

**TERMS OF REFERENCE and CONSTITUTION**  
of the  
**PERMANENT JOINT TECHNICAL COMMISSION**  
for the  
**CUNENE RIVER**

Pursuant to the provision of Article 2.2 of the Agreement dated 21<sup>st</sup> January, 1969, between the Government of Portugal and the Government of the Republic of South Africa, and as endorsed by the sovereign Governments of the People's Republic of Angola and the Republic of Namibia as agreed on 18 September 1990, a Permanent Joint Technical Commission (hereinafter called "the **PJTC**") is established to act solely in an advisory capacity, to study and report on matters relating to the aforesaid Agreement and any modification thereof which may subsequently be agreed to (hereinafter referred to as "the Agreement").

**TERMS OF REFERENCE**

The terms of reference and functions of the **PJTC** shall include, in particular:

- (1) As required by Article 5.8 of the Special Provisions of the Agreement. The **PJTC** shall revise the hydrological studies carried out by both countries (referred to in Article 1.2 of the Agreement) for the purpose as hereinafter set out. Such revision shall be made at the commencement of operation of the works to be executed in the first phase of the development of the water resources of the Cunene River basin and thereafter at such intervals as may be agreed upon. The specific purposes of such revision shall be:

- (a) To provide (as indicated in Sub-Article 4.1.11 of the Agreement) a basis for the adjustment (if necessary) of the value of 80 cubic metres per second provisionally accepted as the flow of the Cunene River at Ruacana as regulated by Gove Dam;
  - (b) When consulted as provided in Sub-Article 4.1.12 of the Agreement, to determine the technical procedure to be followed in the operation of Gove Dam to provide the requisite regulated flow;
  - (c) To provide (as indicated in Sub-Article 5.2.2 of the Agreement) a basis for adjustment of the ratio to be applied to power generation at Ruacana for the purpose of payment of royalties as set out in Article 5.2 of the Agreement;
  - (d) To analyse and implement aspects relating to the Agreement dated 21 January 1969 which refers to different actions on the first phase development of the Cunene River basin.
- (2) As required by Sub-Article 4.2.6.11 of the Agreement the **PJTC** shall give advice in regard to whether the works constructed in Angola by the South African Authorities have been completed in terms of the contract documents. Additional functions of the **PJTC** shall be:
- (3) To submit proposals to the two Government concerning surveys, studies and investigations considered essential for the discharge of its duties. Such proposals shall include arrangements for financing of the work envisaged.
  - (4) To assemble records and to initiate the collection of hydrographic data and of other hydrological measurements relating to the Cunene River and its tributaries including, as far as may be relevant, diversion and abstraction of water therefrom. Free exchange of such information between participating delegations shall be considered a requisite.

- (5) To make an expert evaluation of all hydrological data using such agencies and services as the **PJTC** may consider appropriate.
- (6) To consider and report on conformance to any agreed principles of the Agreement and to any approval decision of the **PJTC**
- (7) To organize technical supervision of any approved measures of Joint Interest.
- (8) To make request for special financial and technical assistance as the **PJTC** considers appropriate.
- (9) To carry out studies at the request of either Government and advise on proposals for the further development of the water resources of the Cunene River basin in accordance with the principle of best joint utilization with a view to water supply, irrigation, power development, flood control, reclamation and drainage, consideration of fish and wildlife, recreation and tourism and other beneficial uses.
- (10) To investigate, report and make recommendations to the two Governments on any question they may wish jointly or individually to refer to the **PJTC** from time to time.
- (11) To exercise any other functions allocated to the **PJTC** by the two Governments in concert.

Notwithstanding the conferment of these functions upon the **PJTC**, the two Governments may also deal direct with matters within the **PJTC**'s terms of reference.

## CONSTITUTION

The **PJTC** shall function under the following Constitution regulating the procedures of the **PJTC** as approved by both Governments.

### Article 1

#### Membership

- 1.1 The **PJTC** shall be composed of six (6) members.
- 1.2 Each Government shall appoint as its delegation three (3) members of the **PJTC**, at least one of whom shall be a professional hydraulic engineer, and an alternate for each member, who may also participate in the discussions.
- 1.3 Appointed members and alternates shall hold office for a period of 3 years.
- 1.4 Each Government shall appoint one of its own members of the **PJTC** as Chairman of its delegation.
- 1.5 Each Government shall appoint an Administrative Secretary to the **PJTC**
- 1.6 The respective Governments shall fill any vacancy that may occur, due to death, ill-health, resignation or expiry of term of office of a member, subject only to due notification.
- 1.7 The Governments may likewise designate other experts to take part in the **PJTC**'s work in numbers to be determined in each individual case by agreement between the two Chairmen.

- 1.8 The **PJTC** may if necessary set up sub-committees composed of its members, their alternates and other experts.

## Article 2

### Meetings

- 2.1 Unless otherwise agreed, the **PJTC** shall meet alternatively in the respective territories of the two Governments, in such place as may be selected for each meeting by the Chairman of the host delegation.
- 2.2 Meetings shall be presided over by the Chairman of the delegation of the Government in whose territory the session is held.
- 2.3 Alternates shall sit on the **PJTC** as observers, but may be requested to excuse themselves at a meeting if so agreed by both Chairmen.
- 2.4 As may be agreed between the two Chairmen, experts may attend sessions as observers.
- 2.5 Four (4) members shall constitute a quorum at regular meetings, provided that at least two (2) members of each delegation shall be present.
- 2.6 The **PJTC** shall meet regularly at least twice a year in alternate countries at a date to be decided by mutual agreement.
- 2.7 The **PJTC** shall hold its first session within three (3) months of acceptance by both Governments of its Constitution, at a

place to be mutually agreed upon or alternatively by drawing lots. The specific purposes of that session shall be to decide upon a programme of work and the priorities to be given for the discharge of the **PJTC**'s duties.

- 2.8 In addition to its regular sessions, special meetings may be convened at any time at the request of either Chairman or their respective Governments.
- 2.9 The **PJTC** shall also arrange such inspections as it considers appropriate, which inspections may be declared formal or informal according to the task being studied.

### Article 3

#### Agenda

- 3.1 Each session shall be convened by the Chairman of the host delegation.
- 3.2 The delegate members shall propose agenda items through their respective Chairmen.
- 3.3 The final agenda for each meeting shall be confirmed by prior agreement between the Chairmen of the delegations, or failing this, through diplomatic channels by negotiation.
- 3.4 The agenda shall be dispatched to be in the hands of the members at least two (2) weeks before the particular meeting.
- 3.5 The agenda may be supplemented or amended by agreement during the meetings.

**Article 4**

- Languages**
- 4.1 The working languages of the **PJTC** shall be English and Portuguese.
- 4.2 Each delegation shall be entitled to have the assistance of an interpreter, at its own expense.

**Article 5**

- Decisions**
- 5.1 Should the members fail to arrive at an agreed conclusion after repeated sessions, the delegations shall submit the question in dispute to their Governments for settlement.
- 5.2 Subject to ratification in terms of 5.3 below, a decision shall be final if adopted unanimously as set out in the quorum requirement in 2.5. If a decision is not unanimous, then the **PJTC** shall refer it to the two Governments.
- 5.3 No conclusion may be put into effect if either Government raises an objection. If no objection to the conclusions is raised by either Government within ninety (90) days after its adoption by the **PJTC**, the conclusions shall be regarded as approved by both Governments.
- 5.4 The conclusions of the **PJTC** shall not affect the right of the Governments to take decisions.

**Article 7**

- 7.1 Each Government shall determine and defray the expenses of its own delegation.
- 7.2 The joint expenses, which may be incurred as agreed by the **PJTC**, shall be borne equally by the two Governments, unless otherwise determined by the **PJTC**
- 7.3 Proposals for incurring joint expenses shall be subject to ratification by the two Governments.

**Article 8**

- Other Procedures**
- 8.1 Except as set out in preceding Articles, the **PJTC** may make such rules and by-laws for the conduct of its meetings and for the performance of its duties and such financial regulations as it deems necessary.
  - 8.2 Such additional procedures shall be in conformity with this Constitution and with the spirit of the Agreement between the two Governments.

This Constitution may be modified only by agreement between the two Governments.



