

**DEPARTMENT OF FOREIGN AFFAIRS
DEPARTEMENT VAN BUITELANDSE SAKE**

No. 250

24 March 2006

In accordance with the powers vested in me by section 5(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), I hereby recognise the Technical Assessment Mission and the Country Review Team of the African Peer Review Forum of the African Union for the purposes of granting the immunities and privileges to the members of the said Team and Mission as provided for in the *Memorandum of Understanding between the Government of the Republic of South Africa and the African peer Review Forum of the African Union Relating to Technical Assessment Missions and the Country Review Visit to the Republic of South Africa* attached as a Schedule hereto.

Signed
N.C. Dlamini Zuma
Minister of Foreign Affairs

Date: 28/12/2005

Schedule

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE AFRICAN PEER REVIEW FORUM OF THE
AFRICAN UNION**

AND

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH
AFRICA**

RELATING TO

**TECHNICAL ASSESSMENT MISSIONS AND THE
COUNTRY REVIEW VISIT TO THE REPUBLIC OF
SOUTH AFRICA**

PREAMBLE

WE, the African Peer Review **Forum** of the African Union as represented by the Chairperson of the Committee of the Participating Heads of State and Government of the Member States of the African Union (AU) which have voluntarily acceded to the African Peer Review Mechanism (**APRM**) on the one part and the Government of Republic of South Africa on the other part;

COGNISANT of our shared commitments to the principles and objectives set out in the Constitutive Act of the AU adopted on 11 July 2000 in Lome, Togo;

RECALLING our Declaration on the Implementation of the New Partnership for Africa's Development (NEPAD) [Assembly/AU/Decl. 1(I)], at the Inaugural Session of the Assembly of the AU in July 2002 in Durban, South Africa;

RECALLING FURTHER our Declaration on the Implementation of the NEPAD [Assembly/AU/Decl. 5(II)], at the 2nd Ordinary Session of the Assembly of the AU in July 2003 in Maputo, Mozambique;

RECOGNISING that the mandate of the APRM [AHG/235 (XXXVIII) **Annex II**] is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance [AHG/235 (XXXVIII) Annex I] and that it is a mutually agreed instrument for self-monitoring by the participating Member States of the AU;

REITERATING our commitment to the principles and core values contained in the Declaration on Democracy, Political, Economic and Corporate Governance [AHG/235 (XXXVIII) Annex I];

MINDFUL that the primary purpose of the **APRM** [AHG/235 (XXXVIII) Annex II] is to foster the adoption of policies, standards and practices that lead to political stability, **high** economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs for capacity building;

RECOGNISING the important role that will be played in the APRM [AHG/235 (XXXVIII) *Annex* 1] by the Committee of Participating Heads of State and Government, the Panel of Eminent Persons, the Country Review Teams and the African Peer Review Secretariat (APR Secretariat) and partner institutions;

CONSCIOUS of our decision to accede to the **APRM through** our signature of the Memorandum of Understanding on the APRM [NEPAD/HSGIC/03-2003/APRM/MOU] and the commitments contained therein:

HAVING REGARD to our acceptance of the following documents as further elaboration of and further guidelines for the implementation of the APRM [AHG/235 (XXXVIII) Annex II]:

- (i) Objectives, Standards, Criteria and Indicators for the APRM (NEPAD/HSGIC/03-2003/APRM/Guideline/OSCI);
- (ii) African Peer Review Mechanism-Organisation and Processes (NEPAD/HSGIC/03-2003/APRM/Guideline/O&P); and
- (iii) Outline of the Memorandum of Understanding on the Technical Assessments and the Country Review Visit (NEPAD/HSGIC/03-2003/APRM/Guideline/Outline).

ALSO HAVING REGARD to the acceptance by the African Peer Review Panel (APR Panel) of the following documents:

- (i) Guidelines for Countries to Prepare for and to Participate in the APRM;
- (ii) Code of conduct for the Technical Assessment Missions and the Country Review Teams; and
- (iii) Rules of Procedure of the APR Panel and the APR Secretariat:

FULLY COMMITTED to ensuring the successful implementation of NEPAD and the APRM in particular [AHG/235 (XXXVIII) Annex II];

BEING FURTHER COMMITTED to facilitating the establishment of effective country review mechanisms and the provision of adequate resources;

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

In this Memorandum of Understanding, unless the context otherwise indicates -

“**APR**” means the African Peer Review;

“**APR Focal Point**” means the entity or person designated by the Government to coordinate its national process, liaise with the APR Secretariat and provide assistance to technical assessment missions and the Country Review Visit;

“**APR Forum**” means the Committee of Participating Heads of State and Government of the Member States of the AU which have voluntarily acceded to the **APRM**;

“**APR Panel**” means the *African* Peer Review Mechanism Panel of Eminent Persons:

“**APR process**” means periodic reviews of policies and practices of the participating countries to ensure that those policies and practices conform to the agreed values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance [AHG/235 (XXXVIII) **Annex I**];

“**APR Secretariat**” means the African Peer Review Secretariat”;

“**APRM**” means the African Peer Review Mechanism:

“**AU**” means the African Union:

“**Country Review Team**” means the team sent to South Africa to review the progress of its national programme of action, as envisaged in paragraph 13 of the **APRM** Base document and produce the **APRM** report of the country [Paragraph 42 Guidelines for Countries to Prepare for and to Participate in the **APRM**] :

“**Country Review Visit**” means the visit of the Country Review Team;

“**Government**” means the Government of the Republic of South Africa;

“**NEPAD**” means the New Partnership for Africa’s Development;

“**Parties**” means the APR Forum of the AU and the Government of the Republic of South Africa;

“**Partner Institution**” means any institution in a partnership agreement with the **APR** Panel to perform such activities as may be agreed by the Parties in the furtherance of the APR process:

“**Preliminary Programme of Action**” means the draft plan of action built on existing policies, programmes and projects that South Africa formulates after the self-assessment in preparation for the country review;

“**South Africa**” means the Republic of South Africa;

“**stakeholders**” means any institution or person within South Africa having a vested interest in the South Africa’s APR process;

“**Technical Assessment**” means an assessment undertaken by a Partner Institution of specific issues identified by the **APR** Secretariat in consultation with the APR Panel in reviewing the Preliminary Programme of Action;

“**Technical Assessment Mission**” means a visit of members of a Partner Institution to South Africa for the purposes of undertaking a technical assessment.

ARTICLE 2

STAGES OF APR PROCESS

The APR process conducted under the leadership of the APR Panel and with the technical support of the APR Secretariat, shall consist of the following five stages (as contained in the **APRM** Base Document NEPAD/HSGIC/03-2003/APRM/MOU/Annex II):

- (a) Stage One entails the preparatory process both at the level of the APR Secretariat and the national level. During this stage, the APR Secretariat will send a questionnaire to South Africa on the basis of the mutually agreed Objectives Standards, Criteria and Indicators for the **APRM**. South Africa will develop a self-assessment on the basis of the questionnaire and formulate a Preliminary Programme of Action based on existing policies, programmes and projects:
- (b) Stage Two entails the visit of the Country Review Team to South Africa with a view to holding extensive consultations with **all** stakeholders:
- (c) Stage Three entails the drafting of the report by the Country Review Team:
- (d) Stage Four entails the submission by the Country Review Team of its report to the **APR** Secretariat and APR Panel: and
- (e) Stage Five entails making public the report of the Country Review Team and related actions.

ARTICLE 3

TECHNICAL ASSESSMENT

- (1) If, after receipt of **South Africa's** self-assessment and Preliminary Programme of Action, the APR Secretariat considers that issue specific analysis is needed with regard to any aspect of the self-assessment or Preliminary Programme of Action, it may after consultation with the Government and the APR Panel, commission a Partner Institution with relevant experience to undertake a Technical Assessment.
- (2) The Government shall -
 - (a) allow members of the Technical Assessment Mission entry to South Africa to conduct the Technical Assessment, including, but not limited to, facilitating the provision of visas and rights of entry at its points of entry, subject to the applicable domestic laws of South Africa:
 - (b) make available to the Partner Institution relevant information with regard to the APR Focal Point and the contact details of Government

officials to be contacted to **clarify** any aspect of the self-assessment or Preliminary Programme of Action and to provide any further information to facilitate the Technical Assessment as may be necessary;

- (c) encourage regular contacts and exchange of information between its officials and the members of the Technical Assessment Mission regarding matters relevant to the Technical Assessment and in particular with regard to keeping those members abreast of developments that may impact on its findings;
 - (d) facilitate the conducting of wide consultations with all stakeholders by members of the Technical Assessment Mission including through allowing the holding of stakeholder meetings, availing facilities for such meetings and disseminating information relating to those meetings;
 - (e) take **all** reasonable steps to ensure the personal safety of members of the Technical Assessment Mission while within its borders during the technical assessment;
 - (f) provide such resources, logistical and other support to the members of the Technical Assessment **Mission** as agreed between the APR Secretariat and the Government in each case;
 - (g) provide **any** other assistance that may be reasonably necessary for the success of the technical assessment and the APR for South Africa.
- (3) After completion of a Technical Assessment and submission of the report of the Technical Assessment to the APR secretariat, the APR Secretariat shall submit the report to the APR Panel and the Government.
- (4) The Government and the APR Secretariat, in consultation with the APR Panel, shall give due consideration to the report on a Technical Assessment. In view of the said report-
- (a) the Government may make such changes to the Preliminary Programme of Action as it considers appropriate; and
 - (b) relevant issues paper, contemplated in Article 4(3)(b), may be amended by the APR Secretariat, in consultation with the APR Panel, as it considers appropriate.

ARTICLE 4**COUNTRY REVIEW VISIT**

- (1) In support of the Country Review Visit, the Government shall, through the APR Focal Point-
 - (a) organise a participatory and transparent national process for the self-assessment and country review and provide clear guidelines to the APR Secretariat and the national stakeholders as to how the process **will** be effected, modalities for participation by stakeholders and relevant contact persons with regard to each aspect of the process;
 - (b) develop a Preliminary Programme of Action based on consensus and reflecting the needs of all stakeholders;
 - (c) forward to the **APR** Secretariat its Preliminary Programme of Action and indicate to the APR Secretariat when it **is** ready for the Country Review Visit;
 - (d) avail human and capital resources to support the in-country activities of the Country Review Team;
 - (e) allow members of the Country Review Team entry to South Africa for the Country Review Visit, subject to the applicable domestic laws of South Africa;
 - (f) make available to the Country Review Team relevant information with regard to contact details of Government officials to be contacted to clarify any aspect of its initial self-assessment and Preliminary Programme of Action and to provide any further information to facilitate the APR process as may be necessary;
 - (g) encourage regular contacts and exchange of information between its officials and the Country Review Team regarding matters relevant to the APR process and in particular with regard to keeping the Country Review Team abreast of developments that may impact on its findings;
 - (h) facilitate the conducting of wide consultations of **all** stakeholders by the Country Review Team including through allowing the holding of stakeholder meetings, availing facilities for such meetings and

disseminating information relating to those meetings and public service announcements: and

- (i) provide any other assistance as may be necessary for the success of the Country Review Visit and the APR process in general.
- (2) In support of the Country Review Visit, the Government shall -
- (a) plan **all** the necessary logistical and material support for the Country Review Team as set out in the work plan, contemplated in sub-Article (3)(a), and agreed with the APR Secretariat;
 - (b) assign a logistics team to the Country Review Team and provide to the team leader of the Country Review Team the contact details of each member of the logistics team and an outline of his or her responsibilities, in respect **of** each stage of the Country Review Visit;
 - (c) organise for logistical, administrative, financial and security support for the Country Review Team for each stage of the Country Review Visit;
 - (d) facilitate the access of the Country Review Team to any facilities or individuals it may wish to visit or interview for purposes of the Country Review Visit; and
 - (e) provide **any** other assistance to the Country Review Team as may be necessary for purposes of the Country Review Visit.
- (3) For purposes of the Country Review Visit, the APR Secretariat **shall** -
- (a) prepare a work plan, in consultation with the Government, the Partner Institutions and individual experts involved in a technical assessment mission;
 - (b) under the direction of the APR Panel, ensure leadership, coordination, guidance and technical assistance with regard to the APR process and the Country Review Visit. **This** includes developing an issues paper after receipt of South Africa's self-assessment and Preliminary Programme of Action, **commissioning** a technical assessment **and** a Partner Institution to undertake such assessment and providing input with regard to the composition of the Country Review Team;
 - (c) coordinate and handle **any** protocol relating to the contact between the Country Review Team, a Partner Institution and the Government, including the notification of the Government about the visit of the Country Review Team, the particulars of the members of the Team and its team leader;
 - (d) arrange for the participation **of** a Partner Institution that conducted a Technical Assessment;
 - (e) ensure that the members of a Technical Assessment Mission and the Country Review Team observe and respect the codes of conduct approved by the APR Panel;

- (f) ensure that the Government and other stakeholders are fully and regularly updated on a Technical Assessment Mission and the Country Review Visit; and
 - (g) on request, provide technical support to the APR Focal point in the conduct of the national process.
- (4) The APR Focal point shall promptly bring to the attention of the APR Secretariat any breaches of such a code by any member of a Technical Assessment Mission or the Country Review Team of a code, referred to in sub-Article (3)(e).

ARTICLE 5

DRAFT REPORT OF COUNTRY REVIEW TEAM

- (1) After the completion of the Country Review Visit, the APR Panel shall submit to the Government the draft report of the Country Review Team.
- (2) The Government shall ensure that all key stakeholders have an opportunity to participate in the consideration of the ~~draft~~ report and to comment on it.
- (3) The Government shall **within** 60 days or such other period as may be agreed between the Parties submit to the APR Secretariat or the APR Panel any comments it may have **with** regard to the draft report and provide evidentiary justification for any complaints. The Government may **also** submit a revised Preliminary Programme of Action taking into account recommendations of the draft report or indicate which aspects it is prepared to revise.
- (4) The APR Panel and the APR Secretariat shall ensure that the Government's comments are appended to the report of the Country Review Team before submitting it to the APR Forum.

ARTICLE 6

NOTIFICATION

- (1) The APR Secretariat and the APR Focal Point of the Government shall agree on a timetable and programme for –

- (a) the Country Review Visit at least 60 days before the commencement of the Visit; and
 - (b) a Technical Assessment Mission at least 30 days before the commencement of the Mission.
- (2) The **APR** Secretariat shall, within 15 days of the team for a Technical Assessment Mission or the Country Review Team, being constituted, notify the **APR** Focal Point of the following:
- (a) The name of the leader of such team and its composition;
 - (b) the time of arrival and departure of such team in and from South Africa and other relevant information;
 - (c) the **full** list of Government departments and agencies, national institutions, organisations and other stakeholders with **which** consultations are anticipated to be held by any **such** team; and
 - (d) **any** other information as may be necessary.
- (3) Upon receipt of the notification, the **APR** Focal Point South Africa **shall** within 30 days confirm to the **APR** Secretariat its acceptance of the visit of such team, the finalisation of arrangements in place for the visit and the contact details of the liaison official responsible for facilitating the visit.

ARTICLE 7

DIPLOMATIC IMMUNITIES AND PRIVILEGES

In accordance with the General Convention on the Privileges and Immunities of the Organisation of African **Unity** and the Vienna Convention on Diplomatic Relations, 1961, **the** Government agrees to extend to each member of the team for a Technical Assessment Mission and of the Country Review Team, for the duration of their official visit in South Africa, the immunities and privileges accorded to diplomatic agents in terms of the said Conventions.

ARTICLE 8**EQUIPMENT AND OFFICE SPACE**

The Government shall provide, at no cost, to the Partner Institution of a Technical Assessment Mission, the **Country** Review Team and the **APR** Secretariat such office space, equipment, premises and other facilities as may be necessary for the performance of their functions in terms of **this** Memorandum of Understanding. The Government shall take all steps legally possible to ensure that such premises shall be inviolable.

ARTICLE 9**IMPORTS AND EXPORTS**

Each member of a Technical Assessment Mission and of the Country Review **Team** **shall** be exempt from taxation and duties on any equipment brought into **South Africa** for official use, provided that the specifics of such equipment have been communicated to the **APR** Secretariat and the **APR** Focal Point beforehand. This provision shall apply both on arrival and departure of the Teams to **and** from **South** Africa. The above provisions will also apply if any such member receives such equipment for official use during his or her visit to the country.

ARTICLE 10**ACCOMMODATION AND TRANSPORT**

- (1) Without prejudice to the use by the members of a Technical Assessment Mission and the **Country** Review Team of their own means of accommodation and transport, the Government shall, on request of the **APR** Secretariat, provide at the Government's expense, such means of accommodation and transport as may be necessary for a Technical Assessment Team or the Country Review Team to perform its functions in terms of **this** Memorandum of Understanding.
- (2) The Government agrees to extend such reasonable special assistance to members of **APR** Panel, the **APR** Secretariat, the Country Review Team and a Technical Assessment Mission including, but not limited to, **the** facilitation of transit at point of entries into South Africa and transport at the Government's expense.

ARTICLE 11

ACCESS TO STAKEHOLDERS, INFORMATION AND RECORDS

Subject to the applicable domestic laws of South Africa, members of a Technical Assessment Mission or the Country Review Team -

- (a) may request, receive, examine, copy, have access to and procure records, data, information or documentation in support of the APR process for South Africa and to verify same;
- (b) may freely conduct interviews on matters relating to the APR process for South Africa with any stakeholder without hindrance, surveillance or censorship;
- (c) **may** use its own instrumentation to collect information freely;
- (d) may visit such individuals, premises or facilities within the territory of South Africa as may be necessary for the performance of their functions in terms of this Memorandum of Understanding;
- (e) may remove without hindrance, any documentation acquired during the course of a Technical Assessment Mission or the Country Review Visit which needs to be further examined for the purpose of the APR for South Africa; and
- (f) have access to any other form of assistance required during the course of a Technical Assessment Mission or the Country Review Visit as may be necessary for the purposes of the APR for South Africa.

ARTICLE 12

TRANSLATION AND INTERPRETATION

The APR Focal point **shall** make necessary arrangements to fulfil the interpretation and translation needs of the technical assessment mission and the Country Review Team. Such arrangements may include the four languages of the African Union namely, French, English, Arabic and Portuguese. The APR Secretariat will take all reasonable steps to ensure that members of the technical assessment mission and the **Country** Review Team are proficient in English, one of the official languages of the Republic of **South** Africa.

ARTICLE 13

COMMUNICATION

Without prejudice to the use by the members of a Technical Assessment Mission or the Country Review Team of their own means of communication, the Government shall, on request by the APR Secretariat, provide at the said Government's

expense, such means of communication as may be necessary to perform its functions in terms of this Memorandum of Understanding.

ARTICLE 14

ADDITIONAL ARRANGEMENTS AND REQUESTS

The Government shall make such additional arrangements and take all necessary steps to meet such additional requests as may be reasonably required for the success of a Technical Assessment Mission, the Country Review Visit or, generally, the APR process for South Africa.

ARTICLE 15

SETTLEMENT OF DISPUTES

Any dispute between the Parties arising out of the interpretation or implementation of this Memorandum of Understanding shall be settled amicably through consultation or negotiation between them.

ARTICLE 16

ENTRY INTO FORCE AND AMENDMENTS

- (1) This Memorandum of Understanding shall enter into force on the date of its signature by the authorized representatives of the Parties.
- (2) This Memorandum of Understanding may be amended by the mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 17

TERMINATION

- (1) This Memorandum of Understanding shall remain in force until terminated in accordance with sub-Article (2).

- (2) Either Party may terminate **this** Memorandum of Understanding by giving 90 days advance written notice **through** the diplomatic channel to the other Party.
- (3) The Parties shall take **all** the necessary actions to ensure that **such** termination would not be prejudicial to any activity in progress pursuant to **this** Memorandum of Understanding.
- (4) One original signed text of **this** Memorandum of Understanding **shall** be deposited with the APR Secretariat and the other original signed text shall be retained by South Africa.

IN **WITNESS WHEREOF**, the undersigned, being duly authorised thereto, have signed and sealed this Memorandum of Understanding in two originals in the English language, both texts being equally authentic.

Done at Pretoria on this 11th day of November 2006

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[Signed]
 FOR AFRICAN PEER REVIEW
 FORUM OF THE **AFRICAN UNION**

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[Signed]
FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA