

Southern African Development Community, African Regional Bodies

Protocol on Combating Illicit Drug Trafficking in the Southern African Development Community (SADC) Region

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Southern African Development Community

Protocol on Combating Illicit Drug Trafficking in the Southern African Development Community (SADC) Region

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Preamble

We, the Heads of State or Government of the Southern African Development Community (hereinafter referred to as SADC), signatories to the Treaty establishing SADC (hereinafter referred to as the Treaty);

CONSIDERING Article 21 of the Treaty which provides for areas of co-operation and Article 22 which provides for conclusion of Protocols which may be necessary in agreed areas of co-operation;

COMMITTED to the establishment of a regional institutional framework for co-operation in combating illicit drug supply, demand and corruption in Member States, through legislative and social policies;

CONCERNED about the magnitude of, and the rising trend in, the illicit production, use and abuse of, demand for, and traffic in drugs in the SADC;

CONCERNED that such illicit use of, and traffic in, drugs poses a serious threat to the health and welfare of the peoples of the SADC and adversely affects the economic, cultural and political foundations of society;

CONSCIOUS that funds derived from any drug trafficking might distort the economies of the Region;

CONSCIOUS of the fact that illicit drug trafficking is a serious international problem;

AWARE that the Region is being increasingly used as a conduit for illicit drugs destined for international markets and that illicit drug trafficking generates large financial gains and wealth enabling trans-national criminals and organisations to penetrate, contaminate and corrupt the structures of governments, legitimate commercial and financial business and society at all levels;

AWARE that illicit drug trafficking and corruption often complement each other;

CONVINCED that a joint concerted effort by Member States is necessary to eradicate illicit drug production and trafficking;

CONVINCED that a joint concerted effort can only be effected through the implementation of coordinated, comprehensive and integrated drug control and prevention programmes that address both supply and demand;

DETERMINED to eliminate the root causes of the problem of drug production, trafficking and abuse by adopting and strictly enforcing legislation against illicit drug production and trafficking, money laundering and diversion of chemical precursors;

DETERMINED to stop the region from being used as a conduit for drugs destined for international markets and to deprive those who are engaged in illicit drug trafficking of the proceeds of their criminal activities;

DESIROUS of launching a joint concerted effort to achieve the above mentioned aims and objectives;

HEREBY AGREE AS FOLLOWS:

Article 1 – Definitions

In this Protocol, unless the context otherwise requires:

"**Chemical Precursors**" means substance frequently used in the illicit manufacture of narcotic drugs or psychotropic substances as defined in Article 12 of the 1988 UN Convention Against Illicit Drugs and Psychotropic Substances mentioned in Table I and Table II annexed to the said convention.

"**Community Prevention**" means any activity undertaken at the level of a community designed to reduce the underlying causes of drug abuse peculiar to the community.

"**Controlled Delivery**" shall have the meaning assigned to it in article 1 of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances.

"**Corruption**" means abuse or misuse of any office for private gain or benefit or the giving or receipt by any person of any benefit of whatever nature which is not legally due.

"**Demand Reduction**" means those measures that encompass all primary, secondary and tertiary activities taken to reduce, and to deter the use of illicit drugs.

"**secondary**" means helping people who use illicit drugs to using them.

"**tertiary**" means limiting or minimising some of the worst effects of disease and harmful behaviour.

"**Drugs**" means any narcotic drug or psychotropic substance.

"**Executive Secretary**" means the Executive Secretary of SADC.

"**Illicit Drug Trafficking**" means the offenses set forth in Article 3, paragraphs 1 and 2 of the 1988 UN Convention Against Illicit Drugs and Psychotropic Substances.

"**Member State**" means a member of 'SADC'.

"**Money Laundering**" means engaging directly or indirectly in a transaction that involves money or property which is proceeds of crime or receiving, processing, conceiving, disguising, transforming, converting, disposing of, removing from, bringing into any territory, money or property that is the proceeds of crime.

"**Narcotic drugs**" means any of the substances, natural or synthetic, referred to in schedules I and II of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961.

"**Proceeds of illicit drug trafficking**" means any property derived from or obtained, directly or indirectly, from drug trafficking.

"**Property**" means any asset whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents or instruments evidencing title to, or interest in, such assets.

"**Psychotropic substance**" means any substance, natural or synthetic, or any natural material referred to in Schedules I and II, III and IV of the Convention on Psychotropic Substances of 1971.

"**Region**" means the geographical area of the Member States of SADC.

"**Summit**" means the summit of the Heads of State or Government of SADC established by Article 9 of the Treaty.

"**Treaty**" means the treaty establishing SADC.

"**Tribunal**" means the Tribunal established by Article 16 of the Treaty.

Article 2 – Objectives

The main objectives of this Protocol are;

- i) to reduce and eventually eliminate drug trafficking, money laundering, corruption and the illicit use and abuse of drugs through cooperation among enforcement agencies and demand reduction through coordinated programmes in the Region;
- ii) to eliminate the production of illicit drugs; and

- iii) to protect the region from being used as a conduit for drugs destined for international markets.

Article 3 – International conventions

Member States, which have not acceded to, *inter alia*, the undermentioned United Nations Conventions shall do so as soon as possible:

- (a) The 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs of 1961;
- (b) The 1971 Convention on Psychotropic Substances; and
- (c) The 1988 UN Convention Against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances.

Article 4 – Domestic legislation

1. Member States shall promulgate and adopt domestic legislation which shall satisfy the provisions of the conventions referred to in Article 3.
2. The legislation shall, *inter-alia*, make provision for:
 - a) drug trafficking, money laundering, diversion of chemical precursors, conspiracy, incitement and instigation and drug abuse to be illegal;
 - b) maximum custodian sentencing which will serve both as punishment and as a deterrent and would include provision for rehabilitation;
 - c) the destruction of drugs seized, as appropriate;
 - d) effective measures for dealing with the proceeds of illicit drug trafficking including the tracing, freezing and seizure, confiscation and forfeiture of the said proceeds, including instrumentalities;
 - e) rendering of mutual assistance in respect of illicit drug trafficking, investigations, confiscation, prosecutions and measures for the proportionate sharing among concerned Member States of forfeited assets;
 - f) Facilitation of laws and extradition between Member States;
 - g) Prevention and detection of laundering of the proceeds of drug trafficking;
 - h) Conspiracy, incitement and instigation to be illegal; and
 - i) Controlled delivery in conformity with the 1988 UN Convention and international practices.
3. Member States shall harmonise penalties applicable in the domestic laws with those of other Member States.

Article 5 – Mutual legal assistance

1. Member States shall cooperate with each other to afford mutual legal assistance in a joint concerted effort to suppress the commission of illicit drug trafficking.
2. Mutual legal assistance shall, *inter alia*, include the following:
 - a) communication of information and evidentiary items;
 - b) investigation and detection of offenses;
 - c) request for the taking of evidence and/or statements;
 - d) execution of searches and seizures;

- e) inspection of sites or examination of subjects and or documents;
 - f) request for judicial documents;
 - g) service of judicial documents;
 - h) communication of relevant documents and records; and
 - i) identification or tracing of suspects or proceeds.
3. Member States may further agree upon any other form of mutual legal assistance consistent with their domestic laws.
 4. Member States shall designate a competent authority the name of which shall be communicated to the Executive Secretary, which shall have the responsibility and power to execute and monitor requests for mutual legal assistance.
 5. Requests for mutual legal assistance shall be made in writing to the competent authority and shall contain:
 - a) the identity of the authority making the request;
 - b) the subject matter and nature of the investigation or prosecution to which the request relates;
 - c) the description of the assistance sought;
 - d) the purpose for which the evidence, information or action is sought; and
 - e) all relevant information available to the requesting Member State and which may be of use to the requested Member State.
 6. The requested Member State may request for any such additional information which might be necessary for the execution of the request in accordance with its domestic law.
 7. The provisions of this article shall not affect the obligations of the Member States.

Article 6 – Law enforcement

Member States shall establish appropriate mechanism for cooperation among enforcement agencies of the Member States to promote effective enforcement including the following:

1.
 - a) Establishment of direct communication system to facilitate free and fast flow of information among the law enforcement agencies in the Region;
 - b) Establishment of an effective infrastructure to enhance effective drug law enforcement, including suitable search and inspection facilities at all designated points of exit and entry;
 - c) Establishment of special law enforcement multi-disciplinary drug units for combating of illicit drug trafficking and money laundering and diversion of chemical precursors;
 - d) Establishment of special training courses to equip law enforcement agencies/units and prosecutors with appropriate skills for carrying out their tasks effectively;
 - e) Promotion of cooperation with international organisations such as the International Criminal Police Organisation (INTERPOL), United Nations International Drug Control Programme (UNDCP), World Customs Organisation (WCO) and International Narcotics Control Board (INCB) and to utilise existing data bases;
 - f) Establishment of focal contact points within the respective law enforcement agencies for the rapid information exchange to combat cross-border drug trafficking and money laundering;
 - g) Promotion of cooperation and the exchange of information between agencies responsible for combating drug trafficking and corruption;

- h) Introduction of effective extradition arrangements to enable extradition in all cases of drug trafficking and money laundering;
 - i) Introduction of effective mutual legal assistance in all cases of drug trafficking and money laundering.
2. Establishing a regional drug data base which will be serviced by the committee established under Article 9 of this Protocol.

Article 7 – Drug demand reduction

Member States shall;

- a) Develop, implement and evaluate policies and strategies aimed at establishing a comprehensive and integrated demand reduction programme that will include the development of community prevention, public and school education and research activities so as to address the underlying causes of drug abuse;
- b) Establish mechanisms to coordinate, monitor and evaluate the demand reduction efforts of Government and Non-Governmental Organisations (NGO);
- c) Call upon the public, private, business and NGO sectors to give higher priority in their programmes to combating drug abuse and the demand for drugs;
- d) Establish appropriate facilities for the treatment, rehabilitation and social reintegration of drug dependent persons and make these available to Member States;
- e) Promote the establishment of employee assistance programmes in all work situations regarding drug abuse;
- f) Provide and share systematic information and research data on drug abuse, drug trafficking and demand reduction programmes in order to facilitate regional cooperation and coordination;
- g) Ensure the availability of adequate training opportunities for personnel involvement in all aspects of demand reduction programmes and to share those opportunities within the region;
- h) Provide adequate human, financial and technical resources for the implementation of the activities to combat drug abuse;

Article 8 – Corruption

1. Member States shall institute appropriate and effective measures for cooperation between enforcement agencies to curb corruption, resulting from illicit drug trafficking.
2. Measures to be taken shall include the following:—
 - a) Establishment of adequately resourced anti-corruption agencies or units that are:—
 - (i) independent from undue intervention, through appointment and recruiting mechanisms that guarantee the designation of persons of high professional quality and integrity;
 - (ii) free to initiate and conduct investigations;
 - (iii) capable of gathering evidence, examining files and documents, and having the power to administer oaths and to deal with any obstruction and contempt;
 - b) Establishment of administrative and regulatory mechanism for the prevention of corruption and the abuse of power;
 - c) Strengthening and harmonising of criminal laws and procedures to curb corruption;
 - d) Adoption of procedures for the detection, investigation, prosecution and conviction of suspect corrupt persons and their accomplices, as well as the protection of witnesses;

- e) Freezing, forfeiture and confiscation of property and money acquired through and/or derived from corruption;
- f) Rendering of mutual legal assistance in corruption investigations and prosecutions;
- g) Provision of effective channels to the public for submission of allegations of corruption, *inter alia*, ombudsmen, independent commissions and other means, such as special post-boxes;
- h) Obligatory disclosure of assets and investments of persons under investigation for corruption, including those of their dependents in accordance with national laws;
- i) Improved banking and financial regulations and mechanisms to prevent capital flight, tax and customs duty evasion;

Article 9 – Institutional arrangement

1. Member States shall establish a committee to oversee the implementation of this Protocol.
2. This committee will be responsible for, *inter-alia*, the following:
 - a) to gather and disseminate drug related information;
 - b) to organise training programmes;
 - c) to evaluate programmes required to be put in place and a programme of cooperation for the implementation of this Protocol; and
 - d) to provide assistance to Member States as and when appropriate.

Article 10 – Settlement of disputes

Disputes arising out of the interpretation or application of this Protocol, which are not settled amicably, shall be referred to the Tribunal.

Article 11 – Amendments

1. An amendment to this Protocol shall be adopted by a decision of three quarters of the members of the summit.
2. Subject to paragraph 3 of this Article, a proposal for the amendment of this Protocol shall be submitted to the Executive Secretary by any Member State for preliminary consideration by the Council.
3. The Executive Secretary shall submit a proposal for amendment to the Council under paragraph 2, after:
 - a) all member states have been duly notified of the proposal; and
 - b) three months have elapsed since the notification.

Article 12 – Signature

This Protocol shall be signed by duly authorised representatives of Member States.

Article 13 – Ratification

This Protocol shall be ratified by the signatory states in accordance with their constitutional procedures.

Article 14 – Entry into force

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States.

Article 15 – Accession

This Protocol shall remain open for accession by any Member State, subject to Article 8 of the Treaty.

Article 16 – Depository

The original text of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary, who shall transmit certified copies to all Member States.

IN WITNESSES WHEREOF, WE, the Heads of State or Government or duly Authorised Representatives of SADC Member States have signed this Protocol.

Done at Maseru this 24 day of August 1996 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.