

**Agreement between the government of the Republic of Namibia and the government of the Republic of South Africa on the establishment of a permanent water commission signed at Noordoewer, 14 September 1992**

PREAMBLE

The Government of the Republic of Namibia and the Government of the Republic of South Africa (hereinafter called the "Parties"),

DESIROUS of establishing a tradition of good neighbourliness and co-operation between the Parties;

RECOGNISING the importance and paucity of the water resources in the two States and the Southern African region;

CONSCIOUS that co-operation between the Parties with regard to the development of mutual projects in respect of water resources of common interest will contribute towards the prosperity and welfare of their peoples, and

WISHING to consolidate the existing friendly relations by promoting regional water resource development 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,

HEREBY agree as follows:

Article 1 - Establishment of a Permanent Water Commission

1. The Parties hereby establish and undertake to maintain a Permanent Water Commission (hereinafter called the "Commission").
2. The objective of the Commission shall be to act as technical adviser to the Parties on matters relating to the development and utilisation of water resources of common interest to the Parties and shall 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. In furtherance of the stated objective each Party shall, to the extent permitted by its own laws and procedures, provide such information and authorisations as the Commission may require for the performance of its functions.

## Article 2 - Composition and Procedures of the Commission

1. The Commission shall consist of two delegations which represent the respective Parties.
2. Each Party may appoint not more than three members to its delegation.
3. One member of each delegation shall be designated by the Party concerned as leader of its delegation.
4. The leader of a delegation may co-opt any number of persons as advisers to his delegation.
5. Meetings of the Commission shall be convened as agreed upon by it. The venue of meetings shall alternate between the territories of the Parties unless the Commission determines otherwise for a particular meeting.
6. The leader of the delegation of the Party hosting a particular meeting of the Commission shall be chairperson in respect of that meeting and shall be responsible for the preparation and timeous distribution of the agenda, including all supporting documentation, the recording and distribution of the minutes and the making available of a suitable venue.
7. All decisions of the Commission shall be taken on the basis of consensus: Provided that, in the event of the Commission failing to reach consensus, the matter under discussion shall be referred to the Parties by the respective delegations for further negotiation.
8. A quorum shall be formed by the presence of at least two members from each delegation at any meeting of the Commission.
9. The Commission shall decide its own procedure.

## Article 3 - Functions and Powers of the Commission

1. The functions and powers of the Commission shall be to advise the Parties on:
  - (a) measures and arrangements to determine the potential of the water resources available from rivers of common interest;
  - (b) the reasonable demand for water from common water resources;

(c) the criteria to be adopted in the allocation and utilisation of common water resources;

(d) investigations, separately or jointly by the Parties, related to the development of any water resource of common interest including the construction, operation and maintenance of any water works in connection therewith;

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

(f) measures that can be implemented by either or both Parties to alleviate short-term problems resulting from water shortages in any river 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; and

(g) such other matters as may be determined by the Commission.

2. In pursuance of 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 recommendations to the Parties have regard for the interests any other State may have in any water resource of common interest to the Parties and that State.

#### 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 in terms of Article 2 (4).
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 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 otherwise agreed by the Commission.