

SADC PROTOCOL ON MINING

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PREAMBLE

WE, the Heads of State or Government of:

The	Republic	of	Angola
The	Republic	of	Botswana
The	Kingdom	of	Lesotho
The	Republic	of	Malawi
The	Republic	of	Mauritius
The	Republic	of	Mozambique
The	Republic	of	Namibia
The	Republic	of	South Africa
The	Kingdom	of	Swaziland
The	United Republic	of	Tanzania
The	Republic	of	Zambia
The Republic of Zimbabwe			

INTEND to be guided and bound by the principles set forth in this Protocol;

WHEREAS, we fully recognise the objectives and principles set forth in previous declarations and treaties governing the Region including but not limited to:

The Declaration and Treaty establishing the Southern African Development Community (SADC) signed by the Heads of State or Government on 17 August, 1992 in Windhoek, Republic of Namibia;

A Declaration entitled "Southern Africa toward economic liberation", signed by the Heads of State or Government on 1 April, 1980 in Lusaka, Zambia; and

The Lagos Plan of Action and the Final Act of Lagos: April 1980, and the Treaty establishing the African Economic Community signed at Abuja on 3 June, 1991;

WHEREAS, we recognise the propriety and importance of a comprehensive regional strategy and plan for the development of the mining sector;

WHEREAS, we intend to promote the interdependence and integration of our mining policies for the accelerated development and growth of the mining sector in the Region;

WHEREAS, we are determined to ensure, through co-operation and collaboration, to develop the Region's abundant mineral resources to improve the living standards for people throughout the SADC Region;

WHEREAS, we shall promote the economic and social development and integration of our economies with a view to achieving competitiveness and increasing our market share in international markets;

WHEREAS, we are cognisant of the principles of International Law governing relations between States.

NOW, therefore, we have decided to establish a Mining Sector Protocol and agree as follows.

ARTICLE DEFINITIONS

1

"Committee of Mining Ministers" means a committee of Ministers established under Article 10 of this Protocol.

"Community" means the Southern African Development Community.

"Coordinator" means the Coordinator of the Mining Sector established under Article 10(5) of this Protocol.

"Council" means the Council of Ministers of SADC established under Article 9 of the Treaty.

"Exploitation" means the exploration, mining and marketing of minerals.

"Historically disadvantaged" means disabled people, women and indigenous people.

"Member State" means a Member State of SADC.

"Mining Coordinating Unit" means the SADC Mining Sector Unit established under Article 10 of the Protocol.

"Mining Technical Committee of Officials" means a committee of officials established under Article 10 of this Protocol.

"Region" means the geographic area of the Member States of SADC.

"SADC" means the Southern African Development Community established by Article 2 of the Treaty.

"Treaty" means the Treaty establishing the Southern African Development Community (SADC) which was signed at Windhoek on 17th August, 1992.

ARTICLE GENERAL PRINCIPLES

2

For the purpose of this Protocol the following principles shall apply:

1. Member States recognise that a thriving mining sector can contribute to economic development, alleviation of poverty and the improvement of the standard and quality of life throughout the Region.

2. Member States shall seek to harmonise national and regional policies, strategies and programmes related to the development and exploitation of mineral resources.

3. Member States agree to bear their own costs of participation in institutional mechanisms for the effective implementation of this Protocol except that the Mining Coordinating Unit administrative cost shall be borne by the hosting Member State.

4. Member States agree to decide all matters related to the implementation of the Protocol by consensus.

5. Member States agree to cooperate in facilitating the development of human and technological capacity.

6. Member States shall encourage the development, transfer and mastery of science and technology throughout the Region.

7. Member States shall encourage private sector participation in the exploitation of mineral resources.

8. Member States shall promote economic empowerment of the historically disadvantaged in the mining sector.

9. Member States agree that their governments and SADC shall improve the availability of public information to the private sector, Member States and other countries.

10. Member States undertake to jointly develop and observe internationally accepted standards of health, mining safety and environmental protection.

ARTICLE INFORMATION EXCHANGE

3

1. Member States shall coordinate their efforts in creating and managing a database on exploitable mineral resources in the Region.

2. Member States shall co-operate in capacity building in the creation of data dissemination media.

3. Member States shall encourage information dissemination and sharing through, among other things, the networking of institutions and industry.

4. Member States shall encourage multilateral research in compilation of mineral occurrence data and other relevant data.

5. Member States shall strive to improve the organisation and dissemination of technical, investment and marketing information through, among other things, Bureaus and Chambers of Mines and other appropriate institutional mechanisms.

ARTICLE 4
ENHANCEMENT OF TECHNOLOGICAL CAPACITY

1. Member States shall co-operate in developing and upgrading the technological capacity of the human resource in the mining sector of the Region.

2. Member States shall co-operate in research and development, in particular, the provision and utilisation of research and development facilities and training opportunities.

3. Member States shall strive jointly to improve research and development capabilities in search of solutions to current and future technical and other challenges in the Region's mining sector.

4. Member States shall encourage collaboration between the mining industry and training institutions.

5. Member States shall promote, strengthen and rationalise the utilisation of existing facilities and those to be developed in future.

ARTICLE 5
COMMON STANDARDS

1. Member States shall encourage the development of internationally acceptable national and regional standards.

2. Member States shall seek to adopt common nomenclature, common symbols and common colours for all published data.

3. Member States shall co-ordinate their efforts in developing and adopting common certification standards for the Region.

4. Member States shall promote the interchange of engineering, geological codes and other technical data that facilitate the application of common standards.

ARTICLE 6
PROMOTION OF PRIVATE SECTOR PARTICIPATION

1. Member States shall adopt policies that encourage the exploration for and commercial exploitation of mineral resources by the private sector.

2. Member States undertake to develop a mechanism that will enable the private sector's continued participation in the sector.

3. Member States shall strive to create a conducive environment for attracting local and foreign investment to the Region and to the mining sector in particular.

ARTICLE 7

SMALL-SCALE MINING

1. Member States agree to promote policies that will encourage and assist small-scale mining in the Region.

2. Member States shall facilitate the development of small-scale mining through, amongst others, the provision of technical extension services, establishment of marketing facilities including exhibitions and establishment of mineral exchanges.

3. Member States shall encourage the provision of training, institutional and financial support for the small-scale mining sector in the Region.

ARTICLE 8
ENVIRONMENTAL PROTECTION

1. Member States shall promote sustainable development by ensuring that a balance between mineral development and environmental protection is attained.
2. Member States shall encourage a regional approach in conducting environmental impact assessments especially in relation to shared systems and cross border environmental effects.
3. Member States shall collaborate in the development of programmes to train environmental scientists in fields related to the mining sector.
4. Member States undertake to share information on environmental protection and environmental rehabilitation.

ARTICLE 9
OCCUPATIONAL HEALTH AND SAFETY

1. Member States agree to cooperate in improving the practices and standards of occupational health and safety in the Region's mining sector.
2. Member States agree to encourage the sharing of training and any promotional facilities related to occupational health and mining safety in the Region.

ARTICLE 10
INSTITUTIONAL ORGANISATION

1. The organisational structure shall comprise the following organs:

- (a) The Committee of Mining Ministers;
- (b) The Mining Technical Committee of Officials;
- (c) The Mining Coordinating Unit.

2 The Committee of Mining Ministers

- (a) The Committee of Mining Ministers shall consist of one Minister responsible for mining from each Member State.

- (b) The functions of the Committee of Mining Ministers shall be to:

- (i) establish the policy and strategy of the regional mining sector;
- (ii) establish areas of co-operation as provided in this Protocol;
- (iii) consider and recommend for approval by the Council of Ministers the annual reports of the mining sector;
- (iv) consider and approve recommendations on projects and programmes;
- (v) consider and approve recommendations on rules and regulations governing the Mining Coordinating unit;
- (vi) consider any matter having a bearing on the objectives, direction and/or implementation of the Protocol brought to its attention by a Member State, the Mining Technical Committee Officials or the Mining Coordinating Unit;
- (vii) recommend to the Council of Ministers amendments to the Protocol and/or changes or modifications to the organisational structure;

- (viii) consider any matter referred to the Committee of Mining Ministers by the Council;

- (ix) create such other organs as may be necessary for the implementation of this Protocol;

- (x) recommend to the Council of Ministers the adoption of subsidiary agreement to regulate co-operation in any particular area of co-operation provided that such subsidiary agreement is not inconsistent with the provisions of this Protocol;

- (c) The Committee of Mining Ministers shall meet annually on dates to be agreed upon;

- (d) The Committee of Mining Ministers shall hold extraordinary meetings upon the consent of two-thirds of the Member States;

- (e) The Chairperson of the Committee of Mining Ministers shall be from the Member State nominated to host the sector.

3. The Mining Technical Committee of Officials

- (a) The Mining Technical Committee of Officials shall consist of at least one representative from each Member State at Permanent Secretary level or equivalent;

- (b) The Mining Technical Committee shall meet at least once annually;

- (c) The Chairperson of the Mining Technical Committee of Officials shall be appointed from the Member States holding the chairmanship of the Committee of Mining Ministers;

- (d) The functions of the Mining Technical Committee of Officials shall be to:
- (i) advise the Committee of Mining Ministers on the activities of the Mining Coordinating Unit and any other relevant organ;
 - (ii) recommend the agenda, provisional work programmes, studies, and projects proposed by the Mining Coordinating Unit for the consideration of the Committee of Mining Ministers;
 - (iii) perform such other functions as may be assigned to it by the Committee of Mining Ministers; and
 - (iv) supervise the operations of the Mining Coordinating Unit through the Chairman.

4. The Mining Coordinating unit

- (a) The Mining Coordinating Unit shall be the executing organ of the mining sector;
- (b) The Mining Coordinating Unit shall comprise of a central coordinating unit and various bodies such as sub-committees, working groups, and other bodies deemed appropriate for the effective implementation of the programme of work;
- (c) There shall be a Coordinator who shall be the head of the Mining Sector Coordinating Unit;
- (d) Although a hosting Member State shall be responsible for the staffing of the Mining Coordinating Unit, experts may be seconded to it from within or outside SADC;
- (e) The Mining Coordinating Unit shall be required to:
 - (i) implement the Protocol;
 - (ii) implement the sector's work programme and the decisions of the Committee of Mining Ministers;
 - (iii) organise and manage meetings of the various organs established under this Protocol; and
 - (iv) manage finances and general administration.

5. The Coordinator, Mining Sector

- (1) The Coordinator shall be appointed and removed by the sector's host Government. In exercising these functions, the host Government shall be guided by the need to ensure the highest standards of efficiency, professional competence and integrity;
- (2) The Coordinator shall have the following functions and duties:
 - (i) coordinate and integrate the work of the Region's mining sector programme;
 - (ii) prepare annual reports and draft budgets and other financial statements and business plans for consideration by the Committee of Mining Ministers;
 - (iii) act as secretary to the meetings of the Committee of Mining Ministers and Mining Technical Committee of Officials, prepare record documents, agenda and work programmes;
 - (iv) organise, as appropriate, meetings of the Committee of Mining Ministers and Mining Technical Committee of Officials;
 - (v) prepare internal rules and regulations of the Mining Coordinating Unit for the consideration of the Committee of Mining Ministers;
 - (vi) mobilise and collect financial and other contributions from various sources;
 - (vii) recommend to the Mining Technical Committee of officials and to the Committee of Mining Ministers any matter of interest to the sector;
 - (viii) convene groups and panels of experts considered necessary to advise the sector on policies, strategies, work programmes and implementation of the sector's activities; and
 - (ix) perform such other functions that may from time to time be assigned by the Committee of Mining Ministers.

ARTICLE FINANCIAL PROVISIONS

11

- 1. The Mining Coordinating Unit may accept grants, legacies and donations from any source provided they are consistent with the objectives of the Protocol. Information related to any of the above assistance together with externally audited accounts shall be conveyed to the Committee of Mining Ministers.
- 2. Subject to approval by the Committee of Mining Ministers, the Mining Coordinating Unit shall make proposals for self-generation of funds.

3. A Member State may contribute towards a sub-sectoral project resources commensurate with its level of interest in the project.

4. Articles 11(2) and 11(3) shall not be construed as prohibiting subsidiary agreements envisaged under Article 10(2)(b)(x) for purposes of adopting any other financing arrangements, provided they are based on equity, balance and mutual benefit.

ARTICLE 12
CO-OPERATION WITH OTHER ORGANISATIONS

In accordance with Article 23 of the Treaty, the Mining Coordinating Unit shall co-operate with other organisations, provided that their objectives and activities are not at variance with

the objectives of this Protocol. The Mining Coordinating Unit shall establish working relationships with such organisations and entities, and make such arrangements as may be necessary to ensure effective co-operation.

ARTICLE 13
ANNEXES

1. Any subsidiary agreement adopted in accordance with Article 10 of this Protocol shall be annexed to this Protocol.

2. Annexes to this Protocol may be amended or terminated by the Council of Ministers.

ARTICLE 14
SETTLEMENT OF DISPUTES

1. Any dispute arising between two or more Member States from the interpretation or application of this Protocol which cannot be settled amicably shall be referred to the Tribunal established under Article 9 of the Treaty for adjudication.

2. If a dispute pertaining to this Protocol arises between SADC and a Member State, a request shall be made by the Council of Ministers for an advisory opinion in accordance with Article 16 of the Treaty.

ARTICLE 15
WITHDRAWAL

1. Any Member State may withdraw from this Protocol upon the expiry of twelve months from the date of giving written notice to that effect to the Executive Secretary of SADC.

2. Such Member State shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective.

3. During the twelve months period of notice referred to in paragraph 1 of this Article such Member State shall comply with the provisions of this Protocol and shall continue to be bound by its obligations.

4. A Member State that has withdrawn can apply for readmission upon approval by two-thirds of Member States that are signatories to the Protocol.

ARTICLE 16
SAVING PROVISIONS

Nothing contained in this Protocol shall derogate or be construed to derogate from existing agreements entered into between two or more Member States or a Member State and a non-SADC State and/or Organisation on any activity related to the Mining Sector, provided that Member States shall endeavour to give effect to such agreements and any rights acquired or obligations assumed thereunder in conformity with the general principles prescribed in Article 2 of this Protocol.

ARTICLE 17
SIGNATURE

This Protocol shall be signed by the Heads of State or Government, or their duly authorised representatives.

ARTICLE 18
RATIFICATION

1. This Protocol shall be subject to ratification by Member States in accordance with their respective constitutional procedures.

2. Member States shall deposit an instrument of ratification with the Executive Secretary in accordance with Article 43 of the Treaty.

ARTICLE **19**
ACCESSION

This Protocol shall remain open for accession by any State, which is a member of SADC.

ARTICLE **20**
AMENDMENT

1. Any Member State may propose an amendment to this Protocol.

2. Proposals for amendment to this Protocol may be made to the SADC Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendment by the Committee of Ministers. Such notice period may be waived by the Member States.

3. An amendment to this Protocol shall be adopted by a decision of three-quarters of all the members of the Summit, and shall become effective immediately.

ARTICLE **21**
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 States listed in the Preamble and shall become effective immediately.

ARTICLE **22**
DEPOSITARY

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

2. The Executive Secretary shall register this Protocol with the Secretariat of the United Nations Organisation and the Organisation of African Unity.

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

DONE at Blantyre on the 8th day of SEPTEMBER, 1997, in two (2) original texts, in the English and Portuguese languages, both texts being equally authentic.

REPUBLIC OF ANGOLA

REPUBLIC OF BOTSWANA

KINGDOM OF LESOTHO

REPUBLIC OF MALAWI

REPUBLIC OF MAURITIUS

REPUBLIC OF MOZAMBIQUE

REPUBLIC OF NAMIBIA

REPUBLIC OF SOUTH AFRICA

KINGDOM OF SWAZILAND

UNITED REPUBLIC OF TANZANIA

REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE

