

**MINISTER OF FOREIGN AFFAIRS
REPUBLIC OF SOUTH AFRICA**

No. 957

29 September 2006

MINISTER'S MINUTE

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 **Orange-Senqu River Commission (ORASECOM)** for the purposes of granting the immunities and privileges provided for in the **Diplomatic Immunities and Privileges Act, Act No. 37 of 2001**, attached as a schedule hereto.



**NKOSAZANA DLAMINI ZUMA
MINISTER OF FOREIGN AFFAIRS**



AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF

SOUTH AFRICA

AND

THE ORANGE-SENQU RIVER COMMISSION

FOR

THE HOSTING OF THE SECRETARIAT OF THE

ORANGE-SENQU RIVER COMMISSION IN

THE REPUBLIC OF SOUTH AFRICA

PREAMBLE

The Government of the Republic of South Africa and the Orange-Senqu River Commission (hereinafter referred to in plural as the "Parties" and in the singular as a "Party");

RECALLING the Agreement entered into on 3 November 2000 by the Governments of the Kingdom of Lesotho, the Republic of Botswana, Republic of South Africa and the Republic of Namibia to establish the Orange-Senqu River Commission, known as ORASECOM for the integrated water resource management of the Orange-Senqu River Basin;

IN PURSUANCE of a decision taken by ORASECOM on 30 July 2004 in Durban, Republic of South Africa, to establish a Secretariat;

NOTING that ORASECOM wishes and the Government of the Republic of South Africa agrees to the establishment of the Office of the Secretariat of ORASECOM in South Africa and to grant the Secretariat and its staff members certain privileges and immunities;

HEREBY AGREE as follows:

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context indicate otherwise -

- (a) “archives” includes all the records, correspondence, documents, manuscripts, computer records, still and motion pictures, films and sound recordings, belonging to or held by the Secretariat in furtherance of its functions;
- (b) “Country” means the Republic of South Africa;
- (c) “Executive Secretary” means the head of the Secretariat, duly appointed by the Council of ORASECOM in accordance with the provisions of ORASECOM Staff Regulations;
- (d) “Government” means the Government of the Republic of South Africa;
- (e) “members of the family” means
 - (i) the spouse;
 - (ii) any unmarried child under the age of 21 years;
 - (iii) any unmarried child between the ages of 21 and 23 who is undertaking full time studies at an education institution; and
 - (iv) any other unmarried child or other family members officially recognised as a dependant member of the family by the Secretariat
- (f) “Office” means the office premises used by the Secretariat of ORASECOM;
- (g) “official activities” means all activities carried out at the direction of ORASECOM in pursuit of the purpose of ORASECOM;
- (h) “official visitor” means any person invited by the ORASECOM Secretariat to its offices regarding official activities pertaining to ORASECOM;

- (i) "ORASECOM" means the Orange Senqu River Commission;
- (j) "Secretariat" means the Secretariat of ORASECOM;
- (k) "spouse" means the legal spouse or partner recognised as such under South African domestic law;
- (l) "staff member" means any person recruited or appointed as such by the ORASECOM under the terms of the Staff Regulations and for the purpose of carrying out ORASECOM's official activities. It does not include persons recruited at hourly rates of pay.

ARTICLE 1

ESTABLISHMENT

- (1) ORASECOM is hereby authorised to establish the Office in the Country.
- (2) ORASECOM shall enjoy in the furtherance of its official functions treatment not less favourable than that accorded to other international organisations in the Country and shall have the right to display its emblem at its premises subject to the consent of the landlord and on its vehicles.
- (3) The Government shall provide ORASECOM with the necessary, uninterrupted public services on ORASECOM facilities on the same basis as it does to other international organisations.

ARTICLE 2
LEGAL PERSONALITY

- (1) The Government recognises the legal personality of ORASECOM and in particular its international personality with capacity to enter into international agreements
- (2) ORASECOM shall have international juridical personality, as well as the capacity, among others things to contract, acquire and dispose of property and institute legal proceedings

ARTICLE 3
INVIOABILITY OF THE OFFICE

- (1) The office and its archives shall be inviolable and ORASECOM's property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived. Waiver of immunity from legal process shall not be held to imply waiver of immunity in respect of any measure of execution, for which a separate waiver shall be necessary.
- (2) No officer or official of the Government or person exercising any public authority within the Country, shall enter the Office to perform any duties therein except with the consent of, and under the conditions approved by the Executive Secretary. The Executive Secretary's consent to such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action
- (3) The Office shall not be used in any other manner incompatible with the functions of the Secretariat.

ARTICLE 4
EXEMPTION FROM TAXATION

(1) Within the scope of its official activities, ORASECOM assets, income and property shall be exempt from all forms of direct taxation, however ORASECOM shall not claim exemption from taxes which are no more than charges for public utility services.

(2) ORASECOM shall be exempted from custom duties, prohibitions and restrictions on imports in respect to articles (equipment and materials, including vehicles) imported or exported by the Secretariat for its official use and for implementation or completion of its projects. Goods imported free of duties and taxes shall not be sold, transferred or disposed of in the Country without prior approval and under conditions agreed to with the Government.

(3) While ORASECOM 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, nevertheless when the Secretariat makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE 5
FINANCIAL TRANSACTIONS

Without being restricted by financial controls, regulations or moratoria of any kind ORASECOM may, in order to carry out its activities -

- (a)** hold funds and currency of any kind and operate accounts in any currency; and
- (b)** freely transfer its funds and currency to and from the Country, and convert any currency held by it into any other currency,

Provided that such funds originate from the non-resident sources.

ARTICLE 6 COMMUNICATION

- (1) ORASECOM shall, for its official communication, enjoy treatment not less favourable than that accorded by the Government to any other government, including such government's diplomatic mission, in the manner of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communication and press rates for information to the press and radio.
- (2) The Government shall ensure that official correspondence and other official communications of ORASECOM shall be free of censorship.
- (3) Nothing in this Article shall be constructed as to preclude the adoption of appropriate security precautions to be determined by agreement between the Government and ORASECOM.

ARTICLE 7 PRIVILEGES AND IMMUNITIES

- (1) The Government shall accord to -
- (a) the Executive Secretary-
 - (i) the same privileges and immunities, exemptions and facilities as diplomatic representatives at Missions;
 - (b) the staff members of the Secretariat, who are not nationals or permanent residents of the Country -
 - (i) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

- (ii) exemption from taxation on the salaries and emoluments paid to them by the Secretariat;
 - (iii) immunity, together with members of their family, from immigration restrictions and alien registration;
 - (iv) subject to restrictions by the Government, which may be in effect for travelling to certain parts of the Republic of South Africa, free movement within the Republic of South Africa;
 - (v) where necessary, the timeous issuance of visas, work, travel and residence permits in the Republic of South Africa;
 - (vi) the right to import free of duty their furniture and effects, at the time of first taking up their post in the Country;
 - (vii) the same privileges in respect of exchange facilities as are accorded the officials of comparative ranks forming part of diplomatic missions to the Government;
 - (viii) the same repatriation facilities in time of international crises as to diplomatic envoys.
- (c) staff members of the Secretariat, who are nationals of the Country-
- (i) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity.
- (2) Privileges and immunities are granted to the Executive Secretary and staff members of the Secretariat in the interest of the Secretariat and not for the personal benefit of the individuals themselves. The Executive Secretary shall have the right and the duty to waive the immunity of a staff member or members of their family in any case where, in the opinion of the Executive Secretary, the immunity would impede the course of justice and can be waived without prejudice to the interest of the Secretariat.
- (3) ORASECOM shall co-operate at all times with the appropriate authorities of the Government to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to the staff members.

- (4) ORASECOM shall timeously notify the Government of names and ranks of the Secretariat staff in order to facilitate the granting of the immunities and privileges.
- (5) ORASECOM shall have the authority to recruit staff members locally for carrying out collaborative programmes for ORASECOM. Such staff members shall be drawn from among nationals of the Republic of South Africa, or nationals of other countries holding residence and work permits in the Republic of South Africa, and their terms and conditions of employment shall be expected to approximate prevailing norms in the Republic of South Africa with such modifications as may be required to assure availability of well qualified staff members and high quality of performance. Such local staff members shall be recruited under the ORASECOM Staff Regulations, with the provision that the ORASECOM staff regulation shall not apply if and when it conflicts with South African Labour Laws to the extent that rights of the locally recruited staff members would be violated.

ARTICLE 8

SETTLEMENT OF DISPUTES

- (1) Any dispute between the Parties arising out of, or relating to the interpretation or implementation of this Agreement that cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party.
- (2) For purposes of the implementation of this Article -
- (a) each Party shall appoint one arbitrator and advise the other Party of the name of its arbitrator. Should the arbitrators fail to agree upon an award they shall immediately appoint an umpire. In the event that within thirty (30) days of the request for the arbitration either has not appointed an arbitrator, or the arbitrators appointed fail to agree on an award and or the appointment of an

umpire, either Party may request the President of the International Court of Justice to appoint an arbitrator or an umpire, as the case may be;

- (b) a majority vote of the arbitrators shall be sufficient to reach a decision, including decisions on procedural matters, which shall be final and binding; and
- (c) the expenses of arbitration shall be borne by the Parties as laid down in the arbitration award.

ARTICLE 9 AMENDMENT

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

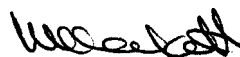
ARTICLE 10

ENTRY INTO FORCE, DURATION AND TERMINATION

- (1) This Agreement shall enter into force on the date of signature thereof by the Parties
- (2) This Agreement shall remain in force indefinitely unless terminated by either Party by giving six months written notice in advance to the other Party of its intention to terminate it.
- (3) Notwithstanding any such notice of termination this Agreement shall remain in force until complete fulfilment or termination of all obligations entered into by virtue of this Agreement.



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



**FOR THE ORANGE-SENQU
RIVER COMMISSION**