

GOVERNMENT NOTICE

NOTICE 1108 OF 2004

MINUTE

In accordance with the powers vested in me by section 6(2) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), I hereby recognise the meetings of the Pan-African Parliament to be held in the Republic for the purposes of granting the immunities and privileges as provided for in the Host Country Agreement between the African Union and the Government of the Republic on the Seat of the Pan-African Parliament as set out in the attached Schedule.

(signed)
N.C. Diamini Zuma
Minister of Foreign Affairs

Date: 15/09/2004

SCHEDULE

**HOST COUNTRY AGREEMENT BETWEEN THE AFRICAN UNION AND THE
GOVERNMENT OF THE REPUBLIC ON THE SEAT OF THE PAN-AFRICAN
PARLIAMENT**

PREAMBLE

The Government of the Republic of South Africa and the African Union (hereinafter jointly referred as "the Parties" and in the singular as a "Party")

WHEREAS the Assembly of the African Union adopted decision Assembly/AUIDec.37 (III) during its Third Ordinary Session held in Addis Ababa, Ethiopia, from 6 to 8 July 2004, to the effect that the Republic of South Africa would host the Seat of the Pan - African Parliament).

AND WHEREAS it is necessary to enter into a host agreement with the Government of the Republic of South Africa relating to the headquarters in South Africa of the Pan-African Parliament

COGNISANT that the Pan-African Parliament is one of the Organs of the AU as provided for in Article 5 of the Constitutive Act:

CONSIDERING THAT the Government of the Republic of South Africa is willing to host the Headquarters of Pan-African Parliament and to grant members of Parliament, Pan-African Parliament's staff and experts such immunities and privileges as are necessary for the functioning of the Pan-African Parliament, the Pan-African Parliamentarians and officials of the Pan -African Parliament;

CONSIDERING FURTHER that pursuant to Article 8 of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament the Pan-African Parliamentarians, while exercising their functions, shall enjoy in the territory of each Member State the immunities and privileges extended to representatives of Member States under the General Convention on the Privileges and Immunities of the OAU and the Vienna Convention on Diplomatic Relations;

NOW THEREFORE the Government of the Republic of South Africa and the African Union, represented by their duly accredited Representatives

HAVE AGREED AS FOLLOWS:

Article I
DEFINITIONS

For the purpose of this Agreement, the following terms and expressions shall have, unless the context otherwise requires, the following meanings:

'Appropriate Authorities' means such national, local or other authorities in the Republic of South Africa, as may be appropriate within the laws of South Africa;

'AU' means the African Union established by the Constitutive Act of the African Union adopted on 11 July 2000 and which entered into force on 26 May 2001;

'Officials' means all members of staff providing services to the Pan-African Parliament, with the exception of those persons who are recruited locally and assigned to hourly rates;

'Clerk' means the Clerk of the Parliament or such other person as is for the time being performing the duties of the Clerk by direction of the President;

'Department of Foreign Affairs' means the Department of Foreign Affairs of the Government ;

'Experts' means individuals, other than Officials, undertaking missions or special projects on behalf of the AU in relation to the Pan-African Parliament and/or to the Secretariat;

'Government' means the Government of the Republic of South Africa;

'Headquarters of the AU' means the seat of the Union including the buildings, offices, premises, structures or portions thereof which at any given time are occupied or used by the AU in the territory of the Federal Democratic Republic of Ethiopia;

'Member of a family' means the spouse, any unmarried child under the age of 21 years, any unmarried child between the age of 21 and 23 years who is undertaking full-time studies in an education institution, and any other unmarried child or other family member officially recognized as a dependent member of the family by the AU;

'Pan -African Parliament' means the Pan-African Parliament established in accordance with Article 5 of Constitutive Act of the African Union as elaborated in the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament;

'Pan-African Parliamentarian' means a representative elected or designated in accordance with Article 5 of the Protocol Establishing the African Economic Community relating to the Pan-African Parliament;

'Premises' means all the offices, sub-offices, field offices, installations and facilities made available to be occupied, maintained or used by Pan-African Parliament in South Africa for purposes of the Pan-African Parliament and its Secretariat and notified as such to the Government;

'President' means the President of Pan African Parliament,

'Secretariat' means the Pan-African Parliament Secretariat, tasked with the functions of liaison, coordination, administration and logistics relating to the implementation of functioning of Pan -African Parliament;

'South Africa' means the Republic of South Africa and its territory.

Article II

JURIDICAL PERSONALITY

- (1)□ The Pan -African Parliament shall be vested in South Africa with juridical personality. It shall have the capacity:
- a)□ to contract;
 - b)□ to acquire and dispose of immovable and movable property; and
 - c)□ to institute legal proceedings, subject to the provisions of Article IV (1) herein.
- (2)□ For the purposes of this Agreement the President or his or her duly designate representative shall represent the Pan-African Parliament as well as the Secretariat.

Article III

PREMISES AND FACILITIES

- 1□ The Government undertakes to provide a dedicated, equipped and furnished permanent structure at its expense to house the Pan-African Parliament Complex which shall not be occupied by any other organization or company or government agency.
- 2□ Pending the provision of the permanent structure referred to in paragraph (1) above the Government undertakes to make available an appropriate temporary venue as provided for in Annex A .
- 3□ The Government undertakes to assist the Pan-African Parliament, as far as possible, in obtaining and making available where applicable, water, electricity, telephone, fax, e-mail and other facilities required at rates or charges not less favorable than those charged to comparable consumers or users, and in the case of interruption or threatened interruption of service, to give as far as is within its power, the same priority to the needs of the Pan-African Parliament as to other international organisations.
- 4□ All official business between the Government and the Pan-African Parliament shall be conducted through the Department of Foreign Affairs or such other Government Departments as may be agreed upon between the Government and the Pan-African Parliament .
- 5□ The Pan -African Parliament shall be entitled to display the AU flag and/or emblem at or on the Premises, official vehicles and as otherwise agreed between the Pan-African Parliament and the Government.
- 6□ Technical Annexes detailing the provision of premises and facilities as provided for in this Agreement shall be concluded between the Parties. Such Annexes shall form an integral part of this Agreement.

Article IV

IMMUNITY OF PROPERTY, FUNDS AND ASSETS OF THE AU

- 1□ The Premises, property, funds and assets of the AU for use by Pan-African Parliament, wherever located within South Africa and by whomsoever held on behalf of the AU for Pan-African Parliament, shall be immune from legal process, exception so far as in any particular case the Parliament has expressly waived its immunity; it being understood, however, that this waiver shall not extend to any measure of execution.
- 2□ Government officials therefore whether administrative, military or police shall not enter the premises to perform any judicial duties therein except with the knowledge and consent of the President or his or her representative. The Parties may conclude supplementary agreements to provide for additional arrangements for the provision of security to the premises.

In the event of natural disaster fire or any other emergency constituting an immediate threat to human life, the consent of the President is presumed.

Article V

INVIOABILITY OF PREMISES, PROPERTY, ASSETS AND TRANSACTIONS OF THE AU

The Premises shall be inviolable. The property, funds and assets of the AU for use by Pan-African Parliament, wherever situated in South Africa and by whomsoever held on behalf of the AU for Pan-African Parliament, shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action.

Article VI

INVIOABILITY OF AU ARCHIVES

The archives of the AU for use by Pan -African Parliament, including all the papers, documents, correspondence, books, films, tapes, registers, data-bases and computerized documentation belonging to and held by it, shall be inviolable, wherever located within South Africa.

Article VII

COMMUNICATIONS

1. The Pan-African Parliament shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to other international organizations in matters of cablegrams, telephotos, telephone, telegraph, telex, telefax and other communications. In particular, the Pan-African Parliament shall enjoy treatment not less favourable than that accorded by the Government in matters of priorities, tariffs and charges on mail to other International Organizations.
- 2□ The Government shall secure the inviolability of the official communications and correspondence of the Pan-African Parliament and shall not apply any censorship of its communications and correspondence.

- 3□ The Pan-African Parliament shall have the right to use codes and to dispatch and receive correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers, and bags.
- 4□ The Pan-African Parliament shall have the right to erect and operate on the Premises radio and other telecommunications equipment and to use mobile and internet equipment, on AU registered frequencies which have been coordinated with the Government and on frequencies allocated by the Government, between the Premises of Pan-African Parliament in South Africa, and with other offices of the AU, in particular with the Headquarters of the AU; provided that this right shall not, without the consent of the Government, extend to point-to-point radio communication between fixed points in South Africa where a suitable terrestrial telephone infrastructure already exists, and provided further that such radio and other telecommunications equipment shall be licensed at the prescribed license fees and meet internationally accepted standards as determined by the relevant Government authorities. It is further provided that the frequencies on which any station may be operated shall be duly communicated by the South African telecommunication authorities to the International Frequency Registration Board.

Article VIII

**EXEMPTION FROM TAXATION, CUSTOM DUTIES, PROHIBITIONS
OR RESTRICTIONS ON IMPORTS AND EXPORTS**

- I□ The Pan-African Parliament, its assets, income and other property in South Africa shall be
 - a)□ exempt from all direct taxes, it being understood, however, that the Pan-African Parliament will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - b)□ exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Pan-African Parliament for its official use, it being understood, however, that articles imported under such exemption will not be sold in South Africa except under conditions agreed to with the Government and being not less favourable than those extended to other intergovernmental or international organizations;
 - c)□ exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.

While the Pan-African Parliament agrees that it will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, the Government agrees that when the Pan-African Parliament is making important purchases of property for official use and which purchase attracts duties and taxes, it will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax concerned.

- 3□ Notwithstanding the provisions of this Article VIII, the Pan-African Parliament shall, in respect of any specific activity regulated by South African legislation on a national regional and/or local level and which does not fall within the ambit of paragraph 1

and 2 of this section, comply with the provisions of such legislation and consult with the relevant Government Department(s), administration(s) and/or body (bodies) pertaining to such activity and legislation.

Article IX

PAN-AFRICAN PARLIAMENTARIANS AND OFFICIALS: PRIVILEGES AND IMMUNITIES

- 1□ The Pan -African Parliament, Pan-African Parliamentarians, the Clerk and the Deputy Clerks shall enjoy full diplomatic immunities as provided for in Article VI(3) of the General Convention on the Privileges and Immunities of the Organisation of African Unity and the Vienna Convention on Diplomatic Relations, 1961.
- 2□ The immunities and privileges referred to in paragraph 1 above includes parliamentary immunity. Accordingly, a Pan-African Parliamentarian shall not be liable to civil or criminal proceedings, arrest, imprisonment or damages for what is said or done by him or her within or outside the Parliament in his or her capacity as a member of Parliament in the discharge of his or her duties.
- 3□ Officials, whether expatriate or locally recruited shall be subject to AU Staff Rules and Regulations.
- 4□ All other Officials shall be:
 - a)□ immune from legal process for words spoken or written and all acts performed by them in their official capacity;
 - b)□ immune from personal arrest or detention except for nationals or permanent resident Officials;
 - c)□ exempt from taxation in respect of salaries and other remuneration paid to them by the AU or Pan-African Parliament;
 - d)□ immune from national service obligations;
 - e)□ exempt, with respect to themselves, their spouses, their dependents, relatives and other members of their family and personal employees who are not nationals or permanent residents of South Africa from immigration restrictions and alien registration;
 - f)□ accorded the same facilities in respect of currency or exchange restrictions as are accorded to the officials of comparable ranks forming part of international organisations to South Africa;
 - g)□ accorded the same protection and repatriation facilities with respect to themselves, their spouses and dependent relatives and other members of the family and other personal employees who are not nationals or permanent residents of South Africa, as are accorded in time of international crises or national emergencies to diplomatic envoys;
 - h)□ permitted free movement to, within or from South Africa to the extent necessary for carrying out their mandate for and on behalf of the Pan-African Parliament, for the purpose of their official communications, to use codes and receive papers and correspondence by courier or sealed in bags;

- i) ☐ accorded the same immunities and facilities, including immunity from inspection and seizure of their official baggage, as are accorded to diplomatic envoys ;
 - j) ☐ permitted to import for personal use, free of duty and other levies, prohibitions or restrictions on imports at the time of first taking up their post in South Africa .
- 5 ☐ The Officials shall be permitted to import their furniture and personal effects in one or more shipments within a period of six months of first taking up their post in South Africa .
- 6 ☐ Officials who are unmarried may import one motor vehicle duty free and those who are married and accompanied by members of his/her family may import two motor vehicles duty free. Modalities for the replacement of motor vehicles shall be agreed upon between the Parties.
- 7 ☐ Other privileges will be accorded to the officials commensurate with the privileges accorded to comparable ranks of other international organisations in South Africa.
- 8 ☐ Articles imported - in accordance with the immunities and privileges referred to in this Article shall not be sold in South Africa except under conditions agreed to with the Government and not being less favourable than those extended to officials of comparable ranks of other international organisations .
- 9 ☐ The African Union Laissez-Passer shall be recognized and accepted in South Africa as valid travel documents.

Article X

PRIVILEGES AND IMMUNITIES OF EXPERTS

- 1 ☐ Experts shall be accorded such immunities and privileges as are necessary for the independent exercise of their functions during the period of their mission, including time spent on journeys in connection with their mission. In particular they shall:
 - a) ☐ be immune from personal arrest or detention and from seizure of their personal baggage;
 - b) ☐ enjoy inviolability for all papers and documents, including computerized documentation ;
 - c) ☐ be accorded the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - d) ☐ be accorded the same protection and repatriation facilities with respect to themselves, their spouses and dependent relatives and other members of their family as are accorded in time of international crises or national emergencies to diplomatic envoys;
 - e) ☐ be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - f) ☐ for the purpose of their communication with the AU, have the right to use codes and to receive papers or correspondence by courier or in sealed bags; and

g□ enjoy the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

- 2□ Visas for persons referred to in paragraph 1, when required, shall be issued as soon as possible, provided however that the provisions of the said paragraph 1 shall not imply exemption from the obligation to produce reasonable evidence to establish that persons claiming the rights granted under paragraph 1 are included in the categories specified therein, nor from the application of quarantine and health regulations.

Article XI **WAIVER OF IMMUNITY**

Privileges and immunities are granted to Officials and Experts in the interests of the Pan-African Parliament and to safeguard the independent exercise of the functions of such Officials and Experts in connection with the Secretariat. Such privileges and immunities are not for the personal benefit of the individuals concerned.

Accordingly, the President may waive the immunity of any of the Officials and Experts where, in his or her opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Pan-African Parliament.

- 2□ Privileges and immunities are granted to Pan-African Parliamentarians in the interests of the Pan-African Parliament and to safeguard the independent exercise of the functions of such Pan-African Parliamentarians in connection with the Pan-African Parliament. Such privileges and immunities are not for the personal benefit of the individuals concerned. Accordingly, the Pan-African Parliament may waive the immunities of a Pan-African Parliamentarian in accordance with its Rules of Procedure where the interest of justice so requires.
- 3□ The Pan-African Parliament shall co-operate at all times with the appropriate authorities of South Africa to facilitate the proper administration of justice, secure the observance of the laws of South Africa and prevent the occurrence of any abuse in connection with the immunities and privileges granted to the Pan-African Parliamentarians, Officials and Experts.

Article XII **IDENTIFICATION**

The Government shall, at the request of the President or the Clerk, accredit and issue to each Pan-African Parliamentarian or Official, as soon as possible after such Pan-African Parliamentarian is elected or such Official is assigned to South Africa, as well as to those locally recruited, other than persons who are locally recruited and assigned to hourly rates, the appropriate certificates of identity. The details of the accreditation and certificates of identity to be provided are set out in Annex G.

- 2□ All Pan-African Parliamentarians or Officials, including those locally recruited, shall be required to present, but not to surrender, their certificates of identity upon demand of an authorized official of the Government.

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- 3□ The Pan -African Parliament shall, upon termination of employment of locally recruited staff members or reassignment from South Africa of other Officials, ensure that their certificates of identity are returned promptly to the Government.

Article XIII

DECEASED PAN-AFRICAN PARLIAMENTARIANS AND OFFICIALS

The Clerk shall have the right to take charge of and remove the remains of a Pan-African Parliamentarian or Official who dies in South Africa, in accordance with the applicable AU procedures, it being understood that in the exercise of this right due consideration shall be given to the relevant domestic law in force in South Africa.

- 2□ The Clerk shall also have the right to remove from South Africa the personal property of the deceased Pan-African Parliamentarian or Official. The Government shall not levy national, regional or municipal estate, succession or inheritance duties and duties on transfers on movable property, the presence of which was due solely to the presence in South Africa of the deceased as a Pan-African Parliamentarian or Official.

Article XIV

SETTLEMENT OF DISPUTES

Any dispute between the Pan-African Parliament and the Government arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to an arbitral tribunal at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the Chairperson of the Tribunal. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two (2) arbitrators, the third arbitrator has not been appointed, either Party may request the President of the Court of Justice of the AU or, pending its establishment, the Chairperson of the AU, to make the necessary appointments. All decisions of the arbitrators shall require a vote of two of them and shall be binding on the Parties

- 2□ The arbitrators shall fix the procedure of the arbitration and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XV

GENERAL PROVISIONS

The Parties, through consultation and negotiation, shall settle any relevant matter for which no provision is made in this Agreement. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this Article.

- 2□ The Parties may conclude additional technical annexes, agreements or arrangements to facilitate the hosting of the Pan-African Parliament.

- 3. Consultations and negotiations with a view to amending or revising this Agreement may be held at the request of either party. Amendments or revision shall be made by joint written agreement.
- 4. This Agreement shall enter into force provisionally upon signature by the duly authorized Representatives of the Government and the AU. It shall enter into force definitively once the Parties have notified each other in writing of the completion of their internal procedures necessary for the implementation of this Agreement. The definitive date for entry into force shall be the date of last notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by the Government of the Republic of South Africa and the African Union respectively, have signed and sealed this Agreement in the English language in two originals, both texts being equally authentic.

Done at on this day of two thousand and four.

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FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA □
FOR THE AFRICAN UNION