

**LUSAKA AGREEMENT ON CO-OPERATIVE ENFORCEMENT OPERATIONS
DIRECTED AT
ILLEGAL TRADE IN WILD FAUNA AND FLORA**

Adopted at Lusaka on 8 September 1994

Preamble

THE PARTIES TO THIS AGREEMENT,

Conscious that the conservation of wild fauna and flora is essential to the overall maintenance of Africa's biological diversity and that wild fauna and flora are essential to the sustainable development of Africa,

Conscious also of the need to reduce and ultimately eliminate illegal trade in wild fauna and flora,

Recognising that the intense poaching that has resulted in severe depletion of certain wildlife populations in African States has been caused by illegal trade, and that poaching will not be curtailed until such illegal trade is eliminated,

Noting that illegal trade in wild fauna and flora has been made more sophisticated through the use of superior technology in transboundary transactions and should be addressed through commensurate national, regional and international measures,

Recalling the provisions of the African Convention on the Conservation of Nature and Natural Resources (Algiers, 1968), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973), and the Convention on Biological Diversity (Rio de Janeiro, 1992),

Affirming that States are responsible for the conservation of their wild fauna and flora,

Recognising the need for co-operation among States in law enforcement to reduce and ultimately eliminate illegal trade in wild fauna and flora,

Recognising also that sharing of information, training, experience and expertise among States is vital for effective law enforcement to reduce and ultimately eliminate illegal trade in wild fauna and flora,

Desirous of establishing close co-operation among themselves in order to reduce and ultimately eliminate illegal trade in wild fauna and flora,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Agreement:

"Agreement area" means the area comprised of the land, marine and coastal areas within the limits of national jurisdiction of the Parties to this Agreement and shall include their air space and internal waters.

"Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"Conservation" means the management of human use of organisms or ecosystems to ensure such use is sustainable; it also includes protection, maintenance, rehabilitation, restoration and enhancement.

"Country of original export" means the country where the specimens originated and from whose territory they depart or have departed.

"Country of re-export" means the country from whose territory specimens depart or have departed and that is not the country of origin of the specimens.

"Field Officer" means a member of a Government organisation, department or institution who is employed as a law enforcement officer with national law enforcement jurisdiction, and who is seconded to the Task Force.

"Governing Council" means the Governing Council established under Article 7 of this Agreement.

"Illegal trade" means any cross-border transaction, or any action in furtherance thereof, in violation of national laws of a Party to this Agreement for the protection of wild fauna and flora.

"National Bureau" means a governmental entity with the competence encompassing law enforcement, designated or established by a Party to this Agreement under Article 6.

"Party" means a State for which this Agreement has entered into force.

"Specimen" means any animal or plant, alive or dead, as well as any derivative thereof, of any species of wild fauna and flora.

"Task Force" means the Task Force established under Article 5 of this Agreement.

"Wild fauna and flora" means wild species of animals and plants subject to the respective national laws of the Parties governing conservation, protection and trade.

Article 2

Objective

The objective of this Agreement is to reduce and ultimately eliminate illegal trade in wild fauna and flora and to establish a permanent Task Force for this purpose.

Article 3

Geographical Scope

This Agreement shall apply to the Agreement area as defined in Article 1.

Article 4

Obligations of the Parties

1. The Parties shall, individually and/or jointly, take appropriate measures in accordance with this Agreement to investigate and prosecute cases of illegal trade.
2. Each Party shall co-operate with one another and with the Task Force to ensure the effective implementation of this Agreement.
3. Each Party shall provide the Task Force on a regular basis with relevant information and scientific data relating to illegal trade.
4. Each Party shall provide the Task Force with technical assistance relating to its operations, as needed by the Task Force.
5. Each Party shall accord to the Director, Field Officers and the Intelligence Officer of the Task Force while engaged in carrying out the functions of the Task Force in accordance with paragraph 9 of Article 5, the relevant privileges and immunities, including those specified under paragraph 11 of Article 5.
6. Each Party shall protect information designated as confidential that becomes available to any of the Parties in connection with the implementation of this Agreement. Such information shall be used exclusively for the purposes of implementing this Agreement.
7. Each Party shall encourage public awareness campaigns aimed at enlisting public support for the objective of this Agreement, and the said campaigns shall be so designed as to encourage public reporting of illegal trade.

8. Each Party shall adopt and enforce such legislative and administrative measures as may be necessary for the purposes of giving effect to this Agreement.

9. Each Party shall return to the country of original export or country of re-export any specimen of species of wild fauna and flora confiscated in the course of illegal trade, provided that:

(a) the country of original export of the specimen(s) can be determined; or

(b) the country of re-export is able to show evidence that the specimen(s) re-exported were imported by that country in accordance with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora governing import and re-export; and

(c) the costs of returning such specimens of wild fauna and flora are borne by the country receiving the specimen(s), unless there is an alternative offer to bear costs to which both the Party returning the specimen(s) and the Party receiving the specimen(s) agree.

10. Each Party shall pay its contribution to the budget of the Task Force as determined by the Governing Council.

11. Each Party shall report to the Governing Council on implementation of its obligations under this Agreement at intervals as determined by the Governing Council.

Article 5

Task Force

1. A Task Force is hereby established to be known as the Task Force for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

2. The Task Force shall be composed of a Director, Field Officers and an Intelligence Officer and such other staff as may be decided by the Governing Council.

3. The Task Force shall include at least one Field Officer seconded by each Party and approved by the Governing Council. Each Field Officer shall be appointed to serve for a term of three years, or such other term as may be determined by the Governing Council. Upon the recommendation of the Director made in consultation with the Party concerned, the Governing Council may shorten or increase the term of other Field Officers.

4. The Director shall be appointed by the Governing Council from among the Field Officers.

5. The Director and other Field Officers shall retain their national law enforcement authority during their time of service with the Task Force.

6. The appointment of the Director, other Field Officers and the Intelligence Officer, as well as their terms of service, shall be decided in accordance with rules established by the Governing Council. The terms and conditions of service of other support staff as deemed necessary for the functioning of the Task Force shall also be decided by the Governing Council.

7. The Director shall be the Chief Executive Officer of the Task Force and shall be accountable to the Governing Council and responsible for:

(a) appointing other support staff as deemed necessary for the functioning of the Task Force;

(b) commanding and coordinating the work of the Task Force;

(c) preparing budgets annually or as required by the Governing Council;

(d) implementing policies and decisions agreed by the Governing Council;

(e) providing reports annually and as required by the Governing Council;

(f) arranging for and servicing meetings of the Governing Council; and

(g) performing such other functions as may be determined by the Governing Council.

8. The Task Force shall possess international legal personality. It shall have in the territory of each Party the legal capacity required for the performance of its functions under this Agreement. The Task Force shall in the exercise of its legal personality be represented by the Director.

9. The functions of the Task Force shall be:

(a) to facilitate co-operative activities among the National Bureaus in carrying out investigations pertaining to illegal trade;

(b) to investigate violations of national laws pertaining to illegal trade, at the request of the National Bureaus or with the consent of the Parties concerned, and to present to them evidence gathered during such investigations;

(c) to collect, process and disseminate information on activities that pertain to illegal trade, including establishing and maintaining databases;

(d) to provide, upon request of the Parties concerned, available information related to the return to the country of original export, or country of re-export, of confiscated wild fauna and flora; and

(e) to perform such other functions as may be determined by the Governing Council.

10. In carrying out its functions, the Task Force, when necessary and appropriate, may use undercover operations, subject to the consent of the Parties concerned and under conditions agreed with the said Parties.

11. For the purposes of paragraph 9 of this Article, the Director, other Field Officers and the Intelligence Officer of the Task Force shall enjoy, in connection with their official duties and strictly within the limits of their official capacities, the following privileges and immunities:

(a) immunity from arrest, detention, search and seizure, and legal process of any kind in respect of words spoken or written and all acts performed by them; they shall continue to be so immune after the completion of their functions as officials of the Task Force;

(b) inviolability of all official papers, documents and equipment;

(c) exemption from all visa requirements and entry restrictions;

(d) protection of free communication to and from the headquarters of the Task Force;

(e) exemption from currency or exchange restrictions as is accorded representatives of foreign governments on temporary official missions; and

(f) such other privileges and immunities as may be determined by the Governing Council.

12. Privileges and immunities are granted to the Director, other Field Officers and the Intelligence Officer in the interests of the Task Force and not for the personal benefit of the individuals themselves. The Governing Council shall have the right and the duty to waive the immunity of any official in any case where, in the opinion of the Governing Council, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Task Force.

13. The Task Force shall not undertake or be involved in any intervention, or activities of a political, military, religious or racial character.

Article 6

National Bureau

1. To facilitate the implementation of this Agreement, each Party shall:

(a) designate or establish a governmental entity as its National Bureau;

(b) inform the Depositary, within two months of the date of the entry into force of the Agreement for this Party, the entity it has designated or established as its National Bureau; and

(c) inform the Depositary within one month of any decision to change the designation or establishment of its National Bureau.

2. For the purposes of this Agreement, the functions of the National Bureaus shall be to:

(a) provide to and receive from the Task Force information on illegal trade; and

(b) coordinate with the Task Force on investigations that involve illegal trade.

Article 7

Governing Council

1. A Governing Council consisting of the Parties to this Agreement is hereby established to be known as the Governing Council for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

2. Each Party shall send a delegation to the meetings of the Governing Council and shall be represented on the Governing Council by a Minister or alternate who shall be the head of the delegation. Because of the technical nature of the Task Force, Parties should endeavour to include the following in their delegations:

(a) high ranking officials dealing with wildlife law enforcement affairs;

(b) officials whose normal duties are connected with the activities of the Task Force; and

(c) specialists in the subjects on the agenda.

3. The first meeting of the Governing Council shall be convened by the Executive Director of the United Nations Environment Programme not later than three months after the entry into force of this Agreement.

Thereafter, ordinary meetings of the Governing Council shall be held at regular intervals to be determined by the Council at its first meeting.

4. Meetings of the Governing Council will normally be held at the Seat of the Task Force unless the Council decides otherwise.

5. Extraordinary meetings of the Governing Council shall be held at such times as may be determined by the Council, or at the written request of any Party, provided that such request is supported by at least one third of the Parties within two months of the request being communicated to them by the Director of the Task Force.

6. At its first meeting, the Governing Council shall:

(a) by consensus elect its Chairperson and adopt rules of procedure, including decision-making procedures, which may include specified majorities required for adoption of particular decisions;

(b) decide the Seat of the Task Force;

(c) consider and approve the appointment of the Director, other Field Officers and the Intelligence Officer and decide upon their terms and conditions of service as well as the terms and conditions of service of the supporting staff;

(d) adopt terms of reference and financial and administrative rules of the Task Force;
and

(e) consider and approve an initial budget to establish and operate the Task Force and agree upon the contributions of each Party to the budget.

7. At ordinary meetings the Governing Council shall approve a budget for the Task Force and agree upon the contributions of each Party to the budget.

8. The Governing Council shall determine the general policies of the Task Force and, for this purpose, shall:

(a) consider the reports submitted by the Director; and

(b) upon expiry, termination or renewal of their terms of service, consider and approve the appointment of the Director, other Field Officers and the Intelligence Officer.

9. The Governing Council shall:

(a) keep under review the implementation of this Agreement;

(b) consider and undertake any additional action that may be deemed necessary for the achievement of the objective of this Agreement in the light of experience gained in its operation; and

(c) consider and adopt, as required, in accordance with Article 11, amendments to this Agreement.

Article 8

Financial Provisions

1. There shall be a budget for the Task Force.

2. The financial management of the Task Force shall be governed by the financial rules adopted by the Governing Council.
3. The Governing Council shall determine the mode of payment and currencies of contributions by the Parties to the budget of the Task Force. Other resources of the Task Force may include extra budgetary resources such as grants, donations, funds for projects and programmes and technical assistance.
4. The Parties undertake to pay annually their agreed contributions to the budget of the Task Force by a specified date as determined by the Governing Council.
5. The Unit of Account in which the budget will be prepared shall be determined by the Governing Council.

Article 9

Seat

1. The Seat of the Task Force shall be determined by the Governing Council pursuant to an offer made by a Party.
2. The Government of the Party in whose territory the Seat of the Task Force shall be located and the Director acting on behalf of the Task Force shall conclude a headquarters agreement relating to the legal capacity of the Task Force and the privileges and immunities of the Task Force, Director, other Field Officers and the Intelligence Officer, which privileges and immunities shall not be less than those accorded to diplomatic missions and their personnel in the host country, and including those privileges and immunities stipulated in paragraph 11 of Article 5.
3. The Government aforementioned shall assist the Task Force in the acquisition of affordable accommodation for its use.

Article 10

Settlement of Disputes

1. Any dispute concerning the interpretation or application of this Agreement which cannot be settled by negotiation, conciliation or other peaceful means may be referred by any Party thereto to the Governing Council.
2. Where the Parties fail to settle the dispute the matter shall be submitted to an arbitral body.

3. The Parties to the dispute shall appoint one arbitrator each; the arbitrators so appointed shall designate, by mutual consent, a neutral arbitrator as Chairperson who shall not be a national of any of the Parties to the dispute.
4. If any of the Parties does not appoint an arbitrator within three months of the appointment of the first arbitrator, or if the Chairperson has not been designated within three months of the matter being referred to arbitration, the Chairperson of the Governing Council shall designate the arbitrator or the Chairperson or both, as the case may be, within a further period of three months.
5. The arbitral body shall have jurisdiction to hear and determine any matter arising from a dispute.
6. The arbitral body shall determine its own rules of procedure.
7. The Parties to the dispute shall be bound by the arbitral decision.

Article 11

Amendment

1. Amendments to the Agreement may be proposed by any Party and communicated in writing to the Director of the Task Force who shall transmit the proposals to all Parties. The Director shall also communicate proposed amendments to the signatories to this Agreement for information.
2. No proposal for amendment shall be considered by the Governing Council unless it is received by the Director at least one hundred and twenty days before the opening day of the meeting at which it is to be considered.
3. Amendments to the Agreement shall be adopted at a meeting of the Governing Council. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties present and voting at the meeting. Amendments shall take effect, with respect to the Parties, on the thirtieth day after their adoption by the Governing Council. Amendments adopted shall be notified to the Depositary forthwith.

Article 12

Signature, Ratification, Acceptance, Approval or Accession

1. This Agreement shall be open for signature on 9 September 1994 by all African States at the Ministerial Meeting to conclude this Agreement in Lusaka, and thereafter from 12 September to 12 December 1994 at the Headquarters of the United Nations Environment Programme in Nairobi, and from 13 December 1994 to 13 March 1995 at the United Nations Headquarters in New York.

2. This Agreement shall be subject to ratification, acceptance or approval.
3. This Agreement shall remain open for accession by any African State from the day after the date on which the Agreement is closed for signature.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article 13

Entry into Force

1. This Agreement shall enter into force on the sixtieth day after the date of the deposit of the fourth instrument of ratification, acceptance, approval or accession.
2. For each Party which ratifies, accepts, approves or accedes to this Agreement after the deposit of the fourth instrument of ratification, acceptance, approval or accession, this Agreement shall enter into force on the sixtieth day after the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.

Article 14

Withdrawal

1. At any time after five years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from the Agreement by giving written notification to the Depositary.
2. Any such withdrawal shall take place upon the expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal provided, however, that any obligation incurred by the Party prior to its withdrawal shall remain valid for that Party.

Article 15

Depositary

1. The Secretary-General of the United Nations shall assume the functions of Depositary of this Agreement.
2. The Depositary shall notify all Parties to this Agreement of:
 - (a) the deposit of instruments of ratification, acceptance, approval or accession in accordance with Article 12;

- (b) the designation or establishment of National Bureaus in accordance with Article 6;
- (c) the amendments adopted in accordance with Article 11; and
- (d) withdrawal in accordance with Article 14.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective governments, have signed this Agreement.

DONE AT LUSAKA on this ninth day of September, one thousand nine hundred and ninety-four.
