
GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF FOREIGN AFFAIRS DEPARTEMENT VAN BUITELANDSE SAKE

No. 1210

14 November 2008



MINISTER
FOREIGN AFFAIRS
REPUBLIC OF SOUTH AFRICA

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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 African Union Office of the New Partnership for Africa's Development (NEPAD) for the purposes of granting the immunities and privileges as set out in the *Host Agreement between the Government of the Republic of South Africa and the African Union on an Interim Office for the NEPAD Operating Outside the African Union Headquarters*, attached as a Schedule hereto.

A handwritten signature in black ink, appearing to read 'N.C. Dlamini Zuma'.

N.C. Dlamini Zuma
Minister of Foreign Affairs
Date: 9 October 2008



HOST AGREEMENT

BETWEEN

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

AND

THE AFRICAN UNION

ON

**AN INTERIM AU OFFICE FOR THE NEPAD
OPERATING OUTSIDE THE AFRICAN UNION
HEADQUARTERS**

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

WHEREAS the decision on the Implementation of the New Partnership for Africa’s Development (NEPAD) made at the Inaugural Session of the African Union Assembly in Durban, South Africa, from 8 to 10 July 2002 (Assembly/Decl. 1 (I)), mandated the Heads of State and Government Implementation Committee (HSGIC) and its supporting structures to ensure the implementation of the NEPAD Initial Action Plan;

AND WHEREAS the Heads of State and Government Implementation Committee of the African Union on the New Partnership for Africa’s Development (NEPAD) endorsed the joint proposal of the Commission of the African and the NEPAD Secretariat of the latter’s Integration into the Processes and Structures of the African Union during its session held in Algiers, Algeria on 21 March 2007, to the effect that the Republic of South Africa would in the interim period host the NEPAD Secretariat;

AND WHEREAS by Assembly declaration AU/Decl.8 (II) the Assembly mandated the Chairperson of the Commission to, *inter alia*, enter into a temporary host agreement with the Government of the Republic of South Africa with a view to providing the NEPAD Secretariat with the legal status of an AU Office operating outside the African Union;

AND WHEREAS the Assembly of the Union, by virtue of decision Assembly/AU/Dec.191 (X) adopted in February 2008, agreed to proceed with the integration of NEPAD into the AU structures and processes, immediately, and in an expeditious manner, along the lines of the 13-point conclusions of the Algiers Brainstorming Summit of March 2007, including the establishment of a Headquarters for the NEPAD Secretariat in South Africa;

AND WHEREAS the Government of the Republic of South Africa is willing to conclude a host agreement with the African Union with a view to providing the NEPAD Secretariat with the legal status of an AU Office operating outside the African Union Headquarters

AND WHEREAS the Government of the Republic of South Africa is willing to host the AU Office for the NEPAD in its transition to the NEPAD Planning and Coordinating Authority and to grant its staff and experts such immunities and privileges as are necessary for the functioning of the AU NEPAD Office and its staff;

NOW THEREFORE the Government of the Republic of South Africa and the African Union Commission have agreed as follows with regard to the transitional period pending determination of the nature and final structure of the AU NEPAD office:

A handwritten signature in dark ink, consisting of a stylized 'S' followed by a flourish.



ARTICLE 1

DEFINITIONS

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

- (a) "Appropriate Authorities" means such National or other Authorities in the Republic of South Africa as may be responsible in the context and in accordance with the laws and customs applicable in the Republic of South Africa;
- (b) "AU" means the African Union established by the Constitutive Act of the African Union which entered into force on 26 May 2001;
- (c) "AU Office for NEPAD" means the NEPAD Secretariat, tasked with the functions of liaison, coordination, administration and logistics related to the implementation of NEPAD;
- (d) "Chairperson" means the Chairperson of the Commission;
- (e) "Chief Executive Officer" means the head of the AU Office for the NEPAD;
- (f) "Commission" means the Commission of the African Union;
- (g) "Department of Foreign Affairs" means the Department of Foreign Affairs of the Government of the Republic of South Africa;
- (h) "Experts" means persons, other than Officials, appointed to perform specific tasks on behalf of the AU Office for the NEPAD or to undertake missions or special projects on behalf of the AU Office for the NEPAD;
- (i) "Government" means the Government of the Republic of South Africa;
- (j) "NEPAD" means the New Partnership for Africa's Development and any successor organisation as approved by the Heads of State and Government Implementation Committee;
- (k) "Officials" means members of staff of the AU Office for the NEPAD, with the exception of those persons who are recruited locally and assigned to hourly rates;



- (l) "Premises" means all the office, sub-offices, field offices, installations and facilities made available to be occupied, or used by the AU Office for the NEPAD;
- (m) "South Africa" means the Republic of South Africa and its territory.

ARTICLE 2 LEGAL PERSONALITY

1. An AU Office for the NEPAD is hereby established in the Republic of South Africa with the legal status of an AU Office operating outside the Headquarters of the AU.
2. The Government recognises the legal personality of the AU Office for the NEPAD for the purposes of:
 - (a) entering into contracts;
 - (b) acquiring and disposing of movable and immovable property; and
 - (c) receiving and instituting legal proceedings.
3. For the purposes of this Agreement, the Chief Executive Officer, or his or her duly designated representative shall represent the AU Office for the NEPAD.
4. All official business between the Government and the AU Office for the NEPAD shall be conducted through the Department of Foreign Affairs or such other Government Departments as may be agreed upon between the Government and the AU Office for the NEPAD.

ARTICLE 3 PREMISES AND FACILITIES

1. The Government shall provide, in accordance with the Criteria for Hosting AU organs, a secure, equipped and furnished permanent premises at its expense, for the AU Office for the NEPAD as its Headquarters, for use by the AU Office for the NEPAD and its personnel in accordance with this Agreement and Annexes thereto. The furniture and equipment shall be in accordance with the specifications of the African Union.
2. Pending the provision of the permanent premises referred to in paragraph (1) above, and during the period of transition to the NEPAD Authority, the Government shall be responsible for the payment of rent and other incidentals for the current premises occupied by the AU Office for the NEPAD and located



within the premises of the Development Bank of Southern Africa (DBSA). For the purposes of this Agreement, other incidentals shall include the facilities and services presently provided by DBSA to NEPAD, as agreed between the Parties and as provided for in an Annex to this Agreement.

3. The Government undertakes to assist the AU Office for the NEPAD, as far as possible, in obtaining and making available, where applicable, water, electricity, telephone, fax, internet and other facilities at rates or charges not less favourable than those charged to comparable consumers or users, and in the case of interruption or threatened interruption of service, to give, as far as within its powers, the same or higher priority to the needs of the AU Office for the NEPAD as to international organizations.
4. Technical Annexes detailing the specification of premises and facilities as provided for in this Agreement shall form an integral part of this Agreement.
5. Without prejudice to the provisions of international law and the terms of this Agreement, the AU Office for the NEPAD shall endeavour to prevent its offices from being used as a refuge by persons who may be seeking to enter the offices to avoid arrest, extradition or receipt of legal process under any law of the Republic of South Africa.
6. Any dispute between the Government and the AU Office for the NEPAD as to whether a power of the Government is being exercised in such a way as to interfere with the exercise of functions of the AU Office for the NEPAD shall be promptly settled by negotiations.
7. The Government shall accord to the NEPAD Offices the same protection given to other international organisations operating in the Republic of South Africa.
8. The AU Office for the NEPAD shall be entitled to display the AU flag and/or emblem at or on the premises, its official vehicles and as otherwise agreed between the AU Office for the NEPAD and the Government.

ARTICLE 4 IMMUNITY OF PROPERTY, FUNDS AND ASSETS

1. The AU Office for the NEPAD, its property, funds and assets, wherever located within the Republic of South Africa and by whomsoever held for use by the AU Office for the NEPAD shall be immune from legal process, except in so far as in any particular case the Chairperson of the AU Commission has expressly waived its immunity; it being understood, however, that this waiver shall not extend to any measure of execution, for which a separate waiver shall be required.



2. Government officials, therefore, whether administrative, military or police shall not enter the Premises of the AU Office for the NEPAD to perform any duties therein except with the knowledge and consent of the Chief Executive Officer or his or her representative.
3. In the event of natural disaster, fire or any other emergency, constituting an immediate threat to human life, the consent of the Chief Executive Officer is presumed.

ARTICLE 5

INVIOABILITY OF THE PREMISES, PROPERTY, ASSETS AND TRANSACTIONS

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

ARTICLE 6

INVIOABILITY OF AU ARCHIVES

The archives of the AU Office for the NEPAD, including all the papers, documents, correspondence, books, films, tapes, registers, databases and computerised documentation belonging to and held by it, shall be inviolable, wherever located within South Africa.

ARTICLE 7

FACILITIES IN RESPECT OF COMMUNICATIONS

1. The AU Office for the NEPAD shall enjoy, in respect of its official communications, treatment no 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 AU Office for the NEPAD shall enjoy treatment not less favourable



than that accorded by the Republic of South Africa 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 AU Office for the NEPAD and shall not apply any censorship of its communications and correspondence.
3. The AU Office for the NEPAD 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 AU Office for the NEPAD 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 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 8 EXEMPTION FROM TAXATION, CUSTOMS DUTIES, PROHIBITIONS OR RESTRICTIONS ON IMPORTS AND EXPORTS

1. The AU Office for the NEPAD, its assets, income and other property in South Africa shall be:
 - (a) exempt from all direct taxes, it being understood, however, that the AU Office for the NEPAD 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 AU Office for the NEPAD 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 upon with the



- (c) Government and being not less favourable than those extended to other intergovernmental or international organisations;
 - (d) exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.
2. While the AU Office for the NEPAD 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 a part of the price to be paid; the Government agrees that when the AU Office for the NEPAD 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, the AU Office for the NEPAD 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 Article, comply with the provisions of such legislation and consult with the Appropriate Authorities pertaining to such activity and legislation.

ARTICLE 9 IMMUNITIES AND PRIVILEGES OF OFFICIALS

1. The AU Office for the NEPAD may engage such Officials, as it may deem necessary, for the effective discharge of its functions. It will in doing so specify the categories of officials to which the provisions of this Article shall apply. The AU Office for the NEPAD shall inform the Government of the names and categories of all Officials present in South Africa at the time of the entry into force of this Agreement. Thereafter, the AU Office for the NEPAD shall, before the arrival of Officials in South Africa, notify the Government of the names of Officials, to facilitate implementation by the Government of the provisions of this Article. Such a list of names and categories shall be timeously revised as may be necessary.
2. Officials, whether locally or internationally recruited shall be subject to AU Staff Rules and Regulations.



3. Officials shall be:

- (a) immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - (b) immune from personal arrest or detention for all acts performed by them in their official capacity;
 - (c) enjoy exemptions from taxation in respect of salaries and emoluments paid to them by the AU Office for the NEPAD subject to the provisions of sub-Article (5) of this Article;
 - (d) immune from national service obligations;
 - (e) immune, together with their spouses and relatives residing with and dependant on them from immigration restrictions and alien registration
 - (e) accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
 - (f) given, together with their spouses and relatives residing with and dependants on them, the same repatriation facilities in time of international crisis as officials of comparable rank of diplomatic missions;
 - (g) permitted free movement to, within or from South Africa to the extent necessary for carrying out their mandate for and on behalf of the AU Office for the NEPAD and for the purpose of their official communications, to use codes and receive papers and correspondence by courier or sealed in bags;
 - (h) accorded the same immunities and facilities, including immunity from inspection and seizure of their official baggage, as are accorded to officials of comparable rank in diplomatic missions;
 - (i) be accorded the right to import for personal use, free of duty or other levies, prohibitions and restrictions on imports at the time of first taking up their post and within a period of six months:
 - (i) their furniture and personal effects;
 - (ii) one motor vehicle, and in the case of officials accompanied by their spouses and relatives dependant on them, two motor vehicles.
4. Articles imported under such exemptions will not be sold in the Republic of South Africa except under conditions agreed upon with the Government and in any case not being less favourable than those extended to officials of comparable ranks of other international organisations in South Africa
5. Notwithstanding the provisions of sub-Article 3, Officials who are South African citizens or permanent residents will be entitled only to the immunities set out in sub-Article 3 (a) – (c) of this Article. With respect to Article 9(3)(c) it is agreed that the administrative modalities for the tax exemptions for South African nationals shall be determined by the Parties.



6. Other privileges will be accorded to the officials commensurate with the privileges accorded to comparable ranks of other international organisations in South Africa.
7. The African Union Laissez-Passer shall be recognized and accepted in South Africa as a valid travel document.
8. In addition to the privileges and immunities specified in sub-Article 3 of the present Article, the Chief Executive Officer shall enjoy in respect of him or herself, their spouses and relatives living with and dependant on them the privileges and immunities, exemptions and facilities as are normally accorded to diplomatic envoys, in terms of relevant public international law and South African law, unless the Chief Executive Officer is a South African citizen or permanent resident, in which case the provisions of Article 9(5) shall apply

ARTICLE 10 EXPERTS ON MISSIONS

1. Experts (other than Officials coming within the scope of Article 9) performing missions for NEPAD shall be accorded the following 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 relatives dependant with and living with them 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 Office for the NEPAD, 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 11 WAIVER OF IMMUNITY

1. Privileges and immunities are granted to Officials and Experts in the interests of the AU Office for the NEPAD to safeguard the independent exercise of the functions of such Officials and Experts in connection with their activities for NEPAD. Such privileges and immunities are not for the personal benefit of the individuals concerned. Accordingly, the Chief Executive of the AU Office for the NEPAD 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 NEPAD AU Office for the NEPAD.
2. The AU Office for the NEPAD shall co-operate at all times with the Appropriate Authorities of the Government 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 Officials and Experts.

ARTICLE 12 IDENTIFICATION

1. The Government shall, at the request of the Chief Executive Officer, accredit and issue to each Official, as soon as possible after such Official is assigned to the AU Office for NEPAD, the appropriate certificates of identity.
2. All Officials shall be required to present, but not to surrender, their certificates of identity upon demand of an authorized official of the Government.
3. The AU Office for the NEPAD shall, upon termination of employment or reassignment from the AU Office for the NEPAD of Officials, ensure that their certificates of identity are returned promptly to the Government.



**ARTICLE 13
DECEASED OFFICIALS OF THE NEPAD SECRETARIAT**

1. The Chief Executive Officer, shall have the right to take charge of and remove the remains of an 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 taken of the relevant domestic law in force in South Africa.
2. The Chief Executive Officer shall also have the right to remove from South Africa the personal property of the deceased 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 an Official.

**ARTICLE 14
SETTLEMENT OF DISPUTES**

1. Any dispute between the AU 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 arbitration 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. 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 Commission 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 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 15
ENTRY INTO FORCE, AMENDMENT AND TERMINATION**

1. This Agreement shall enter into force on the date of signature hereof by the duly authorised representatives of the Government and of the AU and shall



remain in force, unless terminated either Party in accordance with the provisions of sub-Article (3).

2. This Agreement may be amended by mutual consent at any time at the request in writing of either the Government or the AU.
3. The Agreement may be terminated by any of the Parties, giving six (6) months written notice. The termination of the Agreement shall not affect the rights and duties accruing to the Parties by virtue of the application of this Agreement prior to its termination.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have on behalf of the Parties signed this Agreement in two originals in the English language, both texts being equally authentic.

DONE AT New York/Pretoria on this 9th day of
October 2008.

NCuma

FOR AND ON BEHALF OF THE
GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR AND ON BEHALF OF THE
AFRICAN UNION