

Protocol on Shared Watercourse Systems, Southern African Development Community

PREAMBLE

We, the Heads of State or Government of -

The Republic of Angola

The Republic of Botswana

The Kingdom of Lesotho

The Republic of Malawi

The Republic of Mozambique

The Republic of Namibia

The Republic of South Africa

The Kingdom of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

BEARING in mind the Helsinki Rules on uses of the waters of International Rivers and the work of the International Law Commission on the non-navigational uses of international watercourses;

RECOGNISING the relevant provisions of Agenda 21 of the United Nations Conference on Environment and Development, the concepts of environmentally sound management, sustainable development and equitable utilisation of shared watercourse systems in the SADC Region;

CONSIDERING the existing and emerging socio-economic development programmes in the SADC Region and their impact on the environment;

DESIROUS of developing close co-operation for judicious and coordinated utilisation of the resources of the shared watercourse systems in the SADC Region;

CONVINCED of the need for coordinated and environmentally sound development of the resources of shared watercourse systems in the SADC Region in order to support sustainable socio-economic development;

RECOGNISING that there are as yet no regional conventions regulating common utilisation and management of the resources of shared watercourse systems in the SADC Region;

MINDFUL of the existence of other Agreements in the SADC Region regarding the Common utilisation of certain watercourses; and

IN ACCORDANCE with Article 22 of the Treaty establishing SADC, have agreed as follows:

ARTICLE 1

INTERPRETATION OF TERMS

1. For the purposes of this Protocol the following terms shall have the meanings ascribed to them hereunder:

"Agricultural use" means use of water for irrigation purposes.

"Basin" means drainage basin.

"Basin State" means a State part or all of whose territory is within a drainage basin.

"Domestic use" means use of water for drinking, washing, cooking, bathing, sanitation and stock watering purposes.

"Drainage Basin" means a geographical area determined by the watershed limits of a system of waters including underground waters flowing into a common terminus.

"Emergency situation" means a situation that causes, or poses an imminent threat of causing serious harm to Basin States, which results suddenly from natural causes, such as floods, landslides or earthquakes or from human conduct.

"Industrial use" means use of water for commercial, electrical power generation, industrial, manufacturing and mining purposes.

"Member State" means a State which is a member of SADC, party to this Protocol.

"Navigational use" means use of water for sailing whether it be for transport, fishing, recreation or tourism.

"Riparian Land" means land contiguous to, abutting on or overlying waters of a stream, lake or aquifer or land through which a watercourse passes.

"Riparian State" means a State through whose territory or along whose border a watercourse passes.

"Shared watercourse system" means a watercourse system passing through or forming the border between two or more Basin States.

"Watercourse State" means a State in whose territory part of a watercourse system is situated.

"Watercourse system" means the inter-related hydrologic components of a drainage basin such as streams, rivers, lakes, canals and underground water which constitute a unitary whole by virtue of their physical relationship.

2. For the purposes of this Protocol "SADC", "the Council", "the Secretariat", "the Tribunal", and any other term defined in the Treaty establishing SADC shall have the same meaning as ascribed to them in that Treaty.

ARTICLE 2

GENERAL PRINCIPLES

For the purposes of this Protocol the following general principles shall apply:

1. The utilisation of shared watercourse systems within the SADC Region shall be open to each riparian or Basin State, in respect of the watercourse systems within its territory and without prejudice to its sovereign rights, in accordance with the principles contained in this Protocol. The utilisation of the resources of the watercourse systems shall include agricultural, domestic, industrial and navigational purposes.
2. Member States undertake to respect and apply the existing rules of general or customary international law relating to the utilisation and management of the resources of shared watercourse systems and, in particular, to respect and abide by the principles of community of interests in the equitable utilisation of those systems and related resources.
3. Member States lying within the basin of a shared watercourse system shall maintain a proper balance between resource development for a higher standard of living for their people and conservation and enhancement of the environment to promote sustainable development.
4. Member States within a shared watercourse system undertake to pursue and establish close co-operation with regard to the study and execution of all projects likely to have an effect on the regime of the watercourse system.

5. Member States within a shared watercourse system shall exchange available information and data regarding the hydrological, hydrogeological, water quality, meteorological and ecological condition of such watercourse system.
6. Member States shall utilise a shared watercourse system in an equitable manner. In particular, a shared watercourse system shall be used and developed by Member States with a view to attaining optimum utilisation thereof and obtaining benefits therefrom consistent with adequate protection of the watercourse system.
7. Utilisation of a shared watercourse system in an equitable manner within the meaning of paragraphs 4 and 6 requires taking into account all relevant factors and circumstances including -
 - (a) geographical, hydrographical, hydrological, climatical and other factors of natural character;
 - (b) the social and economic needs of the Member States concerned;
 - (c) the effects of the use of a shared watercourse system in one watercourse state on another watercourse state;
 - (d) existing and potential uses of the shared watercourse system;
 - (e) guidelines and agreed standards to be adopted.
8. Member States shall require any person intending to use the waters of a shared watercourse system within their respective territories for purposes other than domestic use or who intends to discharge all types of wastes into such waters, to first obtain a permit from the relevant authority within the State concerned. The permit shall be granted only after such State has determined that the intended discharge will not have a detrimental effect on the regime of the watercourse system.
9. Member States shall, without delay, notify other potentially affected States and competent international organisations, of any emergency originating within their respective territories.
10. In the event that implementation or execution of any planned measures is of the utmost urgency in order to save life, or to protect public health and safety, or other equally important interests as a result of an emergency situation, the Member State planning the measures may notwithstanding the provisions of paragraph 9, immediately proceed with implementation or execution, provided that in such event a formal declaration of the urgency of the measures shall be communicated to the other Member States.
11. Member States shall take all measures necessary to prevent the introduction of alien aquatic species into a shared watercourse system which may have detrimental effects on the ecosystem.
12. Member States shall maintain and protect shared watercourse systems and related installations, facilities and other works in order to prevent pollution or environmental degradation.
13. Shared watercourse systems and related installations, facilities and other works shall be used exclusively for peaceful purposes consonant with the principles enshrined in the SADC Treaty and in the Charter of the United Nations and shall be inviolable in time of international as well as internal conflicts.

ARTICLE 3

ESTABLISHMENT OF RIVER BASIN MANAGEMENT INSTITUTIONS FOR SHARED WATERCOURSE SYSTEMS IN THE SADC REGION

1. Member States hereby undertake to establish appropriate institutions necessary for the effective implementation of the provisions of this Protocol.
2. Without prejudice to paragraph 1 above, Member States undertake to establish the following institutions -
 - (a) A Monitoring Unit based at the SADC Environment and Land Management Sector (ELMS);
 - (b) River Basin Commissions between Basin States and in respect of each drainage basin;
 - (c) River Authorities or Boards in respect of each drainage basin.

ARTICLE 4

OBJECTIVES OF THE RIVER BASIN MANAGEMENT INSTITUTIONS

The River Basin Management Institutions shall have as their main objectives -

- (a) To develop a monitoring policy for shared watercourse systems;
- (b) To promote the equitable utilisation of shared watercourse systems;
- (c) To formulate strategies for the development of shared watercourse systems;
- (d) To monitor the execution of integrated water resource development plans in shared watercourse systems.

ARTICLE 5

FUNCTIONS OF THE RIVER BASIN MANAGEMENT INSTITUTIONS

In order to attain the objectives set out in Article 4, the River Basin Management Institutions shall, in consultation with watercourse States, perform the following functions

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- (a) With regard to National Water Resources Policies and Legislation;
 - (i) Harmonisation of national water resources policies and legislation,
 - (ii) Monitoring compliance with water resource legislation and, where necessary, recommending amendments thereto and the introduction of new legislation.
- (b) With regard to Research, Information and Data Handling;
 - (i) Collecting, analysing, storing, retrieving, disseminating, exchanging and utilising data relevant to the integrated development of the resources within shared watercourse systems and assisting Member States in the collection and analysis of such data in their respective States,
 - (ii) Reviewing the provisions of National Development Plans relating to the water course systems,
 - (iii) Designing and conducting studies, research and surveys relating to the environmentally sound development and management plans for shared watercourse systems,
 - (iv) Stimulating public awareness and participation in the sound management and development of the environment including human resources development,
 - (v) Promoting in accordance with the national development plans of the Basin States, the formulation of integrated master plans for shared watercourse systems.

- (c) With regard to Water Control and Utilisation in shared watercourse systems;
- (i) Recommending regulation of the flow and drainage,
 - (ii) Promoting measures aimed at flood and drought mitigation,
 - (iii) Recommending and promoting measures to control desertification, soil erosion and sedimentation,
 - (iv) Monitoring the utilisation of water for agriculture, domestic, industrial and navigational purposes,
 - (v) Monitoring the establishment of hydro-electric power installations,
 - (vi) Monitoring the generation of hydro-electric power.
- (d) With regard to Environmental Protection;
- (i) Promoting measures for the protection of the environment and the prevention of all forms of environmental degradation arising from the utilisation of the resources of the shared watercourse systems,
 - (ii) Assisting in the establishment of a list of substances whose introduction into the waters of a shared watercourse system is to be banned or controlled,
 - (iii) Promoting environmental impact assessments of development projects within the shared water-course systems,
 - (iv) Monitoring the effects on the environment and on water quality arising from navigational activities,
- (e) With regard to Hydrometeorological Monitoring Programme;
- (i) Promoting a Hydrometeorological Monitoring Programme in consultation with other SADC sectors.

ARTICLE 6

FINANCIAL AND REGULATORY FRAMEWORK FOR RIVER BASIN MANAGEMENT INSTITUTIONS

A financial and regulatory framework for the River Basin Management Institutions referred to in Article 3 shall be annexed to this Protocol and shall constitute part of the Protocol.

ARTICLE 7

SETTLEMENT OF DISPUTES

1. Any dispute between two or more Member States arising from the interpretation or application of this Protocol which cannot be settled amicably shall be referred to the Tribunal for adjudication under Article 16(1) of the Treaty of SADC.
2. (a) If a dispute pertaining to this Protocol is between SADC and a Member State, a request shall be made by the Council for an advisory opinion in accordance with Article 16(4) of the Treaty of SADC;
- (b) The opinion given by the Tribunal shall be accepted by the parties as final and binding.

ARTICLE 8

SIGNATURE

This Protocol shall be signed by duly authorised representatives of Member States.

**ARTICLE 9
RATIFICATION**

This Protocol shall be ratified by the signatory States in accordance with their constitutional procedures.

**ARTICLE 10
ENTRY INTO FORCE**

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States of SADC.

**ARTICLE 11
ACCESSION**

This Protocol shall remain open for accession by any Member State of SADC.

**ARTICLE 12
AMENDMENTS**

1. An amendment to this Protocol shall be adopted by a decision of three quarters of the Summit members who are party to this Protocol.
2. Proposals for amendments to this Protocol may be made to the Executive Secretary by any Member State for preliminary consideration by the Council of Ministers, provided however, that the proposed amendment shall not be submitted to the Council of Ministers for preliminary consideration until all Member States have been duly notified of it and a period of three months has elapsed after such notification.

**ARTICLE 13
WITHDRAWAL**

1. Any Member State may withdraw from this Protocol upon expiry of six months from the date of giving a written notice to that effect to the Executive Secretary.
2. Such a State shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal coming into effect, but shall remain bound to its obligations hereunder for a period of twelve months from the date of withdrawal.

**ARTICLE 14
TERMINATION**

This Protocol may be terminated in accordance with the provisions of Article 35 of the Treaty of SADC.

**ARTICLE 15
SAVINGS PROVISION**

Nothing contained in this Protocol shall derogate or be construed to derogate from existing agreements entered into between two or more Member States or a Member State and a State that is not a Member State concerning the utilisation of shared watercourse systems, provided that Member States shall endeavour to give effect to such agreements and any rights acquired or obligations assumed thereunder in conformity with the general principles prescribed in Article 2.

ARTICLE 16

ANNEXES

Any agreement that may be entered into between two or more Member States or between a Member State and a State which is not a Member State, concerning the utilisation of one or more shared watercourse systems shall be in conformity with the provisions of Articles 2, 3, 4 and 5 of this Protocol.

Such agreement may be adopted as an Annex to this Protocol by a decision of two-thirds of the Summit members who are party to the Protocol.

ARTICLE 17

DEPOSITARY

1. The original of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.

2. The Executive Secretary shall register this Protocol with the Secretaries of the United Nations Organisation and the Organisation of African Unity.

IN WITNESS WHEREOF, WE, the Heads of State or Government of SADC Member States have signed this Protocol.

Done at Johannesburg on the 28th day of August 1995 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.

REPUBLIC OF ANGOLA
REPUBLIC OF BOTSWANA
KINGDOM OF LESOTHO
REPUBLIC OF MALAWI
REPUBLIC OF MOZAMBIQUE
REPUBLIC OF NAMIBIA
REPUBLIC OF SOUTH AFRICA
KINGDOM OF SWAZILAND
UNITED REPUBLIC OF TANZANIA
REPUBLIC OF ZAMBIA
REPUBLIC OF ZIMBABWE