Protocol on Control of Firearms, Ammunition and other related materials

PREAMBLE

We, the Heads of State or Government of the:

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

CONSIDERING Article 21 of the Treaty which provides for areas of cooperation, Article 22 of the Treaty which provides for the conclusion of Protocols which may be necessary in agreed areas of cooperation and Article 5 of the Treaty which provides for promotion and defence of peace and security as one of the objectives of SADC;

CONSCIOUS that illegal firearms, most commonly used in the perpetration of crime, contribute to the high levels of instability, extended conflict, violence and social dislocation evident in Southern Africa and the African continent as a whole;

AWARE of the urgent need to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use, and owing to the harmful effects of those activities on the security of each State and the Region and the danger they pose to the well-being of people in the Region, their social and economic development and their rights to live in peace;

REAFFIRMING that priority should be given to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use of firearms, because of their links with, inter alia, drug trafficking, terrorism, transnational organised crime, mercenary and other violent criminal activities;

CONVINCED that the prevention, combating and eradication of the illicit manufacturing of firearms, ammunition and the other related materials and their excessive and stabilising accumulation, trafficking, possession and use requires international cooperation, the exchange of information, and other appropriate measures at the national, regional and global levels;

STRESSING the need, especially during peace processes and post-conflict situations, to maintain effective control over firearms, ammunition and other related materials;

RECOGNISING the importance of regional and international co-operation and regional and international initiatives undertaken to prevent, combat and eradicate the illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms and related materials;

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

1. In this Protocol, terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.

2. In this Protocol, unless the context otherwise indicates:

"ammunition" means the complete cartridge including the cartridge case, unfired primer, propellant, bullets and projectiles that are used in a firearm, provided those components are themselves subject to authorisation in the respective State Parties;

"brokering means:

a) acting for a commission, advantage or cause, whether pecuniary or otherwise; or

b) to facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials;

and thereby acting as intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and buyer or recipient thereof;

"firearm" means:

a) any portable lethal weapon that expels, or is designed to expel, a shot, bullet or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorisation in the respective State Parties;

b) any device which may be readily converted into a weapon referred to in paragraph a);

c) any small arm as defined in this Article; or

d) any light weapon as defined in this Article;

"illicit manufacturing" means the manufacturing or assembly of fire arms, ammunition and other related materials, without a licence or permit from a competent authority of the State Party where the manufacture or assembly takes place;

"illicit trafficking" means the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from, to, or across the territory of a State Party without the authority of State Parties concerned;

"light weapons" include the following portable weapons designed for use by several persons serving as a crew: heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder fired rockets, anti-aircraft weapons and launchers and air defence weapons.

"other related materials" means any components, parts or replacement parts of a firearm that are essential to the operation of the firearm;

"small arms" include light machine guns, sub-machines guns, including machine pistols, fully automatic rifles and assault rifles and semi-automatic rifles;

"State Party" means a member of SADC that is party to this Protocol.

ARTICLE 2

SOVEREIGNTY

State Parties shall fulfil their obligations and exercise their rights under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of State Parties.

ARTICLE 3

OBJECTIVES

The objectives of this Protocol are to:

a) prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use in the Region;

b) promote and facilitate cooperation and exchange of information and experience in the Region to prevent, combat, and eradicate the illicit manufacturing of, excessive and destabilising use and accumulation of, trafficking in, possession and use of, firearms, ammunition and other related materials; and

c) co-operate closely at the regional level as well as at international fora to effectively prevent, combat, and eradicate the illicit manufacturing of, excessive and destabilising use and accumulation of, trafficking in, possession and use of, firearms, ammunition and other related materials in collaboration with international partners

ARTICLE 4

INTERNATIONAL INITIATIVES

State Parties undertake to consider becoming parties to international instruments relating to the prevention, combating and eradication of illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms, ammunition and other related materials and to implement such instruments within their jurisdictions.

ARTICLE 5

LEGISLATIVE MEASURES

1. State Parties shall enact the necessary legislation and take other measures to establish as criminal offences under their national law to prevent, combat and eradicate, the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use.

2. State Parties shall enact the necessary legislation and take other measures to sanction criminally, civilly or administratively under their national law the violation of arms embargoes mandated by the Security Council of the United Nations;

3. State Parties further undertake to incorporate the following elements in their national laws as a matter of priority:

a) the prohibition of unrestricted possession of small arms by civilians;

b) the total prohibition of the possession and use of light weapons by civilians;

c) the co-ordination of procedures for the import, export and transit of firearm shipments;

d) the regulation and centralised registration of all civilian owned firearm in their territories;

e) measures ensuring that proper controls are exercised over the manufacturing of, possession and use of firearms, ammunition and other related materials;

f) provisions promoting legal uniformity and minimum standards in respect of the manufacture, control, possession, import, export and transfer of firearms, ammunition and other related materials;

g) provisions ensuring the standardised marking and identification of firearms at the time of manufacture, import or export;

h) provisions that adequately provide for the seizure, confiscation, and forfeiture to the State of all firearms, ammunition and other related materials manufactured or conveyed in transit without or in contravention of licences, permits, or written authority;

i) provisions that ensure the effective control of firearms including the storage and usage thereof, competency testing of prospective firearm owners and restriction on owner's rights to relinquish control, use, and possession of firearms, ammunition and other related materials;

j) the monitoring and auditing of licences held in a person's possession, and the restriction on the number of firearms that may be owned by any person;

k) provisions that prohibit the pawning and pledging of firearms, ammunition and other related materials;

I) provisions that prohibit the misrepresentation or withholding of any information given with a view to obtain any licence or permit;

m) provisions that regulate firearm brokering in the territories of State Parties; and

n) provisions that promote legal uniformity in the sphere of sentencing.

ARTICLE 6

OPERATIONAL CAPACITY

State Parties, undertake to improve the capacity of police, customs, border guards, the military, the judiciary and other relevant agencies to fulfil their roles in the implementation of this Protocol and to:

a) co-ordinate national training programmes for police, customs and border guards, the judiciary and other agencies involved in preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use;

b) establish and improve national data-bases, communication systems and acquire equipment for monitoring and controlling the movement of firearms across borders;

c) establish inter-agency working groups, involving police, military, customs, home affairs, foreign affairs and other relevant agencies, to improve policy co-ordination, information sharing and analysis at national level regarding firearms, ammunition and other related material; and

d) undertake joint training exercises for officials, from countries within the Region drawn from the police, customs and other relevant agencies, including the military where it is involved with border control, and explore the possibility for exchange programmes for such officials within the Region, and with their counterparts in other regions.

ARTICLE 7

CONTROL OVER CIVILIAN POSSESSION OF FIREARMS

State Parties undertake to consider a co-ordinated review of national procedures and criteria for issuing and withdrawing of firearm licences and establishing and maintaining national electronic databases of licensed firearms, firearm owners, and commercial firearms traders within their territories.

ARTICLE 8

STATE-OWNED FIREARMS

State Parties undertake to:

a) establish and maintain complete national inventories of firearms, ammunition and other related materials held by security forces and other state bodies;

b) enhance their capacity to manage and maintain secure storage of state owned firearms;

c) harmonise relevant import, export and transfer documents and end-user control certificates regarding firearms, ammunition and related material; and

d) establish systems to verify the validity and authenticity of documents issued by licensing authorities in the Region.

ARTICLE 9

MARKING OF FIREARMS AND RECORD-KEEPING

1. State Parties undertake to establish agreed systems to ensure that all firearms are marked with a unique number, at the time of manufacture or import, on the barrel, frame and, where applicable, the slide and undertake to keep proper records of the markings.

2. The marking referred to in paragraph 1 of this Article shall identify the country of manufacture, the serial number, and the manufacturer of the firearm.

ARTICLE 10

DISPOSAL OF STATE-OWNED FIREARMS

1. State Parties undertake to identify and adopt effective programmes for the collection, safe-storage, destruction and responsible disposal of firearms rendered surplus, redundant or obsolete through, inter alia,:

a) peace agreements;

b) demobilisation or reintegration of ex-combatants; and

c) re-equipment, or restructuring of armed forces or other armed state bodies.

2. State Parties shall pursuant to paragraph 1 of this Article consider:

a) encouraging full preparation for, and implementation of the collection, safe-storage, destruction or responsible disposal of firearms as part of the implementation of peace agreements;

b) establishing and implementing guidelines and procedures for ensuring that firearms, ammunition and other related materials rendered surplus, redundant or obsolete through

the re-equipment or re-organisation of armed forces or other state bodies are securely stored, destroyed or disposed off in a way that prevents them from entering the illicit firearm market or flowing into regions in conflict or any other destination that is not fully consistent with agreed criteria for restraint; and

c) destroying surplus, redundant or obsolete state-owned firearms, ammunition or other related materials.

ARTICLE 11

DISPOSAL OF CONFISCATED OR UNLICENSED FIREARMS

1. State Parties undertake to adopt co-ordinated national policies for the disposal of confiscated or unlicensed firearms that come into the possession of state authorities.

2. State Parties undertake to develop joint and combined operations across the borders of State Parties to locate, seize and destroy caches of firearms, ammunition and other related materials left over after conflict and civil wars.

ARTICLE 12

VOLUNTARY SURRENDER OF FIREARMS

State Parties shall introduce programmes to encourage:

a) lawful firearm holders to voluntarily surrender their firearms for destruction by the State, and in such cases, the State may consider paying compensation in cash or in kind; and

b) illegal firearm holders to surrender their firearms for destruction, and, in such cases, the State may consider granting immunity from prosecution.

ARTICLE 13

PUBLIC EDUCATION AND AWARENESS PROGRAMMES

State Parties undertake to develop national and regional public education and awareness programmes to enhance public involvement and support for efforts to tackle firearms proliferation and illicit trafficking and to encourage responsible ownership and management of firearms, ammunition and other related materials.

ARTICLE 14

MUTUAL LEGAL ASSISTANCE

1. State Parties shall co-operate with each other to provide mutual legal assistance in a concerted effort to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use.

2. Mutual legal assistance shall, inter alia, include the following:

a) communication of information and transfer of exhibits;

b) investigation and detection of offences;

c) obtaining evidence or statements;

d) execution of searches and seizures;

e) inspection of sites or examination of objects or documents;

f) request for judicial documents;

g) service of judicial documents;

h) communication of relevant documents and records;

i) identification or tracing of suspects or proceeds of crime; and

j) application of special investigative techniques, such as forensics and ballistic and fingerprinting.

3. State Parties may further agree upon any other form of mutual legal assistance consistent with their national laws.

4. State Parties 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 details of the following:

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 State Party and which may be of use to the requested State Party.

6. A State Party may seek any such additional information which it considers necessary for the execution of the request in accordance with its national laws.

ARTICLE 15

LAW ENFORCEMENT

State Parties shall establish appropriate mechanisms for co-operation among law enforcement agencies of the State Parties to promote effective implementation of this Protocol including the:

a) establishment of direct communication systems to facilitate a free and fast flow of information among the law enforcement agencies in the Region;

b) establishment of an infrastructure to enhance effective law enforcement, including suitable search and inspection facilities at all designated ports of exit and entry;

c) establishment of multi-disciplinary law enforcement units for preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use;

d) promotion of co-operation with international organisations such as the International Criminal Police Organisation and World Customs Organisation and to utilise existing data bases such as the Interpol Weapons and Explosives Tracing System;

e) establishment of national focal contact points within the respective law enforcement agencies for the rapid information exchange to combat cross-border firearm trafficking; and

f) introduction of effective extradition arrangements.

ARTICLE 16

TRANSPARENCY AND INFORMATION EXCHANGE

State Parties undertake to:

a) develop and improve transparency in firearms accumulation, flow and policies relating to civilian owned firearms; and

b) establish national firearms databases to facilitate the exchange of information on firearms imports, exports and transfers.

ARTICLE 17

INSTITUTIONAL ARRANGEMENT

State Parties shall establish a Committee to oversee the implementation of this Protocol.

ARTICLE 18

SETTLEMENT OF DISPUTES

Disputes arising from the interpretation or application of this Protocol, which cannot be settled amicably, shall be referred to the Tribunal.

ARTICLE 19

AMENDMENTS

1. An amendment to this Protocol shall be adopted by a decision of three quarters of the State Parties.

2. Subject to sub-article (3) of this Article, a proposal for the amendment of this Protocol shall be submitted to the Executive Secretary by any State Party for preliminary consideration by the Council.

3. The Executive Secretary shall submit a proposal for amendment to the Council under paragraph 2 of this Article after:

a) all Member States have been duly notified of the proposal; and

b) three months have elapsed since the notification.

ARTICLE 20

SIGNATURE

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

RATIFICATION

This Protocol shall be ratified by the Signatory States in accordance with their constitutional procedures.

ARTICLE 22

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 23

ACCESSION

This Protocol shall remain open for accession by any Member State.

ARTICLE 24

WITHDRAWAL

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving to the Executive Secretary a written notice to that effect.
2. Any State Party that has withdrawn pursuant to paragraph 1 of this Protocol shall continue to enjoy all rights and benefits under this Protocol and shall remain bound by

the obligations herein until the expiration of the period of twelve (12) months from the date of giving notice of intention to withdraw.

ARTICLE 25

DEPOSITARY

1. 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.

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

IN WITNESSES WHEREOF, WE, the Heads of State or Government or our duly authorised representatives, have signed this Protocol.

Done at ……..…… this ……. day of …… in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

Republic of Angola

Republic of Botswana

Democratic Republic of Congo

Kingdom of Lesotho

Republic of Malawi

Republic of Mauritius

Republic of Mozambique

Republic of Namibia

Republic of Seychelles

Republic of South Africa

Kingdom of Swaziland

United Republic of Tanzania

Republic of Zambia

Republic of Zimbabwe