



# **MEMORANDUM OF UNDERSTANDING**

between

**THE GOVERNMENT OF THE KINGDOM OF LESOTHO**

and

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

*In respect of the Maloti-Drakensberg Transfrontier Conservation and Development Area*

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## PREAMBLE

The Government of the Kingdom of Lesotho and the Government of the Republic of South Africa (hereinafter referred to as "Lesotho" and "South Africa" respectively and jointly as "the Parties");

**RECOGNIZING** that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause harm to the environment of other States or of areas beyond the limits of national jurisdiction;

**RECOGNIZING** that States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health;

**RECOGNIZING** that peace, economic development and environmental protection are interdependent and indivisible;

**RECOGNIZING** that poverty is both a cause and a consequence of environmental degradation and must therefore be addressed adequately in order to enhance equitable and sustainable development;

**RECOGNIZING** the historical efforts made by institutions of the Parties to strengthen cooperation in the spirit of the Memorandum of Understanding entered into between the Ministry of Environment, Gender and Youth Affairs (Lesotho) and the KwaZulu-Natal Nature Conservation Board (South Africa) in October 1998;

**AWARE** of the global environmental importance of the Maloti-Drakensberg Transfrontier Conservation and Development Area (hereinafter referred to as "the Area" as described in Annex 1(a) and shown in Annex 1(b) to this Memorandum of Understanding) and its significance to the sustainable development of the Parties;

**CONCERNED** that the present level of exploitation of the natural resources of the Area may be approaching the limits of the sustainable yield of the Area;

**FURTHER CONCERNED** that increased agricultural and grazing use of the Area and conversion of wetlands adversely affects the ecological system of the Area;

**AGREEING** that bilateral cooperation is an essential component of the environmental management of the Area;

**RECOGNISING** that a joint Steering Committee has guided the development of the transfrontier conservation area concept over a long period, and will be reaffirmed by this Memorandum of Understanding (hereinafter referred to as "the MoU")

**RECOGNISING** that participation of local communities, scientists, the academic community, the private sector and non-governmental organizations is crucial to sustainable development of the Area;

**DESIROUS** to maximise the benefits accruing to the Parties from integrated and sustainable utilization of resources of the Area and the conservation of a global natural heritage;

**ACCEPTING** that the environmental management of the Area will require a sustained long-term cooperative effort based on a comprehensive programme addressing the various problems; and to this end requires capacity building by using and strengthening existing institutions to conduct on a sustainable basis on-going and additional functions under a bilateral program; and

**HAVING** applied for financial assistance to various sources, including the Global Environment Facility for a proposed Maloti-Drakensberg Transfrontier Conservation and Development Project (hereinafter referred to as "the Project") for the benefit of the Area;

**HEREBY AGREE** as follows:

## ARTICLE 1

### OBJECTIVES

- (1) The objective of this MoU is to establish a framework for cooperation between the Parties for the purpose of conserving biological diversity and promoting sustainable development of the Area.
- (2) To attain the objective set forth above, the Parties undertake -
  - (a) to identify those portions of the Area containing important elements of biological diversity and to secure their long-term conservation status by preparing and implementing a management plan for key components while countering critical threats;
  - (b) to retain the Area as far as may be possible in its natural state as an undivided ecosystem for the benefit of biological diversity, research, tourism and the community at large, with particular focus on those communities located therein;
  - (c) to institute the integrated land-use planning and management programmes for the protected areas and their transition zones;
  - (d) to develop and expand an integrated community-based conservation and development programme;
  - (e) to facilitate a sustainable (including environmental, social and economic sustainability) nature conservation development and ecotourism investment programme based on the natural, social and cultural resources of the Area;
  - (f) to facilitate cooperation between Lesotho and South Africa on sustainable development

## ARTICLE 2

### DEFINITIONS AND SCOPE

- (1) Unless the context otherwise requires, the several terms defined in the Preamble have the respective meanings therein set forth and the following additional terms have the following meanings;
- (a) "DEA&T" means the National Department of Environmental Affairs and Tourism of South Africa;
  - (b) "A Global Environment Facility Trust Fund Grant Agreement" means the agreement entered into by each Party with the International Bank for Reconstruction and Development in respect of the Project;
  - (c) "KZNNCS" means the KwaZulu-Natal Nature Conservation Services;
  - (d) "KZNNCB" means the KwaZulu-Natal Nature Conservation Board;
  - (e) "LPCC" means the Lesotho Project Coordination Committee referred to in Article 6(1);
  - (f) "MEGYA" means the Ministry of Environment, Gender and Youth Affairs of Lesotho;
  - (g) "SAPCC" means the South African Project Coordination Committee referred to in Article 6(8);
  - (h) "Steering Committee" means the committee described in Article 4(1);
  - (i) "Working Groups" means the groups described in Article 5(1); and
  - (j) "the Project" means the Maloti-Drakensberg Transfrontier Conservation

- (2) The geographic scope of this MoU shall comprise the Area described in Annex 1(a) and shown in Annex 1(b).

### ARTICLE 3 COMPETENT AUTHORITIES

- (1) Lesotho appoints MEGYA as the Competent Authority responsible for the coordination and implementation of the provisions of this MoU on its behalf.
- (2) South Africa appoints DEA&T as the Competent Authority responsible for the coordination and implementation of the provisions of this MoU on its behalf.

### ARTICLE 4 STEERING COMMITTEE

- (1) For the carrying out of the provisions set forth in this MoU, the Parties agree that the existing Steering Committee is hereby reconstituted with the composition, functions and structure as substantially set forth in this Article.
- (2) The Steering Committee shall be co-chaired by the Principal Secretary of MEGYA and by the Director-General of DEA&T.
- (3) The Steering Committee shall have the following composition to be nominated by each Party:
  - (a) Lesotho: (i) MEGYA (Chair); (ii) The Ministry of Agriculture, Cooperatives and Land Reclamation; (iii) The Ministry of Development Planning; (iv) The Ministry of Tourism, Sport and Culture; (v) The Ministry of Local Government; and (vi) The Ministry of Foreign Affairs.
  - (b) South Africa: (i) DEA&T (Chair); (ii) KZNNCS; (iii) the National Department of Foreign Affairs; (iv) the Eastern Cape Department of

Economic Affairs, Environment and Tourism; (v) the Free State Department of Environmental Affairs and Tourism; and (vi) South African National Parks

- (4) The Steering Committee may by consensus of its members, co-opt further persons as members
- (5) The function of the Steering Committee is to provide the Parties with a forum for discussion and coordination regarding the conservation and sustainable development of the Area. Specific functions of the Steering Committee include -
  - (a) providing strategic direction on matters arising in connection with this MoU, in particular regarding Article 8;
  - (b) facilitating further cooperation and integration of activities as may be delegated to it from time to time by the Parties;
  - (c) serving as a forum for discussing and facilitating the resolution of transboundary disputes in the Area;
  - (d) providing advice and recommendation on proposed conservation and development programs, projects and initiatives in the Area;
  - (e) proposing areas to be designated as protected or subject to other land-use controls;
  - (f) monitoring conservation and development activities in the Area;
  - (g) coordinating and exchanging relevant information;
  - (h) promoting scientific, environmental, economic, cultural, recreational and social activities related to the Area;



- (i) developing a strategic management plan for the conservation and development of the Area within three years of the date of this MoU, and recommending its adoption and implementation by the relevant authorities;
- (j) actively searching for funding alternatives for conservation and sustainable development activities in the Area;
- (k) in respect of the proposed Project -
  - (i) providing advice and recommendations concerning key implementation aspects;
  - (ii) considering and approving annual work plans proposed by the LPCC and the SAPCC;
  - (iii) reviewing progress reports; and
- (l) establishing and supervising Working Groups in accordance with the provisions of Article 5 of this MoU

- '6) A quorum for a meeting of the Steering Committee shall be six members, provided that at least three members designated by each Party shall be present
- (7) Decisions of the Steering Committee shall be made by consensus. The Steering Committee shall, subject to this MoU, determine its own meeting times, rules and procedures, frequency and venue for meetings, provided that the Steering Committee shall meet at least once every six months.

## ARTICLE 5 WORKING GROUPS

- (1) The Steering Committee may establish Working Groups for purposes of assisting the Steering Committee in the discharge of its functions. Each working group shall have a multi-disciplinary composition and focus, and shall perform its functions within the limits of terms of reference issued by the Steering Committee.
- (2) Each Working Group shall have representation from both Parties.
- (3) Each Working Group may comprise, as appropriate, representatives from the following areas:
  - (a) government;
  - (b) scientific or academic community;
  - (c) non-governmental and/or community based organizations; and
  - (d) private sector
- (4) Working Groups may be established for:
  - (a) consultation with stakeholders;
  - (b) development of common approaches and cross-border initiatives to deal with issues of common concern;
  - (c) provision of recommendations and technical advice to the Steering Committee; and
  - (d) executing specific mandates as required by the Steering Committee.
- (5) Results of the activities of the Working Groups shall be presented to the Steering Committee in accordance with the relevant terms of reference.

## ARTICLE 6

### PROJECT COORDINATION COMMITTEES

- (1) Lesotho shall establish a Project Coordination Committee (the LPCC) with the composition, structure and functions as substantially set out in this Article
- (2) The LPCC shall consist of representatives of MEGYA; the Ministry of Agriculture, Cooperatives and Land Reclamation; the Ministry of Development Planning; the Ministry of Tourism, Sport and Culture; the Ministry of Local Government, and the Ministry of Foreign Affairs. Invitations to non-governmental and/or community-based organizations and the private sector may be extended to participate in the LPCC.
- (3) The LPCC will be responsible for the overall coordination and provision of guidance concerning the implementation of the activities of the Project in Lesotho.
- (4) Functions of the LPCC shall include -
  - (a) overall coordination of the project;
  - (b) financial management and procurements;
  - (c) allocation of resources among the various agencies and activities;
  - (d) annual work plans and budgets for project activities;
  - (e) monitoring and evaluation;
  - (f) reporting requirements and responsibilities (i.e. quarterly reports, quarterly financial management reports and annual reports); and
  - (g) liaison with the Steering Committee
- (5) The LPCC shall be chaired by the Principal Secretary of MEGYA or a person appointed for this purpose by the Principal Secretary.

The LPCC shall meet at least quarterly, during the first year of project implementation, and thereafter, as it deems to be necessary, to review

implementation progress through reports, annual work plans and budgets.

- (6) The LPCC shall establish a Financial Management Committee for the Project as required in terms of the Global Environment Facility Trust Fund Grant Agreement.
- (7) South Africa shall establish a Project Coordination Committee (the SAPCC) with the composition, structure and functions as substantially set out in this Article
- (8) The SAPCC shall consist of representatives of DEA&T; KZNNCS; the National Department of Foreign Affairs; the Eastern Cape Department of Economic Affairs, Environment and Tourism; the Free State Department of Environmental Affairs and Tourism, and South African National Parks. Invitations to non-governmental and or community-based organizations and the private sector may be extended to participate in the SAPCC.
- (9) The SAPCC will be responsible for the overall coordination and provision of guidance concerning the implementation of the activities of the Project in South Africa
- (10) Functions of the SAPCC shall include -
  - (a) overall coordination of the Project;
  - (b) financial management and procurement;
  - (c) allocation of resources among the various agencies and activities;
  - (d) annual work plans and budgets for project activities;
  - (e) monitoring and evaluation;
  - (f) reporting requirements and responsibilities (i.e quarterly reports, quarterly financial management reports and annual reports); and
  - (g) liaison with the Steering Committee.

- (11) The SAPCC shall be chaired by the Director-General of DEA&T or a person appointed for this purpose by the Director-General.
- (12) The SAPCC shall meet at least quarterly during the first year of project implementation, and thereafter, as it deems to be necessary, to review implementation progress, through reports, annual work plans and budgets.
- (13) The SAPCC shall establish a Financial Management Committee for the Project as required in terms of the Global Environment Facility Trust Fund Grant Agreement.

## ARTICLE 7

### PROJECT COORDINATION UNIT

- (1) For the purposes of assisting the LPCC with the carrying out of its functions, a Project Coordination Unit (hereinafter referred to as "LPCU") will be established in MEGYA with adequate logistical facilities. The Principal Secretary of MEGYA will appoint a Project Coordinator to serve as the head of the LPCU and Secretary of the LPCC. The remaining composition of the LPCU includes -
  - (a) a project accountant;
  - (b) a counterpart accountant;
  - (c) a procurement officer;
  - (d) a counterpart procurement analyst; and
  - (e) an administrative secretary
- (2) For the purposes of assisting the SAPCC with the carrying out of its functions, a Project Coordination Unit (hereafter referred to as "SAPCU") will be established by DEA&T through an agreement with KZNNCB, with adequate logistical facilities. The Project Coordinator will be contracted by KZNNCB and will report to the SAPCC. The remaining composition of the SAPCU includes -

- (a) a project accountant;
- (b) a counterpart accountant;
- (c) a procurement officer;
- (d) a counterpart procurement analyst; and
- (e) an administrative secretary

## ARTICLE 8 SPECIAL PROVISIONS

- (1) Without limitation upon the other provisions of this MoU or other existing obligations between the Parties, the Parties shall, in respect of the Area -
  - (a) maintain and expand, on the basis of criteria and procedures approved by the Steering Committee, a database register containing relevant information on the Area;
  - (b) while committed not to engage in any activity that may, directly or indirectly, generate transboundary adverse environmental impact, provide prior and timely notification and relevant information on any activity that may have a significant transboundary environmental impact;
  - (c) undertake an environmental impact assessment of any development initiative in the Area in accordance with the domestic law of the respective Parties. Copies of the relevant assessment shall be provided to the Steering Committee for comment and recommendations to the relevant authorities of the Parties; and
  - (d) within five years of the coming into effect of this MoU, take into consideration for adoption, through their respective domestic procedures, a zoning plan for the Area.

## ARTICLE 9 FINANCIAL MATTERS

- (1) In order to discharge their obligations under this MoU, the Parties shall

annually make sufficient funds available to cover any expenses that may arise from its implementation.

- (2) Without limitation upon sub Article 1, the Parties shall employ their best endeavours to obtain financial and other means of support from their own sources for the attainment of the objectives of this MoU
- (3) The Parties shall jointly or separately employ their best endeavours to obtain additional financial and other means of support for the attainment of the objectives of this MoU.

#### ARTICLE 10 SETTLEMENT OF DISPUTES

- (1) Any dispute arising between the Parties out of the interpretation or implementation of this MoU shall be settled amicably through consultation or negotiation between the Parties, provided that a dispute may be referred to mediation if so decided by the Parties
- (2) If an amicable settlement of the dispute is not reached through mediation, the dispute shall be settled through arbitration by an Arbitration Tribunal appointed on the basis that each Party shall appoint an arbitrator and the two arbitrators appointed by the Parties shall appoint a third arbitrator who shall act as the chairperson of the Arbitration Tribunal.
- (3) The Arbitration Tribunal shall decide upon its own procedures. The decision of the Tribunal shall be in writing and shall be supported by a majority of its members. Such decision shall be final and binding upon the Parties.

#### ARTICLE 11 MISCELLANEOUS PROVISIONS

- (1) The Parties hereby agree that members of the Steering Committee or their duly authorized representatives shall be permitted, in the discharge of their functions in connection with this MoU, to visit the respective portions of the Area located within the territories of the Parties subject to any immigration

formalities. Any such visits shall be subject to reasonable advance notice to the respective Competent Authority.

- (2) Any amendment to this MoU, including amendments to existing, or the insertion of additional, Annexes, shall be proposed in writing by the respective Competent Authority of the Party requesting such amendment and shall enter into effect upon its acceptance through the diplomatic channel by both Parties.
- (3) Any notice or request required or permitted to be given or made under this MoU shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, electronic mail or facsimile to the Party to which it is required or permitted to be given or made at such Party's address hereinafter specified or at such other address as such Party shall have designated by notice to the Party giving such notice or making such request. The addresses so specified are:

For the Government of the Kingdom of Lesotho:  
Ministry of Environment, Gender and Youth Affairs  
Post Office Building Kingsway  
P O Box 10993  
Maseru  
**Lesotho**

For the Government of the Republic of South Africa:  
Department of Environmental Affairs and Tourism  
Fedsure Forum  
315 Pretorius Street  
Pretoria  
0001  
**Republic of South Africa**




**ARTICLE 12**  
**ENTRY INTO FORCE AND TERMINATION**

- (1) This MoU shall enter into force on the date on which each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation of this MoU. The date of entry into force shall be the date of the last notification.
- (2) The Parties shall review the progress achieved in the implementation of this MoU five years after it has entered into force.
- (3) This MoU may be terminated by either Party giving one year's written notice in advance through the diplomatic channel of its intention to terminate.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed and sealed this MoU in duplicate in the English language, both being equally authentic

DONE at SEHLABA-THEBE on this 11th day of June 2001.

  
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GOVERNMENT OF THE KINGDOM OF LESOTHO

  
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GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

## BROAD DESCRIPTION OF THE MALOTI-DRAKENSBERG TRANSFRONTIER CONSERVATION AND DEVELOPMENT AREA

The Drakensberg-Maloti Transfrontier Conservation and Development Area extends over a distance of almost 300 km along the international frontier between the Kingdom of Lesotho and the Provinces of KwaZulu-Natal, the Free State and the Eastern Cape in South Africa, and covers an area of approximately 8500 km<sup>2</sup>.

On the Lesotho side the area comprises the Eastern Mountain Region of Lesotho from a north-south line down the western edge of Golden Gate National Park in South Africa, into the Butha-Buthe district in the north, through the Mokhotlong, Thaba-Tseka and Qacha's Nek districts to Qacha's Nek in the south. It includes the area within approximately 20km west of the international boundary with South Africa and also includes the high-altitude area between Phofung and Mahlasela (Oxbow)

Formally protected conservation areas occurring in the Lesotho study area include the 6 500 ha Sehlabathebe National Park and the Lesotho Highlands Development Authority area nature reserves, namely; Ts'ehlanyane Nature Reserve, Bokong Nature Reserve and the Liphofung Nature Area

In South Africa, the TFCA consists generally of the Drakensberg Mountain range. Component areas include the Golden Gate Highlands National Park and QwaQwa National Park in the Free State Province, the mountainous area 1650 metres above sea level along the eastern boundary of Lesotho, between QwaQwa National Park and the Royal Natal National Park, Mnweni area and the southern Drakensberg in KwaZulu-Natal and in the Eastern Cape along the border with Lesotho between Bushmans Nek and Qacha's Nek