



MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT
OF THE
REPUBLIC OF SOUTH AFRICA
AND
THE GOVERNMENT
OF THE DEMOCRATIC REPUBLIC
OF CONGO
RELATING TO
CO-OPERATION ON CAPACITY BUILDING
FOR
THE CONGOLESE NATIONAL POLICE

PREAMBLE

The Government of the Republic of South Africa and the Government of the Democratic Republic of Congo (hereinafter jointly referred to as the "Parties" and in the singular as a "Party");

CONSIDERING the General Cooperation Agreement signed in Kinshasa on 14 January 2005 between the Government of the Republic of South Africa and the Government of the Democratic Republic of Congo;

DESIRING to develop and reinforce the co-operation between the Parties for the strengthening of the capacities of the Congolese National Police;

COGNISANT of the principles of International Law, of the United Nations Charter and of the Constitutive Act of the African Union;

BEARING IN MIND that the Parties are members of the Southern African Development Community (SADC);

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

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

"Memorandum of Understanding" means this Memorandum of Understanding including the Annexures attached thereto;

"PNC" means the Congolese National Police (Police Nationale de Congolese);

"official of the PNC" means a member of the PNC and/or a person employed by the PNC in accordance with Decree Law 002/2002 of January 26, 2002 relating to the setting up, organisation and operation of the PNC;

"SAPS" means the South African Police Service; and

"official of the SAPS" means a member of the South African Police Service employed in terms of the South African Police Service Act 1995, (Act No. 68 of 1995) or a person employed by the South African Police Service in terms of the Public Service Act 1994, (Act No. 103 of 1994);

"Sending Party" means the Government of the Republic of South Africa and/or the SAPS;

"Receiving Party" means the Government of the Democratic Republic of Congo and/or the PNC.

ARTICLE 2

COMPETENT AUTHORITIES

- (1) The Competent Authorities responsible for the achievement of the objectives of this Memorandum of Understanding shall be -
 - (a) in the case of the Government of the Republic of South Africa, the Ministry of Safety and Security; and

- (b) in the case of the Democratic Republic of Congo, the Minister of the Interior, Decentralisation and Security.
- (2) The Competent Authorities shall jointly facilitate the successful execution of this Memorandum of Understanding.
- (3) The Competent Authorities shall meet once a year or at any time the Parties express the need in order to assess progress on the implementation and/or where appropriate the need to review this Memorandum of Understanding.

ARTICLE 3

PURPOSE OF CO-OPERATION

The purpose of this Memorandum of Understanding shall be to provide assistance in the area of Safety and Security especially with regards to-

- (a) the planning, development and consolidation of organisational and operational capacities of the PNC in order to ensure Safety and Security, before, during and after the elections in the Democratic Republic of Congo, mainly in the following areas:
 - (i) Intelligence Capacity Building;
 - (ii) VIP Protection Capacity Building;
 - (iii) Firearms Proliferation;
 - (iv) Police Telecommunications;
 - (v) Operational Commanders Training;
 - (vi) Project Management;

- (vii) Crowd Management Training; and
 - (viii) Training Facility Infrastructure Project;
- (b) co-operation in any field relating to policing as agreed to in writing by the Competent Authorities.

ARTICLE 4

FORMS OF CO-OPERATION

In order to materialize the commitment arising from Article 3 of this Memorandum of Understanding, the Parties within their means and subject to the domestic law in force in their countries and their international obligations, agree to the following:

- (a) Visits by experts and exchange of expertise;
- (b) development of professional capacity through study visits, workshops and training courses;
- (c) exchange, dissemination and sharing of information in the area of security;
- (d) material and technical assistance;
- (e) any other form of co-operation envisaged by the Competent Authorities.

ARTICLE 5

CO-OPERATION MANAGEMENT

- (1) A Joint Programme Steering Committee shall be established upon the signing of this Memorandum of Understanding in order to manage the implementation of projects provided for in Article 3 of this Memorandum of Understanding.
- (2) The Joint Programme Steering Committee shall consist of an equal number of representatives from SAPS and PNC.
- (3) The Joint Programme Steering Committee shall meet alternately in the Republic of South Africa and in the Democratic Republic of Congo at least every quarter, or as and when required. The host country shall chair the meeting.
- (4) The Joint Programme Steering Committee shall be chaired by the National Commissioner of the SAPS and the Inspector General of the PNC or their delegates.
- (5) Each Party shall be responsible for the costs of its delegation attending meetings of the Joint Programme Steering Committee. Costs related to the hosting of the meetings of the Joint Programme Steering Committee shall be borne by the host Party.

ARTICLE 6

FINANCIAL ARRANGEMENTS

- (1) Funds allocated by the Parties for the implementation of this Memorandum of Understanding or any activities related thereto, shall only be used for these purposes.
- (2) The Parties shall endeavour to obtain the necessary funding for the implementation of this Memorandum of Understanding, or any activities arising from it.
- (3) The Joint Programme Steering Committee shall be responsible for the management of any funds obtained in accordance with the objectives specified in the agreed projects.
- (4) The Joint Programme Steering Committee may agree on the reallocation of funds between the different budget items.

ARTICLE 7

WORK PLAN

- (1) A work plan shall be compiled annually by the Joint Programme Steering Committee for each project to be financed under this Memorandum of Understanding.
- (2) The work plan, once approved by the Competent Authorities, shall become an official co-operation project in terms of this Memorandum of

Understanding.

ARTICLE 8

STATUS OF VISITING OFFICIALS FROM SAPS AND PNC

- (1) Officials of the PNC, officials of the SAPS and administrative and technical staff on official visits in pursuance of the implementation of this Memorandum of Understanding, shall be accorded diplomatic status and the relevant immunities and privileges accorded in terms of the Vienna Convention on Diplomatic Relations, 1961.
- (2) Without detracting from the generality of the provisions of sub-Article (1)-
 - (a) officials of the SAPS and administrative and technical staff may, subject to the provisions of paragraph (b), import and export free of duty, their personal effects, upon entry into and departure from the territory of the Receiving Party;
 - (b) officials of the SAPS and administrative and technical staff shall not be allowed to import into or export from the territory of the Receiving Party any private personal firearms or ammunition;
 - (c) officials of the SAPS and administrative and technical staff may take with them such funds received as pay or emoluments and cash advances from the Sending Party without restriction or penalty upon departure from the territory of the Receiving Party;

- (d) officials of the SAPS and administrative and technical staff shall be exempted from income tax on their salaries, allowances and other emoluments and benefits (whether in cash or in kind) received in pursuance of the execution of the Projects in accordance with this Memorandum of Understanding, and they shall be exempted from any other form of direct taxation and from the payment of any social security, subject further to any exceptions provided for in the Vienna Convention on Diplomatic Relations, 1961;
 - (e) articles, including motor vehicles, purchased duty and tax free and to be used for official duties, may also be exported duty and tax free, or sold in the territory of the Receiving Party, subject to the domestic law in force in the territory of the Receiving Party;
 - (f) the Receiving Party shall grant the necessary import permits and exchange control permits, necessary to execute the Projects undertaken in accordance with this Memorandum of Understanding, unless otherwise agreed;
 - (g) the Sending Party shall be exempted from taxes, customs, import duties, landing fees and/or any other similar fees.
- (3) In the case of an eventual deployment in the Republic of South Africa of an official, administrative or technical staff member of the Congolese National Police in order to give effect to the implementation of this Memorandum of Understanding, such person shall be attached to the Embassy of the Democratic Republic of Congo in the Republic of South Africa and shall enjoy the diplomatic privileges and immunities as

provided for in sub-Article (2).

- (4) Officials of the SAPS and officials of the PNC when visiting the respective countries of the Parties, shall respect the domestic law in force in the countries of the Parties.

ARTICLE 9

CLAIMS

- (1) The Receiving Party shall be responsible for dealing with any action, claim or other demand against the Sending Party or the officials of the SAPS, as a result of the implementation of this Memorandum of Understanding.
- (2) The Receiving Party shall indemnify and hold harmless the Sending Party and officials of the SAPS, in respect of any such action, claim or other demand contemplated in sub-Article (1), except where the Receiving Party and the Sending Party agree to such action, claim or other demand resulting from the gross negligence or wilful misconduct of an official of the SAPS.
- (3) The Sending Party shall render reasonable assistance and shall exert its best efforts to make available to the Receiving Party the relevant information, evidence and documents which are in possession or under control of the Sending Party to enable the Receiving Party to deal with any action, claim or other demand contemplated in sub-Article (1).

ARTICLE 10

ENTRY, RESIDENCE AND DEPARTURE

- (1) The Receiving Party shall facilitate the speedy entry into and departure from its territory of officials of the SAPS.
- (2) Officials of the SAPS shall for the purposes of this Memorandum of Understanding have the right to enter into, reside in and depart from the territory of the Receiving Party.
- (3) Officials of the SAPS shall be exempt from immigration restrictions upon entry into or departure from the territory of the Receiving Party.
- (4) Officials of the SAPS shall be exempt from any regulations governing the residence of aliens in the territory of the Receiving Party (including registration), but shall not be considered as acquiring any right to permanent residence or domicile in the territory of the Receiving Party.
- (5) The Receiving Party shall facilitate the prompt repatriation from its territory of the remains and personal effects of deceased officials of the SAPS at the request of the Sending Party.
- (6) All stores, equipment, vehicles, aircraft, arms and ammunition brought into the territory of the Receiving Party in pursuance of the implementation of this Memorandum of Understanding, shall remain the exclusive property of the Sending Party, unless otherwise agreed upon by the Parties.

- (7) Upon departure from the territory of the Receiving Party, all stores, equipment, vehicles, aircraft, arms and ammunition brought into the territory of the Receiving Party, for purpose of use by the Sending Party, shall be transported back to the territory of the Sending Party at the cost and risk of the Sending Party.

ARTICLE 11

PERMITS AND LICENCES

- (1) The Receiving Party agrees to accept as valid, without tax or fees, any permit or licence, issued to officials of the SAPS by the Sending Party for the operation of any transport within the territory of the Receiving Party and for the practice of any profession or occupation in connection with their functions in terms of the provisions of this Memorandum of Understanding.
- (2) Where it is required for training or deployment in support of the PNC, an official of the SAPS shall be entitled to wear the uniform and rank insignia of the Sending Party and carry such firearms and ammunition as may be necessary.

ARTICLE 12

SETTLEMENT OF DISPUTES

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

ARTICLE 13

AMENDMENT AND SUPPLEMENTARY ARRANGEMENTS

- (1) This Memorandum of Understanding may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.
- (2) The Parties may conclude supplementary arrangements consistent with this Memorandum of Understanding through an Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 14

SUSPENSION

- (1) A Party may for reasons of security, public order, public health or financial reasons suspend temporarily, either in whole or in part, the implementation of this Memorandum of Understanding.
- (2) The suspension shall take immediate effect, after notification of the suspension to the other Party through the diplomatic channel.
- (3) A Party may terminate the suspension contemplated in sub-Article (1) through notification in writing to this effect.
- (4) This termination of the suspension shall take effect 30 days after such notification in writing.

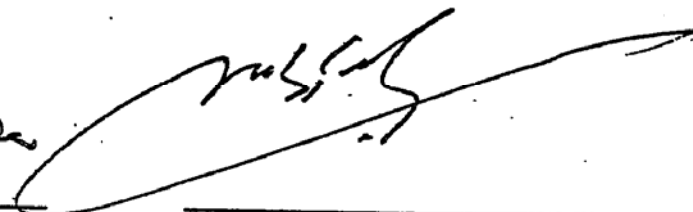
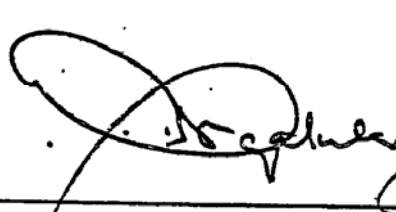
ARTICLE 15

ENTRY INTO FORCE, DURATION AND TERMINATION

- (1) This Memorandum of Understanding shall enter into force on the date of signature thereof.
- (2) This Memorandum of Understanding shall remain in force for a period of three (3) years, whereafter it shall automatically be renewed for a further period of three (3) years, unless terminated in accordance with sub-Article (3).
- (3) This Memorandum of Understanding may be terminated by either Party giving six (6) months' written notice in advance through the diplomatic channel of its intention to terminate it.
- (4) The termination of this Memorandum of Understanding shall not affect the full execution of any cooperative activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Memorandum of Understanding in two originals in the English and French languages, all texts being equally authentic.

DONE at PRETORIA on this 29th day of APRIL in this year 2005



FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT
OF THE DEMOCRATIC
REPUBLIC OF CONGO