

**Decree regarding the Arab Model Law Project on Crimes within ICC Jurisdiction**

The Arab Justice Ministers Council, after reviewing the following:

- Council's decrees no. 453-18d- 25/10/2002, 503-19d-18/10/2003, and 564-20d- 29/11/2004.
- Council's decrees of the executive office no 394-27g-29/4/2003, 436- 29g-27/4/2004, and 475-32g-10/4/2005
- The report of the committee of experts and Arab countries representatives to coordinate Arab positions on international conferences and agreements (18-19/9/2005).
- The council's technical treasury report.

And after discussion, decided the following:

1. To approve the model Arab law on crimes within the ICC jurisdiction, and circulate this law among Arab countries in order for them to use it for guidance.
2. To thank the committee who prepared this project.

(Decree no. 598-21d-29/11/2005).

## Model Law Project on crimes within the jurisdiction of the ICC

### **First Chapter**

#### **General Provisions**

##### **Article (1)**

The sentences stated in both penal law and the criminal procedure code are to be implemented whenever it is not dealt with in this law.

##### **Article (2)**

The sentences set out in this law are enforced regardless of the place where the said crimes are committed, as long as one of the following conditions is fulfilled:

- If the accused is a national of the state.
- If the accused was present within the territory of the state after committing the crime.
- If the victim was a national of the state.

##### **Article (3)**

The principle: Irrelevance of Official Capacity (The person's official rank may not be used as a reason to exempt them from responsibility or mitigate the punishment)  
The formulation of this principle is left to national law, pursuant to the legal system of each state.

##### **Article (4)**

An investigation in one of the stated cases may not commence without written permission from the prosecutor or from someone on his/her behalf.

##### **Article (5)**

No person should be tried with respect to conduct which formed the basis of any of the crimes stated under this law for which the person has been convicted or acquitted by the ICC.

##### **Article (6)**

The crimes stated in this law shall not be subject to any statute of limitations (no legal proceedings or sentences issued for crimes stated under this law shall be dropped based on elapsed time.)

##### **Article (7)**

General or special amnesty is not applicable for the crimes stated in this law.

**Article (8)**

- A. Every military commander or person effectively acting as a military commander shall be criminally responsible and punished according to the penalty stated in this law if committed by forces under his or her effective command and control or effective authority, in the following cases:
1. If the superior was aware, or was assumed to be aware that subordinate forces are committing or are about to commit such crimes.
  2. If the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress them from being committed, or to refer the matter to the appropriate authorities for investigation and prosecution.
- B. Every superior shall be punished with the penalties stated in this law if one of the crimes stated in this law were committed by his/her subordinates who are under his/her effective authority and control in the following cases:
1. If the superior was aware or consciously disregarded any information indicating that the subordinates were committing or about to commit such crimes.
  2. If the crimes concerned activities that were within the effective responsibility and control of the superior.
  3. If the superior failed to take all necessary and reasonable measures within his power to prevent or repress such crimes from being committed, or to refer the matter to the appropriate authorities for investigation and prosecution.

**Article (9)**

- A. No person committing a crime stated in this law shall be relieved from criminal responsibility whether pursuant to an order of a Government or of a superior, whether military or civilian, except in the following cases:
1. If the person was under a legal obligation to obey orders of the Government or the superior in question; or
  2. If the person did not know that the order was unlawful; and
  3. If the order was not manifestly unlawful.
- B. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

## **Second Chapter**

### **Crimes within the ICC Jurisdiction**

#### **Article (10) Genocide**

Death penalty or jail is the punishment for every one who commits, either alone or with others, any of the following acts intending to destroy, in whole or in part, a national, ethnic, racial or religious group, provided that the act was committed in the context of a manifest pattern of acts directed against that group or was an act that could itself effect such destruction:

1. Killing one or more members of the group;
2. Causing serious bodily or mental harm to one or more members of the group;
3. Deliberately inflicting on one or more persons of the group conditions of life intended to bring about its physical destruction in whole or in part;
4. Imposing measures on one or more persons in the group with the intention to prevent births within the group;
5. Forcibly transferring one child or more children of the group to another group.

In accordance with this law, the same punishment shall be given to anyone who directly and publicly incites others to commit the aforementioned acts—even if the crime was not committed as a result of that incitement to destroy, in whole or in part, a national, ethnical, racial or religious group.

#### **Article (11)**

### **Crimes against Humanity**

Death penalty or jail is the punishment for everyone who commits, either alone or with others, any of the following acts, when committed as part of a widespread or systematic attack directed against any civilian population under a State or organizational policy actively promoting or encouraging such an attack or such a policy and with knowledge of the attack:

1. Intentionally killing one or more persons.
2. Intentionally inflicting certain severe living conditions intended to destroy part of the population.
3. Exercising power related to the right of ownership over one or more persons or imposed on them a similar deprivation of liberty, which would include exercising such powers in the course of trafficking persons, and in particular women and children;
4. Deporting or transferring a person or part of a population under protection, or forcibly displacing them from the area in which they are lawfully present to any other country or place, using methods in violation of international law provisions.
5. Imprisonment one of more persons, or otherwise severely depriving them of physical liberty in violation of the fundamental rules of international law.

6. Intentionally inflicting severe pain or suffering, whether physical or mental, upon one or more persons under the custody or control of the accused; this does not include pain or suffering arising from, or inherent in, or incidental to, lawful sanctions.
7. Using coercion to have sex with a female, or to sodomize a male, or to rape a victim with penetration of any sort. It is still considered coercion if the aforementioned acts were committed against a person incapable of expressing consent.
8. Exercising one of the powers related to the right of ownership on one or more persons to cause them to commit acts of a sexual nature, or to impose upon them a similar deprivation of liberty.
9. Forcing one or more persons to engage in one or more acts of a sexual nature with the intention of obtaining money or other benefits in exchange for or in connection with these acts.
10. Detaining one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or committing other grave violations of international law.
11. Depriving one or more persons of biological reproductive capacity without medical justification or treatment of the person concerned, nor their genuine consent.
12. Committing acts of a sexual nature against one or more persons, or forcing such a person or persons to engage in an act of a sexual nature by force, or by threat of force.
13. Intentionally depriving one or more persons of their fundamental rights because of their affiliation to a group or a particular collectivity, or to specifically target this group or collectivity for political, racial, national, ethnic, cultural, religious, gender-related, or other reasons, when the deprivation is related to any act referred to in this law.
14. Arresting, detaining or abducting one or more persons by, or with the authorization, support, or complicity of a State or a political organization, knowing that such acts would be followed in the ordinary course of events by a refusal on the part of the State to acknowledge that deprivation of freedom or provision of information on the fate or whereabouts of those persons, or a refusal by the state or the political organization – both during or after – to acknowledge the arrest, detention, or abduction and being aware of them, when the intention of removing such a person or persons was to deprive them of the protection of the law for a prolonged period of time.
15. Committing an inhumane act against one or more persons similar in nature to those previously referred to in this article and within the context of an institutionalized regime of systematic oppression and domination by one racial group against other racial group or groups with the intention of maintaining such a regime;
16. Intentionally committing other inhuman acts of a similar character to those referred to in this article, causing the victim harsh sufferance or severe mental or physical damage.

## **Article (12)**

### **War Crimes**

**[Translator's note: "protected" here refers to being protected under one or more of the Geneva conventions of 1949; see pt. 3 below]**

#### **First: War Crimes against individuals**

1. Death penalty or life imprisonment shall be the punishment of whoever commits any of the following acts in the context of international or non-international armed conflict that the perpetrator was aware of:
  - 1.1 Intentionally killing one or more protected persons.
  - 1.2 Torturing one or more protected persons or treating them inhumanely by causing them great suffering, or serious mental or physical injury to acquire information or a confession, or with the aim of punishing, intimidation, coercion or for any reason based on discrimination of any kind.
  - 1.3 Subjecting one or more persons to permanent physical handicap, or permanent disability, or dismembering part of their body causing death or severely endangering their physical or mental health.
  - 1.4 Causing severe physical or mental damage, great suffering or severe wounds to one or more protected persons.
  - 1.5 Violating the personal dignity of one or more protected persons, particularly by treating them in a degrading and humiliating manner.
  - 1.6 Arresting, detaining, or taking as hostage one or more protected persons in any way, and threatening to kill, injure, or continue to detain them to compel a state, international organization, natural or legal person or groups of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of that individual or group.
  - 1.7 Using coercion to have sex with a female, or sodomize a male, or rape the victim using penetration of any kind. The aforementioned acts would still be considered coercion if committed on a person unable to express their consent.
  - 1.8 Compelling one or more protected persons with force or intimidation to commit sexual acts in exchange for money or other related benefits.
  - 1.9 Depriving one or more protected persons of biological reproductive capacity, without medical justification or treatment of the concerned person or with their genuine consent.
  - 1.10 Detaining one or more protected women and forcibly making them pregnant, with the intent of affecting the ethnic composition of any population
  - 1.11 Enlisting one or more children under the age of fifteen years into the national armed forces or using them to actively participate in war hostilities.
  - 1.12 Deporting or transferring a protected person or a protected population, or forcibly displacing them in one or another from the area in which they are lawfully present to another country, in violation of international law
  - 1.13 Transferring, directly or indirectly, part of the population of the occupying power to the occupied territory.
  - 1.14 Detaining a protected individual or group without legal ground.

- 1.15 Passing sentences and carrying out executions on one or more protected persons without previous trials at a specialized court that takes into consideration all judicial and procedural guarantees which are generally recognized by international law.
  - 1.16 Subjecting one or more protected persons to biological experiments of any kind which are neither medically justified, nor carried out in the interest of the concerned party, and which may lead to death or to serious endangerment of the mental or physical health of such person or persons.
  - 1.17 Subjecting the lives of one or more protected persons under the authority of the opposing party to death or grave physical health through conducting any kind of medical or scientific experiments unjustified by the medical, dental or hospital treatment of the person concerned and against the interest of the person or persons.
  - 1.18 Killing or injuring a combatant who has laid down his weapons or who no longer possesses a means of defense after voluntarily surrendering at being present outside the combat zone.
- 2 Imprisonment shall be the punishment for whoever commits any of the following acts during international armed conflicts:
    - 2.1 Intentionally depriving a prisoner of war or other protected persons of their rights to a fair trial at a specialized court that takes into consideration judicial and procedural hearings guaranteed by law.
    - 2.2 Compelling a prisoner of war or other protected persons to serve in the forces of a hostile power.
    - 2.3 Compelling one or more persons of the hostile country to take part in the operations of war directed against their own country or armed forces.
- 3 The rules of this article, are in reference to the protected persons:
    - 3.1 In international armed conflicts: people protected under the provisions of the four Geneva Conventions of 1949, and the first additional protocol of 1977, are: the wounded, the sick, and the drowned from the armed forces, prisoners of war, and civilians; and members of the armed forces who surrendered their weapons or became unable to fight for any reason.
    - 3.2 In non-international armed conflicts: people under the protection of the third article shared with the four Geneva Conventions of 1949 and the second additional protocol of 1977, are: those who are not directly involved in hostile acts, including members of armed forces who laid down their weapons, those unable to fight due to illness, wounds, detention or any other reason, as well as paramedics and religious figures.

### **Second: War Crimes against Properties and other Rights**

Life or temporary imprisonment shall be the punishment for whoever commits any of the following acts against properties protected under the provisions according to international law applicable to armed conflicts, in the context of an international or non international armed conflict that the perpetrator was aware of:

1. Looting any properties belonging to the opponent's party with the intention of personal usage or ownership.
2. Causing extensive destruction to the property of the opponent or confiscation by unlawful means unjustified by military necessity.
3. Depriving those on the side of the opponent from their legal rights to appeal to the courts by canceling stalling or suspending their appeals

### **Third: War Crimes against Humanitarian Operations and their emblems**

Imprisonment shall be the punishment for whoever commits any of the following acts in the context of international or non-international armed conflicts that the perpetrator was aware of:

1. Intentionally launching attacks against individuals, or establishments or installations, or materials, or units or vehicles used for humanitarian relief or peacekeeping missions in accordance with the Charter of the United Nations, and entitled to protection under the international law of armed conflict.
2. Intentionally directing attacks against persons, buildings, materials, medical units, and transport systems carrying the distinctive emblems of the Geneva Conventions of 1949.

### **Fourth: War crimes represented by the improper use of flags, insignia and slogans**

Imprisonment shall be the punishment for whoever commits any of the following acts in the context of international or non-international armed conflict that the perpetrator was aware of:

Misuse of the hostile party's flag, military symbols or uniforms, or of the flag, symbols, or military uniform of the United Nations, or of the distinctive symbols of the Geneva Conventions, for combatant purposes in a manner prohibited under the international law of armed conflict, or in order to feign an intention to negotiate under the flag of truce or surrender – when there was no such intention – and to have this result in death or serious injury.

**Fifth: War Crimes related to Illegal Combat methods:**

Death penalty or imprisonment shall be the punishment for whoever commits any of the following acts in the context of international or non-international armed conflict that the perpetrator was aware of:

1. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.
2. Intentionally directing attacks against civilian locations, or other protected neighborhoods that do not constitute military targets, especially buildings dedicated to religious, or educational, or scientific or charitable purposes, historical monuments and artistic objects, hospitals, and places where the wounded and sick are brought together.
3. Intentionally attacking or bombing unprotected towns, villages, dwellings or buildings that are not military targets.
4. Intentionally launching attacks that would cause loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
5. Transfer or exploitation of the presence of one or more civilians or other protected persons to render certain points, areas or military bases immune from military operations.
6. Starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, or impeding relief supplies to barely keep them alive in violation of the rules of humanitarian international law.
7. Declaring or ordering that no one will remain alive, while in a position of actual control or leadership over subordinate forces as a means of threatening the enemy or of engaging in acts of war.
8. Treacherously killing or wounding one or more persons or combatants from the hostile state or army after inviting their confidence or belief that they were entitled to protection under the rules of international law applicable in armed conflict.
9. Ordering the displacement of the civilian population without being justified in terms of increasing the security of the concerned civilians or in terms of military necessity.

### **Sixth: War Crimes relating to the use of prohibited means and weapons**

Death penalty or imprisonment shall be the punishment of whoever commits any of the following acts in the context of international or non-international armed conflict that the perpetrator was aware of:

1. Using poison or a weapon that releases a poisonous substance that causes death, or severely damage to health in the ordinary course of events, through its toxic properties.
2. Using gas, or liquid or any material or substance that results in death or severe damage to health in the ordinary course of events, through its asphyxiating or toxic properties.
3. Using prohibited bullets that expand or flatten easily in the human body, which uselessly aggravate suffering and the wounding effect. In particular, the use of bullets with a hard covering that does not entirely cover the core of the bullet, or bullets with sharp edges.
4. Employing weapons, projectiles or materials or methods of warfare which in their nature cause superfluous injury or unnecessary suffering or which are inherently indiscriminate, in violation of international law applicable to armed conflict.

### **Article (13)**

#### **Crime of Aggression**

- (1) Death penalty or life imprisonment shall be the punishment of whoever is in the position of practicing control or being able to direct political or military acts in his/her state against the state in violation of the UN Covenant by resorting to armed force to threaten, or overtake state sovereignty, its regional security or its political independence.
- (2) Any of the following acts are considered aggression (whether there is a declaration of war or not):
  - a. The armed forces of a certain state invade or attack a region of the state, even if temporarily, by means of its armed forces or a military occupation, as a result of a similar kind of attack or invasion or any merging of the state's provinces or portions of it by use of force.
  - b. The armed forces of a certain state bomb a region of the state or the state uses any weapons against a region of the state.
  - c. Imposing a blockade on the ports of a state, its coast, or its airspace by the armed forces of another state.
  - d. The armed forces of a certain state attack the ground troops, the navy, and the air force, or the navy and air trade fleets of the state.

- e. A certain state whose armed forces are present in a region of another state with the consent of the host state, uses its armed forces in violation of the conditions stated in the agreement or extends their presence in the aforementioned region beyond the conclusion of the agreement.
  - f. A certain state that placed its region under the control of another state permits that other state to use this region to perpetrate an act of aggression against the state.
  - g. Sending gangs, or armed groups, or irregular forces, or militias, or mercenaries from a particular state or in the name of the state, to conduct armed acts against another state that are dangerous to a degree tantamount to one of the above mentioned acts of aggression or to the tangible participation of that state in this act.
- (3) It is considered aggression to plan, prepare, and issue orders when aggression is the act that follows these actions.