

AGREEMENT BETWEEN

THE GOVERNMENT

OF THE REPUBLIC OF MOZAMBIQUE

AND

THE GOVERNMENT

OF THE REPUBLIC OF SOUTH AFRICA

IN RESPECT OF CO-OPERATION AND MUTUAL ASSISTANCE

IN THE FIELD OF CRIME COMBATING

PREAMBLE

WHEREAS the President of the Republic of South Africa and the President of the Republic of Mozambique have entered into a general agreement for co-operation between the two Governments.

AND WHEREAS the supremacy of the principle of non-interference in the internal affairs of each state and the upholding of their laws are recognised;

AND WHEREAS the Government of the Republic of South Africa and the Government of the Republic of Mozambique (hereinafter referred to as "The Parties") acknowledge the cordial relations which exist between them and their peoples;

AND WHEREAS the President of the Republic of South Africa and the President of the Republic of Mozambique are to sign the agreement of co-operation and mutual assistance in terms of their respective laws;

AND WHEREAS the Parties are mutually desirous of concluding such an agreement in order to contribute towards peace, stability, security, prosperity and the combating of crime;

NOW THEREFORE, the Parties hereby agree as follows -

ARTICLE 1 INTERPRETATION

1.1 In this Agreement, unless the context otherwise indicates -

- (a) "extra-territorial area" in relation to -
 - (i) (aa) the Republic of South Africa, means the territory of the Republic of Mozambique, including the territorial waters of that Republic;
 - (bb) the Republic of Mozambique, means the territory of South Africa, including the territorial waters of that Republic;
 - (ii) any police official of any such Police Force/Service, means the territorial area including the territorial waters, in which the other such Police Service has jurisdiction;
- (b) "hosting State", "hosting Police Force/Service" or "hosting police official", in relation to any act or conduct, or any other matter, means the State, Police Service or official, as the case may be, in the territory of which such act or conduct takes place or is to take place, or such matter is relevant or to be attended to, or which or who may legitimately, without reference to this

Agreement, operate in connection with any such act, conduct or matter in such territory, as the case may be;

- (c) "Ministers" mean the Minister of Safety and Security of the Republic of South Africa and the Minister of Interior of the Republic of Mozambique;
- (d) "Mozambique" means the Republic of Mozambique;
- (e) "Party" includes an acceding Party contemplated in Article 11;
- (f) "police official", in relation to any Party or its Police Service, means an official who is a member of the Police Service of such Party, or of such Police Service, as the case may be;
- (g) "South Africa" means the Republic of South Africa.

ARTICLE 2 LEGAL PROVISIONS

- 2.1 This Agreement shall in no way be construed as derogating from any provision of -
- (a) the laws of the respective Parties regarding extradition;
 - (b) any Extradition Agreement which is in force or may be entered into between the Parties; and
 - (c) the Co-operation Agreement entered into between the Government of the Republic of South Africa and the Government of the Republic of Mozambique on 20 July 1994.

ARTICLE 3
RIGHT OF ENTRY OF POLICE OFFICIALS

- 3.1 In the circumstances set out in Article 4, and subject to the conditions set out in Article 5, any police official shall, for the purposes set out in this Agreement, be allowed to enter into, and to be present in, or to travel through or across an extra-territorial area whenever necessary, provided that such right shall at no time be exercised in conflict with the laws of the relevant extra-territorial area.
- 3.2 The Ministers shall consult with each other and advise their respective Governments as to the legislative or administrative steps that may be necessary for the implementation of the provisions of this Agreement and to remove any legal obstacles or impediments that may be found to exist in the execution of the provisions of this Agreement.
- 3.3 The Ministers shall advise their respective Governments as to any other action which may be necessary to ensure that the performance of police functions by any police official in an extra-territorial area, is lawful in every respect.
- 3.4 Any entry by a police official into an extra-territorial area in terms of this Agreement will be subject to any applicable law pertaining to any such entry.

ARTICLE 4
CIRCUMSTANCES UNDER WHICH RIGHT OF ENTRY MAY BE EXERCISED

- 4.1 The entry of any police official into an extra-territorial area may be allowed -
- (a) where such entry is necessary for the purpose of any police investigation or for the seizure of exhibits relating to an offence or suspected offence committed in or in respect of the territorial area or State of such police official;

- (b) for the purpose of tracing and interrogating a witness in connection with any such offence, and taking the steps authorized by law to obtain his presence in a court of competent jurisdiction; and
- (c) for the purpose of the co-operation and assistance contemplated in this Agreement.

4.2 Officials of the hosting Police Force/Service will be responsible -

- (a) for the tracing, arresting, detaining, guarding or keeping in custody of any person suspected of having committed any relevant offence and to take such steps as he or she is authorized to by law in order to effect his or her extradition for trial in a court of competent jurisdiction;
- (b) for the purpose of searching for, and seizing, removing or transporting of any exhibit known or suspected to be involved in the commission of such offence; and
- (c) for such other acts as may from time to time in any urgent or extra-ordinary circumstances be authorized by the Ministers or, with their prior approval, by the responsible officials of the Police Service concerned.

ARTICLE 5

CONDITIONS FOR EXERCISE OF RIGHT OF ENTRY

5.1 Entry referred to in Article 3 shall be exercised subject to the following conditions -

- (a) A police official who intends to enter the extra-territorial area shall prior to crossing the relevant international border, obtain the approval of -

- (i) in the case of such official being a member of the South African Police Service, the officer or officers which the National Commissioner of the South African Police Service may from time to time designate in writing for this purpose;
 - (ii) in the case of such an official being a member of the Mozambican Police Service, the officer or officers which the General Commander of the Mozambican Police Service may from time to time designate in writing for this purpose;
- (b) The National Commissioner of the South African Police Service and the General Commander of the Mozambican Police Service agree to inform each other of the particulars of the officers referred to in sub-article 5.1 (a)(i) and (ii).
- (c) upon receipt of such a request, the officers referred to in sub-paragraphs (i) and (ii) above, shall immediately forward the request to his counterpart who will in turn make the necessary arrangements for such an entry and the assistance to be afforded;
- (d) the responsible officer of the hosting Police Service shall without delay convey the nature of the arrangements to his counterpart;
- (e) no official entry and/or request for assistance will be granted otherwise than in accordance with the terms of this Agreement;
- (f) under no circumstances will the visiting police official have the right to act on his or her own, but will at all times be accompanied by a member of the hosting Police Service and all actions to be taken will be done by the hosting police official concerned; and
- (g) the provisions of paragraph (e) shall not prevent the visiting police official from accompanying the hosting police official during the carrying out of his duties in terms of the provisions of this Agreement.

- 5.2 The provisions of sub-article 5.1 shall not apply where a police official intends to enter an extra-territorial area merely for the purpose of travelling through or crossing the border of the extra-territorial area in his private capacity.
- 5.3 The visiting police official shall during his presence in his official capacity in or on an extra-territorial area, at all times conduct his activities in consultation with the hosting police official.
- 5.4 Any police official who has entered an extra-territorial area and who acts in a manner contrary to any provision of this Agreement, or who otherwise misconducts himself, shall immediately be reported to the police official under whose auspices the visit was arranged, who shall, in consultation with his counterpart in the hosting State, take such steps as may in their opinion be necessary to remedy the breach or as may otherwise be required by law.
- 5.5 Whenever it is deemed necessary to extradite a person from the hosting State, the extradition proceedings will be effected strictly in accordance with the applicable laws and in terms of any extradition agreement which may be in force between the Parties at the time of carrying out of such proceedings.

ARTICLE 6

SPECIFIC AREAS OF CO-OPERATION

- 6.1 Recognising the high incidence of organised crime and the need for close co-operation in addressing the problem, the Parties shall provide for:
- (a) the exchange of crime related information on a regular basis;
 - (b) the planning, co-ordination and execution of joint operations including covert operations;

- (c) technical assistance and expertise where the same is required for the purposes of criminal investigations:

Provided that the provisions of sub-articles 4.2, 5.3 and 5.4 shall mutatis mutandis apply to a police official whilst present in an extra-territorial area in pursuance of the provisions of this Article.

- 6.2 Recognising the need for stolen property to be returned to its legal owner the Parties shall with due regard to their respective laws relating to the disposal of such property, do their utmost to obtain this objective. In this regard the relevant Police Force/Service undertakes to make such possible arrangements as may be necessary to enable a complainant to identify his or her property and to advise as to what steps need to be taken to procure its return.

ARTICLE 7

OTHER MATTERS OF MUTUAL CONCERN

- 7.1 Where either of the Police Force/Service of the Parties request assistance or logistical support in connection with the execution of their functions from the other, such assistance and support shall be rendered when and whenever it is reasonably practical and possible and, furthermore, subject to the conditions set out in Article 9.
- 7.2 The Police Force/Service of either of the Parties shall, if so requested in writing, render all reasonable advice, support or assistance to the requesting Force/Service in relation to the training of its officials, the improvement or development of its organization or administration or the promotion of its expertise with regard to the performance of police functions.

ARTICLE 8**LIABILITY**

- 8.1 In the event of any legal proceedings being instituted in connection with the actions of a police official in accordance with this Agreement, each of the Parties shall be liable for the actions of its own police officials and in this regard the Parties hereby indemnify each other against liability of whatsoever nature.
- 8.2 In the event of any loss or damages sustained by the Police Force/Service of a Party or any police official acting in accordance with this Agreement, such loss or damages will be borne by that Police Force/Service or the Police Force/Service of which such official is a member, as the case may be.

ARTICLE 9**EXPENDITURE**

- 9.1 Any expenses incurred in terms of a provision of this Agreement by either of the Parties at the request of the other Party shall be at the expense of the requesting Party. The requesting Party shall upon receipt of proof of expenditure incurred by the other Party, reimburse that Party with such expenditure.
- 9.2 The provisions of sub-article 9.1 shall not apply where, in any particular case, the Ministers have in writing agreed otherwise.

ARTICLE 10
AMENDMENT AND ADDITIONS

- 10.1 Any amendment or addition to this Agreement shall only be of force and effect if agreed to in writing and signed by both Parties.

ARTICLE 11
OTHER SIGNATORIES

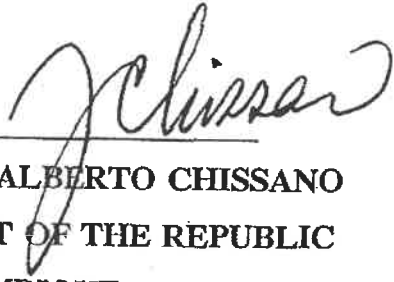
- 11.1 By mutual consent the Government of any other State may be invited to become, by means of the representation of its responsible Minister, a signatory to this Agreement in which event such signatory State will become a full Party to this Agreement.
- 11.2 In such an event any amendment or addition to this Agreement shall be effected in accordance with the provisions of Article 10.

ARTICLE 12
ENTERING INTO FORCE AND TERMINATION

This Agreement shall enter into force upon signature and shall remain in force until terminated by either Party through diplomatic channels by notice in writing of not less than 6 months.

In witness whereof this Agreement was signed and sealed in four originals, two in English and two in Portuguese, both versions being equally authentic.

THUS DONE at CAPE TOWN on this ...28th day of ...FEBRUARY.. 1995



JOAQUIM ALBERTO CHISSANO
PRESIDENT OF THE REPUBLIC
OF MOZAMBIQUE

FOR THE GOVERNMENT OF THE
REPUBLIC OF MOZAMBIQUE



NELSON ROLIHLEHLA MANDELA
PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA