

African Union-SARO
Folio No. 07

*AGREEMENT
BETWEEN*

*THE GOVERNMENT OF THE REPUBLIC OF MALAWI
AND
THE ORGANIZATION OF AFRICAN UNITY ON THE
ESTABLISHMENT OF THE OAU REGIONAL OFFICE FOR
SOUTHERN AFRICA*

SAR



PREAMBLE

WHEREAS the Council of Ministers decided during its Sixty-Ninth Ordinary Session held in Addis Ababa, Ethiopia, from 22 to 23 March, 1999 to establish a Regional Office of the Organization of African Unity (OAU) for the Southern African region which decision was endorsed by the 35th Ordinary Session of the Assembly of Heads of State and Government held in Algiers Algeria from 12 to 14 July 1999:

AND WHEREAS the Government of the Republic of Malawi has offered to host the Headquarters of the said Regional Office;

CONSIDERING that pursuant to Article XXXI of the Charter of the Organization of African Unity some privileges and immunities should be accorded to the Organization of African Unity and its staff in order to enable them to achieve the objectives of the OAU;

CONSIDERING FURTHER that it is necessary for the Government of the Republic of Malawi and the OAU to conclude an agreement relating to the hosting of the Regional Office in Malawi;

NOW, THEREFORE, the Government of the Republic of Malawi (hereinafter referred to as "the Government") and the Organization of African Unity (hereinafter referred to as "the OAU"),

HAVE AGREED AS FOLLOWS:

**SECTION A
ARTICLE I
DEFINITIONS**

1. For the purpose of this Agreement, the following expressions and terms shall have the meanings assigned to them hereunder:
 - (a) The "Charter" means the Charter of the Organization of African Unity;
 - (b) The "OAU" means the Organization of African Unity, including its Secretariat, as well as the bodies and Specialized Commissions already created by the Charter;



- (c) The "OAU Regional Office" means the Regional Office of the Organization of African Unity in Southern Africa, including the buildings, premises, and structures which at any given time, are effectively occupied or used by it;
- (d) The "Secretary General" means the Secretary General of the Organization of African Unity, or his or her accredited representatives;
- (e) The "Executive Secretary" means the Executive Secretary of the OAU Regional Office;
- (f) The "OAU Officials" means all members of staff of the Organization of African Unity irrespective of their nationality;
- (g) The "Representatives of Member States" includes resident representatives, accredited temporary representatives, leaders of delegations and members thereof including advisers, technical experts and secretarial personnel;
- (h) The "General Convention" means the General Convention on the Privileges and Immunities of the Organization of African Unity, adopted by the Assembly of Heads of State and Government of the Organization of African Unity on 19 July, 1964 and to which Malawi is party;
- (i) The "Government" means the Government of the Republic of Malawi;
- (j) The "Appropriate Malawian Authorities" means such national, state, local or other authorities in Malawi, as may be appropriate within the Laws of Malawi;
- (k) The "Laws of Malawi" includes legislative acts, decrees, orders or regulations enacted or issued by or under the authority of the Government, or any appropriate legislative authority.

SECTION B
ARTICLE II
PRIVILEGES, IMMUNITIES AND CONTROL OF THE
OAU AND ITS PROPERTIES

1. The Government shall, at its expense, provide the OAU with adequate and suitable office premises for the establishment and functioning of the OAU Regional Office.



2. The premises of the OAU Regional Office shall be inviolable and shall be under the control of the OAU as provided for in this Agreement and in accordance with the provisions of the Vienna Convention on Diplomatic Relations of 1961.

3. The OAU and all its properties shall enjoy legal immunity except in particular cases where the OAU renounces this immunity in accordance with the provisions of this Agreement. The premises of the OAU shall not be violated, and shall be immune from search, requisition, confiscation, expropriation or any other form of administrative and legislative act. Government officials therefore whether administrative, judicial, military or police shall not enter the OAU Regional Office to perform any official duty therein except with the knowledge and consent of the Executive Secretary of the Regional Office or in his or her absence the Secretary-General of the OAU or his or her accredited representative. In the event of natural disaster, fire or any other emergency constituting an immediate threat to human life, the consent of the Executive Secretary is presumed.

4. Without prejudice to the provisions of the General Convention or of this Agreement, the OAU has the right to enact internal rules and regulations applicable only within the OAU Regional Office and to make all arrangements to enforce these rules and regulations. It shall be understood, however, that in case of incompatibility between the OAU rules and regulations, on the one hand, and the laws of Malawi, on the other, the latter shall not apply within the OAU Regional Office to the extent of the inconsistency and the rules and regulations of the OAU shall prevail.

5. The OAU shall be entitled to display the OAU flag in the premises of the OAU Regional Office, Official Residence of the Executive Secretary and on its vehicles and, where applicable, its aircraft and shipping vessels, and to display the OAU logo or emblem on all its documents, equipment and structures.

6. Without prejudice to the provisions of the General Convention or of this Agreement, the OAU shall ensure that the OAU Regional Office is not used as a refuge for persons who are avoiding arrest or extradition by the Malawian Government or who are trying to avoid service of legal process.



7. The appropriate Malawian Authorities shall exercise due diligence to ensure that the tranquility of the OAU Regional Office is not disturbed by unauthorized entry of a person or group of persons from outside or by disturbance in its immediate vicinity.

8. At the request of the Executive Secretary or his or her representative or other designated OAU official, the appropriate Malawian Authorities shall provide police or other law enforcement officers to maintain law and order in the OAU Regional Office and to send away unauthorized and unwanted persons.

9. The OAU, its properties, incomes and other possessions shall be exempted from taxes, charges or fees, and shall enjoy appropriate privileges accorded by Article III, Section B of the General Convention.

ARTICLE III COMMUNICATION AND TRANSPORT

1. For its official communications and transfer of all its documents the OAU shall enjoy in Malawi the facilities granted by the Government to all other international organizations as well as to foreign diplomatic missions in Malawi.

2. The archives of the OAU and all documents belonging to it or held by it shall not be violated. Such immunity extends to printed or electronic communications or data, publications, still and moving pictures, films and sound recordings.

3. The OAU shall have the right to make use of codes, and to despatch and receive its official correspondence, publications, documents, still and moving pictures, films and sound recordings either by courier services or in sealed bags or in any other form such as electronically, and these shall have the same immunities and privileges as diplomatic couriers and bags.

4. The OAU shall have the right to install and use at the Regional Office for its official purposes only, a wireless station or other mode of communication as may be deemed appropriate which might be necessary for its operations, provided that those stations comply with the provisions of Articles 45 and 47 of the International Telecommunication Union Convention relating to the national use of frequencies and other wave-lengths. It is further provided that the frequencies on which any such station may be operated shall be allocated by the Malawian telecommunication authorities and the same shall be duly communicated to the International Frequency Registration Board.



5. For its official purposes, the OAU shall be entitled to use transportation operated by the Government in accordance with such privileges as may be accorded to resident diplomatic missions and other international organizations.

6. Aircrafts and shipping vessels operated by or on behalf of the OAU shall be exempted from all charges, except those for actual services rendered and from fees or taxes incidental to the landing at, parking on or taking off, docking or sailing away from any part of Malawi. Except as provided for above, nothing herein shall be construed as exempting such aircraft or shipping vessels from full compliance with all applicable laws of Malawi governing the operation of flights and shipping within and throughout the territory of the Republic of Malawi.

ARTICLE IV THE LAWS OF MALAWI

Subject to the provisions of the General Convention and of this Agreement, in particular paragraph 4 of Article II, Section B above:

- (a) The laws of Malawi shall apply within the OAU Regional Office;
- (b) The Malawian courts shall have jurisdiction over acts done and transactions taking place within the OAU Regional Office.

ARTICLE V ACCESS AND RESIDENCE

1. The appropriate Malawian Authorities shall not impede the transit to and from Malawi of the following persons:

- (a) Officials of the OAU and members of their families and relatives residing with and dependent on them;
- (b) Persons other than OAU officials working on behalf of the OAU as well as their spouses and close relations living with and dependent on them;
- (c) Other persons invited to the OAU Regional Office on official business whose names shall be communicated to the Government by the Secretary General or the Executive Secretary or other designated OAU official.



2. It is understood, however, that the provisions of the preceding paragraph shall not apply to general interruption of transport facilities, and shall not impede the enforcement of laws and regulations by the Malawian Authorities.

3. Visas of persons referred to in paragraph 1, when required, shall be granted free of charge, provided however that the provisions of the said paragraph 1 shall not imply exemption from the obligation to produce sufficient proof to establish that persons claiming the rights granted under paragraph 1 of Article V are included in the categories specified in sub-paragraphs (a), (b) and (c) of the said paragraph 1 or from the application of quarantine and sanitary formalities.

**SECTION C
ARTICLE VI**

**PRIVILEGES AND IMMUNITIES OF GOVERNMENT
REPRESENTATIVES OF OAU MEMBER STATES**

1. Representatives of Member States participating in the work of the OAU, or in any conference which may be convened by the OAU Regional Office, shall be entitled in Malawian territory while performing their functions and during their travel to and from the OAU Regional Office, to the same privileges and immunities as are accorded to diplomatic envoys of comparable ranks under international law, including but not limited to those provided in Section C Article V of the General Convention. However, such representatives shall not be entitled to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

2. Residents as well as temporary accredited representatives of Governments of the Member States of the OAU shall be entitled in Malawian territory to the same privileges and immunities as are accorded to diplomatic envoys accredited to Malawi.

**SECTION D
ARTICLE VII**

**PRIVILEGES AND IMMUNITIES OF OAU
REGIONAL OFFICE OFFICIALS**

1. Within the territory of Malawi, officials of the OAU Regional Office shall, subject to the provisions of this Agreement:



- (a) be immune from legal process for acts performed by them in their official capacity, including spoken or written words and they shall continue to benefit from such immunity after their functions have ceased;
- (b) be immune from national service obligations;
- (c) be immune from personal arrest or detention;
- (d) be immune from seizure of their personal and official baggage;
- (e) be immune, together with their spouses and members of their immediate families residing with and dependent on them including their personal employees, from immigration restrictions, alien registration and finger printing;
- (f) be accorded the same repatriation facilities in time of international crises, together with their spouses and members of their immediate families resident with and dependent on them including their personal employees, as are accorded to diplomatic envoys.

2. Within the territory of Malawi officials of the OAU Regional Office shall also, subject to the provisions of this Agreement:

- (a) have the right to import free of duty and other restrictions their personal effects and private motor vehicles within one (1) year after first taking up their post at the Headquarters. Thereafter the provisions applicable to other international organizations as well as resident members of diplomatic missions of comparable rank shall apply to such officials in the case of importation, exportation, transfer and replacement of automobiles as are applicable to other international organizations as well as resident members of the diplomatic missions of comparable rank;
- (b) be accorded in respect of currency or exchange regulations the same facilities as are accorded to personnel of international organizations as well as to diplomatic personnel of the same status;
- (c) be exempted from all national or local taxation on the salaries and emoluments paid to them by the OAU;
- (d) be exempted from any form of direct taxation on income derived from sources outside Malawi;
- (e) be accorded the right to maintain, within Malawi or elsewhere, foreign securities and other movable and immovable property whilst employed by the OAU in Malawi;



- (f) have the right at the termination of such employment to take out of Malawi funds in non Malawian currencies without restriction or limitation, provided the said officials can show good cause for their lawful possession of such funds;

3. However, the immunity from legal process shall not apply to the civil jurisdiction of the Republic of Malawi in relation to an action for damages arising from an accident caused by a motor vehicle, vessels or aircraft used or owned by the persons concerned where those damages are not recoverable from insurance.

4. All OAU officials shall be provided with special or diplomatic identity cards certifying that they are officials of the OAU Regional Office enjoying the privileges and immunities specified in this Agreement, and the appropriate Malawian authorities shall recognize the same as valid documents.

ARTICLE VIII IMMUNITIES AND PRIVILEGES OF THE EXECUTIVE SECRETARY

Apart from the privileges and immunities provided for in the preceding Article of this Agreement, the Government shall accord the Executive Secretary the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law, as provided for in Section D, Article VI, paragraph 3 of the General Convention.

SECTION E ARTICLE IX PURPOSE OF PRIVILEGES AND IMMUNITIES

The Privileges and immunities provided for in this Agreement are granted to the officials of the OAU Regional Office solely for the purpose of performing their duties without let or hindrance and not for the personal benefit of the individuals themselves. The Secretary-General or his or her accredited representative has the right and duty to waive the immunity granted to an OAU official or an employee in any case where in the opinion of the Secretary General, the immunity can be withdrawn without prejudice to the interests of the OAU.



ARTICLE X
COOPERATION BETWEEN THE OAU AND THE GOVERNMENT

1. The OAU shall cooperate at all times with the appropriate Malawian authorities in order to facilitate the administration of justice, observance of law and order and for the avoidance of the abuse of privileges and immunities granted in this Agreement.
2. If the Government considers that there has been an abuse of any privileges of immunity granted by or under this Agreement, consultation shall be held between the Government and the Secretary General or his accredited representative to determine such steps as may be necessary to deal with such occurrence.

ARTICLE XI
PUBLIC SERVICES AND UTILITIES

The appropriate Malawian Authorities shall assist the OAU Regional Office to ensure that it is provided with electricity, water, postal, telephone and related facilities such as e-mail, transportation, fire protection, refuse disposal service and adequate drainage system. In the event of interruption or threat of interruption of any of these services, the appropriate Malawian Authorities shall consider the needs of the OAU as equally important as those of diplomatic missions.

ARTICLE XII
INTERPRETATION AND APPLICATION

1. The provisions of the General Convention and of this Agreement shall, where they relate to the same subject be treated whenever possible as complementary, so that the provisions of both shall be applicable and neither shall narrow the effect of the other; provided that, in the case of a conflict, the provisions of this Agreement shall prevail.
2. The Government and the OAU may enter into such supplementary agreements as may be necessary to fulfill the purposes of this Agreement.



3. Wherever this Agreement imposes obligations on the appropriate Malawian Authorities, the ultimate responsibility for the fulfillment of such obligations shall rest with the Government.

4. The provisions of this Agreement and of all other supplementary agreements shall be interpreted and applied with the purpose of enabling the OAU to perform its functions under the best possible conditions in order to achieve its aims and objectives.

ARTICLE XIII SETTLEMENT OF DISPUTES

Any dispute which may arise between the Government and the OAU with respect to the interpretation or application of this Agreement, or of any supplementary agreement, failing settlement, by negotiation or any other agreed method of settlement, shall be submitted to a tribunal of three arbitrators: one to be named by the Government, one to be appointed by the Secretary General, and the third to be chosen by the two arbitrators; and where the two arbitrators do not agree on the third, then the current Chairman of the OAU shall be empowered to make the nomination.

ARTICLE XIV ENTRY INTO FORCE, AMENDMENTS AND TERMINATION

1. This Agreement shall come into force upon its execution by the two parties in accordance with their respective legal or constitutional procedures.

2. The Government or the OAU may request in writing a consultation for the purpose of modification or amendment of this or any supplementary agreement; and any such modification or amendment shall be subject to mutual consent, for it to become effective.

3. This Agreement and all other supplementary agreements concluded between the Government and the OAU shall cease to take effect six months after one party has notified the other in writing of its decision to terminate them.



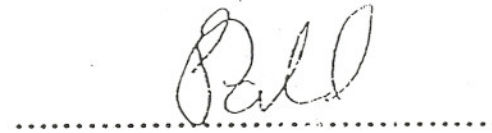
Done at Addis Ababa this 31st day of August Two
Thousand, in two originals in the English language, both texts being equally
authentic.

For and on behalf of the
Organization of African
Unity.



Secretary-General,
Organization of African Unity

For and on behalf of the
Government of the
Republic of Malawi



Minister of Foreign Affairs
and International Cooperation

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Agreement between the government of Republic of Malawi and the organization of African unity on the establishment of the OAU regional office for Southern Africa

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