



international relations & cooperation

Department:
International Relations and Cooperation
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF STATE LAW ADVISER (INTERNATIONAL LAW)

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10/16/33
RO 259/2014

Mr Henk Roodt
SADC Desk

SADC PROTOCOL ON ENVIRONMENTAL MANAGEMENT FOR SUSTAINABLE DEVELOPMENT

1. Your request for legal advice, refers.
2. Please be advised that we have reviewed the SADC Protocol on Environmental Management for Sustainable Development from an international law perspective and find it in order.
3. We are of the view that this Protocol falls within the ambit of section 231(2) of the Constitution of the Republic of South Africa, 1996, requiring parliamentary approval for ratification. Parliament's approval needs to be obtained before it can be ratified.
4. In order to obtain Parliamentary approval the Protocol needs to be certified by this Office. The documentation required for certification consists of:
 - two copies of the President's Minute;
 - two copies of the Explanatory Memorandum setting out the purpose of the Agreement and proposed date of signature;
 - two copies of the finally agreed text of the Agreement;
 - two copies of the legal opinions from the State Law Advisers at the Department of Justice and Constitutional Development and this Office;
 - Completed certification form (attached herewith)
 - all documentation in folder Z137.
5. Following the process to obtain the Presidential Minute, the Protocol must be submitted to Parliament in the following manner :
 - 5.1. Approach the relevant cabinet portfolio committee :

The line function department must prepare a Cabinet Memorandum. The various Cabinet Committees may have their own requirements for the format of Cabinet Memoranda. The usual headings required are: Subject; Purpose; Summary; Discussion; Organisational

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and Personnel Implications; Financial Implications; Communication Implications; Constitutional Implications; Other Departments/Bodies consulted; Recommendations.

5.2. The Protocol must be considered by Parliament (National Assembly and National Council of Provinces) :

- 5.2.1.1. The line function department must prepare an Explanatory Memorandum setting out the history, objectives and implications of the agreement;
- 5.2.1.2. The legal opinions from the State Law Advisors of both Departments (DOJ&CD and DIRCO) must be included;
- 5.2.1.3. It must be stated whether the agreement contains any self-executing provisions in terms of section 231(4) of the Constitution;
- 5.2.1.3.1. The projected financial and other costs for the implementation of the Protocol must be set out;
- 5.2.1.4. The Explanatory Memorandum must contain all other information needed to take an informed decision.

5.3. In cases of treaties requiring an Instrument of Ratification, such Instrument of Ratification must be deposited with the Depository:

- 5.3.1.1. The Line Function Department must prepare the Instrument of Ratification;
- 5.3.1.2. The Minister of International Relations and Cooperation or the President must sign the Instrument of Ratification;
- 5.3.1.3. DIRCO will send the Instrument of Ratification to the relevant depository through the diplomatic channels.

5.4. The Protocol must be deposited with the Treaty Section at DIRCO :

The documents required are :

- A certified copy of the agreement;
- The President's Minute or Parliamentary authorisation
- Copy of the signed Instrument of Ratification (where applicable).

6. It is trusted that our comments would be of assistance to you.

ANDRE STEMMET
SENIOR STATE LAW ADVISER (IL)

PRETORIA
12 AUGUST 2014

**CHECKLIST
FOR THE CERTIFICATION AND APPROVAL OF AGREEMENTS¹**

TITLE OF AGREEMENT: _____

RESPONSIBLE DEPARTMENT: _____

THE TEXT

1. Have all the changes from the State Law Advisers at DOJ&CD been effected?
 Yes No
2. If not, provide an explanation.

3. Have all the changes from the State Law Advisers (IL) at DFA been effected?
 Yes No
4. If not, provide an explanation.

5. Has the other Party been informed of the changes and agreed thereto?
 Yes No
6. Is this the finally agreed text?
 Yes No

CERTIFICATION DOCUMENTS

7. Does the Z137 coversheet reflect the title of the Agreement exactly as it appears on the text?
 Yes No
8. Does the President's Minute reflect the title of the Agreement exactly as it appears on the text?
 Yes No
9. Has the Agreement been proof-read and all typographical and spacing issues finalised i.e. text must be justified, title page with size 16 Times New Roman Font, Agreement with size 12 Times New Roman Font, two spaces between Articles, one space between sub-Articles.
 Yes No

SIGNATURE AND BINDING

10. What is the intended date and venue for signature of the Agreement?

¹ This checklist must be completed by the responsible line function Department and returned to OCLSA (IL) with the documents required for certification.

11. Has it been confirmed with the Minister authorised to sign the Agreement that he/she will be present at the signing ceremony?

Yes	No
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12. If the Agreement is to be signed also in another language the English and other language text will be bound together in one cover for South Africa. Has this been confirmed with the other Party?

Yes	No
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13. Will the other Party be providing their own bound text in English and in the other language?

Yes	No
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14. If no, what alternative arrangements are being made?

15. What arrangements are being made to return the Agreement to the Treaty Section at DFA after signature?

16. Contact details of person responsible for processing Agreement:

Name: _____

Title: _____

Telephone number: _____ Cell phone: _____

Fax: _____

17. Contact details of Chief Director of the division in the Department responsible for processing the Agreement:

Name: _____

Title: _____

Telephone number: _____ Cell phone: _____

Fax: _____

For the line function Department

For the Office of the Chief State Law Adviser (IL)

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____