

Southern African Development Community, African Regional Bodies

## Agreement on the Establishment of the Zambezi Watercourse Commission

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Southern African Development Community

# Agreement on the Establishment of the Zambezi Watercourse Commission

Published

Commenced in full on 19 June 2011

*[This is the version of this document at 13 July 2004.]*

## Preamble

The Republic of Angola, the Republic of Botswana, the Republic of Malawi, the Republic of Mozambique, the Republic of Namibia, the United Republic of Tanzania, the Republic of Zambia and the Republic of Zimbabwe,

CONSCIOUS of the advantages of regional co-operation with regard to the utilization and development of common water resources and the significant contribution which such co-operation could make towards the peace and prosperity of the Southern African region;

CONSCIOUS of the paucity and value of water resources in the Southern African region and the need to provide the people of the region with access to sufficient and safe water supplies;

RECOGNISING the significance of the Zambezi Watercourse as a major water resource in the region, as well as the need to conserve, protect and sustainably utilise the resources of the Zambezi Watercourse;

COMMITTED to the realisation of the principles of equitable and reasonable utilization as well as the efficient management and sustainable development of the Zambezi Watercourse;

DESIROUS of extending and consolidating the existing relations of good neighbourliness and co-operation with regard to the management and development of the water resources of the Zambezi Watercourse on the basis of 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 the Revised Protocol on Shared Watercourses in the Southern African Development Community, adopted in August, 2000;

HEREBY agree as follows:

## Article 1 – Definitions

In this Agreement, unless the context otherwise indicates—

"**Commission**" means the Zambezi Watercourse Commission established in terms of Article 3 of this Agreement (hereinafter called "the Commission" or "ZAMCOM");

"**Council**" means the Council of Ministers established in terms of Article 6 of this Agreement;

"**Equitable and reasonable utilisation (ERU)**" means equitable and reasonable utilisation as provided for under Article 3 (7)(a) and (b), and Article 3 (8)(a) and (b) of the SADC Protocol;

"**Executive Secretary**" means the Executive Secretary provided for in terms of Article 11 of this Agreement;

"**Member States**" means the States mentioned in the Preamble for which this Agreement has entered into force; and Member State shall have a corresponding meaning;

"**Public**" means the inhabitants of any Member State, including natural and juristic persons;

"**SADC**" means the Southern African Development Community;

"**SADC Protocol**" means The Revised Protocol on Shared Watercourses in the Southern African Development Community, adopted in August 2000;

"**Secretariat**" means the Secretariat established in terms of Article 6 of this Agreement;

“**Signatory State**” means any state mentioned in the Preamble, which has signed this Agreement;

“**Strategic Plan**” means a master development plan comprising a general planning tool and process for the identification, categorisation and prioritisation of projects and programmes for the efficient management and sustainable development of the Zambezi Watercourse;

“**Technical Committee**” means the Technical Committee established in terms of Article 6 of this Agreement;

“**Tribunal**” means The Tribunal of the SADC established in terms of Article 9 of the Treaty of the Southern African Development Community, adopted in 1992;

“**Zambezi Watercourse**” means the system of surface and ground waters of the Zambezi constituting by virtue of their physical relationship a unitary whole flowing normally into a common terminus, the Indian Ocean. (An indicative topographical map of the Zambezi Watercourse is contained in Annex 1 to this Agreement).

## Article 2 – Scope of the Agreement

This Agreement shall apply to the Zambezi Watercourse as defined in Article 1.

## Article 3 – Establishment of the Zambezi Watercourse Commission

1. The Zambezi Watercourse Commission is hereby established.
2. The headquarters of the Commission shall be determined by the Council.
3. A Headquarters Agreement shall be concluded between the Commission and the Government of the country determined by the Council as host for the Commission.

## Article 4 – Legal status

1. The Commission shall be an international organisation, and shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.
2. In the territory of each Member State, the Commission shall, pursuant to paragraph 1 of this Article, have such legal capacity as is necessary for the proper exercise of its functions.

## Article 5 – Objective and functions of the Commission

The objective of the Commission is to promote the equitable and reasonable utilization of the water resources of the Zambezi Watercourse as well as the efficient management and sustainable development thereof. To that end the Commission shall have the following functions:

- (a) collect, evaluate and disseminate all data and information on the Zambezi Watercourse as may be necessary for the implementation of this Agreement;
- (b) promote, support, coordinate and harmonise the management and development of the water resources of the Zambezi Watercourse;
- (c) advise Member States on the planning, management, utilization, development, protection and conservation of the Zambezi Watercourse as well as on the role and position of the Public with regard to such activities and the possible impact thereof on social and cultural heritage matters;
- (d) advise Member States on measures necessary for the avoidance of disputes and assist in the resolution of conflicts among Member States with regard to the planning, management, utilization, development, protection and conservation of the Zambezi Watercourse;

- (e) foster greater awareness among the inhabitants of the Zambezi Watercourse of the equitable and reasonable utilization and the efficient management and sustainable development of the resources of the Zambezi Watercourse;
- (f) co-operate with the institutions of SADC as well as other international and national organisations where necessary;
- (g) promote and assist in the harmonization of national water policies and legislative measures;
- (h) carry out such other functions and responsibilities as the Member States may assign from time to time; and
- (i) promote the application and development of this Agreement according to its objective and the principles referred to under Article 12.

### **Article 6 – Organs of the Commission**

In order for the Commission to discharge the functions entrusted to it, the following organs are hereby established:

- (a) The Council of Ministers;
- (b) The Technical Committee; and
- (c) The Secretariat.

### **Article 7 – The Council of Ministers**

1. The Council shall comprise one (1) delegate from the Government of each of the Member States. The Government of each Member State shall delegate to the Council the Minister responsible for water resources management and development.
2. The Council shall meet once annually in ordinary session and may meet in extraordinary session at the request of any Member State.
3. The Council shall at its annual ordinary session elect a Chairperson and Vice-Chairperson from among its members on the basis of rotation and the persons so elected shall function in such capacities until the annual ordinary session of the following year. Unless the Council expressly decides otherwise or unless prevented by unavoidable circumstances, the Vice-Chairperson shall be elected as Chairperson at the annual ordinary session of the year following his or her election as Vice-Chairperson.
4. Decisions of the Council shall be by consensus.
5. The quorum for meetings of the Council shall be at least two thirds of the Member States.

### **Article 8 – Functions and powers of the Council**

1. The functions of the Council shall be to:
  - (a) adopt policies and decisions and provide other necessary guidance on the promotion, support and coordination of the efficient management, sustainable development, reasonable and equitable utilisation of the water resources of the Zambezi Watercourse;
  - (b) oversee the implementation of the plans, programmes and projects of the Commission;
  - (c) approve the plans, programmes and projects to be developed and implemented by the Secretariat in accordance with Article 11;
  - (d) appoint the Executive Secretary and determine the terms and conditions of his or her service or employment;

- (e) approve the annual budget of the Commission before the beginning of the financial year;
  - (f) approve the annual accounts of the Commission;
  - (g) appoint independent external auditors and fix their fees and remuneration at the beginning of each financial year;
  - (h) adopt staff rules, financial rules and rules of procedure for the organs of the Commission;
  - (i) determine in accordance with the financial rules, the annual contribution of each Member State towards the budget of the Commission; and,
  - (j) approve the development and oversee the implementation of the Strategic Plan for the Zambezi Watercourse.
2. The powers of the Council shall be to:
- (a) conclude agreements with Member States, other States, institutions or international organisations;
  - (b) allow representatives of non-Member States or international organisations to attend its meetings as observers and determine the terms and conditions for such attendance;
  - (c) evaluate programmes and projects with regard to the Zambezi Watercourse and where necessary conduct or commission studies for purposes of evaluating, harmonising or co-ordinating such programmes or projects;
  - (d) entertain, address and resolve differences or disputes arising in connection with the interpretation or implementation of this Agreement, referred to it by any Council member, the Technical Committee, the Secretariat or any Member State and make recommendations to the parties with a view to arriving at an amicable settlement thereof;
  - (e) appoint commissions of enquiry where necessary;
  - (f) decide on the course of action to be taken in the event of non-compliance with the provisions of this Agreement; and,
  - (g) decide on any matter referred to it by the Technical Committee.

### **Article 9 – The Technical Committee**

1. The Technical Committee shall comprise delegations from each Member State consisting of no more than three (3) members and such number of advisors as each Member State may determine.
2. The Technical Committee shall meet once annually in ordinary session and may meet in extraordinary session at the request of the Secretariat or at least two thirds of the Member States.
3. The Technical Committee shall at its annual ordinary session elect a Chairperson and Vice-Chairperson from among its members on the basis of rotation and the persons so elected shall function in such capacities until the annual ordinary session of the following year. Unless the Technical Committee expressly decides otherwise or unless prevented by unavoidable circumstances, the Vice-Chairperson shall be elected as a Chairperson at the annual ordinary session of the year following his or her election as Vice-Chairperson.
4. Decisions of the Technical Committee shall be by consensus.
5. The quorum for meetings of the Technical Committee shall be at least two thirds of the Member States.

## **Article 10 – Functions and powers of the Technical Committee**

1. The functions of the Technical Committee shall be to:
  - (a) implement policies and decisions of the Council and such other tasks as maybe assigned by Council from time to time;
  - (b) develop the Strategic Plan for the Zambezi Watercourse and recommend it to the Council for approval;
  - (c) develop and propose for consideration and approval by the Council, rules of application to facilitate ERU of the Zambezi Watercourse pursuant to Article 13, including and not limited to:
    - (i) establishing strategic hydrometric stations on the Zambezi Watercourse to capture the relevant hydrological data;
    - (ii) developing and establishing early warning systems against extreme events (floods, droughts and other disaster situations) and procedures to sound alarms for such events; and,
    - (iii) instituting a monitoring mechanism for water abstractions and intra watercourse transfers.
  - (d) formulate recommendations on matters for decision by the Council;
  - (e) appoint the technical personnel of the Secretariat; and,
  - (f) take action on the recommendations and reports of the Secretariat.
2. The powers of the Technical Committee shall be to:
  - (a) make recommendations to the Council on the implementation by Member States of the principles referred to in Article 12 with regard to the Zambezi Watercourse;
  - (b) make recommendations to the Council on the harmonisation of the water laws and policies of Member States;
  - (c) make recommendations to the Council on the definition by Member States of the role and position of the Public in respect of the planning, utilization, development, protection and conservation of the Zambezi Watercourse and the possible impact thereof on social and cultural heritage matters;
  - (d) establish ad hoc or standing working groups, comprising representatives from Member States as may be necessary for the implementation of this Agreement;
  - (e) make recommendations to the Council on the standardised methodology to be adopted by Member States for collecting, processing and disseminating data and information with regard to all aspects of the Zambezi Watercourse;
  - (f) make recommendations to the Council with regard to contingency plans by Member States for responding to emergency situations; and,
  - (g) assign tasks to, and supervise the Secretariat.

## **Article 11 – The Secretariat**

1. The Secretariat shall comprise:
  - (a) the Executive Secretary;
  - (b) such number and categories of technical personnel as may be approved from time to time by the Council; and,
  - (c) such number and categories of supporting administrative personnel as may be approved from time to time by the Council.

2. The Executive Secretary and the technical personnel shall possess appropriate qualifications and experience.
3. The appointment of the Executive Secretary and the technical personnel shall satisfy the requirements for equitable representation of the Member States and a fair gender balance.
4. The Secretariat shall be headed by the Executive Secretary who shall be appointed or re-appointed for periods not longer than three years each.
5. The Executive Secretary shall:
  - (a) appoint the supporting administrative personnel of the Secretariat in accordance with the procedures and the terms and conditions of service determined by the Council;
  - (b) prepare and submit the annual budget to the Technical Committee for its consideration and recommendations to the Council;
  - (c) prepare and submit a Strategic Plan to the Technical Committee for its consideration and recommendation to the Council;
  - (d) prepare and submit annually to the independent external auditors appointed by the Council the books and accounts of the Commission;
  - (e) prepare the ordinary and extraordinary meetings of the Council and the Technical Committee;
  - (f) report annually to the Technical Committee on its activities as well as the programmes and projects planned, initiated or executed;
  - (g) be responsible for the effective and efficient functioning of the Secretariat as administrative head; and,
  - (h) perform all such other functions as the Council or the Technical Committee may from time to time assign.
6. The Secretariat shall:
  - (a) provide technical and administrative services to the Council under the Technical Committee's supervision;
  - (b) facilitate the development of a Strategic Plan, annual work programme, plans, studies, assessments and other documents required for the implementation of this Agreement for the approval of the Technical Committee;
  - (c) collect, obtain, collate and evaluate data and information with regard to all relevant aspects of the Zambezi Watercourse as well as disseminate all such data and information to the Member States;
  - (d) institute research and training programmes aimed at the sustainable utilization, protection and management of the Zambezi Watercourse;
  - (e) advise Member States on the planning, utilization, development, protection and conservation, of the Zambezi Watercourse as well as the role and position of the Public with regard to such activities and the possible impact thereof on social and cultural heritage matters;
  - (f) advise the Council and the Technical Committee on the listing and the effects of substances, the introduction of which into the Zambezi Watercourse shall be prohibited, limited, investigated or monitored by Member States, and provide guidelines for their mitigation;
  - (g) on the request of one or more of the Member States and subject to the approval of the Council, plan and implement development programmes or projects with regard to the Zambezi Watercourse;
  - (h) develop and distribute programmes and materials aimed at fostering greater awareness among the inhabitants of the Zambezi River Basin on the equitable and reasonable utilization of the Zambezi Watercourse on the basis of the principles referred to in Article 12;

- (i) co-operate with the institutions of SADC and others as necessary and provide such data and information as may be reasonably required and be requested by such institutions;
- (j) obtain financial and technical support for the implementation of programmes, plans and projects necessary for the achievement of the objective of this Agreement in accordance with the guidelines and directives provided by the Council from time to time;
- (k) implement the decisions of the Council and of the Technical Committee;
- (l) make recommendations to the Technical Committee on the harmonisation of the national water policies and laws of the Member States; and,
- (m) perform all such other functions as the Council or the Technical Committee may from time to time assign.

### **Article 12 – Principles**

1. In the implementation of this Agreement, the Member States commit themselves to the following principles:
  - (a) principle of sustainable development;
  - (b) principle of sustainable utilization;
  - (c) principle of prevention of harm;
  - (d) principle of precaution;
  - (e) principle of inter-generational equity;
  - (f) principle of assessment of trans-frontier impacts;
  - (g) principle of co-operation; and
  - (h) principle of equitable and reasonable utilisation.
2. These principles shall be interpreted according to the provisions of Article 3 of the SADC Protocol, and developed in accordance with the latest scientific concepts and with the best international practices.

### **Article 13 – Equitable and reasonable utilization**

1. The Zambezi Watercourse shall be managed and utilized in an equitable and reasonable manner.
2. The rules of application of ERU shall be developed by the Technical Committee as provided for under Article 10(1)(c).
3. In the application of ERU the Technical Committee shall take into account all the relevant factors, and circumstances including the following:
  - (a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
  - (b) the social, economic, and environmental needs of the Member States;
  - (c) the population dependent on the Zambezi Watercourse in each Member State;
  - (d) the effects of the use or uses of the Zambezi Watercourse in one Member State on other Member States;
  - (e) existing and potential uses of the waters of the Zambezi Watercourse;

- (f) conservation, protection, development and economy of the use of the water resources of the Zambezi Watercourse and the costs of measures taken to that effect; and,
  - (g) the availability of alternatives of comparable value, to a planned or existing use of the waters of the Zambezi Watercourse.
4. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is an equitable and reasonable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.
  5. In the application of ERU, Member States shall take into account the provisions of Article 14(4).

### **Article 14 – General responsibilities of Member States**

1. Member States shall in their respective territories utilize the Zambezi Watercourse in an equitable and reasonable manner with a view to attaining optimal utilization thereof and benefits therefrom consistent with adequate protection of the Zambezi Watercourse.
2. Member States shall individually and jointly take all precautionary and preventive measures in the utilization of the resources of the Zambezi Watercourse so as not to cause significant harm to the Watercourse nor to any Member State, including harm to human health and safety.
3. Member States shall take all appropriate technical, legislative, administrative and other measures in the utilisation of the Zambezi Watercourse in order to:
  - (a) prevent, reduce or control pollution of the surface and ground waters of the Watercourse and to protect and enhance the quality status of the water and associated ecosystems for the benefit of present and future generations;
  - (b) prevent, eliminate, mitigate or control adverse transboundary impacts;
  - (c) co-ordinate management plans and planned measures;
  - (d) promote partnerships in effective and efficient water use; and,
  - (e) prevent the occurrence of disputes.
4. Where significant harm is nevertheless caused to another Member State, the State whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard to the provisions of paragraph 3 above and in consultation with the affected States, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.
5. Member States shall give their full co-operation and support to the decisions of the Council and the Technical Committee, and shall take the necessary legislative, administrative, technical and other measures to give effect to this Agreement or such decisions.
6. Member States undertake to respect the international character and legal personality of the Commission and shall not seek to unduly influence the Executive Secretary or the technical and supporting administrative personnel of the Secretariat.
7. Each Member State shall, as may be required for the exercise of its functions under this Agreement, facilitate expeditiously the granting of visas and other travel documents to the Executive Secretary, the technical and supporting administrative personnel of the Secretariat as well as to the delegates of Member States to meetings of the Council and the Technical Committee.
8. Each Member State shall provide the Executive Secretary, the technical and supporting administrative personnel of the Secretariat with all the necessary access rights required for the exercise of their functions under this Agreement; provided that Member States may not be obliged to provide access rights if it would be prejudicial to their defence or national security.

9. Member States shall conduct their management and development plans, projects and programmes relating to the resources of the Zambezi Watercourse in accordance with the Strategic Plan.
10. Member States shall in their respective countries collaborate closely with civil society, institutions and organisations responsible for water resources management, development and utilisation.
11. Each Member State shall take the necessary legislative, administrative or other measures to extend the privileges and immunities provided for in the SADC Protocol on Immunities and Privileges to ZAMCOM, the Executive Secretary and the personnel of the Secretariat, as well as delegates of Member States to the meetings of the Council or the Technical Committee.

### **Article 15 – Furnishing of data and information**

1. Member States shall, on a regular basis, provide the Secretariat as well as all the other Member States with readily available or obtainable data and information with regard to all aspects of the Zambezi Watercourse.
2. If a Member State should be requested by the Secretariat or another Member State to provide data or information which is not readily available or obtainable, it shall employ its best efforts to comply with the request but may condition its compliance upon the payment by the requesting Member State or the Secretariat of the reasonable costs of collecting and, where appropriate, processing such data and information.
3. Member States shall employ their best efforts to collect and, where appropriate, to process data and information with regard to the Zambezi Watercourse, in a manner which, facilitates its utilization by the Secretariat and other Member States. Where appropriate, Member States shall make every effort to employ the standardised methodology for collecting, processing and disseminating data and information recommended by the Commission.
4. A Member State shall not be obliged to supply data or information to the Secretariat or any other Member State if it would be prejudicial to its defence or national security. A Member State shall however co-operate in good faith with the Secretariat or other Member States and provide as much data and information especially on hydrological matters and matters potentially harmful to people and the environment as circumstances permit.

### **Article 16 – Planned programmes, projects or activities of Member States**

1. A Member State planning any programme, project or activity with regard to the Zambezi Watercourse or which may adversely affect the Watercourse or any other Member State shall forthwith notify the Secretariat thereof and provide the Commission with all available data and information with regard thereto.
2. If the Commission or any Member State has reasonable grounds to believe that another Member State is planning a programme, project or activity referred to in paragraph (1) of this Article, the Commission or such Member State may request the other Member State planning the programme, project or activity to comply forthwith with the provisions of paragraph (1) of this Article. The request shall be accompanied by a documented explanation setting forth its reasons.
3. In the event of the Member State planning such programme, project or activity finding that the programme, project or activity will not adversely affect the Zambezi Watercourse or any other Member State, it shall so inform the Commission and the relevant Member State or States, providing a documented explanation setting forth the reasons for such finding.
4. The Commission shall study and evaluate the data and information pertaining to the planned programme, project or activity and report to the relevant Member State or States on its findings as to the possible effects thereof within a period of six months after having received the relevant data and information.
5. In the event of a dispute arising between Member States with regard to the effect of such programme, project or activity, such Member States shall, on the request of any one of them and utilising the good

- offices of the Commission, promptly enter into consultations and negotiations with a view to arriving at a settlement of such dispute. During the course of the consultations and negotiations, the Member State planning the programme, project or activity shall if so requested by the other Member State, refrain from implementing or permitting the implementation of such programme, project or activity for a period agreed upon by the Member States involved or, failing such agreement, for a period determined by the Commission.
6. If so requested by any Member State and subject to the decision of the Commission to that effect and the conditions which the Commission may impose including the contributions of the relevant Member States towards defraying the costs involved, the Commission may undertake a fact finding study with regard to the aspects in dispute between the Member States involved and if appropriate, may appoint consultants to assist it in such a study.
  7. If agreed to by the Member States involved and subject to the decision of the Commission, the Commission may undertake the co-ordination and harmonisation of programmes, projects or activities planned by two or more Member States. Member States shall, where appropriate, make every effort to co-ordinate and harmonise programmes, projects and activities with regard to the Zambezi Watercourse.
  8. Member States shall ensure that the Public in an area likely to be affected by a proposed programme, project or activity are informed thereof and are provided with the opportunity for making comments thereon or objections thereto as well as on the transmittal of such comments or objections to the Commission.

### **Article 17 – Emergency situations**

1. For the purposes of this Article, "emergency" means a situation resulting suddenly either from natural causes or from human conduct and causing or posing an imminent threat of causing serious harm to the Zambezi Watercourse or to a Member State.
2. A Member State shall, without delay and by the most expeditious means available, notify and promptly supply all the necessary information to other potentially affected Member States as well as the Secretariat of any emergency originating within its territory.
3. A Member State within whose territory an emergency originates shall, in co-operation with potentially affected Member States and, where appropriate, the Secretariat, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.
4. Member States shall individually and/or jointly develop contingency plans for responding to emergencies in co-operation, where appropriate, with the Secretariat and competent institutions and international organisations.

### **Article 18 – Shared watercourse agreements**

1. In the absence of any agreement to the contrary, nothing in this Agreement shall affect the rights or obligations of a Member State arising from agreements in force for it on the date on which it became a party to this Agreement.
2. Notwithstanding the provisions of paragraph 1, Member States which are parties to agreements referred to in paragraph 1 shall harmonise such agreements with this Agreement.

### **Article 19 – Financial provisions**

1. The budget of the Commission shall be drawn from annual cash contributions by Member States; donations, grants and loans from bilateral and multilateral organizations; monies raised internally; and other sources of funding agreed to by the Council.

2. The contributions of Member States to the ordinary budget of the Commission shall be determined by the Council.
3. Unless specified by the Council, contributions by Member States to projects implemented by the Commission could either be in cash or in kind. In kind contributions include: staff time, experts, training facilities, services, office accommodation and equipment or any other contributions as may be agreed by Council from time to time.

### **Article 20 – Non-compliance**

1. In the event of any Member State failing to fulfil its obligations under this Agreement, such Member State shall forthwith, and in any event no later than thirty (30) days after such failure, send written communication to the Secretariat explaining the failure and setting forth the reasons therefore, including any measures taken to remedy the failure.
2. Upon receipt of the written communication from the Member State, the Secretariat shall immediately enter into consultations with such Member State with a view to providing such assistance as may be necessary to procure the fulfilment of the obligations in question.
3. In the event of the consultations between the Member State and the Secretariat failing to achieve the result anticipated in paragraph 1 within six (6) months of the commencement of the consultations, the Secretariat shall refer the matter to the Council for its decision.

### **Article 21 – Settlement of disputes**

1. In the event of a dispute with regard to the planning, management, utilization, development, protection and conservation of the Zambezi Watercourse or the interpretation and application of this Agreement, arising among Member States, the Member States which are parties to the dispute, shall expeditiously enter into consultations and negotiations in the spirit of good faith and equity with a view to arriving at an amicable settlement.
2. The Council may, where appropriate, make recommendations to the parties to the dispute with a view to arriving at an amicable settlement thereof.
3. If the parties to the dispute have not arrived at a settlement through the means provided for in paragraphs (1) and (2) of this Article, the dispute may, unless the parties to the dispute agree on another means of settlement, be brought before the Tribunal by way of an agreement between the Member States which are parties to the dispute or by way of a reasoned and documented petition on the part of one or more of the parties to the dispute. A copy of the agreement or petition, as the case may be, shall be lodged with the Executive Secretary.
4. If a dispute arises between the Commission on the one hand and a Member State on the other, such dispute shall be referred to the Tribunal for decision.

### **Article 22 – Advisory opinion**

1. The Council may request the Tribunal to give an advisory opinion on the utilization, development, protection and conservation of the Zambezi Watercourse.
2. The Executive Secretary shall forthwith notify all Member States of the request for an advisory opinion.
3. All costs involved in obtaining such an advisory opinion shall be borne by the Commission.

### **Article 23 – Withdrawal**

1. At any time after three (3) years from the date on which this Agreement has entered into force for a Member State, that Member State may withdraw from this Agreement upon the expiration of twelve (12) months from the date of giving to the Executive Secretary, a written notice to that effect.
2. Any Member State which has withdrawn pursuant to paragraph 1 shall cease to enjoy all rights and benefits under this Agreement upon the withdrawal becoming effective, but shall remain bound by the obligations herein for a period of twelve (12) months from the date of giving notice to the date the withdrawal becomes effective.
3. Any asset of the Commission situated in the territory of a Member State which has withdrawn from this Agreement shall continue to be an asset of the Commission and be available for its use.
4. A Member State which has withdrawn from this Agreement shall not be entitled to enforce any claim against the Commission by way of execution against the assets of the Commission until the dissolution of the Commission.

### **Article 24 – Dissolution**

1. The Council may decide by a resolution supported by at least three quarters of the Member States to dissolve ZAMCOM or any of its organs and determine the terms and conditions for dealing with its liabilities and the disposal of its assets.
2. Notification of a proposal to dissolve ZAMCOM shall be given to all the other Member States by the Member State wishing to make such a proposal at least six (6) months prior to submitting it to the Council. The Council shall not decide on such proposal until a period of at least twelve (12) months has elapsed after the proposal has been submitted to it.

### **Article 25 – Amendment**

1. This Agreement may be amended by a decision of the Council taken by consensus.
2. The text of any amendment to this Agreement proposed by a Member State shall be notified by the Secretariat to the Member States at least six (6) months before the meeting of the Council at which such amendment is proposed for adoption.
3. The amendment shall enter into force thirty (30) days after the Council's approval pursuant to paragraph 1.

### **Article 26 – General and final provisions**

1. The working languages of the Commission shall be English and Portuguese.
2. This Agreement shall enter into force thirty (30) days after the date on which two thirds of the Member States listed in the preamble to this Agreement have deposited their instruments of ratification with the Executive Secretary of SADC who shall act as Depository for this Agreement.
3. This Agreement shall remain open for accession by any of the states listed in the preamble upon such terms and conditions as may be approved by the Council.

4. This Agreement drawn up in two original texts in the English and Portuguese languages respectively, both texts being equally authentic, shall be deposited with the Depository which shall transmit a certified copy to each Signatory State.

IN WITNESS WHEREOF, the duly authorized representatives of the Zambezi Watercourse States have signed this Agreement.

DONE at Kasane, Botswana this 13<sup>th</sup> day of July in the year two thousand and four.

### Annex 1

