



International Conference on the Great Lakes Region

Protocol against the Illegal Exploitation of Natural Resources

30 November 2006

Original: French

PREAMBLE

We, Heads of State and of Government of the Member States of the International Conference on the Great Lakes Region;

Reaffirming the Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region adopted and signed in Dar-es-Salaam (United Republic of Tanzania) on 20 November 2004;

Reaffirming the need to respect the fundamental principles enshrined in the United Nations Charter and the Constitutive Act of the African Union notably territorial integrity, sovereignty, non-interference, non-aggression, and prohibition of any State from allowing the use of its territory by armed groups as a base for aggression and subversion against another State;

Considering that respect for human rights represents a fundamental guarantee against threats to peace and the internal security of States;

Determined to build a Great Lakes Region that is open to other regions of the continent, by building cooperation on the following priority areas: Peace and Security, Democracy and Good Governance, Economic Development and Regional Integration, and Humanitarian and Social Issues;

Considering that permanent sovereignty over natural resources is an inalienable right of the people, which must be exercised in the interest of their national development and of the well-being of the population of the State concerned, without prejudice to the obligations arising out of international economic cooperation, based upon the principle of mutual interest and international law;

Considering that the illegal exploitation of natural resources in the Great Lakes Region is one of the factors causing or aggravating endemic conflicts and persistent insecurity in the Region, and represents, at the same time, a major obstacle to the attainment of the Millennium Development Goals;

Deeply concerned about the negative impact of the illegal exploitation of natural resources, which aggravates environmental degradation and deprives States of the resources needed to fight poverty;

Recognizing the numerous initiatives and efforts made at national, sub-regional and regional levels to find a durable solution to the issue of illegal exploitation of natural resources in the Great Lakes Region;

Recognizing the rights and duties of States under international law, in particular, the need to promote international cooperation, technical assistance, regional integration and economic development;

Considering our commitment to promote regional policies and strategies for environmental evaluation, restoration and protection, as well as the rehabilitation of human settlements;

Considering regional and international instruments on the issue of illegal exploitation of natural resources namely: the Constitutive Act of the African Union, 2000; the

International Covenant on Economic, Social and Cultural Rights, 1966; the International covenant on Civil and Political Rights, 1966; the African Charter on Human and Peoples' Rights, 1981; the African Convention on the Conservation of Nature and Natural Resources, 1968; the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, 1991; the Convention on Biological Diversity, 1992; the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, 1994; the Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960 ; the United Nations General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, 1962; the Declaration on the Right to Development, adopted by the United Nations General Assembly Resolution 41/128 of 1986 ; the Kimberley Process Certification Scheme;

Resolved to put in place a legal framework to curb the illegal exploitation of natural resources in the Great Lakes Region and to take effective measures to prosecute and punish those responsible for such acts;

Agree as follows:

CHAPTER I

General Provisions

Article 1.

Definitions

For the purposes of this Protocol, unless the context otherwise requires, the following mean:

“Committee”: Committee Against the Illegal Exploitation of Natural Resources which is composed of one person chosen by each Member State from among men and women reputed for their high moral standing, impartiality and competence;

Extradition: 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 Protocol, or other treaties and conventions, or legislation, in force apply;

Illegal Exploitation: any exploration, development, acquisition, and disposition of natural resources that is contrary to law, custom, practice, or principle of permanent sovereignty over natural resources, as well as the provisions of this Protocol;

Regional Mechanism for the Certification of natural resources: the set of policies, laws and regulations governing operations of exploration, trade and use of such resources.

The Kimberley Process: The international certification scheme for uncut diamonds with a view whose aim is to break the link between armed conflict and the illegal trade in uncut diamonds;

Protocol: the Protocol against the Illegal Exploitation of Natural resources;

Natural Resources: substances provided by nature that are useful to human beings and have an economic value, found in any of the States of the Great Lakes Region. The major types of natural resources include minerals, flora and fauna, fishery products and water;

“Permanent Sovereignty over Natural Resources”: the permanent authority and competence exercised by a State over natural resources on its territory according to the principle of international law as enshrined in the UN General Assembly Resolution 1803 (XVII) of 1962;

Article 2.

Objectives

The objectives of this Protocol are:

1. To promote and strengthen, in each Member State, the development of effective mechanisms to prevent, curb and eradicate the illegal exploitation of natural resources;
2. To intensify and revitalize cooperation among Member State with a view to achieving more efficient and sustainable measures against the illegal exploitation of natural resources;
3. To promote the harmonization by Member States of their national legislations, policies and procedures against the illegal exploitation of natural resources.

Article 3.

Permanent Sovereignty over Natural Resources

1. Member States shall freely dispose of their natural resources. This right shall be exercised in the exclusive interest of the people. In no case, the populations shall a State be deprived of it.
2. In case of spoliation, the dispossessed Member State shall have the right to the lawful recovery of its property, as well as to adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation, based on mutual respect, equitable exchange and the principles of international law.
4. Member States shall develop and implement a participatory and transparent mechanism for the exploitation of natural resources, according to their respective economic and social systems;

Article 4.

Infringement of the Right to Permanent Sovereignty of States over Natural Resources

The illegal exploitation of natural resources shall be considered as a violation of the right of Member States to permanent sovereignty over their natural resources, and contrary to the spirit and principles of the United Nations Charter, the Declaration on the Right to Development adopted by the United Nations General Assembly, the Constitutive Act of the African Union and the African Charter on Human and Peoples' Rights.

Article 5.

Respect for the principle of sovereignty by investors

1. Any investment agreement for the exploitation of natural resources shall scrupulously respect the principle of permanent sovereignty of each Member State over

its natural resources, in accordance with national legislations, provisions of this protocol, , the Constitutive Act of the African Union, The United Nations Charter and other relevant international and regional legal instruments

2. The exploration, development and disposition of natural resources, as well as the import of foreign capital required for these purposes, shall be in conformity with the rules and conditions which the Member States freely consider to be necessary or desirable for the authorization, restriction or prohibition of such activities.

3. In situations where a Member State authorizes the exploration, development and disposal of its natural resources, the capital imported for these purposes and the yielded returns shall be governed by the terms of the authorization, the prevailing national legislation and applicable international law. The profits realized must be fairly distributed between the investors and the Member States concerned, due care being taken to ensure that there is no encroachment or impairment whatsoever, on the Member Status's sovereign right to enjoy and exercise full control over its natural resources.

Article 6.

Nationalization, Expropriation and Requisitioning

1. Acts of nationalization, expropriation or requisitioning shall be based on reasons of State approved national interest or security, which are recognized as prevailing over individual or private interests, whether domestic or foreign.

2. Where nationalization, expropriation, or requisition, takes place, the investor shall be entitled to the payment of adequate and prompt compensation by the concerned Member State, in accordance with the rules and regulations in force in the Member State and with the international applicable law.

Article 7.

International Cooperation in the Fight Against the Illegal Exploitation of Natural Resources

International co-operation for the economic development of the countries of the Great Lakes Region, whether in the form of public or private investment, exchange of goods and services, technical assistance, or exchange of scientific information, shall aim at fostering their national and regional development as well as participating in the fight against the illegal exploitation of natural resources.

Article 8.

Protection of Human Rights

1. Member States shall insure respect for the protect human rights at anytime including in case of exploiting natural resources. They shall ensure that third parties do not infringe upon human rights or permanent sovereignty over natural resources on their territories.

2. Member States shall use all the political, diplomatic and other mechanisms at their disposal, to obtain the cooperation of all foreign governments to ensure that multinational companies and other third parties abide by human rights, in accordance with the United Nations Norms on the Responsibilities of Transnational corporations and other business enterprises with respect to human rights.

3. Member States undertake to establish the necessary mechanisms to prevent illegal exploitation and mitigate the negative effects of licit exploitation of natural resources on environment and human settlements.

CHAPTER II

Obligations of States

Article 9.

Combating Impunity

Member State undertake to end impunity for persons responsible for exploiting natural resources illegally.

Article 10.

Preventive Measures

To achieve the objectives defined under article 2, each Member State undertakes to:

(a) Formulate and apply rules and regulations and other measures aimed at providing effective and adequate protection for persons who, in good faith, provide information on illegal acts, measures, or means of exploiting natural resources.

(b) Establish independent specialized bodies responsible for combating the illegal exploitation of natural resources and to strengthen the capacity of such bodies to enable them to discharge their responsibility effectively.

(c) Promote the participation of civil society and non-governmental organizations in detecting and preventing acts, or means of exploiting natural resources illegally.

(d) Respect and strengthen the role of the press to inform the public and raise awareness of the economic and social consequences of the illegal exploitation of resources, and to sensitize the public on the measures taken by the Member States to prevent and curb the illegal exploitation of resources.

Article 11.

Mechanism for the Certification of Natural Resources

Member States undertake to establish a regional mechanism whose objective shall be to serve as a tool for combating the illegal exploitation of natural resources. This mechanism shall institute accredited standards as regards natural resource exploitation and shall include provisions on certification of origin including labeling, monitoring, supervision, verification and implementation, and as appropriate, capacity development and capacity building, with a view to ensuring the efficiency of such a mechanism.

Article 12.

Criminalization

Each Member State shall ensure that all acts of illegal exploitation of natural resources are offences under its criminal law. Such acts shall include:

- (a) Concluding an agreement to exploit resources, in violation of the principle of peoples' sovereignty over their natural resources;
- (b) Concluding with state authorities an agreement to exploit natural resources, in violation of the legal and regulatory procedures of the State concerned;
- (c) Concluding an agreement to exploit natural resources in through corrupt practices;
;
- (d) Concluding an agreement to exploit natural resources that is clearly one-sided;
- (e) Exploiting natural resources without any agreement with the State concerned;
- (f) Exploiting natural resources without complying with norms relating to the protection of the environment and the security of the people and the staff; and
- (g) Violating the norms and standards established by the relevant natural resource certification mechanism.

Article 13.

Laundering of Proceeds of Illegal Exploitation of Natural Resources

Each Member State shall adopt, in accordance with the fundamental principle of its law, legislative measures and other measures that are necessary to establish as criminal offences:

- (a) The conversion or transfer of property, with knowledge that such property was obtained from the proceeds of natural resources that have been exploited illegally, or concealing or disguising the illegal origin of the property concerned, or helping any person who is involved in the illegal exploitation of natural resources to evade the legal consequences of his or her acts;

(b) The concealment or conspiracy to conceal or disguise the true nature, source, location, disposition, movement or ownership of the property in question, with knowledge that such property was obtained from, or with, the proceeds gained from the illegal exploitation of natural resources;

(c) The acquisition, possession or use of property by a person who knows or knew, at the time of receipt, possession or use of such property, that it was obtained from, or with, the proceeds gained from the illegal exploitation of natural resources.

Article 14.

Protection of Witnesses

1. Each Member State shall take appropriate measures to ensure that witnesses, their relatives and other persons close to them, are effectively protected from potential retaliation, harm, or intimidation, as a result of giving evidence against persons investigated, prosecuted, acquitted or convicted, of any crime that involves the illegal exploitation of resources.

2. Such measures may include:

(a) Establishing procedures for the physical protection of the persons concerned, such as, relocating them elsewhere and permitting non-disclosure or limitations on the disclosure of information on their identity and whereabouts;

(b) Formulating rules of procedure which permit witnesses to give testimony in a manner that ensures their safety, such as permitting testimony to be given through the use of communications technology, such as video or other suitable means.

3. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 15.

Sanctions

1. Each Member State shall impose effective and deterrent sanctions commensurate with the offence of illegal exploitation of natural resources committed, including imprisonment for individual persons convicted of such offences;

2. Each Member State shall, in case of liability incurred under Article 17 below, ensure that corporate bodies found guilty of offences shall be liable to effective and deterrent sanctions, and proportionate criminal or non-criminal sanctions, including pecuniary sanctions;

Article 16.

Seizure and Confiscation

1. Each Member State shall adopt legal measures or others as may be necessary to enable the identification, tracing, freezing or seizure of instruments and proceeds of illegal exploitation of natural resources or of property deriving from such proceeds.
2. To implement the measures referred to in this article, each Member State Party shall empower its courts to order that banking, financial or commercial records be made available or seized, and shall not decline to provide assistance required by another Member State on the ground of banking confidentiality.
3. The requesting Member State shall not use such information received for purposes other than those for which it was required.
4. In accordance with their domestic laws, relevant treaties and agreements, Member States shall afford one another mutual assistance in respect of the identification and seizure of property obtained from or in connection with the illegal exploitation of natural resources or used for this purpose.
5. Member States that make a seizure or confiscation shall return the seized or confiscated objects to the legitimate owner that is the victim of the illegal exploitation of natural resources;

Article 17.

Liability of Legal Entities

1. Each Member State shall adopt measures to establish the liability of legal entities for participating in the illegal exploitation of natural resources.
2. Subject to the legal principles of the Member State, the liability of legal entities may be criminal, civil or administrative;
3. Such liability shall be without prejudice of the criminal liability of natural persons who have committed similar offences.
4. Each Member State shall, in particular, ensure that legal entities held liable for offences pursuant the provisions this article shall be subject to effective, deterrent and proportionate criminal or non-criminal sanctions, including pecuniary sanctions, the prohibition to carry out commercial activities, liquidation by court order, or placement under court supervision
5. Member States undertake to encourage the governments of foreign countries to carry out necessary investigations and to take appropriate measures against enterprises registered in their countries allegedly involved in the illegal exploitation of natural resources;

Article 18.

Extradition

1. The criminal offences covered by this Protocol shall be deemed to be included as extraditable offences in any extradition treaty existing between Member States. Member States undertake to include such offences as extraditable offences in every future extradition treaty to be concluded between them.
2. A Member State that receives an extradition request from another Member State with which it has no extradition treaty may consider this Protocol as the legal basis for extradition in respect of any offences covered by this Protocol.
3. Member States that do not make extradition conditional on the existence of a treaty shall recognize the offences covered by this Protocol as extraditable offences.
4. Extradition shall be subject to the conditions provided for by the domestic law of the requested Member State or by applicable extradition treaties, including the grounds upon which the requested Member State may refuse extradition.
5. If an alleged offender is not extradited on the ground of his or her nationality, or because the requested State deems itself competent in the particular case, such State shall submit the case without undue delay to its competent authorities for the purpose of prosecution, unless there are provisions agreed upon with the requesting party. The requesting State shall be kept duly informed of the final outcome.

Article 19.

Cooperation Between Investigation and Prosecution Services

1. In conformity with the provisions of their national legislations and the applicable international treaties, Member States undertake to mutually assist one another in dealing with requests from competent authorities and to apply the necessary measures to facilitate procedures and formalities relating to the investigations and prosecutions with respect to acts of illegal exploitation of natural resources;
2. Member States undertake to cooperate in law enforcement services, with a view to strengthening the measures necessary to prevent, detect, and punish acts of illegal exploitation of natural resources;
3. Member States shall not deny judicial assistance to one another on the ground of banking confidentiality.

Article 20.

Central Authorities

1. Each Member State shall designate a central authority in the context of cooperation and mutual assistance provided for in this Protocol,.

2. Central authorities shall be competent to make and receive any requests for cooperation and assistance that arise pursuant to this Protocol, and they may communicate directly with one another.

Article 21.

Application in Time

Acts of illegal exploitation of natural resources committed prior to the entry into force of this Protocol may, upon agreement of Member States, be subjected to judicial cooperation, in conformity with existing national and international legal norms with respect to extradition;

Article 22.

Harmonization of National Laws

1. Each Member State shall review its national legislations on the illegal exploitation of natural resources to insure that such legislations complies with the provisions of this Protocol and the relevant international instruments and legal norms .

2. Member States undertake to harmonize their national legislations in accordance with the provisions of this Protocol.

Article 23.

Relation with other International Legal Instruments

No Member State shall invoke against another Member State previous provisions contained in other legal instruments which are contrary to this Protocol.

CHAPTER III

Implementation Measures

Article 24.

Establishment of a Committee Against the Illegal Exploitation

A Committee against the illegal exploitation of natural resources, hereinafter referred to as "the Committee", is hereby established, Member States shall provide the Committee with sufficient resources to carry out its mission effectively.

Article 25.

Mission of the Committee

1. The functions of the Committee shall be to prevent the illegal exploitation of natural resources. To this end, it shall be responsible for:

- (a) Examining on a regular basis the situation in each Member State with respect to the prevention of illegal exploitation of natural resources;
 - (b) Collecting and analyzing information on these matters;
 - (c) Alerting, in a timely manner, the Conference Secretariat so that urgent measures can be taken to prevent and stop imminent cases of illegal exploitation of natural resources;
 - (d) Proposing specific measures to effectively combat impunity in case of illegal exploitation of natural resources;
 - (e) Sensitizing all social actors, including the public to be actively involved in the fight against the illegal exploitation of natural resources;
 - (f) Collecting and disseminating relevant information between Member States;
 - (g) Organizing regular and relevant training programmes for actors concerned with the illegal exploitation of natural resources;
 - (h) Carrying out any other duty as may be assigned by the Conference Secretariat.
2. The Committee shall carry out its functions in accordance with its rules of procedure.

Article 26.

Composition

1. The Committee shall be composed of one person chosen by each Member State from among men and women reputed for their high moral standing, impartiality and competence with respect to curbing the illegal exploitation of natural resources.
2. The members of the committee shall serve in their individual capacities;

Article 27.

Term of office of Committee members

1. The members of the Committee shall be appointed for a term of four (4) years, renewable once.
2. If a member of the Committee does not complete his or her term of office, a replacement from the same country shall be designated by his or her government to fill the vacancy for the remaining term.
3. A member of the Committee who vacate his or her position, shall serve on the Committee until his or her successor assumes office, except where such vacancy occurs as a result of the death of the serving the Committee;
4. The Committee shall appoint its Secretary.

Article 28.

Vacancies

In the event of death or resignation of a member of the Committee, the Chairperson of the Committee shall immediately inform the Secretariat of the Conference which shall declare the seat vacant from the date on which the death occurred or the date on which the resignation took effect;

Article 29.

Suspension of Members or Termination of Membership

1. A member shall be suspended or removed from office if the unanimous view of other members of the Committee is that he or she no longer fulfills the required of membership.
2. In such a case, the decision to suspend a member or terminate membership shall be taken by the Regional Interministerial Committee.

Article 30.

The Committee Chairperson

1. The Committee shall elect its Chairperson, Vice-chairperson and Rapporteur for a term of two years, which shall be renewable once.
2. The functions of the chairperson, vice-chairperson and Rapporteur shall be defined in the I rules of procedure of the Committee.

Article 31.

Meetings of the Committee

1. The Committee shall meet as many times as necessary at least twice a year, when convened by the Chairperson. The quorum shall be constituted by two-thirds of its members.
2. Decisions of the Committee shall be taken by absolute majority of the members present. In the event of a tie, the Chairperson shall have the casting vote.

Article 32.

Cooperation

In carrying out its functions, the committee shall cooperate with Member States, the African Commission on Human and Peoples' rights, civil society organizations, United Nations agencies and any other body that may provide it with relevant information

Article 33.

Applicable Law

The Committee shall apply the provisions of this Protocol, as well as any other applicable instrument ratified by the Member State concerned.

Article 34.

Method of Investigations

The Committee may resort to any appropriate method of investigations and in particular, it may receive any evidence from any person who is in a position to provide it with information relevant to its functions.

Article 35.

Report on the Activities of the Committee

The Committee shall present a report on its activities and propose recommendations at each ordinary session of the Regional Interministerial Committee which reports to the ordinary session of the Summit of the Conference.

Article 36.

Establishment of the First Committee

1. Upon the entry into force of the present protocol, members of the Committee shall be appointed, in accordance with the provisions of this Protocol.
2. The Conference Secretariat shall convene the first meeting of the committee.

CHAPTER IV

Article 37: Final Provisions

1. This Protocol shall be an integral part of the Pact and shall not be subject to separate signature and ratification by the Member States.
2. For any Member State which has ratified the Pact in terms set out in Article 30 of the Pact, this Protocol shall automatically enter into force at the same time as the Pact in accordance with Article 33 of the Pact.
3. Nothing contained in this Protocol shall be construed to be contrary to the provisions of the Pact, the Constitutive Act of the African Union, and the Charter of the United Nations.