

Agreement on the Establishment of the Limpopo Watercourse Commission

Filename: 2003-LimpopoWatercourseCommission.EN.txt

Source: South African Department of Foreign Affairs, Office of the Chief State Law Adviser (IL), Treaty and Information Management Section.

Agreement Between The Republic Of Botswana, The Republic Of Mozambique, The Republic Of South Africa, And The Republic Of Zimbabwe On The Establishment Of The Limpopo Watercourse Commission

Source: South African Department of Foreign Affairs, Office of the Chief State Law Adviser (IL), Treaty and Information Management Section.

PREAMBLE

The Republic of Botswana, the Republic of Mozambique, the Republic of South Africa and the Republic of Zimbabwe (hereinafter called the "Contracting Parties");

Recognising the spirit, value and objectives of the Revised Protocol on Shared Watercourses in the Southern African Development Community Region signed at Windhoek, Namibia on 7 August 2000;

MINDFUL of the importance to extend and consolidate the existing tradition of good neighbourliness and close co-operation between the Contracting Parties;

MINDFUL also of the existing Limpopo Basin Permanent Technical Committee established by the Contracting Parties in 1986 and the need to develop and strengthen the Committee;

RECOGNISING the relative paucity of water resources in the Southern African region (hereinafter referred to as the Region") and the need to provide the people of the Region with access to sufficient water supplies;

RECOGNISING also the significance of the Limpopo Watercourse (hereinafter called Limpopo) as an important water resource in the Region;

Further Recognising that the vulnerability of the Limpopo to transboundary floods from upstream, especially in the lower lying areas;

CONSCIOUS that collaboration between the Contracting Parties with regard to the utilization and the development of the Limpopo as a water resource of common interest could significantly contribute towards the mutual benefit, peace, security, welfare and prosperity of the peoples of the Region;

COMMITTED towards the realisation of the principle of equitable and reasonable utilisation as well as of the principle of sustainable development, with regard to the Limpopo;

BEARING in mind the Convention on the Law of the Non-navigational Uses of International Watercourses adopted by the General Assembly of the United Nations in 1997 as well as Chapter 18 of Agenda 21 of the United Nations Conference on Environment and Development;

HEREBY agree as follows:

ARTICLE 1

DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the meanings ascribed to them hereunder:

(a) "Commission" means the Limpopo Watercourse Commission established under Article 2 of this Agreement.

(b) "Council" means the Council of the Commission established under Article 4 of this Agreement.

(c) "Prevention" means reasonable action to avoid any detrimental alteration in the composition or quality of the waters of the Limpopo.

(d) "Protocol" means the Revised Protocol on Shared Watercourses in the Southern African Development Community Region signed at Windhoek, Namibia on 7 August 2000.

1.2 For the purposes of this Agreement, the Limpopo watercourse consists of the system of surface and groundwaters of the Limpopo, parts of which are situated in the territories of the Contracting Parties.

ARTICLE 2

ESTABLISHMENT OF THE LIMPOPO WATERCOURSE COMMISSION

2.1. The Contracting Parties hereby establish the Limpopo Watercourse Commission.

2.2. For the purpose of the exercise of its functions the Commission shall possess legal personality with the capacity to enter into agreements and contracts and shall further possess legal personality within the legal systems of each of the Contracting Parties.

2.3. In the absence of an agreement to the contrary, nothing in this Agreement shall affect the rights and obligations of a Contracting Party arising from agreements regarding the Limpopo in force for it on the date this Agreement comes into force for that Contracting Party.

2.4. Notwithstanding the provisions of paragraph 2.3 Contracting Parties to agreements referred to in paragraph 2.3 shall consider harmonizing such agreements with this Agreement.

2.5. Without prejudice to the notification provisions herein, nothing in this Agreement shall affect the prerogative of any number of the Contracting Parties to enter into any agreements among themselves with regard to any part of the Limpopo, provided that such agreements are not inconsistent with this Agreement.

ARTICLE 3

OBJECTIVES OF THE COMMISSION AND GENERAL PRINCIPLES OF THE AGREEMENT

3.1 The objectives of the Commission shall be to advise the Contracting Parties and provide recommendations on the uses of the Limpopo, its tributaries and its waters for purposes and measures of protection, preservation and management of the Limpopo.

3.2 For the purposes of this Agreement the general principles of the Protocol shall apply, in particular

- a) Sustainable development;
- b) Intergeneration equity principle;
- c) Prevention principle;
- d) Transboundary impact assessment principle.

ARTICLE 4

INSTITUTIONAL ARRANGEMENTS

4.1 The principal organ of the Commission shall be the Council.

4.2 The Council may establish a secretariat and such other appropriate organs as may be necessary for the implementation of this Agreement.

ARTICLE 5

THE COUNCIL

5.1 The Council shall consist of four delegations each representing the Contracting Parties.

5.2 Each delegation shall consist of not more than three permanent members and such other advisors as each Contracting Party may determine, provided that a delegation may be

accompanied by not more than three advisors at any meeting of the Council unless otherwise determined by the Council for any particular meeting.

5.3 Each Contracting Party shall expeditiously notify all the other Contracting Parties of the appointment of the permanent members of its delegation as well as of the termination of such appointments.

5.4 One of the permanent members of each delegation shall be designated by the Contracting Party concerned as the leader of its delegation and shall be a co-chairperson of Council meetings_ Each Contracting Party shall expeditiously notify all the other Contracting Parties of the appointment of the leader of its delegation as well as of the termination of such appointment.

ARTICLE 6

MEETINGS OF THE COUNCIL

6.1 The Council shall meet at least twice a year in ordinary session and may meet in extraordinary sessions at the request of any one of the Contracting Parties.

6.2 Unless otherwise determined by the Council, ordinary meetings shall take place on a basis of rotation in the territory of one of the Contracting Parties.

6.3 The Council shall determine the date and time of all meetings as well as the Contracting Party in whose territory such meeting shall take place.

6.4 The leader of the delegation hosting a particular meeting of the Council shall, in respect of that meeting act as the chairperson and shall be responsible for making a suitable venue available for that meeting. The hosting chairperson shall further be responsible for the preparation and timeous distribution of the agenda and all supporting documentation as well as the recording of the minutes of the meeting and the distribution thereof to the Contracting Parties within thirty days of the date of that meeting.

6.5 In all meetings of the Council three delegations shall constitute a quorum.

6.6 The Council shall make every effort to adopt decisions on the basis of consensus. If all efforts at consensus on a matter at a meeting of the Council have been exhausted and no agreement is reached, the matter shall be dealt with at the next meeting of the Council. Failing agreement at such meeting, the matter shall be made the subject of negotiations between the Contracting Parties.

6.7 The Council shall determine its own rules of procedure.

ARTICLE 7

FUNCTIONS OF THE COUNCIL

7.1 The Council shall serve as technical advisor to the Contracting Parties on matters relating to the development, utilisation and conservation of the water resources of the Limpopo. The Council shall perform such other functions pertaining to the development and utilisation of water resources as the Contracting Parties may agree to assign to the Council.

7.2 The Council shall advise the Contracting Parties on the following matters:

- a) measures and arrangements to determine the long term safe yield of the water available from the Limpopo;
- b) the equitable and reasonable utilisation of the Limpopo to support sustainable development in the territory of each Contracting Party and the harmonisation of their policies related thereto;
- c) the extent to which the inhabitants in the territory of each of the Contracting Parties concerned shall participate in the planning, utilisation, sustainable development, protection and conservation of the Limpopo and the possible impact on social and cultural heritage matters;
- d) all aspects related to the efficient and effective collection, processing and dissemination of data and information with regard to the Limpopo;
- e) contingency plans and measures for preventing and responding to harmful conditions whether resulting from natural causes such as drought or human conduct as well as emergency situations that result suddenly from natural causes such as floods or human conduct such as industrial accidents;
- f) the investigations and studies, separately or jointly by the Contracting Parties with regard to the development of the Limpopo including the construction, operation or maintenance of any water works;
- g) measures with a view to arriving at settlement of a dispute between two or more of the Contracting Parties; and
- h) any other matters affecting the implementation of the Protocol.

7.3 In making any recommendations or giving any advice in terms of this Article, the Council shall consider the provisions of the Protocol.

ARTICLE 8

POWERS OF THE COUNCIL

8.1 The Council may establish ad hoc or standing working groups or committees comprising representatives of the Contracting Parties as each Contracting Party may determine.

8.2 The Council may appoint administrative service providers to provide administrative support to the Commission. The Council may also appoint technical experts and consultants to provide

expert opinion and advice on any matter referred to in Article 6 and may exercise such powers and make such decisions relating to the administrative service, the expert opinion and advice as may be assigned to it in this regard by the Contracting Parties from time to time.

8.3 The Council shall ensure that recommendations on any matter referred to in Article 7, shall be contained in a report signed by the leader of each delegation at the meeting of the Council at which such report is adopted and such report shall be submitted to the Contracting Parties by the respective delegations.

8.4 Every report referred to in paragraph 8.3 of this Article shall include estimates of the cost involved in the implementation thereof and for the apportionment of such costs between any two or more of the Contracting Parties.

ARTICLE 9

SETTLEMENT OF DISPUTES

9.1 In the event of a dispute with regard to the planning, utilisation, development, protection and conservation of the Limpopo including its ecosystem or the interpretation or application of this Agreement, the Contracting Parties which are parties to the dispute, shall expeditiously enter into negotiations with a view to arriving at a settlement of the dispute.

9.2 If the parties to the dispute have not arrived at a settlement through the means provided for in paragraph 15.1 of this Article within six months after the request for negotiations, the dispute may, unless the parties to the dispute agree otherwise, be brought before the Tribunal established in terms of Article 16 (1) of the Treaty of the Southern African Development Community of 1992, in accordance with the rules and procedures applicable with regard to the function of such Tribunal.

9.3 The parties to the dispute shall accept the decision of the Tribunal as final and binding.

ARTICLE 10

WITHDRAWAL

At any time after three years from the date on which this Agreement has entered into force for a Contracting Party, that Party may withdraw from this Agreement by giving written notice to the other Contracting Parties. Any such withdrawal shall take effect on the date specified in the notification which date may not be less than twelve months after such notification. A Party withdrawing from this Agreement shall remain bound by contractual relationships to which it is a party and to its obligations thereunder.

ARTICLE 11

FINANCIAL ARRANGEMENTS

11.1 Each Contracting Party shall, in respect of all meetings of the Council, be responsible for all costs incurred in connection with the attendance and participation of its delegation and of any person included in its delegation as an advisor.

11.2 The Contracting Party hosting a meeting of the Council shall be responsible for all costs incurred in making a venue available for the meeting, the preparation and distribution of the agenda for the meeting as well as for the recording and distribution of the minutes of the meeting.

11.3 All other costs or liabilities incurred by the Commission shall be shared equally by the Contracting Parties, unless otherwise agreed by the Council.

ARTICLE 12

GENERAL AND FINAL PROVISIONS

12.1 This Agreement shall be signed by duly authorised representatives of the Contracting Parties subject to ratification in accordance with their respective constitutional procedures.

12.2 This Agreement shall enter into force thirty days after the last notification to the Depository by the Contracting Parties that their constitutional procedures have been complied with.

12.3 The current Agreement on the establishment of the Limpopo Basin Technical Committee signed on the 5th June 1986 shall lapse on the entry into force of this Agreement.

12.4 Any Contracting Party may propose an amendment to this Agreement, which amendment shall be communicated through an exchange of notes between all the Contracting Parties through diplomatic channels.

12.5 if agreed to by the Contracting parties the amendments shall take effect thirty days after the date of the last notification to the Depository by the Contracting Parties that they accept the amendments.

12.6 For the purposes of this article the Republic of Mozambique will be the depository of this Agreement.

IN WITNESS WHEREOF we the undersigned duly authorised by our governments have signed this Agreement.

DONE AT Maputo on the 27th day of November 2003, in the English and Portuguese languages, each text being equally authentic.

THE REPUBLIC OF BOTSWANA

THE REPUBLIC OF MOZAMBIQUE

THE REPUBLIC OF SOUTH AFRICA

REPUBLIC OF ZIMBABWE