

# ICGLR Model Law RINR

## **The Prevention and Suppression of the Illegal Exploitation of and Illicit Trade in Designated Minerals of the Great Lakes Region Act, [Chapter][Act] No. .... / ... .. of the Laws of the Republic of ... of ...201..**

### **[Alternative 1 (Civil law jurisdictions)]**

The President of the Republic

Given the Constitution of the Republic;

Considering the Declaration of Dar-es-Salaam on Peace, Security, Democracy and Development in the Great Lakes Region, adopted and signed at Dar es Salaam on 20 November 2004;

Given the Pact on Peace, Security, Stability and Development in the Great Lakes Region, adopted and signed at Nairobi on 15 December 2006;

Considering the Protocol Against the Illegal Exploitation of Natural Resources, adopted and signed at Dar es Salaam on 30 November 2006, especially Article 22;

Considering the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;

The Council of Ministers has deliberated;

The National Assembly has adopted;

Promulgates this Act:]

### **[Alternative 2 (Common law jurisdictions)]**

Commencement: Upon publication in the Gazette

An Act of Parliament to give effect to those aspects of the ICGLR Protocol Against the Illegal Exploitation of Natural Resources relating to gold, cassiterite, coltan, and wolframite originating within the conflict zones; to require supply chain due diligence by entities dealing in the designated minerals; to institute mechanisms for certification and for related matters.

Be it enacted by the Parliament of the Republic as follows:

## **CHAPTER I: PRELIMINARY**

### **Section 1**

#### **Definitions**

In this Act, except where the context otherwise requires –

“**Affiliates**” mean persons in the designated minerals supply chain that work directly with armed groups to facilitate the extraction, trade, or handling of the designated minerals.

**“Artisanal mining”** means mineral extraction undertaken generally by individuals, small groups of individuals, or cooperatives working with hand tools or very basic forms of mechanization;

**“Child labour”** means child labour as defined in the ‘Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO Convention No. 182 of 1999, 2133 UNTS 161.

**“Common minerals”** means clay, murrum, limestone, sandstone or such other stone as the Minister may declare not to be a mineral for purposes of this Act;

**“Competent authority”** means the public authority mandated under this Act to implement and enforce its provisions;

**“Conflict zones”** means the regions falling within the territory of the Member States of the ICGLR.

**“Conference or ICGLR”** means the International Conference on the Great Lakes Region;

**“Designated Minerals”** means gold, cassiterite, wolframite, and coltan which are exploited within or otherwise transit through the conflict zones;

**“Dodd Frank Act”** means the Dodd Frank Wall Street Reform and Consumer Protection Act of the United States of America;

**“Exploitation”** means any activity aimed at digging or excavating for the designated minerals in an identified mineral deposit, including any operations directly or indirectly necessary there for or incidental thereto, as well as such processing of the designated minerals as may be required to produce a saleable product;

**“Exploration”** means any activity aimed at defining the extent and determining the economic value of a known designated mineral deposit employing geological or geochemical methods;

**“Extort”** means the demanding, under the threat of violence or any other penalty, and for which the person has not voluntarily offered, sums of money or minerals, often in return for granting access to exploit the mine site, access transportation routes, or to transport, purchase, or sell designated minerals.

**“Extradition”** means the formal transfer or removal from the territory or jurisdiction of a Member State or vice versa of a fugitive or persons alleged to have committed an offence to which this Act or other laws in force apply;

**“ICGLR Certificate”** means a certificate issued by the competent authority in terms of this Act which complies with the provisions of Appendix 2 of the ICGLR Regional Certification Mechanism – Certification Manual.

**“ICGLR Committee”** means the Committee Against the Illegal Exploitation of Natural Resources established by the International Conference on the Great Lakes Region;

**“ICGLR Mineral Certification Mechanism”** means the ICGLR regional mechanism providing for the traceability and certification of gold, cassiterite, coltan, and wolframite which is designed to implement the requirements of the OECD Due Diligence Guidance and the Dodd Frank Act;

**“Illegal exploitation”** means any exploration, development, acquisition or disposition of the minerals that is contrary to the applicable laws of a Member State, the

principle of permanent sovereignty over natural resources and/or the provisions of this Act;

“**Licence**” means any document or instrument in writing granted under this Act to any person authorising that person to undertake any of the activities stipulated in section 11(2) of this Act in respect to any of the designated minerals;

“**Member State**” means a Member State of the International Conference of the Great Lakes Region (ICGLR);

“**Minister**” means the Minister responsible for matters that are the subject of this law;

“**Minerals**” means all minerals and mineral substances other than mineral oil and common minerals and includes precious metals, precious stones or non precious metals;

“**Mineral supply chain**” means the series of steps and processes through which the designated minerals are extracted, traded, processed and exported from the region.”

“**OECD Due Diligence Guidance**” means the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas of 2010 including its Supplements on Tin, Tantalum, and Tungsten of 2010 and on Gold of 2011;

“**Pact**” means the Pact on Peace, Security, Stability and Development in the Great Lakes Region, adopted and signed at Nairobi on 15 December 2006;

“**Permanent sovereignty over natural resources**” means the permanent authority and competence exercised by a state over the natural resources on its territory according to the principles of international law as enshrined in the United Nations General Assembly Resolution 1803 (XVII) of 1962;

“**Person**” means natural person, legal person or corporate entity;

“**Processing, refining, and smelting**” means any physical or chemical treatment of the designated minerals carried out in order to increase or otherwise adjust purity;

“**Prospecting**” means any activity aimed at testing the mineral-bearing qualities of the land, for economic or scientific purposes, by studying available information, by taking and analysing samples found on the surface, below the surface, or in streams, employing in particular geological or geochemical methods;

“**Protocol**” means the Protocol against the Illegal Exploitation of Natural Resources which is part of the Pact on Security, Stability and Development in the Great Lakes region adopted and signed by the Heads of State and Government of the International Conference on the Great Lakes Region at Nairobi on 15 December 2006;

“**Region**” means the territory of the Member States of the ICGLR;

“**Republic**” means the Republic of ...;

“**State organ**” means any public body exercising a statutory mandate;

“**Trafficking**” means the illegal movement of the minerals through the territory of a Member State.

“**Transiting minerals**” means bringing minerals into the territory of a Member State for the purpose of transporting them through and out of the territory.

## **Section2**

### **Permanent sovereignty of the State on mineral resources**

1. All minerals not extracted (other than common minerals) on the ground or subsoil within the territory of .....[name of country]belong to the State, subject to rights which by this Act or any other law, have been granted or are recognized as belonging to any other person.
2. The State has permanent sovereignty over its mineral resources and the exclusive right to dispose of its mineral resources as part of its natural resources in accordance with national and international laws and the principle of sustainable use of natural resources. The State exercises this right in the exclusive interest of the population.
3. In case of spoliation, the State has the right to lawful recovery of its property and to adequate compensation.

## **Section3**

### **Recognition by investors of the sovereignty of the state**

Any investment contract, licence or other authorisation relating to mineral resources shall adhere to the principle of permanent sovereignty of the State over its mineral resources, and be compatible with national legislation, the Protocol Against the Illegal Exploitation of Natural Resources, the Constitutive Act of the African Union, the United Nations Charter and other relevant international and regional legal instruments dealing with the exploitation of natural resources.

## **Section4**

### **Nationalization, expropriation and requisition**

1. Decisions of nationalization, expropriation or requisitioning shall be based on reasons of public interest or safety, which must exceed purely individual or private interests, whether domestic or foreign.
2. In cases of nationalization, expropriation or requisitioning, the investor is entitled to receive prompt and adequate compensation from the Government in accordance with the applicable domestic and international laws.

## **Section5**

### **International cooperation**

1. The Government will cooperate with other States, particularly members of the Conference in the fight against the illegal exploitation of minerals.
2. The Government shall cooperate with foreign governments to carry out the necessary investigations and take appropriate measures against companies registered in those countries who are involved in the illegal exploitation of the minerals.

## **Section6**

### **Protection of Human Rights**

1. The Government has an obligation to protect human rights and the rights of indigenous peoples and local communities at all times including during the exploitation of minerals. To this end, the Government must ensure that third parties engaged in the exploitation of minerals do not violate human rights.
2. The Government undertakes to establish the necessary mechanisms to prevent illegal exploitation of minerals and mitigate against the adverse effects of the authorised exploitation of minerals on the environment, human beings and human settlements.

## **CHAPTER II: PREVENTATIVE MEASURES IN RESPECT TO DESIGNATED MINERALS**

### **Part I: Supply Chain Due Diligence**

## **Section7**

### **Obligation to exercise supply chain due diligence**

1. Every person forming part of the mineral supply chain and operating in the territory of the Republic shall exercise supply chain due diligence as required under the provisions of this Act and in line with the OECD Due Diligence Guidance.
2. For the purpose of this Chapter II and Chapter III below, a person operates in the territory of the Republic if the person prospects, explores, exploits, sells, buys, processes, refines, or smelts designated minerals in, exports designated minerals from, imports designated minerals into, or transits designated minerals through the territory of the Republic.
3. This section shall not apply to individuals engaging in artisanal mining.

## **Section8**

### **Objectives of supply chain due diligence**

1. Due diligence requires persons forming part of the mineral supply chain to ensure respect of human rights and avoid contributing to conflict. It stipulates measures that such persons should take to identify and address actual or potential risks and prevent or mitigate adverse impacts arising from their activities or decisions in the minerals supply chain.
2. Persons forming part of the minerals supply chain shall implement supply chain due diligence with the objective of preventing, or mitigating the risk of, contribution to, assistance to, or facilitation of:
  - (a) Any forms of torture, cruel, inhuman and degrading treatment;

- (b) Any forms of forced or compulsory labour, which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily;
  - (c) The worst forms of child labour;
  - (d) Other gross human rights violations and abuses such as widespread sexual violence;
  - (e) War crimes or other serious violations of international humanitarian law, crimes against humanity, or genocide; or
  - (f) Any of the offences listed in Chapter III of this Act,
- regardless of whether such contribution, assistance, or facilitation is carried out intentionally, negligently, or amounts to any form of criminal participation.

### **Section9**

#### ***Obligations for exercising supply chain due diligence***

In order to exercise supply chain due diligence in accordance with section7 of this Act, the person shall take reasonable steps to minimize the risks listed in section8 of this Act. These steps shall include:

- (a) Strengthening the person's management systems by:
  - i. Adopting a supply chain policy and communicating this policy to suppliers;
  - ii. Structuring internal management to support supply chain due diligence;
  - iii. Establishing a system of controls and transparency over the mineral supply chain;
  - iv. Strengthen the person's engagement with suppliers; and
  - v. Participating in a grievance mechanism as an early-warning risk-awareness system.
- (b) Conducting a continuous assessment of risks in the mineral supply chain;
- (c) Adopting and implementing a plan for managing risks in his or her mineral supply chain;
- (d) Participating in an annual third-party audit of mineral supply chain due diligence by an independent and competent auditing organization;
- (e) Annually reporting to the competent authority on all measures implemented in order to exercise mineral supply chain due diligence and publishing these reports;
- (f) Refraining from any offence as specified in Chapter III of this Act.

### **Section10**

#### ***Indicators for evaluating due diligence performance***

1. When evaluating due diligence performance, additional criteria may serve as indicators that the person has acted in accordance with section9. These criteria include, but are not limited to:

- (a) Having assigned authority and responsibility to senior staff with the competence, knowledge, and experience to oversee the supply chain due diligence process;

- (b) Ensuring availability of resources necessary to support the operation and monitoring of these processes;
  - (c) Incorporating supply chain due diligence in contracts with suppliers;
  - (d) Reacting to identified risks in the upstream supply chain by:
    - i. Temporarily suspending trade with a supplier while pursuing ongoing measurable risk mitigation; or
    - ii. Disengaging with a supplier after failed attempts at mitigation or where a person deems risk mitigation not feasible or unacceptable;
  - (e) Undertaking additional fact and risk assessment after change of circumstances;
  - (f) Having established a mechanism accessible to anyone for grievance relating to risks in the supply chain, or participating in such a mechanism established by others;
  - (g) Alerting without undue delay the competent authorities of abusive or exploitative practices in the supply chain;
  - (h) Keeping a record of all relevant information available to the person to the best of his or her efforts regarding the upstream mineral supply chain, and disclosing such information to immediate downstream purchasers. Relevant information regarding the upstream supply chain includes, but is not limited to:
    - i. The mine of origin of the minerals;
    - ii. The quantity and dates of extraction;
    - iii. The method of extraction (artisanal, small-scale, or large-scale mining);
    - iv. All upstream dealers, consolidators, and intermediaries where applicable;
    - v. Transport routes of the minerals where applicable;
    - vi. Smelters or refiners of the minerals where applicable;
    - vii. Documentation of export, import, or transit of the minerals where applicable;
    - viii. All payments made to government officials for the purposes of extraction, trade, transport, and export where applicable.
  - (i) Taking measures to support the progressive professionalization and formalization of the artisanal mining sector through the establishment of cooperatives, associations, or other membership structures as well as improve women's conditions in artisanal mining communities through gender and empowerment programmes.
2. When evaluating due diligence performance, additional criteria may serve as indicators that the person has failed to act in accordance section9. These criteria include, but are not limited to:
- (a) Failure to account for critical elements of due diligence performance in the annual report without giving any reasons for this failure;
  - (b) Failure to publish an annual report in accordance with the requirements set out in section18, paragraph1, of this Act;
  - (c) Commissioning an auditing organization that has, within a period of 24 months prior to the audit, entertained a business or financial relationship beyond auditing with the commissioning person, or with an immediate supplier or purchaser of that person or entity.

## Part II: Licensing

### **Section 11**

#### **Authorization to engage in mining and related activities**

1. The right to authorize any of the activities listed in paragraph 2 of this section is vested legally in the Member State within whose territory the activities are taking place, or, in case of paragraph 2(e), from whose territory minerals are to be exported, into whose territory minerals are to be imported, or through whose territory minerals are to be transited.
2. The following activities in respect to designated minerals are subject to licensing under the provisions of this Act:
  - (a) Prospecting and exploration for minerals;
  - (b) Exploitation of minerals;
  - (c) Processing, refining, and smelting minerals;
  - (d) Dealing in minerals;
  - (e) Exporting, importing, and transiting minerals;
3. This section shall not apply to individuals engaging in artisanal mining.

### **Section 12**

#### **Granting a licence**

1. A licence under section 11, paragraph 2 of this Act shall be granted upon application, subject to the provisions of paragraphs 2, 3, and 4 of this section 12.
2. A licence shall be granted only if the applicant declares that he or she will exercise supply chain due diligence as provided under sections 7, 8, 9, and 10 of this Act.
3. A licence for prospecting, exploration, exploitation, processing, refining, and smelting shall be granted only if the applicant demonstrates that he or she has the financial and technical capacity to carry out the envisaged activity.
4. A licence for prospecting, exploration, and exploiting, shall be granted only if the applicant demonstrated that mineral resources are likely to exist at a scale that warrants the suggested investment and only if no other person holds an exclusive exploration or exploitation licence for the envisaged territory or part of that territory.

### **Section 13**

#### **Obligations of persons and entities holding a licence**

1. Every person or entity holding a licence as specified in section 11, paragraph 2, of this Act (licence holder) shall, within a period of six months subsequent to the date on which the licence was issued, and from then on annually during the validity of the licence, submit to the competent authority a statement of his or her exercise of mineral supply chain due diligence.
2. In accordance with sections 9 and 10 of this Act, the statement shall contain:

- (a) Information on the licence holder's supply chain policy and on measures taken to communicate this policy;
- (b) Information on the licence holder's assessment of risks in the mineral supply chain;
- (c) Information on the licence holder's risk management plan;
- (d) Results of the most recent audit of the licence holder's due diligence performance by an independent and competent auditing organization;
- (e) An annual report by the licence holder on all measures implemented in order to exercise mineral supply chain due diligence;
- (f) As necessary, any further information on or proof of the licence holder's due diligence performance.

## **Section14**

### **Withdrawal of licence**

1. The competent authority shall examine on the basis of the statement submitted by the licence holder whether he or she has exercised due diligence in line with sections 9 and 10 of this Act.
2. If the licence holder has not exercised due diligence, the competent authority shall notify him or her that due diligence has not been exercised and enjoin him or her to implement, within a period of three months subsequent to receipt of the notification, the necessary measures in accordance with section9 of this Act and report them to the competent authority.
3. If the licence holder fails to exercise due diligence after the end of the period granted in accordance with paragraph2 of this section, the competent shall with immediate effect withdraw his or her licence.
4. The competent authority may withdraw a licence without notice if the licence holder has seriously violated his or her obligations under sections7, 8, and 9 of this Act, in particular if he or she is responsible for an offence under sections20 or 21, and this offence qualifies as a particularly serious one.
5. The competent authority shall withdraw the licence without notice if the licence holder is responsible for an offence under section19, paragraph1, sub-paragraphs (b), (d) or (e), of this Act.
6. In case of withdrawal of the licence, the person or entity concerned shall not be granted a new licence for a period of six months subsequent to the withdrawal.

## **Section15**

### **Access to Information**

1. Information on for the exploitation of any of the designated minerals, which includes particulars of persons granted licences, as well as the terms and conditions subject to which such licences are granted shall be made publicly available and may

only be withheld from the public on reasons of commercial sensitivity, public interest or public safety.

2. The competent authority shall establish a register of this information, which the public may inspect during normal working hours on payment of a reasonable fee.

3. Any person who is denied access to information which is subject to disclosure under this section may apply for a review of the disputed decision to a court of competent jurisdiction within 30 days of the decision.

4. Annual reports provided by the licence holder to the competent authority in accordance with section 9, sub-paragraph (e) of this Act shall be published for a period of not less than one year on the licence holder's website. If the licence holder does not entertain a web presence, the report shall be made available to the public in another way as may be appropriate.

## **Section 16**

### **Artisanal mining**

1. The Government shall promote, protect, and defend the rights of exploration and utilisation of designated minerals of artisanal miners against the encroachments and marginalisation due to the licensing of large scale mining operations.

2. The Government shall facilitate and encourage the creation of cooperatives of artisanal miners and shall grant licences to cooperatives formed by artisanal miners on terms and conditions that are favourable to the development and sustainable operation of such cooperatives but which shall ensure that such cooperatives comply with minimum conditions necessary to fulfil the objectives of this Act.

3. In locations where cooperatives of artisanal miners have been formed and are operational artisanal mining by individuals who are not members of a cooperative will be prohibited.

## **Part III: Certification**

### **Section 17**

#### **Application of ICGLR Certification Mechanism**

1. The mining, export, import or transit of, or trade or other dealing in, designated minerals within, from, to or through the territory of [the Republic] shall comply with the ICGLR Regional Certification Mechanism whose objective is to ensure that the designated minerals are sourced only from mine sites that are conflict free and meet minimum social standards.

2. Beginning 15<sup>th</sup> December 2012 or such later date as the competent authority shall stipulate a person shall not export, import, trade or otherwise deal in the

designated minerals unless an officer of the competent authority has inspected the mineral consignment and issued an ICGLR certificate in respect to it or, in the case of import or transit, the consignment is accompanied by an ICGLR certificate issued by the competent authority in the country of origin.

3. For the purposes of this section dealing in minerals means buying or otherwise acquiring minerals for purposes including sale of the same minerals without prior processing; or brokering mineral sales.
4. This section shall not apply to individuals engaging in artisanal mining.

### **Section 18** **Mine site inspections**

1. Mines producing designated minerals shall be inspected annually according to the standards and procedures contained in the ICGLR Certification Manual by an officer of the competent authority who shall verify that the mine complies with the regional mine standards stipulated in the ICGLR Certification Manual.
2. Following the mine site inspection the mine site shall be designated as either certified or uncertified and assigned to one of the following categories:
  - a. Green-flagged, that is, a site which fully complies with the ICGLR standards;
  - b. Yellow-flagged, that is, a mine that does not comply with one or more of the stipulated yellow-flagged standards; or
  - c. Red-flagged or uncertified, that is, a mine that does not comply with one or more of the red-flagged standards or that has not been inspected for more than one year.
3. A certified (green-flagged) mine is permitted to produce designated minerals for certified export.
4. A certified (yellow-flagged) mine is permitted to continue producing designated minerals for certified export while it corrects the yellow flag violations after which it may request and receive a follow up mine site inspection. If it fails to effect the corrections and pass a follow up mine site inspection within the six month period it will be red-flagged or declared uncertified.
5. An uncertified or red-flagged mine site is barred from producing designated minerals for certified export for a period of six months.
6. A licence holder who is aggrieved with the decision of the inspection may seek a review of the decision in accordance with the appeal procedures provided under the ICGLR Certification Mechanism.

## **Section 19**

### **Traceability and transport of minerals**

1. A person dealing in or otherwise handling a designated mineral in the course of a commercial enterprise shall ensure that the mineral consignment originates only from a mine site certified in accordance with the provisions of this Act.
2. A person transporting a designated mineral shall comply with the provisions of the chain of custody tracking system for designated minerals stipulated under this Act and shall ensure that designated minerals are fully traceable and conflict free from the mine site to the point of export.
3. A person transporting or otherwise handling a designated mineral in the course of a commercial enterprise shall ensure that the mineral consignments from certified mine sites are fully physically separated from mineral consignments from other (uncertified) sites.
4. A person dealing in or otherwise handling a designated mineral in the course of a commercial enterprise shall ensure that the supply chain of mineral consignments is conflict free in the sense that none of the actors in the mineral supply chain contributes to any direct or indirect support to non-state armed groups or public or private security forces engaged in illegal activity and or serious human rights abuse.
5. The competent authority shall submit to the ICGLR Secretariat on a monthly basis tracking data from the mineral chain and the chain of custody system.
6. Information in the database of the ICGLR Certification Mechanism shall be publicly accessible except on grounds of commercial confidentiality, state security or national interest.

## **Section 20**

### **Export, Import and Transit of minerals**

1. A person engaging in the export, import and transit of a designated mineral shall comply with the standards and procedures stipulated in this Act.
2. Designated minerals shall not be exported before an officer of the competent authority has inspected the consignment and the accompanying documentation and verified that:
  - a. The minerals are sourced from a certified mine site or from imports from another Member State which is accompanied by an ICGLR certificate;
  - b. The exporter has traceability documents which show the chain of custody of the designated minerals from the mine site or point of import to the point of export; and
  - c. The export is not from a mine site which is uncertified (red-flagged).

3. Upon satisfactory verification an authorised officer of the competent authority shall affix its seal on the consignment and issue an ICGLR certificate to the exporter or in case of a consignment originating from another Member State, append a signature to the accompanying ICGLR certificate.

### **Section 21**

#### **Power to refuse entry and/or transit**

1. As from the effective date the customs officer at the customs port of entry shall not permit the transit or entry of any designated minerals from a Member State or originating from within the region unless accompanied by a valid ICGLR Certificate.
2. In cases where the customs officer is not satisfied, he or she shall place under quarantine the minerals concerned pending investigations.
3. Upon completion of the investigations the customs officer shall either admit the designated minerals into the country or allow transit as the case may be, or he may order that the minerals be confiscated.
4. A request for a review of the decision of the customs officer may be lodged to the officer in charge of the customs department within 14 days of the date of the decision. A decision on the review shall be communicated within 30 days of the request.
5. Any person adversely affected by the decision of the officer in charge of the customs department to refuse entry or transit to minerals may appeal to a court of competent jurisdiction within 30 days of the decision.
6. Designated minerals which were transported to the customs port of entry or which entered the country without the required ICGLR certificate are subject to forfeiture and return to the Member State from whose territory the designated minerals have originated.
7. This section shall come into effect on such date as the competent authority, following consultation with the ICGLR Secretariat, shall, by notice published in the Gazette, determine.

### **Section 22**

#### **Independent Audits**

1. A person who exports designated minerals from the territory of [the Republic] shall be subject to an annual audit whose objective is to independently verify that the mineral chain from the mine site to the export point complies with the provisions of this Act.
2. The third party audit shall comprise a systematic, independent, documented process for obtaining records and other relevant information and objectively assessing them to determine the extent to which the exporter complies with the chain of custody requirements under this Act.
3. The scope of the audit shall extend to the entire mineral supply chain from the exporter up to the mine production site.

4. The audit shall be conducted by a third party auditor accredited in accordance with the provisions of the ICGLR Regional Certification Mechanism – Certification Manual.
5. Following the audit the exporter shall be designated as either certified or uncertified and assigned to one of the following categories:
  - a. Green-flagged, that is, the exporter fully complies with the ICGLR standards;
  - b. Yellow-flagged, that is, the exporter does not comply with one or more of the stipulated yellow-flagged standards; or
  - c. Red-flagged or uncertified, that is, the exporter does not comply with one or more of the red-flagged standards or that has not been inspected for more than one year.
6. A certified (green-flagged) exporter is permitted to undertake certified export of designated minerals.
7. A certified (yellow-flagged) mine is permitted to continue undertaking certified export of designated minerals while it corrects the yellow flag violations after which it may request and receive a follow up audit. If it fails to effect the corrections and pass a follow up audit within the six month period it will be red-flagged or declared uncertified.
8. An uncertified or red-flagged exporter is barred from undertaking certified export of designated minerals for a period of six months.
9. An exporter who is aggrieved with the decision of the auditor may seek a review of the decision in accordance with the appeal procedures provided under the ICGLR Certification Mechanism.
10. The competent authority shall put in place measures to enable the ICGLR Independent Mineral Chain Auditor appointed pursuant to the provisions of the ICGLR Certification Mechanism to conduct independent investigations of any and all parts of the mineral chain within the territory of the Republic and shall take steps to implement the recommendations of the audit.

### **CHAPTER III. SUPPRESSIVE MEASURES**

#### ***Section 23***

##### **Criminal offences with respect to licensing**

1. The following acts with respect to licensing shall constitute a criminal offence:
  - (a) Carrying out any of the activities listed in section 11, paragraph 2, of this Act without a valid licence authorizing the respective activity;
  - (b) Offering, promising, or giving to a public official, directly or indirectly, an undue advantage, for the official himself or herself or another person or entity, in order that

the official issue or refrain from withdrawing a licence as required under section11, paragraph2, of this Act;

(c) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official issue or refrain from withdrawing a licence as required under section11, paragraph2, of this Act;

(d) Intentionally deceiving a public official in order that the official issue or refrain from withdrawing a licence as required under section11, paragraph2, of this Act;

(e) Employing force or threat with serious harm against a public official in order that the official issue or refrain from withdrawing a licence as required under section11, paragraph2, of this Act.

2. Without prejudice to the provisions of the Penal Code and other applicable laws, the acts constituting a crime under this section are punishable by ...[insert penalty]

## **Section 24**

### **Criminal offences with respect to mineral exploitation and transport**

1. The following acts with respect to exploitation and transport of designated minerals shall constitute a criminal offence:

(a) Employing children below the minimum working age as defined under the laws of the Republic in exploiting minerals;

(b) Exploiting of minerals without complying with standards for environmental protection and health and safety;

(c) Directly or indirectly supporting non-state armed groups through the extraction, transport, trade, handling, or export of designated minerals. “Direct or indirect support” to non-state armed groups through the extraction, transport, trade, handling or export of designated minerals includes, but is not limited to, procuring designated minerals from, making payments to, or otherwise providing logistical assistance or equipment to, non-state armed groups or their affiliates who:

i. Illegally control mine sites or otherwise control transportation routes, points where designated minerals are traded and upstream actors in the supply chain;

ii. Illegally tax or extort money or designated minerals at points of access to mine sites, along transportation routes or at points where designated minerals are traded; or

iii. Illegally tax or extort intermediaries, export companies or international traders.

(d) Directly or indirectly supporting public or private security forces who illegally control mine sites, transportation routes and upstream actors in the supply chain, illegally tax or extort money or designated minerals at points of access to mine sites, along transportation routes or at points where designated minerals are traded, or illegally tax or extort intermediaries, export companies or international traders. “Direct or indirect support” to public or private security forces includes, but is not limited to, procuring designated minerals from, making payments to, or otherwise providing logistical assistance or equipment to, such forces, excluding legally required forms of support.

- (e) Offering, promising, giving, demanding, or receiving bribes to conceal or disguise the origin of designated minerals, or to misrepresent taxes, fees, and royalties;
  - (f) Non-payment of taxes, fees, and royalties related to mineral extraction, trade and export;
  - (g) Carrying out any of the activities listed in section 11, paragraph 2, of this Act without respecting the obligations laid down in ICGLR Mineral Certification Scheme.
2. Without prejudice to the provisions of the Penal Code and other applicable laws, the acts constituting a crime under this section are punishable by ...[insert penalty]

## **Section 25**

### **Laundering of proceeds of illegal exploitation of minerals**

1. All acts aimed at laundering the proceeds of the illegal exploitation of designated minerals constitute criminal offences under this Act. Such acts include:
- (a) The conversion or transfer of property, knowing that it is the product of illegal exploitation of designated minerals, for the purpose of concealing or disguising the illegal origin of such minerals;
  - (b) Assisting any person who is involved in the illegal exploitation of designated minerals to escape the legal consequences of his or her actions;
  - (c) The concealment or disguise of the true nature, origin, location, disposition, movement or ownership of property related thereto, which the person knows to be the product of the illegal exploitation of designated minerals;
  - (d) The acquisition, possession or use of property, with knowledge that it is the product of the illegal exploitation of mineral resources.
2. Without prejudice to the provisions of the Penal Code and other applicable laws, the acts constituting a crime under this section are punishable by ..[insert penalty].

## **Section 26**

### **Search, detention and arrest**

1. Any officer authorized by the competent authority or any police officer may, subject to the applicable criminal procedure laws, arrest, detain and search any person whom he believes, with reasonable cause, to be guilty of an offence under this Act.
2. Any officer authorized by the competent authority or any police officer may, subject to the applicable criminal procedure laws, enter any premises or stop any vehicle or vessel in which he believes designated minerals illegally exploited in a member state are being stored or transported, as the case may be. The officer may inspect or search the premises, vehicles or vessels and if he finds designated minerals or other evidence, he may seize the minerals and detain them pending legal action against the person concerned.
3. Any person arrested under this Act shall be brought immediately after his arrest before a judicial officer pending the investigation of the case.

4. In the investigation of offenses related to the illegal exploitation of designated minerals, the competent authority and its authorized staff and the police may resort to any lawful method of inquiry which they consider appropriate. In particular, they may question or hear any person whom they have reason to believe is capable of providing information on the offences.

## ***Section 27***

### **Power to require information**

If there is reason to believe that a person is involved in the illegal exploitation of designated minerals in a Member State or has benefited from the fruits of such illegal exploitation, and the person has refused, neglected or failed to provide information requested by the competent authority to enable it to investigate the matter, the competent authority may request a court of competent jurisdiction to order any banking institution, or other financial institution, with information and documents relating to the financial, business or commercial affairs of the person concerned, to provide it with such information as it may require to enable it conduct its investigations.

## ***Section 28***

### **Tracing, Seizure and Confiscation**

1. If there is reason to believe that a person is involved in the illegal exploitation of designated minerals in a Member State; has received proceeds from the illegal exploitation of designated minerals in a Member State; or has otherwise benefited from activities involving the illegal exploitation of designated minerals in a Member State, a court of competent jurisdiction may, upon request of the competent authority, make an order prohibiting that person from transferring, alienating or otherwise disposing of his property or assets.
2. If the property or assets in question have been deposited into an account held in a bank or other financial institution, the court may order the bank or financial institution to freeze the accounts in which funds are deposited or held.
3. If the court is satisfied, after hearing all persons adversely affected by its decision who wish to be heard, that the property or assets are the proceeds of the illegal exploitation of designated minerals in a Member State, the court shall order the forfeiture to the state of the designated minerals or the assets.
4. Where the proceeds of the illegal exploitation of designated minerals can be traced to the Member State where the illegal exploitation occurred, the court shall order that the proceeds be paid to the Member State concerned.

## ***Section 29***

### **Right of recovery and compensation**

1. In cases where the illegal exploitation of designated minerals has occurred, the Member state in whose territory the illegal exploitation occurred has the right to recover the minerals, or to be compensated by the persons responsible or any other person who benefited from the proceeds of such illegal exploitation.

2. If illegally exploited designated minerals are introduced into any Member State, the competent authority of such Member State is entitled, in exercising its right of recovery and/or compensation, to bring a civil action before the national courts with competent jurisdiction against the perpetrator of the illegal exploitation of the designated minerals and/or against any person who benefitted from the illegal exploitation of the designated minerals.
3. National authorities shall cooperate with the competent authorities of the Member State concerned and provide assistance to recover the illegally exploited designated minerals and/or to obtain appropriate compensation.

### **Section 30**

#### **Liability of legal persons and of chief officers**

1. Where the person who is responsible for an offence under this Act is a legal person, any director, manager or other executive officer of such legal person who knew or ought to have known of the commission of the offence is guilty of a similar offence and is punishable in a like manner.
2. Legal persons responsible for offences under this section may, without prejudice to penalties for the individuals involved, be subject to disqualification from commercial activities including an order for winding up or placement under judicial supervision.

### **Section 31**

#### **Extradition**

1. The criminal offenses created under this Act are extraditable offences, and shall be included in any extradition treaty in force in the Republic.
2. In cases where national authorities receive a request for extradition concerning crimes falling within the scope this Act from another Member State with which the Republic has not concluded an extradition treaty, state organs shall consider the Protocol as a sufficient legal basis for extradition.
3. Extradition concerning crimes falling within the scope this Act shall be subject to the conditions set by national laws or extradition treaties in force, including the grounds on which the Government is entitled to reject the extradition request.
4. If extradition pursuant to the Protocol and this Act is refused on grounds of nationality of the accused or because the state organs claim competence in the case, the State organs will promptly submit the case to competent authorities for prosecution. As soon as the proceedings are completed, the state organs shall notify the state seeking extradition of the final outcome.

### **Section 32**

#### **Cooperation of state organs responsible for investigations and prosecutions**

1. In accordance with national rules and treaties in force, state organs shall cooperate with the competent authorities of other Member States by dealing with requests from the relevant authorities of such Member states and shall apply the

necessary measures to facilitate procedures and formalities relating to mutual judicial cooperation in the investigation and prosecution of acts of illegal exploitation of designated minerals.

2. The state organs shall cooperate with other Member States in enforcing the Protocol and strengthening measures to prevent, detect and punish acts of illegal exploitation of designated minerals.

3. State organs shall not refuse requests for assistance from other Member States on the basis of rules related to bank or other commercial confidentiality.

### **Section 33**

#### **Time of application**

Acts of illegal exploitation of designated mineral committed before the entry into force of this Act may, with agreement between the competent authorities of the relevant Member States, be subject to mutual judicial cooperation in accordance with legal standards and national and international laws on extradition already in force.

### **Section 34**

#### **Witness protection**

1. Any person who provides information and/or agrees to testify or otherwise assist in the implementation of measures against the illegal exploitation of designated minerals is entitled to protection by state organs against disclosure of his identity.

2. As part of the judicial process, no witness shall be required to provide information that could lead to the discovery of his identity or the identity of any other person who assisted the competent authority or the police in their investigations, or gave information leading the arrest and prosecution of a person suspected of engaging in the illegal exploitation of designated minerals in a Member State.

3. No action or proceeding, including disciplinary proceedings, may be commenced or continued against a person because of the assistance or information he supplied to the competent authority or the police in connection with the illegal exploitation of designated minerals.

4. The competent authority shall take steps to provide protection to individuals who have disclosed information regarding the illegal exploitation of designated minerals in a Member State or who have been or intend to be witnesses in judicial proceedings or otherwise. The protection given to these people may include, if necessary, relocation, change of identity and/or the provision of security and protection.

5. If necessary, the protective measures provided for by this section may also be granted to members of the family and other relatives of the witness.

## CHAPTER IV. THE COMPETENT AUTHORITY

### *Section 34*

#### **Designation and functions of the competent authority**

1. The [name of competent authority] is hereby designated as the competent authority for the purposes of this Act.
2. The competent authority mandate is to prevent and control the illegal exploitation of designated minerals within the territory of Member States.
3. To achieve this mandate, the competent authority shall be responsible for:
  - (a) Enforcing this Act and any other rules against the illegal exploitation of designated minerals, including where permitted under the relevant constitutional provisions, prosecuting offenders;
  - (b) Pursuing the recovery of illegally exploited designated minerals and where appropriate, taking civil action on behalf the Republic to seek compensation from persons responsible for the illegal exploitation of designated minerals;
  - (c) Conducting investigations against persons suspected of engaging in the illegal exploitation of designated minerals in a Member State;
  - (d) Conducting research and analyzing information on the illegal exploitation of designated minerals and maintaining a database of such information;
  - (e) Proposing to the Minister specific measures for combating the illegal exploitation of designated minerals;
  - (f) Collaborating with the ICGLR Steering Committee and the competent authorities of Member States with a view to combating the illegal exploitation of designated minerals in the Member states;
  - (g) Liaising with state organs on matters regarding the prevention and control of illegal exploitation of designated minerals;
  - (h) Collaborating with other state organs, the ICGLR Committee, relevant international organizations, civil society organizations and any agency which could provide relevant information or support it in the fight against illegal exploitation of designated minerals.
  - (i) Conducting public education and awareness raising on the illegal exploitation of designated minerals; and
  - (j) Taking such other action as it considers desirable to combat the illegal exploitation of designated minerals.

### *Section 35*

#### **Data base of information**

1. The competent authority shall establish and maintain a database of information on the illegal exploitation of designated minerals and on action being taken to combat it.

2. The Competent authority shall submit a report on its activities and make recommendations at least once a year.
3. At the request of the government or the Committee, the Competent authority shall report or provide an advisory opinion on specific questions.

## **CHAPTER V. FINAL PROVISIONS**

### ***Section 36***

#### **Implementation of the Protocol**

1. Subject to the provisions of this Act, the Protocol shall have legal effect within and throughout (the Republic) and shall be the basis for the prevention and suppression of the illegal exploitation and trafficking of designated minerals.
2. In the case of conflict between this Act and the Protocol, the Protocol shall prevail.

### ***Section 37***

#### **Relationship to other instruments**

Nothing in this Act shall be construed as contrary to the Pact, the Protocol, the Constitutive Act of the African Union and the United Nations Charter or other relevant international legal instruments which have been ratified by the Member States.

### ***Section 38***

#### **Entry into force**

This Act shall enter into force on the date of its publication in the Gazette.

Done at ... ..on ... .. / ... .. / 201...

The President of the Republic or as the case may be:

The Minister for Mines and Minerals [according to the drafting tradition of the country].