

## **PREAMBLE**

The Government of the Republic of South Africa and the Government of the Republic of Mozambique (hereinafter called "the Parties"):

**CONSCIOUS** of the value of the scarce water resources in the Southern African region;

And

**CONSCIOUS** of the advantages of regional development and recognising that cooperation between the Parties with regard to the development and utilisation of water resources of common interest will significantly contribute towards the economic prosperity and welfare of their peoples; and

**WISHING** to maintain the tradition of good neighbourliness and peaceful cooperation between the Parties acknowledged by the "Agreement between the Government of the Republic of South Africa and the Government of Portugal in regard to Rivers of Mutual Interest and the Cunene Scheme", 1964, to which the Kingdom of Swaziland acceded in 1967; and

**ANTICIPATING** the further promotion of the tradition of good neighbourliness and peaceful co-operation between the Parties on the basis of the rules approved in 1966 at Helsinki by the 52nd Conference of the International Law Association relating to the utilisation of water resources of common interest; and

**REALISING** that closer co-operation between the Parties in the development and utilisation of water resources of common interest will necessitate the formal structuring of the Joint Water Commission concerning Water Resources of Common Interest which has hitherto served as liaison channel and discussion forum on all matters of mutual interest to the parties relating to water resources development and water utilisation;

**HEREBY** agree as follows:

## **ARTICLE 1**

### **ESTABLISHMENT OF THE JOINT WATER COMMISSION**

1. The Parties hereby establish and undertake to maintain the Joint Water Commission (hereinafter called "the Commission").
2. The object and functions of the Commission shall be to act as technical adviser to the Parties on all technical matters relating to the development and utilisation of water resources of common interest to the Parties and to perform such other functions pertaining to the development and utilisation of such resources as the Parties may from time to time agree to assign to the Commission.
3. The Commission shall possess legal personality in the territory of each Party.

## **ARTICLE 2**

### **CONSTITUTION AND FUNCTIONING OF THE COMMISSION**

1. The Commission shall consist of two delegations representing the Parties.

2. Each delegation shall consist of not more than three members to be appointed by the Party concerned, one of whom shall be designated by that Party as leader of its delegation.
3. The leader of a delegation may co-opt any number of persons as advisers to his or her delegation, who may take part in the discussions at any meeting of the Commission.
4. The Commission shall meet at least once a year but extraordinary meetings may be convened as may be agreed upon by the leaders of the two delegations whenever circumstances require. The venue of all meetings shall alternate between the Republic of South Africa and the Republic of Mozambique, unless the leaders of the respective delegations determine otherwise in relation to a particular meeting.
5. The leader of the delegation of the Party hosting a particular meeting of the Commission shall, in respect of that meeting, be chairperson, and be responsible for the preparation and timely distribution of the agenda, the recording and distribution of the minutes as well as making available a suitable venue.
6. Each delegation shall consist of at least two members in order to form a quorum for any meeting. All decisions of the Commission shall be taken on the basis of consensus between the delegations but in the event that the Commission fails to reach consensus, the matter under discussion shall be referred to the Parties by the respective leaders for further negotiation.
7. The minutes of each meeting shall be considered as approved after having been signed by the leaders of the two delegations.

### **ARTICLE 3**

#### **FUNCTIONS AND POWERS OF THE COMMISSION**

1. The functions and powers of the Commission shall be to advise the Parties on all technical matters relating to -
  - (a) measures that can be implemented by any one or both Parties to alleviate short-term problems resulting from water shortages in any water resource of common interest to the Parties during periods of drought;
  - (b) the joint or separate investigation by the Parties of the development of any water resource of common interest including the construction, operation and maintenance of any water work in connection therewith;
  - (c) the joint development, and the criteria to be adopted in the apportionment to the Parties, of the water resources of common interest;
  - (d) the implementation and observance of any agreements relating to water resources of common interest entered into between the Parties as well as the "Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal in regard to rivers of mutual interest and the Cunene River Scheme", 1964, to which the Kingdom of Swaziland acceded in 1967-
  - (e) the monitoring and exchange of relevant information and other relevant data, including timely exchange of information needed for the implementation of alleviating measures during drought periods and for flood forecasting and warning systems;
  - (f) the taking of any action by any one or both Parties considered desirable by the Commission in connection with the operation and maintenance of any water work affecting a water resource of common interest, including steps necessary for the

- measurement of water, the exercise of control over the abstraction of water and restrictions to be imposed on the abstraction of water and restrictions to be imposed on the abstraction of water as well as the implementation of any procedure or programme in connection therewith;
- (g) arrangements for the exchange of data and information as well as for the investigation of, and access to, water resources of common interest;
  - (h) the control of the quality of water resources of common interest and the prevention of pollution and soil erosion affecting such water resources;
  - (i) any other aspect related to the planning of the development and utilisation of water resources of common interest referred to the Commission by any Party; and
  - (j) any other relevant matter referred to the Commission by the Parties.
2. Pursuant to sub-article 1, the Commission shall in particular have the power to recommend to the Parties the required mechanisms to co-ordinate and integrate the findings and development plans of each country relating to water resources of common interest and to appoint consultants to assist it in the gathering and processing of information on any matter on which it is to advise the Parties and may exercise any power to make any decision relating thereto as may be agreed upon by the Parties from time to time.
3. The Commission's advice to the Parties on any matter referred to in sub-article I shall, if required by a Party, be contained in a report signed by the leaders of the respective delegations, who shall be responsible for the submission of the report to their respective Governments.
4. Any report prepared by the Commission on any matter referred to in subarticle 1 shall include estimates of the cost involved in the implementation of the advice of the Commission and may include proposals for the apportionment of such cost between the Parties.
5. The Commission shall in all its deliberations and in any report presented to the Parties, have regard for the interests of the Kingdom of Swaziland, the Republic of Zimbabwe and the Republic of Botswana, in any water resource of common interest between the Parties and one or more of those countries.
6. The Commission may recommend to the Parties that the responsible Ministers meet to review the activities of the Commission.
7. The Commission may, where appropriate, co-operate with other Water Commissions or Organisations responsible for the protection and utilisation of water resources.

#### **ARTICLE 4**

## **FINANCIAL ARRANGEMENTS**

1. Each Party shall in respect of all meetings of the Commission be responsible for all costs incurred in connection with the attendance and participation of its delegation and of any person co-opted as adviser to its delegation by the leader concerned in terms of Article 2(3).
2. The Party hosting a meeting of the Commission shall be responsible for all costs incurred in making a venue available for the meeting, the preparation and distribution of the agenda and for the recording and distribution of the minutes.
3. All other costs incurred of liabilities accepted by the Commission in the performance of its functions and the exercise of its powers, shall be shared equally by the Parties unless otherwise agreed by the Commission.

## **ARTICLE 5**

### **GENERAL OBLIGATIONS OF THE PARTIES**

Each Party shall, in respect of its territory -

- (a) supply to the other party such information and plans relating to the development and utilisation of the water resources of common interest as may be necessary for the performance of the functions and exercise of the powers of the Commission,
- (b) cause, subject to its laws, members of the delegations to the Commission and its consultants to be granted all powers, authorisations, exemptions and rights including access rights, necessary to facilitate the performance of the functions and the exercise of the powers of the Commission.

## **ARTICLE 6**

### **REGISTRATION**

In conformity with Article 102 of the Charter of the United Nations, this agreement and any amendment thereof shall be registered by the Parties with the Secretariat of the United Nations.

## **ARTICLE 7**

### **AMENDMENT OF AGREEMENT**

The Parties may agree to amend this agreement and any amendment agreed upon by them shall be committed to writing and signed on their behalf

## **ARTICLE 8**

### **SETTLEMENT OF DISPUTES**

Any dispute concerning the interpretation or application of this agreement shall, at the request of their Party be resolved through negotiations between the Parties.

## **ARTICLE 9**

### **CONCLUDING PROVISIONS**

This agreement shall enter into force on the date of signature hereof.

**IN WITNESS WHEREOF** the Parties hereto, acting through their respective representatives hereunto duly authorised, have caused two originals of this agreement in each of the English and Portuguese languages, each version being equally authentic, to be signed and sealed at on the day of 1996.

For and on behalf  
of the Republic of  
South Africa

For and on behalf  
of the Republic of  
Mozambique