms of the ICC Statute.

\* \* \* \* \*

**Annexes** to the “Windhoek Plan of Action on ICC Ratification and Implementation in SADC”

(i) STATUS REPORT ON ICC RATIFICATION AND RELEVANT ACTION

(ii) EXPLANATORY NOTE ON THE CRIME OF AGGRESSION

## ANNEX

### **(i) STATUS REPORT ON ICC RATIFICATION AND RELEVANT ACTION**

#### ANGOLA

The National Assembly of Angola unanimously approved the Rome Statute with Resolution No. 25/00 of 1 December 2000. The President of Angola, in order to allow the deposit of the instrument of ratification, has submitted to Parliament an amendment to the Constitution, by which the Republic of Angola accepts the jurisdiction of the ICC. This will render the Constitution compatible with the Rome Statute. No political obstacle is foreseen with respect to the current Constitutional revision process, upon the completion of which Angola will become one of the first 60 States Parties to the ICC.

#### BOTSWANA

On 8 September 2000, HE the President of Botswana deposited the instrument of the ratification with the Secretary General of the United Nations on the occasion of the UN Millennium Summit.

#### KINGDOM OF LESOTHO

His Majesty the King of Lesotho deposited the instrument of ratification with the Secretary General of the UN during the UN Millennium Summit on 6 September 2000.

#### MAURITIUS

The Attorney General will have a meeting with Legal Experts concerning ICC ratification right after the conclusion of the "Conference on ICC Ratification and Implementation in the SADC Region". A Cabinet Memo will be prepared as soon as possible to allow a decision on ratification by the Executive. It is envisaged that there will be no serious obstacles to the approval of the ratification. The ratification process shall be completed in a reasonable time-frame.

#### MOZAMBIQUE

An Inter-Ministerial Commission has been created to study the impact of the ICC Statute on the Mozambican legal system. Before undergoing the process of ratification, the Constitution shall be specifically amended in the following areas:

- (1) exercise of jurisdiction of the ICC in Mozambique with respect to the Constitutional legal order (which currently empowers only national criminal tribunals),
- (2) immunities of the Head of State.

The Constitution might be amended in these other areas:

- (3) extradition/surrender of nationals (currently prohibited by the Constitution),
- (4) penalty of life-imprisonment (although not prohibited by the Constitution, but by ordinary legislation).

Once the Constitution will be modified, the Parliament will be seized with the matter of ratification. Upon parliamentary approval of the ICC Statute, the President will be authorised to deposit it with the UN Secretary General.

### NAMIBIA

A Cabinet Memo has been prepared and will be soon submitted to the Executive for approval, upon which the President will deposit the instrument of ratification with the Secretary General of the UN. It is anticipated that Namibia will ratify before the end of the year 2001, thus allowing Namibia to sit in the first Assembly of States Parties of the ICC.

### SEYCHELLES

A Cabinet Memo on ICC Ratification has been duly prepared. Upon the approval of the Executive, it will be transmitted to the President, who will submit a Ratification Bill to Parliament. Approval of the Legislature will authorise the President to deposit the instrument of national ratification. The time-frame of this process is envisaged to be one year.

### SOUTH AFRICA

On 27 November 2000, the Republic of South Africa deposited its instrument of ratification of the ICC Statute at the United Nations.

### ZAMBIA

The Minister of Legal Affairs shall soon submit to the Executive a Cabinet Memo on ICC Ratification, on which relevant branches of the Cabinet shall provide comments within 28 days. Cabinet approval will trigger the procedure of deposit to the United Nations by the President of the Republic. The ratification of Zambia may be expected within one year from the adoption of the “Windhoek Plan of Action on ICC Ratification and Implementation in SADC”.

### ZIMBABWE

The Ministry of Justice has worked hard on the ratification of the ICC Statute. Zimbabwe has reaffirmed its genuine commitment towards ratification and “internal procedures” are to be finalised.

## ANNEX

### **(ii) EXPLANATORY NOTE ON THE CRIME OF AGGRESSION**

As provided by Article 5 of the Rome Statute, the crime of aggression constitute a “core crime” under international law falling under the ICC jurisdiction.

The Final Act annexed to the Rome Statute mandates the United Nations Preparatory Commission for the ICC to discuss a definition of the crime aggression and the conditions for the exercise of the jurisdiction of the Court over such crime.

In light of Article 5, the exercise of the Court’s jurisdiction shall be “in accordance with the relevant provisions of the Charter of the United Nations”.

The Rome Statute further provides that the UN Secretary General will convene a Review Conference of the ICC Statute 7 years after the entry into of the Statute. Such a Review Conference – consisting of States Parties to the ICC – shall be mandated, *inter alia*, to decide upon the insertion in the Statute of the definition of the crime of aggression.

The Assembly of States Parties may, however, under the Vienna Convention on the Law of the Treaties, amend the amending procedures of the Statute by unanimous vote and deliberate – by consensus – on the definition of aggression and the conditions for the exercise of the Court’s jurisdiction over such crime.