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**MINISTRY: WATER AFFAIRS AND FORESTRY
REPUBLIC OF SOUTH AFRICA**

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02 November 2006

Mr P Libeko
Clerk of Papers
Parliament of South Africa
PO Box 15
Cape Town
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Dear Mr Libeko

**TABLING OF THE 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**

On behalf of Ms Lindiwe Hendricks (MP), Minister of Water Affairs and Forestry please find attached the above-mentioned agreement for tabling in terms of section 231 (3) of the Constitution of the Republic of South Africa.

Kind regards

A handwritten signature in black ink, appearing to read 'Zakhele Hlongwane', written over a horizontal line.

**ZAKHELE HLONGWANE
PARLIAMENTARY OFFICER**

**MEMORANDUM ON THE OBJECTS OF THE AGREEMENT BETWEEN THE
REPUBLIC OF BOTSWANA, THE REPUBLIC OF MOZAMBIQUE, THE REPUBLIC
OF ZIMBABWE AND THE REPUBLIC OF SOUTH AFRICA FOR THE
ESTABLISHMENT OF THE LIMPOPO WATERCOURSE COMMISSION**

1. BACKGROUND

- 1.1. The SADC Revised Protocol on Shared Watercourses signed in August 2000 has as objective to foster closer co-operation for judicious, sustainable and coordinated management, protection and utilization of shared watercourses and advance the SADC agenda of regional integration and poverty alleviation, entered into force in 2003. The Protocol calls for the need to establish river basin institutions, such as river basin commissions, joint water commissions and water sharing agreements.
- 1.2. It is within this framework that the riparian States of South Africa, Botswana, Zimbabwe and Mozambique have entered into an agreement (hereinafter referred to as "Agreement") for the establishment of the Limpopo Watercourse Commission (Commission). The Commission will possess, by means of this Agreement, legal personality within the legal systems of each of the contracting Parties.
- 1.3. The objective of the Commission is to advise the contracting Parties and provide recommendations on the uses of the Limpopo River, its tributaries and its waters and measures of protection, preservation and management of the Limpopo River.

2. CONTENTS OF THE AGREEMENT

- 2.1. Article 1 is about definitions. Words such as the Commission, Council, Protocol and prevention are defined.
- 2.2. Article 2 is about the establishment of the Limpopo Watercourse Commission. It states how the Commission is established, the legal personality of the Commission and the protection of the rights of Parties to the Agreement.
- 2.3. Article 3 outlines the objectives of the Commission and the general principles of the Agreement. The general principles stated herein are those of the Protocol and it is stated that these principles are to be applicable to the Agreement.
- 2.4. Article 4 is about the institutional arrangements of the Commission. It clarifies the status of the Council in the Commission.
- 2.5. Articles 5, 6, 7 and 8 are about the Council, its meetings, functions and powers. They outline how the Council should be constituted, how many times the Council should meet annually, where the meetings should be held and when, venues for meetings etc.

- 2.6. Article 9 is about dispute resolutions should there be disagreement regarding the Agreement. It prescribes where the disputes regarding the Agreement can be referred to and when.
- 2.7. Article 10 is about termination of the Agreement by a Party.
- 2.8. Article 11 is about financial arrangements for the costs incurred in connection with attendance and participation of delegates in Commission meetings, who is responsible for the costs of venues, preparations and distribution of agendas and for the recording and distribution of minutes.
- 2.9. Article 12 is about general and final provisions. This Article outlines when the Agreement will be effective, when the current agreement on the establishment of the Limpopo Basin Technical Committee shall lapse, how amendments to the Agreement can be made and empowers Mozambique to be the depository of the Agreement.

3. FINANCIAL IMPLICATIONS FOR THE STATE

- 3.1. Although the four countries are intending to establish the Secretariat, and no study has yet been done to determine the cost implications of the Secretariat, the cost estimates were made based on the experience with the Orange-Senqu River Commission, which was established in 2000. The National Treasury was consulted and it approved the following preliminary cost estimates:
 - (a) R800 000 for the establishment of the Secretariat;
 - (b) R1,6 million for annual costs;
 - (c) that the member States will contribute equally towards the above costs;
 - (d) that our Department's share of the costs of the Secretariat will be about R200 000 for the establishment of the Secretariat and R400 000 per year for annual costs.
- 3.2. Other financial implications of the establishment of the Limpopo Watercourse Commission will depend on the projects and studies agreed upon between the four countries.

4. PROCESS UNDERTAKEN

- 4.1. The previous Minister, Mr. R. Kasrils, MP, together with his Mozambican counterpart, signed the Agreement on 27 November 2003. Zimbabwe and Botswana did not sign on that date but subsequently signed it in July 2004 in Kasane, Botswana. The Agreement was thereafter forwarded to our Department via the South African Department of Foreign Affairs, who had received it from Mozambique.
- 4.2. The four (4) countries want to establish a Secretariat, which will be located in Mozambique. The establishment of the Secretariat can only be done after all the four countries have ratified the Agreement. All the four countries will have to ratify this Agreement before it becomes binding on them. So far only Botswana and Mozambique have already ratified the Agreement.
- 4.3. A hosting agreement will be signed between Mozambique and the Commission.

5. PARLIAMENT PROCEDURE

- 5.1. The Chief State Law Advisers from both the Department of Justice and the Department of Foreign Affairs agreed that the Agreement regarding the Commission falls within the ambit of section 231(2) of the Constitution of South Africa, 1996 (the Constitution) and that the Agreement is in order.
 - (a) Section 231(2) of the Constitution provides that an international agreement binds the Republic only after it has been approved by resolution by both Houses of Parliament, unless it is an agreement referred to in subsection (3) of the said section.
 - (b) Section 231(3) provides that an international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.
- 5.2. The Agreement has been tabled for ratification before the South African Cabinet. The Cabinet has given approval that the Agreement be tabled in Parliament subject to the Department first consulting with the National Treasury, mainly with regard to the financial implications of the establishment of a Secretariat for the Limpopo Watercourse Commission. The National Treasury has already been consulted and has approved the establishment based on the estimated costs for the establishment of the Secretariat.

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

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;
 - c) Intergeneration equity principle;
 - d) Prevention principle;
 - e) 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.