

NOTICE 321 OF 2011

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE
AFRICAN INSTITUTE FOR ENVIRONMENTALLY SOUND MANAGEMENT OF HAZARDOUS AND
OTHER WASTES ON THE ESTABLISHMENT OF AN OFFICE OF THE AFRICAN INSTITUTE FOR
ENVIRONMENTALLY SOUND MANAGEMENT OF HAZARDOUS AND OTHER WASTES IN SOUTH
AFRICA**

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby publish an agreement between the government of the Republic of South Africa and the African Institute for environmentally sound management of hazardous and other wastes on the establishment of an office of the African Institute for environmentally sound management of hazardous and other wastes in South Africa for general information as set out in the Schedule hereto.

**BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**



AGREEMENT BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA

AND

THE AFRICA INSTITUTE FOR
ENVIRONMENTALLY SOUND MANAGEMENT
OF HAZARDOUS AND OTHER WASTES

ON THE ESTABLISHMENT OF AN OFFICE OF
THE AFRICA INSTITUTE FOR
ENVIRONMENTALLY SOUND MANAGEMENT
OF HAZARDOUS AND OTHER WASTES IN
SOUTH AFRICA

Preamble

The Government of the Republic of South Africa and the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes (hereinafter referred to as the "Parties" and in the singular as a "Party");

RECALLING the Basel Convention on the Control of Transboundary Movement of Hazardous and other Wastes, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and any other relevant international agreements;

NOTING the Agreement establishing the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes signed on 31 March 2004, in Jevu, South Korea, and entered into force on 12 September 2007;

NOTING further that the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes wishes to establish an Office in South Africa and the Government of the Republic of South Africa agrees to the establishment of such an Office;

RECOGNIZING the benefits of establishing such an Office within the Republic of South Africa, as well as for the sub region and that the Government welcomes the establishment of such a Office within the Republic of South Africa.

HEREBY AGREE as follows:

ARTICLE 1 Definitions

In this Agreement unless the context otherwise indicates-

- (a) **"Africa Institute"** means the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes, established by the "Agreement establishing the Africa Institute for the Environmentally Sound Management of Hazardous and other Wastes" and is an intergovernmental organization established to serve members in the implementation of the Basel Convention on the Control of Transboundary Movement and their Disposal, adopted on 22 March 1989, and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movements of Hazardous and other Wastes within Africa, adopted on 30 January 1991, and other related multilateral environmental agreements;
- (b) **"appropriate Republic of South Africa authorities"** means such national or other government authorities in the Republic of South Africa as may be responsible in the context and in accordance with the domestic law and customs applicable in the Republic of South Africa;

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(c) **“archives of the Africa Institute”** includes all records, correspondence, documents, manuscripts, computer records, still and motion pictures, films and sound recordings, belonging to or held by the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes in furtherance of its constitutional functions;

(d) **“council”** means the supreme body of the Africa Institute for the Environmentally Sound Management of Hazardous and other Wastes as provided for in Article VI of the Agreement establishing the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes, and composed of its members;

(e) **“Government”** means the Government of the Republic of South Africa;

(f) **“Head of the Africa Institute”** means the Executive Director;

(g) **“member of family”** means -

(i) the spouse;

(ii) any dependant child under the age of 18 years;

(iii) any other dependant family member, officially recognised as such by the Africa Institute;

(iv) the life partner, officially recognised as such by the Africa Institute;

and if applicable the term “spouses and relatives dependant” bears a corresponding meaning.

(h) **“officials of the Africa Institute”** means the professional staff assigned to the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes with the exception of locally recruited staff who are paid hourly rates;

(i) **“property of the Africa Institute”** means all property, including funds, income and other assets, belonging to or held or administered by the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes in furtherance of its constitutional functions;

(j) **“premises”** means the office premises of the Africa Institute for Environmentally Sound Management of Hazardous and other Wastes utilised for its official functions in South Africa as provided by the Department of Water and Environment Affairs; and

(k) **“telecommunications”** means any emission, transmission or reception of written or verbal information, images, sound or information of any nature by wire, radio, satellite, optical fibre or any other electronic or electromagnetic means.

ARTICLE 2**Purpose and Scope of Agreement**

- (1) This Agreement regulates the status of the Africa Institute, including its premises, officials and experts in the Republic.
- (2) The Government confirms that the treatment afforded to the Office of the Africa Institute shall be equal and the same as afforded to any other accredited international organizations in the Republic.

ARTICLE 3**Juristic Personality**

- (1) The Government recognises the juristic personality of the Africa Institute and in particular its capacity to-
- (a) contract;
 - (b) acquire and dispose of immovable and movable property; and
 - (c) institute juridical proceedings for the purpose of giving effect to this Agreement and its tasks.

ARTICLE 4**Inviolability of the Premises**

- (1) The premises of the Africa Institute shall be inviolable. The property and assets of the Africa Institute, wherever located and by whosoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived by the Head of the Africa Institute in consultation with the Council of the Africa Institute. 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 Republic of South Africa or person exercising any public authority within the Republic of South Africa may enter the premises to perform any duties therein except with the consent of and under conditions approved by the Head of the Africa Institute in consultation with the Council of the Africa Institute. The Head of the Africa Institute in consultation with the Council of the Africa Institute consent that such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action.
- (3) The premises shall not be used in any manner incompatible with the mandate of the Africa Institute.
- (4) The archives of the Africa Institute belonging to, or held by it, shall be inviolable.

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ARTICLE 5

Exemption from Taxation

- (1) Subject to all official activities, the Africa Institute, its assets, income and property shall be exempt from all forms of direct taxation. However, the Africa Institute shall not claim exemption from taxes which are no more than charges for public utility services.
- (2) The Africa Institute shall be exempt from customs duties, prohibitions and restrictions on goods imported or exported for its official purposes, including publications. However, articles imported under such exemption will not be sold in the Republic of South Africa except under conditions agreed to with the Government.
- (3) While the Africa Institute 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 Africa Institute makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government shall, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE 6

Financial Transactions

Without being restricted by financial controls, regulations or moratoria of any kind, the Africa Institute 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 Republic of South Africa, and convert any currency held by it into any other currency:

Provided that such funds originate from non-resident sources.

ARTICLE 7

Communication

- (1) The Africa Institute shall enjoy, for its official communications, treatment not less favorable than that accorded by the Republic of South Africa to any other Government, including the latter's diplomatic mission.
- (2) No censorship shall be applied to the official correspondence and other official communications of the Africa Institute.
- (3) The Africa Institute shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

- (4) Nothing in this Article shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the Government and the Africa Institute.

ARTICLE 8
Officials of the Africa Institute

- (1) The Government shall accord to-
- (a) the Head of the Africa Institute, the same privileges and immunities, exemptions and facilities as accorded to diplomatic staff at missions accredited to the Republic together with members of family. (It is the norm that the officially recognised family members of Heads of IO Offices in the RSA are also conferred with diplomatic status – please refer to UNFPA text attached hereto.
 - (b) Officials of the Africa Institute who are not nationals or permanent residents of the Republic of South Africa, will be accorded the following privileges and immunities:
 - (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 organisation;
 - (iii) exemption in respect of themselves and members of their family from immigration restrictions and alien registration;
 - (iv) the same privileges in respect of exchange facilities as are accorded to the officials of comparative ranks forming part of diplomatic missions to the Government;
 - (v) together with members of their families, the same repatriation facilities in time of international crisis as diplomatic envoys;
 - (vi) the right to import free of duty their furniture and effects at the time of first taking up their post in the Republic of South Africa, within six months after arrival
 - (c) Officials of the Africa Institute who are nationals of the Republic of South Africa 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 officials in the interests of the Africa Institute and not for the personal benefit of the individuals themselves. The Head of the Africa Institute in consultation with the Council shall have the right and the duty to waive the immunity of any official in any case 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 organization. Where the issue of immunities and privileges relates to the Head of the Africa Institute, this matter shall be decided forthwith by the Chairperson of the Council.

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(3) The Africa Institute 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 prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned in this Article.

(4) The Africa Institute shall inform the Government timeously of the names, ranks and designations of the officials.

ARTICLE 9

Representatives of Members

(1) Representatives of the Africa Institute, who are not nationals of the Republic of South Africa, at meetings convened by the Africa Institute in the Republic of South Africa shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the privileges and immunities as set out below:


- (a) Immunity from personal arrest or detention and from seizure of their personal baggage and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) inviolability of their official papers and documents;
- (c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) exemption in respect of themselves and members of their family, from immigration restrictions and alien registration;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to officials of comparable rank of diplomatic missions; and
- (f) the same immunities in respect of their personal baggage as are accorded to diplomatic envoys.

(2) Privileges and immunities are accorded to the representatives not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Africa Institute. Consequently a Member of the Africa Institute not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member of the Africa Institute the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

ARTICLE 10

Experts on Missions for Africa Institute

(1) Experts, other than officials, performing missions for the Africa Institute shall be accorded the privileges and immunities as set out below:

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- (a) Immunity from arrest or detention for act performed in their official capacity and from seizure of their official baggage;
 - (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind;
 - (c) inviolability of official their official papers and documents;
 - (d) for the purpose of their official communications with the Africa Institute the right to use codes and to receive papers or correspondence by courier or in sealed bags;
 - (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; and
 - (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.
- (2) Privileges and immunities are granted to experts in the interests of the Africa Institute and not for the personal benefit of the individuals themselves. The Head of the Africa Institute in consultation with the Council, shall have the right and the duty to waive the immunity of any expert in any case 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 organisation.

ARTICLE 11

Visas

Applications for visas, where required, from officials of the Africa Institute an identity card of the Africa Institute shall be dealt with as speedily as possible.

ARTICLE 12

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 13

Settlement of Disputes

Any dispute between the Parties concerning the interpretation or implementation of this Agreement shall be settled amicably through consultation and negotiations between the Parties.

ARTICLE 14**Entry into Force Duration and Termination**

(1) This Agreement shall enter into force on the date on which each Party has notified the other in writing through the diplomatic channel of its compliance with the internal requirements necessary for the implementation of this Agreement. The date of entry into force shall be the date of last notification.

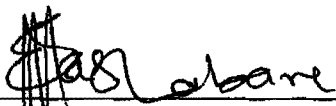
(2) This Agreement shall remain in force until terminated in terms of sub-Article (3)


(3) This Agreement may be terminated by either Party giving six (6) months written notice in advance through the diplomatic channel of its intention to terminate the Agreement.

(4) The obligations assumed by the Parties in terms of this Agreement shall survive the termination of this Agreement to the extent necessary to permit orderly withdrawal of the property, funds and assets of the Africa Institute by virtue of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed and sealed this Agreement in duplicate in the English Language both texts being equally authentic.

DONE at Pretoria on this 18th day of December 2009.


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


**FOR THE AFRICA INSTITUTE FOR
ENVIROMENTALLY SOUND
MANAGEMENT OF HAZARDOUS
AND OTHER WASTES**