

# **Treaty on the establishment and functioning of the joint water commission between the government of the Kingdom of Swaziland and the government of the Republic of South Africa signed on 13 march 1992**

## **PREAMBLE**

The Government of the Kingdom of Swaziland and the Government of the Republic of South Africa (hereinafter called "the Parties");

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

CONSCIOUS of the advantages of regional development and recognising that co-operation between them with regard to the development of mutual projects in respect of water resources of common interest will significantly contribute towards their economic prosperity and the welfare of their peoples in particular as well as the Southern African region in general;

WISHING to maintain the tradition of good neighbourliness and peaceful co-operation between them acknowledged by 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 Government of the Kingdom of Swaziland acceded in 1967;

ANTICIPATING the further promotion of the tradition of good neighbourliness and peaceful co-operation between them on the basis of the rules relating to the uses of the waters of international rivers approved in 1966 at Helsinki by the 52nd Conference of the International Law Association; and

REALISING that closer co-operation between them in the development and utilisation of water resources of common interest will necessitate the formal structuring and an extension of the functions of the Joint Permanent Technical Committee Concerning Water Resources of Common Interest which has since 1979 served as a liaison channel and discussion forum on all matters of mutual interest to them relating to water resource 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 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 delegation.
4. The first meeting of the Commission shall be convened by the Government of the Kingdom of Swaziland and shall be held in the Kingdom of Swaziland.
5. All subsequent meetings of the Commission shall be convened as agreed upon by the leaders of the two delegations: Provided that the Commission shall meet at least twice per year: Provided further that the venue of subsequent meetings shall alternate between the Kingdom of Swaziland and the Republic of South Africa, unless the leaders of the respective delegations determine otherwise in relation to a particular meeting.
6. The leader of the delegation of the Party hosting a particular meeting of the Commission shall in respect of that meeting be chairman, and be responsible for the preparation and timeous distribution of the proposed agenda, the recording and distribution of the minutes and making available of a suitable venue.
7. 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.

## Article 3 - Functions and Powers of the Commission

1. In addition to any other functions or powers conferred on the Commission by the Parties, 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 shortages of water from any water resource of common interest to the Parties during periods of drought, taking into consideration the availability of stored water and the water requirements within the territories of the respective Parties at that time;
  - (b) the separate or joint investigation by the Parties of the development of any water resource of common interest including the construction, operation and maintenance of any water works in connection therewith;
  - (c) the joint development of water resources of common interest to the Parties;
  - (d) the criteria to be adopted in the allocation between the Parties of the utilisable portion of water resources of common interest and the application thereof;
  - (e) 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 existing water work affecting a water resource of common interest, including steps in connection with the exercise of control over the abstraction of water, curtailments to be imposed on the abstraction of water and the operation or maintenance of such water work in the territory of

any of the Parties as well as the implementation of any procedure or programme in connection therewith;

(f) any other matter pertaining to the hydrological regime of water resources of common interest;

(g) the prevention and exercise of control over the pollution of water resources of common interest and soil erosion affecting such resources; and

(h) any other matter pertaining to the development of water resources and utilisation of water referred to the Commission by any Party.

2. Pursuant to the provisions of sub-article 1, the Commission shall in particular have the power 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 or 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 1 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 sub-article 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 Republic of Mozambique in any water resource of common interest between the Parties and the Republic of Mozambique.

#### 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 proposed agenda and for the recording and distribution of the minutes.

3. All other costs incurred or 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 agreed otherwise by the Commission.

#### Article 5 - General Obligations of the Parties

Each Party shall, in respect of its territory:

(a) supply such information and plans relating to the development and utilisation of the water resources of common interest to the Commission as the Commission may require for the performance of its functions; and

(b) cause members of the delegations to the Commission to be granted all powers, authorisations, exemptions and rights including access rights, necessary for their participation in 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 Treaty and any amendment thereof shall be registered by the Parties with the Secretariat of the United Nations.

#### Article 7 - Settlement of Disputes

1. Any dispute concerning the interpretation of this Treaty shall at the request of either Party be resolved through negotiations between the Parties.

2. In the event of the Parties failing to settle a dispute within three months from the date of a request referred to in sub-article 1 or within such other period as may be agreed upon by the Parties, either Party may submit the dispute to arbitration on giving written notice of its intention to the other Party.

3. Arbitration shall be by a tribunal composed of one arbitrator appointed jointly by the Parties.

4. If after a period of three months from the delivery to a Party of the notice referred to in sub-article 2, the Parties have failed to agree on the arbitrator to be appointed by them, either Party may request the Secretary General of the United Nations to appoint such arbitrator.

5. The Arbitral tribunal shall adopt its own rules of procedure.

6. The decision of the Arbitral tribunal shall be final and binding on the Parties.

7. Each Party shall be responsible for all costs incurred in the preparation and presentation of its case to the Arbitral tribunal. All other costs incurred in connection with the arbitration proceedings shall be shared equally between the Parties.

#### Article 8 - Amendment of Treaty

The Parties may agree to amend this Treaty. Any such amendment agreed upon by them shall be committed to writing and signed on their behalf.