

TREATY

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF
NAMIBIA**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

ON THE ESTABLISHMENT

OF THE

[AI-AIS/RICHTERSVELD] TRANSFRONTIER PARK

FOREWORD

As an affiliation of nations steeped in a common tradition of close association with our sustaining earth, Namibia and South Africa join in recognition of our mutual responsibility to protect and preserve our natural and cultural resources, and promote sustainable development for the common good of all;

whilst we embrace this responsibility as Partners and undertake to develop a wildlife sanctuary across political boundaries, where animals may freely roam and flourish in keeping with natural ecological processes;

we do this because as sure as the flower and the bee depend on each other for survival, so too the well-being of humankind is bound to our effective custodianship of the natural, cultural and historic heritage entrusted to us; and

we furthermore undertake to uphold high ideals and standards in jointly managing this natural treasure, for the spiritual and socio-economic upliftment of our people, and for succeeding generations to come.

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PREAMBLE

The Government of the Republic of Namibia and the Government of the Republic of South Africa (hereinafter jointly referred to as the “Parties” and in the singular as a “Party”);

RECOGNISING the principle of sovereign equality and territorial integrity of their states;

FURTHER RECOGNISING the legal rights of all Stakeholders as major contributors of land and economic, social and cultural resources to the [[Ai-|Ais/Richtersveld] Transfrontier Park;

TAKING ACCOUNT of the benefits to be derived from close co-operation and the maintenance of friendly relations with each other;

ACKNOWLEDGING the necessity to conserve and sustainably use shared natural resources and the environment for present and future generations of Southern Africa;

FURTHER ACKNOWLEDGING that the [[Ai-|Ais/Richtersveld] Transfrontier Park contains significant natural habitats for conservation of biological diversity, including habitats containing threatened species of universal value;

CONSCIOUS of the need to integrate cultural traditions, traditional land-use and biodiversity conservation;

RECOGNISING the important role of the private sector and local communities in the promotion and sustainable use of natural resources;

RECALLING that the countries establishing the [[Ai-|Ais/Richtersveld] Transfrontier Park are signatories of, or parties to the Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (Ramsar, 1971); the Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972); the Convention on

International Trade in Endangered Species of Wild Flora and Fauna (Washington, 1973); the Convention on Biological Diversity (Rio de Janeiro, 1992); the Treaty of the Southern African Development Community (SADC) (Windhoek, 1992); the United Nations Convention to Combat Desertification (Paris, 1994), as well as other Conventions and Agreements of relevance; and

DESIRING to promote ecosystem integrity, biodiversity conservation and sustainable socio-economic development across international boundaries;

HEREBY AGREE as follows:

ARTICLE 1

Definitions

In this Treaty unless the context indicates otherwise -

- (a) “Bilateral Ministerial Committee” means the Bilateral Ministerial Committee as provided for in Article 11;
- (b) “conservation” means the protection, maintenance, rehabilitation, restoration and enhancement of ecological processes, natural resources, cultural heritage and the environment;
- (c) “conservation area” means an area designated for conservation;
- (d) “Co-ordinating Party” means that country which on a rotational basis of two years shall be held accountable for routine initiation of meetings and achieving overall co-ordination of activities relating to management of the [[Ai-|Ais/Richtersveld] Transfrontier Park, as provided for in Article 13;
- (e) “JMB” means the Joint Management Board as provided for in Article 12;

- (f) “Joint Management Plan” means the management plan for the [[Ai-|Ais/Richtersveld] Transfrontier Park provided for in Article 14;
- (g) “local communities” or “communities” means groups of people living in and adjacent to the area of the [[Ai-|Ais/Richtersveld] Transfrontier Park, bound together by social and economic relations based on shared interest;
- (h) “Management Plan” means the specific plan providing for the management of a constituent area making up the [[Ai-|Ais /Richtersveld] Transfrontier Park;
- (i) “National Implementing Agency” means that national institution as formally designated by each government respectively which shall be responsible for the effective management of the [[Ai-|Ais/Richtersveld] Transfrontier Park, as provided for in Article 8;
- (j) “Stakeholders” means individuals or groups of individuals, communities or representative institutions with an enforceable right in land, which is included in the Transfrontier Park, and shall include the Richtersveld community;
- (k) “sustainable use” means use in a manner and at a rate that does not lead to the long-term decline of natural resources;
- (l) “TFCA” means the larger Transfrontier Conservation Area as provided for in Article 4;
- (m) “Transfrontier Park” means the [[Ai-|Ais/Richtersveld] Transfrontier Park as established in terms of Article 2.

ARTICLE 2**Establishment of the Transfrontier Park**

The Parties hereby establish the [[Ai-|Ais/Richtersveld] Transfrontier Park, which for the purpose of conservation, socio-economic development and for public enjoyment shall integrate the areas detailed in Article 4, and reflected in the map contained in the Annexure.

ARTICLE 3**Rights of Stakeholders**

The Parties undertake –

- (1) to recognise and respect the enforceable rights of all Stakeholders in their countries;
- (2) to enter into such contractual arrangements with Stakeholders as may be required in terms of their domestic law so as to give real protection to the rights in subArticle (1);
- (3) to take appropriate steps, in compliance with their applicable domestic law, to designate land that will constitute the proposed Transfrontier Park; and
- (4) to engage in dialogue with the Stakeholders on matters affecting them.

ARTICLE 4**Geographical Area**

- (1) For the purpose of conservation, socio-economic development and public enjoyment, the Transfrontier Park shall integrate the following areas:
 - (a) In Namibia, the area known as |Ai-|Ais Hotsprings Game Park; and
 - (b) in South Africa, the area known as Richtersveld National Park.
- (2) The area adjacent to the Transfrontier Conservation Park, characterised by compatible forms of land use but not lending itself to formal integration with the Transfrontier Park, may be managed as a Transfrontier Conservation Area, under the guidance of the JMB in terms of Article 12(2)(g). The Transfrontier Conservation Area shall include the various privately-owned and state-owned conservation areas directly bordering the Transfrontier Park and which may be identified in future.

ARTICLE 5

Objectives

The objectives of this Treaty shall be to –

- (a) foster trans-national collaboration and co-operation between the Parties which will facilitate effective ecosystem management in the area comprising the Transfrontier Park;
- (b) promote alliances in the management of natural and cultural resources by encouraging social, economic, responsible tourism and other partnerships between the Parties, including the private sector, local communities and non-governmental organisations;

- (c) enhance ecosystem integrity and natural ecological processes by harmonising environmental management procedures across international boundaries and striving to remove artificial barriers impeding the natural movement of wildlife;
- (d) facilitate the establishment and maintenance of a sustainable sub-regional economic base through appropriate development frameworks, strategies and work plans;
- (e) develop trans-border eco-tourism as a means of fostering regional socio-economic development; and
- (f) establish mechanisms to facilitate the exchange of technical, scientific, economic and legal information for the joint management of the ecosystem.

ARTICLE 6

Principles

- (1) The sovereign rights of each Party shall be respected, and no Party shall impose decisions on the other.
- (2) The process of managing the Transfrontier Park shall be done through joint decision-making by nominated country representatives, in terms of this Treaty.
- (3) The Parties undertake to follow relevant regional and international treaties and protocols in the development and management of the Transfrontier Park.
- (4) Decision-making shall be guided by the principles of -
 - (a) sustainable development and sustainable use requiring the integration of social, economic and environmental factors in planning, implementation and

evaluation to ensure that development and use serves present and future generations;

- (b) promotion of equitable and effective participation by local communities; and
- (c) accountability to community interests, transparency and access to relevant information.

ARTICLE 7

Co-operation

- (1) The Parties shall ensure that the Transfrontier Park is managed in accordance with the broad objectives, as outlined in Article 5, and in particular the Joint Management Plan.

- (2) The Parties shall -
 - (a) consult, assist and support each other in the implementation of this Treaty;
 - (b) promote an integrated and co-ordinated management of the Transfrontier Park for its optimal benefit;
 - (c) use their best endeavours to harmonise legislation and policies to facilitate integrated and complementary conservation and socio-economic development activities;
 - (d) ensure that effective measures are implemented and maintained to address issues relating to customs and immigration, security and borderline control, public health, wildlife diseases and other matters which affect relations between the Parties;
 - (e) synchronize related development actions in areas bordering each other; and
 - (f) enter into further agreements which may be required to give effect to the spirit and intent of this Treaty.

ARTICLE 8

National Implementing Agencies

Each Party shall –

- (a) designate a National Implementing Agency responsible for the effective development and management of the respective constituent areas within its own country;
- (b) delegate such powers and functions to its National Implementing Agency as are required for the effective implementation and co-ordination of all activities relating to the management of the Transfrontier Park.

ARTICLE 9

Security and Border Control

- (1) The Parties acknowledge that the defence, police, security and other state agencies responsible for national border integrity are entitled to perform statutory functions of border protection and control as permitted by domestic law.
- (2) The Parties undertake that the activities of such state agencies shall be coordinated between the Parties and shall be so done with sensitivity for the areas, management objectives and eco-tourism activities in and around the areas of activity.
- (3) Each Party undertakes to respect the sovereign rights of the other Party and not to allow its officials to cross into the other Party's territory, unless previously agreed on through either arrangement with the JMB or appropriate communication between mandated security or other designated agencies of the Parties.

ARTICLE 10

Institutional Framework for Collaboration

The following bodies shall be responsible for managing the Transfrontier Park:

- (a) Bilateral Ministerial Committee;
- (b) Joint Management Board;
- (c) Co-ordinating Party; and
- (d) other bodies that may be established if required.

ARTICLE 11

Bilateral Ministerial Committee

- (1) The Bilateral Ministerial Committee shall consist of the Ministers mandated by the respective Parties.
- (2) The Bilateral Ministerial Committee shall –
 - (a) be responsible for the overall policy guidance in the management of the Transfrontier Park;
 - (b) be chaired on a rotational basis;
 - (c) meet at least once a year;
 - (d) monitor the effectiveness of the implementation of the Joint Management Plan; and
 - (e) appoint and dissolve the Joint Management Board.
- (3) The decisions of the Bilateral Ministerial Committee shall be taken by consensus.

ARTICLE 12

Joint Management Board

- (1) The JMB shall consist of the following:

- (a) Two representatives from each of the National Implementing Agencies of the Parties of which one in the case of South Africa shall be a community member of the Richtersveld Management Committee;
 - (b) one representative each from the national institutions responsible for border control of the Parties; and
 - (c) two additional representatives appointed by each Party.
- (2) The JMB shall -
- (a) be responsible for periodic revision and implementation of the Joint Management Plan for the Transfrontier Park, in accordance with Article 14 (2);
 - (b) determine mechanisms for administering funds received and revenues generated specifically for the Transfrontier Park;
 - (c) be responsible for identifying financial needs and sourcing such funds as are required to achieve the effective implementation of the Joint Management Plan;
 - (d) establish such committees as may be necessary;
 - (e) provide reports to the Bilateral Ministerial Committee;
 - (f) seek, facilitate, receive and consider inputs of Stakeholders in an accountable manner; and
 - (g) be responsible for the coordination of the Transfrontier Conservation Area.
- (3) The JMB shall -
- (a) be chaired and hosted on a rotational basis; and
 - (b) meet on a quarterly basis or as deemed necessary.
- (4) Decisions of the JMB shall be taken by consensus.
- (5) A quorum at all meetings of the JMB shall consist of six representatives of whom one shall be an appointee of the Namibian National Implementing Agency, one

from the South African National Implementing Agency and one other representative from each of the Parties.

ARTICLE 13

The Co-ordinating Party

- (1) A specific Party shall be designated on a rotational basis as Co-ordinating Party in order to promote accountability and sustain momentum in the development and management of the Transfrontier Park.
- (2) The Co-ordinating Party shall be appointed for a period of two years.
- (3) A Party may elect to forfeit its designation as Co-ordinating Party, depending on the circumstances, in which event the function shall rotate to the next eligible Party.
- (4) The JMB shall recommend the appointment of the Co-ordinating Party with final designation vesting in the Bilateral Ministerial Committee.
- (5) The Co-ordinating Party shall -
 - (a) co-ordinate the activities associated with the development and management of the Transfrontier Park;
 - (b) ensure that an effective JMB is maintained, with full representation by all the Parties and that a working programme focussed on achieving the objectives of the Transfrontier Park is sustained;
 - (c) co-ordinate, with full participation of all relevant stakeholders, the implementation and periodic revision of an effective Joint Management Plan for the Transfrontier Park;
 - (d) apply, in the management of the Transfrontier Park, processes and procedures which are in accordance with the relevant regional and international treaties and protocols;

- (e) prepare reports for the Bilateral Ministerial Committee and the JMB;
- (f) facilitate the convening of meetings held to give effect to this Treaty; and
- (g) liaise with the Parties in identifying sources of funding and joint activities that require funding.

ARTICLE 14

Management Plans

- (1) Each Party shall be responsible for ensuring that a Management Plan for its constituent area is implemented and periodically updated in consultation with the other Party.
- (2) The JMB shall be responsible for ensuring that an overall, Joint Management Plan is maintained, periodically revised, and implemented. This Joint Management Plan shall address natural resource utilization, infrastructure development, tourism flows, revenue matters, and other issues of common interest and mutual impact.

ARTICLE 15

Financing

- (1) Sourcing of funds required to achieve the effective implementation of the Joint Management Plan shall be done either directly or indirectly from the National Implementing Agency of each Party, donor agencies, aid agencies, or other means approved by prior consent of the Bilateral Ministerial Committee.
- (2) The administration of funds shall be undertaken by the Financial Departments or equivalent structures within each of the National Implementing Agencies of the two Parties, or by donor agencies or aid agencies. However, this arrangement is in no way meant to detract from the ability of the JMB to decide and prioritise on financial needs, and decision-making regarding expenditure to ensure the achievement of the objectives of this Treaty.

ARTICLE 16

Settlement of Disputes

- (1) Any dispute between the Parties arising out of the implementation, interpretation or application of or performance in terms of this Treaty including its existence, validity or termination, shall be settled amicably through consultation or negotiation between them, through the diplomatic channel, or if not resolved in this manner, thereafter to be referred for mediation.
- (2) Should the dispute not be resolved in the manner referred to in subArticle (1), any Party may submit the dispute for final and binding arbitration in accordance with The Hague Permanent Court of Arbitration Optional Rules for Arbitrating Between Two States and as modified by the Parties if required, as in effect on the date of signature of this Treaty.
- (3) The appointing authority shall be the Secretary General of the Permanent Court of Arbitration in The Hague.

ARTICLE 17

Amendments

This Treaty may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 18

Reservation

The Articles of this Treaty shall not be subject to reservation.

ARTICLE 19

Depositary

The Secretary General of the United Nations shall be designated as the depositary of this Treaty.

ARTICLE 20

Entry into Force

This Treaty shall enter into force on the date on which each Party has notified the other in writing, through the diplomatic channel, of its compliance with the constitutional requirements necessary for the implementation of this Treaty. The date of entry into force shall be the date of the last notification.

ARTICLE 21

Withdrawal or Termination

- (1) This Treaty shall remain in force indefinitely, but may be terminated by either Party by giving 12 months' written notice in advance to the other Party through the diplomatic channel of its intention to terminate this Treaty.
- (2) Any Party giving notice of its intent to terminate this Treaty shall remain bound by the terms and conditions of the Treaty during the 12 month period of notice.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Treaty in duplicate in the English language, both texts being equally authentic.

DONE at on this day of August 2003.

FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA