

DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATIONS**NO. 31****25 JANUARY 2019**

It is hereby published for general information that the Minister of International Relations and Cooperation has, in terms of section 6(2) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), recognised the hearing of the Permanent Court of Arbitration to be held in Johannesburg, South Africa from 28 to 30 January 2019, for the purposes of granting the immunities and privileges provided for in the Agreement between the Government of the Republic of South Africa and the Permanent Court of Arbitration Regarding the Establishment of a Regional Facility of the Permanent Court of Arbitration for Africa, which entered into force on 17 April 2007.



MINISTER'S 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 hearing of the Permanent Court of Arbitration to be held in Johannesburg, South Africa from 28 to 30 January 2019 for the purposes of granting the immunities and privileges.

In accordance with section 7(1) of the said Act, the immunities and privileges to be conferred to the hearing of the Permanent Court of Arbitration is provided for in the Agreement between the Government of the Republic of South Africa and the Permanent Court of Arbitration Regarding the Establishment of a Regional Facility of the Permanent Court of Arbitration for Africa, which entered into force on 17 April 2007.

A handwritten signature in black ink, appearing to read 'L N Sisulu'.

L N Sisulu, MP

Minister of International Relations and Cooperation

Date: 14/01/2019



AGREEMENT

BETWEEN

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

AND

THE PERMANENT COURT OF ARBITRATION

**REGARDING THE ESTABLISHMENT OF A
REGIONAL FACILITY OF THE PERMANENT
COURT OF ARBITRATION FOR AFRICA**

The **“Government”** shall mean the Government of the Republic of South Africa;

The **“Department of Foreign Affairs”** shall mean the Department of Foreign Affairs of the Republic of South Africa;

The **“Permanent Court of Arbitration”** or **“PCA”** shall mean the Permanent Court of Arbitration, based in The Hague;

The **“International Bureau”** shall mean the International Bureau of the Permanent Court of Arbitration;

The **“Secretary-General”** shall mean the head of the International Bureau;

“Officials of the PCA” shall mean the Secretary-General and all members of the staff of the International Bureau;

The **“Regional Facility”** shall mean the Regional Facility for the Promotion of Dispute Resolution through the Mechanisms of the Permanent Court of Arbitration;

“PCA Proceedings” shall mean any dispute resolution proceedings administered by or under the auspices of the PCA, whether or not pursuant to the 1899 Convention, the 1907 Convention, or any of the PCA’s optional rules of procedure, to the extent that any hearing, meeting, or other activity related thereto takes place within the territory of the host country;

“PCA Adjudicator” shall mean any arbitrator, mediator, conciliator, or member of a commission of inquiry taking part in a hearing, meeting, or other activity in relation to PCA Proceedings;

“Participant in Proceedings” shall mean any witness, expert, counsel, party, agent or other party representative, as well as any interpreters, translators, or court reporters taking part in a hearing, meeting or other activity in relation to PCA Proceedings at or in connection with the Regional Facility;

“Regional Facility Meeting” shall mean any meeting, including conferences, convened by the Regional Facility, the PCA, or under the sponsorship of either;

“UN Convention” shall mean the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946.

Article 2

The Regional Facility is an organ of the Permanent Court of Arbitration, and it is subject to the direction of the Secretary-General. The Regional Facility shall have the legal capacity necessary to fulfill its purposes and objectives.

Article 3

- (1) The Government shall make available, on an as-needed basis and at no cost to the PCA, such office and meeting space (including all public utilities therefor) and such secretarial services as may reasonably be deemed necessary by the Secretary-General or other Officials of the PCA, for activities undertaken in connection with PCA Proceedings, as well as for Regional Facility Meetings.
- (2) The Government shall promote the PCA dispute resolution services through its embassies and diplomatic missions established in Africa, and facilitate through its diplomatic personnel dissemination of information related to the Regional Facility and its operations.

Article 4

The Department of Foreign Affairs shall coordinate on behalf of the Government all issues that may arise with respect to implementation of this Agreement with the Permanent Court of Arbitration.

Article 5

The working languages of the Regional Facility shall be English and French.

Article 6

- (1) As an organ of the Permanent Court of Arbitration, the Regional Facility, including any office space provided and used pursuant to Article 3, shall enjoy, *mutatis mutandis*, the same privileges and immunities as those accorded to the United Nations in the Republic of South Africa pursuant to Article II of the UN Convention, as provided for in the Diplomatic Privileges and Immunities Act, Act No. 37 of 2001.
- (2) Officials of the PCA and PCA Adjudicators, when present in the Republic of South Africa in connection with a PCA Proceeding or Regional Facility Meeting, shall enjoy, *mutatis mutandis*, the same immunities and privileges as those accorded officials of the United Nations in the Republic of South Africa, in conformity with Article V of the UN Convention, provided that, if such a person is a South African national or permanent resident, s/he shall enjoy only immunity from legal process and inviolability in respect of words spoken or written and all acts done by that person in the discharge of her or his duties, which immunity shall continue even after the person has ceased to exercise her or his functions in connection with the PCA or the Regional Facility.
- (3) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the

work of the PCA or Regional Facility, which immunity shall continue even after the person has ceased to exercise her or his functions in connection with the PCA or the Regional Facility.

Article 7

- (1) During the period of their missions, Participants in Proceedings shall be accorded the following privileges and immunities necessary for the independent exercise of their functions:
 - (a) immunity from criminal, civil and administrative jurisdiction in respect of words spoken or written and all acts done by them in discharging their functions in PCA Proceedings; said immunity shall continue even after they have ceased to exercise their functions;
 - (b) inviolability of documents and papers;
 - (c) the right to receive papers or correspondence by courier or in sealed bags;
 - (d) repatriation facilities in time of international crises.
- (2) Upon receipt of notification from parties to PCA Proceedings as to the appointment of a Participant in Proceedings, a certification of the status of such person shall be provided to the Government under the signature of an Official of the PCA and limited to a period reasonably required for the proceedings.
- (3) The competent authorities of the Republic of South Africa shall accord the privileges and immunities provided for in this Article upon production of the certification referred to in paragraph 2.

Article 8

A person enjoying privileges and immunities under Article 7 of this Agreement who is a national or permanent resident of the Republic of South Africa shall enjoy only immunity from legal process and inviolability in respect of words spoken or written and all acts done by that person in the discharge of his or her duties, which immunity shall continue even after the person has ceased to exercise his or her functions in connection with the PCA or the Regional Facility.

Article 9

- (1) In as much as the privileges and immunities provided for in Articles 6 to 8 of this Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves, the competent authority has the right and the duty to waive the immunity in any

case where, in the opinion of such authority, the immunity would impede the course of justice and can be waived without prejudice to the administration of justice and, where appropriate, the interests of the PCA.

- (2) For the purposes of paragraph 1 above, the competent authority shall be:
- (a) in the case of PCA Adjudicators and Officials of the PCA (other than the Secretary-General), the Secretary-General;
 - (b) in the case of the Secretary-General, the Administrative Council of the PCA;
 - (c) in the case of Participants in Proceedings representing or designated by a State which is a party to the relevant PCA Proceedings, the State concerned;
 - (d) in the case of other individuals appearing at the instance of a party to PCA Proceedings before the Regional Facility, the Secretary-General.

Article 10

- (1) Without prejudice to the privileges and immunities provided for in Articles 6 to 8 of this Agreement, the individuals referred to in those Articles shall observe the laws and regulations of the Republic of South Africa and they shall not interfere in the internal affairs of the Republic of South Africa.
- (2) The Secretary-General shall take every precaution to ensure that no abuse of the privileges and immunities provided for in Articles 6 to 8 of this Agreement shall occur. If the Government considers that there has been abuse of a privilege or immunity provided for in Articles 6 to 8 of this Agreement, the Secretary-General shall, when so requested, enter into consultations with the pertinent authorities of South Africa to determine whether such abuse has occurred. If the consultations fail to achieve a result satisfactory to the Government and to the Secretary-General, the matter shall be resolved according to the procedures established in Article 14 of this Agreement.

Article 11

In case of abuse committed by the individuals referred to in Articles 6 to 8 of this Agreement in the course of activities carried out in the Republic of South Africa outside of their official duties, or in violation of their residence obligations according to the laws of the Republic of South Africa and the present Agreement, the Government may require these individuals to leave the Republic of South Africa, provided that:

- (a) In the case of persons entitled to privileges and immunities, as well as exemptions and facilities under Article 6, they shall not be required to leave the Republic of South Africa otherwise than according to the

diplomatic procedure applicable to diplomatic envoys accredited to the Republic of South Africa:

- (b) In the case of all other individuals to whom Article 6 is not applicable, no order to leave the Republic of South Africa shall be issued unless the Department of Foreign Affairs has approved it and the Secretary-General has been notified beforehand.

Article 12

- (1) The Government shall take all reasonable measures to facilitate and allow the entry into and sojourn in the territory of the Republic of South Africa of those non-residents and non-nationals of the Republic of South Africa listed below:
 - (a) PCA Adjudicators and their partners;
 - (b) Officials of the PCA and their partners;
 - (c) Participants in Proceedings; and
 - (d) Persons attending Regional Facility Meetings.
- (2) The Government shall take all reasonable measures to ensure that any visas which may be required for any of the persons referred to in this Article are issued as promptly as possible in order to allow the timely conduct of official business pertaining to the Regional Facility. Visas shall be granted without charge to those persons referred to in paragraph (1)(a), (b) and (c) above.

Article 13

The Republic of South Africa shall not incur by reason of the location of the Regional Facility within its territory any international responsibility for acts or omissions of the PCA or of Officials of the PCA acting or abstaining from acting within the scope of their functions, other than the international responsibility which South Africa would incur as a Contracting Party to the 1899 Convention and/or the 1907 Convention.

Article 14

Any dispute among the Parties to the present Agreement that is not settled by negotiation shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States (the "Rules"), as in force on the date of signature of this Agreement. The number of arbitrators shall be one. The appointing authority shall be the President of the International Court of Justice. In any such arbitration proceedings, the registry, archive and secretariat services of the PCA, referred to in Article 1, paragraph 3, and Article 25, paragraph 3 of the Rules, will not be available, and the PCA shall not be empowered to request, hold, or disburse deposits of costs as provided in Article 41, paragraph 1 of the Rules.

Article 15

This Agreement shall enter into force upon signature thereof.

Article 16

At the request of the Government or the Permanent Court of Arbitration, consultations shall be entered into with respect to the modification of the present Agreement. Any such modifications shall be made by consent of both Parties to the Agreement.

Article 17


This Agreement may be terminated:

- (a) by mutual consent of the Permanent Court of Arbitration and the Government; or,
- (b) by either Party by giving notice to the other Party at least one year in advance of the effective date of termination.

Done at Pretoria, in English, on this 17th day of April 2007.


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

Dr. Nkosazana Dlamini Zuma
Minister of Foreign Affairs


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**FOR THE PERMANENT
COURT OF ARBITRATION**

Mr. Tjaco T. van den Hout
Secretary-General