

B. Agreement between the Governments of the Republic of South Africa, the People's Republic of Mozambique and the Republic of Portugal, in Cape Town on 2 May 1984

The Government of the Republic of South Africa, the Government of the People's Republic of Mozambique and the Government of the Republic of Portugal (hereinafter called "the Parties");

RECALLING that an Agreement was entered into on 19 September 1969 between the Government of the Republic of South Africa and the Government of Portugal concerning the establishment and operation of a hydro-electric scheme, known as the Cahora Bassa Project, for the generation and supply of electricity for use within the territories of South Africa and Mozambique and possibly other countries;

RECOGNIZING that conditions have changed considerably since the conclusion of the said Agreement which consequently no longer reflects the realities of the situation in the region of southern Africa;

CONSIDERING that the continued generation and supply of electricity from the Cahora Bassa Project can significantly contribute to the peace and prosperity of the region as a whole, as well as to the economic development and welfare of their respective peoples and countries;

DESIRING THEREFORE to enter into a tripartite Agreement which will take account of the changed conditions prevailing in the region;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Use of Terms

In this Agreement, unless inconsistent with the context —
"Apollo" means

Escom's distribution station established on the farm Witkoppies No 105, district of Pretoria.

"Cahora Bassa Project" means

- (i) the conservation dam and works erected on the river Zambezi at the site

known as Cahora Bassa at 15° 35' South and 32° 42' East approximately, within the territory of Mozambique;

- (ii) the hydro-electric power station that has been erected on the south bank of the river and the required ancillary works erected for the purposes of the generation and supply of electricity in terms of the supply contract;
- (iii) the transmission system erected for the purposes of transmitting electricity from Cahora Bassa and delivering the same to Escom at Apollo Distribution Station, including the converter equipment, transformers and ancillary equipment installed for this purpose at Cahora Bassa and Apollo.

“date of operation” means

the date upon which the contractual maximum demand is delivered by HCB for the first time in accordance with the provisions of the supply contract.

“Escom” means

the Electricity Supply Commission contemplated in the Electricity Act, 1958, of the Republic of South Africa.

“force majeure” means

- (i) any overwhelming occurrence of nature which could not reasonably have been foreseen or guarded against;
- (ii) any of the following occurrences initiated by human agency: war, invasion, blockade, foreign hostile act, civil war, rebellion, revolution, insurrection or sabotage;
- (iii) strikes or other similar stoppages of work by employees which are not the result of the unreasonable conduct of a Party, HCB or Escom;
- (iv) any other cause beyond the control of a Party, HCB or Escom if the Parties agree that such cause should be regarded as force majeure.

“HCB” means

the Hidroeléctrica de Cahora Bassa, SARL, a limited liability joint-stock company duly constituted in accordance with the laws of Mozambique on 23 June 1975.

“previous Agreement” means

the Agreement entered into on 19 September 1969 between the Governments of the Republic of South Africa and the Republic of Portugal relative to the Cahora Bassa Project.

"supply contract" means

the contract entered into between HCB and Escom regulating the supply of power from the Cahora Bassa Project to Escom and matters related thereto.

ARTICLE 2

Termination of Certain Existing Arrangements

1. As between the Government of the Republic of South Africa and the Government of the Republic of Portugal the provisions of this Agreement shall from the date of its operation terminate and replace the provisions of the previous Agreement, subject however to the provisions of Article 4 of this Agreement.
2. As between the Government of the Republic of Portugal and Escom the provisions of the supply contract shall from the date of its operation terminate and replace the provisions of the supply contract entered into between them on 19 September 1969.

ARTICLE 3

Supply Contract

1. HCB and Escom shall enter into a supply contract regulating the supply of power to Escom for use in the Republic of South Africa and the People's Republic of Mozambique and the said contract shall enter into force upon the same date as does this Agreement.
2. The supply contract shall be read with but subject to the provisions of this Agreement and in case of any dispute regarding the interpretation of the supply contract the provisions of this Agreement shall prevail.
3. The Government of the Republic of South Africa guarantees and shall ensure that Escom will comply with the provisions of the supply contract.
4. The Governments of the People's Republic of Mozambique and the Republic of Portugal jointly guarantee and shall ensure that HCB will comply with the provisions of the supply contract.

ARTICLE 4

Financial Obligations Under the Previous Agreement

Nothing contained in this Agreement shall affect any financial rights and obligations of the Government of the Republic of Portugal incurred by it in

regard to the establishment and operation of the Cahora Bassa Project under the previous Agreement.

ARTICLE 5

Export Credit Loans

The Government of the Republic of South Africa undertakes to negotiate with the Governments of the People's Republic of Mozambique and the Republic of Portugal the conditions of export credit loans to HCB for the purpose of financing repairs to and, if necessary, the improvement of the Cahora Bassa Project.

ARTICLE 6

Most Favoured Treatment

Power from the Cahora Bassa Project shall not be supplied to any consumer outside Mozambique at a price which is more favourable, taking into account the load factor, than that payable by Escom in terms of the supply contract, unless otherwise agreed by the Parties.

ARTICLE 7

Tapping of Transmission Lines

There shall be no tapping of power from the two monopolar lines initially established between Cahora Bassa and Apollo unless otherwise agreed by the Parties.

ARTICLE 8

Protection of the Transmission Lines

1. The Governments of the Republic of South Africa and the People's Republic of Mozambique shall jointly take immediate steps to ensure the protection of the transmission lines against attack or any other form of interference and to safeguard in the execution of their duties the personnel responsible for the maintenance and repair of the lines and all costs in connection therewith shall be borne by the said two Governments as agreed between them.
2. If the steps taken to protect the transmission lines do not result in the adequate protection thereof within a period of 90 days from the date of signature of this Agreement, any Party may request a meeting of the Parties in order to review the situation and such meeting shall take place without undue delay.

ARTICLE 9

Freedom of Movement

The Government of the Republic of South Africa and the Government of the People's Republic of Mozambique shall facilitate the entry and exit to and from their respective countries by any person for purposes connected with the Cahora Bassa Project.

ARTICLE 10

Currency, Method of Payment and Rates of Exchange

1. The amount of any payment to be made in terms of this Agreement or the supply contract shall be determined in Rand and payments shall be made to accounts designated by the payee.
2. The payee shall be entitled to elect to be paid in Rand or in such other currency as may be agreed upon with the payer and if the payee elects to be paid in such other currency the amount to be paid shall, after being determined in Rand, be converted into the other currency at the rate of exchange quoted by the South African Reserve Bank to the Government of the Republic of South Africa on the date of payment; provided that the payee shall give the payer at least three full working days advance notice of the currency desired.
3. If payments are required to be made under this Agreement or the supply contract to more than one payee simultaneously, the payees concerned may set off such payments if they so agree.

ARTICLE 11

Percentage Premium Payable to Mozambique

The Government of the People's Republic of Mozambique shall be entitled to receive from HCB 28,57 per cent of the premium referred to in clause 11, paragraph (2) of the supply contract as a contribution towards the costs incurred by that Government.

ARTICLE 12

Force majeure

In the event of the occurrence of force majeure in relation to this Agreement or the supply contract any Party may request a meeting of the Parties,

which shall take place without undue delay, in order to review the situation and to agree on measures to be taken.

ARTICLE 13

Exchange of Information

During the subsistence of this Agreement the Parties shall exchange information and views and consult with one another on all matters concerning the operation, maintenance and further improvement of the Cahora Bassa Project.

ARTICLE 14

Permanent Joint Committee

1. The Parties shall establish a Permanent Joint Committee which shall furnish them with advice and recommendations on any operational, maintenance or economic aspect of the Cahora Bassa Project.
2. Each Party shall appoint an equal number of members to the Committee which shall meet from time to time and function in accordance with rules drawn up by it and approved by the Parties.

ARTICLE 15

Review of Tariff and Premium

1. The Permanent Joint Committee shall, if so requested by any Party, meet specially in order to review and make recommendations concerning the rate of any tariff or premium payable in terms of the supply contract taking into account all relevant factors and particularly —
 - (a) any substantial increase in the actual operating or maintenance costs of the Cahora Bassa Project occurring as a result of circumstances beyond the control of any Party, Escom or HCB; or
 - (b) any substantial decrease in such costs;

provided that in the event of any increase or decrease in the rate of the tariff or premium, the ratio of the one to the other shall remain constant, except that the rate of the premium shall at no time be decreased below that contemplated in clause 11, paragraph (2) of the supply contract as at the date of signature thereof; provided further that any new tariff or premium which may be agreed upon by the Parties shall not take effect before the expiration of one year from the

date of operation of this Agreement and that any subsequent new tariff or premium agreed upon shall not take effect at intervals of less than one year.

2. At any such special meeting the Committee shall also take into account any fluctuation in the value of the Rand in so far as it may affect the viability of the Cahora Bassa Project.
3. If any recommendation in terms of paragraph 1 involves an increase in the tariff or premium payable by Escom, the profitability of the Cahora Bassa Project shall be one of the factors which the Parties shall take into account in their consideration of the recommendation.
4. In their consideration of any recommendation in terms of paragraph 1 the Parties shall arrive at a decision within 45 days of the date upon which the recommendation was made to them.

ARTICLE 16

Special Meetings of the Parties

If at any time one of the Parties requests a meeting of the Parties for any reason in connection with the Cahora Bassa Project and in particular its economic viability and at least one of the other Parties agrees to such a meeting, the Parties shall meet within 45 days of such request.

ARTICLE 17

Duration and Termination of Agreement

1. This Agreement shall enter into force upon the date of signature thereof and shall remain in force until the date of termination of the supply contract but, subject to the provisions of paragraph 2, shall become operative upon the date of operation.
2. The provisions of Article 8 shall become operative upon the date of entry into force of this Agreement.
3. After the termination of this Agreement it may be renewed by the Parties with such amendments as they may agree upon.

IN WITNESS WHEREOF the undersigned being duly authorized thereto, have in the names of their respective Governments signed and sealed three

copies of this Agreement in each of the English and Portuguese languages,
each version being equally authentic.

(Signatories)

Roelef Frederik
Botha

Mario da Graça
Machungo

Jaime Gama

Minister of
Foreign Affairs
of the Republic
of South Africa

Minister of
Planning of The
People's Republic
of Mozambique

Minister of
Foreign Affairs
of The Republic
of Portugal

For the
Government
of the Republic
of South Africa

For the
Government
of The People's
Republic of
Mozambique

For the
Government
of The Republic
of Portugal