Government of the
United Republic of Tanzania

Government of the
Republic of Malawi

CONVENTION

BETWEEN

THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

AND

THE GOVERNMENT OF THE REPUBLIC OF MALAWI

ON

THE ESTABLISHMENT OF A JOINT SONGWE RIVER BASIN COMMISSION

PREAMBLE

The Government of the United Republic of Tanzania and the Government of the Republic of Malawi (hereinafter referred to as the 'Parties');

DESIROUS of continuing to cooperate in a constructive and mutually beneficial manner for sustainable development, utilization, conservation and management of the Songwe River Basin water and related resources for the benefit of the peoples of the Parties;

RECALLING the beginning of the Parties joint discussions in 1976 on the challenges caused by the Songwe River in the lower basin in order to find a "permanent solution to the border problem";

FURTHER Recalling the Parties General Cooperation Agreement in 1991 to further develop between themselves comprehensive cooperation and friendship for the mutual benefit of their peoples, on the basis of African unity;

Recalling the Memorandum of Understanding (MOU) by the Parties signed on 20th February 2004 providing the mandate to proceed with the Detailed Design and Investment Preparation Phase of the Songwe River Basin Development Programme and the establishment of the Joint Steering Committee (JSC), the Joint Committee of Officials (JCO) and the Council of Ministers (CoM) for the Detailed Design and Investment Preparation Phase;

NOTING the unique spirit of cooperation that has inspired the work of the Joint Steering Committee, the Joint Committee of Officials and the Council of Ministers for the Coordination of the Detailed Design and Investment Preparation Phase of the Songwe River Basin and many accomplishments that have been achieved through its efforts;

ACKNOWLEDGING the great political, economic and social changes that have taken place in the Parties since the inception of the Songwe River Basin Programme;

RECOGNIZING that the Songwe River Basin, related natural resources and environment are natural assets of immense value to the Parties for the economic and social well-being and living standards of their peoples;

CONSCIOUS of the fact that good relationship, good neighbourliness and mutual respect between the Governments and the peoples of the Parties, will contribute to the improvement of co-operation on the protection and utilization of waters for the benefit and the welfare of their populations;

REAFFIRMING the Parties' determination to continue to cooperate and promote in a constructive and mutually beneficial manner in the sustainable development, utilization, conservation and management of the Songwe River Basin water and related resources for social and economic development, navigational and non-navigational purposes and the well-being of both Parties, consistent with the needs to protect, preserve, enhance and manage the environmental and aquatic conditions as well as maintenance of the ecological balance;

COMMITTED towards the realization of the principle of equitable and reasonable utilization, as well as the principle of sustainable development with regard to the Songwe River System;

AFFIRMING the need to promote or assist in the promotion of interdependent sub-regional growth and cooperation among the community of the basin, taking into account the regional benefits that could be derived and/or detriments that could be avoided or mitigated from Activities within the Songwe River Basin undertaken by this framework of cooperation;

REALISING the necessity to provide an adequate, efficient and functional joint organizational structure to implement this Convention and the projects, programmes and activities taken hereunder in cooperation and coordination with other member state and the international community;

FURTHER REALISING the need to address and resolve issues and problems that may arise from the use and development of the Songwe River Basin water and related resources in an amicable, timely and good neighbourly manner;

PROCLAIMING the following specific objectives, principles, institutional framework and ancillary provisions in conformity with the objectives and principles of the Charter of the United Nations, the Revised Protocol on Shared Watercourses in the Southern African Development Community (SADC) and recognized International Law;

ACKNOWLEDGING the important contribution, assistance and guidance of the United Nations, the Southern African Development Community, Development Partners and the international community in general; and

BEARING IN MIND their common interest and commitment to regional integration and poverty reduction through their joint management and development of the Songwe River Basin within the framework of the Southern African Development Community (SADC);

HEREBY AGREE as follows –

ARTICLE 1

Cooperation Convention

The Parties shall cooperate with each other, pursuant to the provisions of this Convention.

ARTICLE 2

Definitions

In this Convention unless the context otherwise requires –

"Acceptable Environmental Flow" means the acceptable minimum flow of water during each month of the dry season;

“Commission” means the Joint Songwe River Basin Commission established under Article 3 of this Convention;

“Committee” means the Joint Steering Committee established under Article 4 and further elaborated in Article 8 of this Convention;

“Convention” means this Convention and all related Annexes;

“Council” means a body of delegates constituted by the Parties as prescribed in Article 4 and further elaborated in Article 7 of this Convention;

“Defined Maximum Water Level and Area Inundated by the Reservoirs” means the maximum water level in a reservoir and the area flooded by the operation of the reservoir to its maximum level;

“Environment” means the conditions of water and land resources, air, flora and fauna that exist in any particular area of the Basin;

“Integrated Water Resources Management” means a process which promotes the coordinated development and management of water, land and related resources within the Songwe River Basin in order to maximise economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems in the Basin;

“Notification” means the timely provision of information by either Party on its proposed use of water according to the format, content and procedures defined by the Commission;

“Prior Consultation “means timely notification plus additional data and information to the Commission as provided in the rules and procedures of the Commission, that would allow either Party to discuss and evaluate the impact of the proposed use upon their uses of water and any other effects, which is the basis for arriving at an agreement. Prior Consultation is neither a right to veto the use nor unilateral right to use water by either Party without taking into account the other Party’s rights;

“Proposed Use” means a proposal for a definite use of the waters and other resources of the Songwe River System by either Party, excluding domestic and minor uses of water not having a significant impact on mainstream flows;

“Secretariat” means the Songwe River Basin Secretariat established under Article 4 and further elaborated under Article 9 of this Convention;

“Social Infrastructure” means physical assets or facilities that accommodate social services such as water supply and sanitation facilities, schools, hospitals and health centers, community housing, sports facilities, roads and local government facilities;

“Songwe River Basin” or “Basin” means the surface area and underground stratum of land area that collects water that is drained by the Songwe river and its tributaries and emptying its waters into Lake Nyasa/Malawi;

“Songwe River Basin Development Programme (hereinafter referred to as the ‘SRBDP’)” means the approved general planning framework for use as a blueprint to identify, categorize and prioritize the activities, projects and programs for integrated and sustainable development of the Songwe River Basin through joint financing by the Parties in order to achieve social and economic development at the local, basin and national levels;

“Songwe River System” means the Songwe River together with all the rivers discharging water by way of a common flow or system of channels into the Songwe River.

ARTICLE 3

Establishment, Objectives and Principles of the Commission

Establishment

1. The Parties hereby establish and maintain a Joint Songwe River Basin Commission herein called “The Commission”;

2. The Commission shall be a fully autonomous body possessing a legal personality in the territory of each Party.

Objectives of the Commission

3. Advise the Parties on matters relating to the sustainable management, conservation, development and utilisation of the water resources of the Basin;

4. Identify areas of co-operation related to Integrated Water Resources Management and Development and link with national and district developmental programmes in the Basin;

5. Coordinate and implement the developmental aspects of the Basin under the Songwe River Basin Development Programme, management of associated assets including the dam(s), hydropower plants, irrigation systems and social infrastructure in the two countries.

Principles of the Commission

6. Cooperation on the basis of sovereign equality and territorial integrity;

7. Sustainable development and equitable and reasonable utilization of the common water resources, notably the Songwe River and its tributaries;

8. Precaution and prevention of harm;

9. Equitable and Reasonable.

ARTICLE 4

Structure of the Commission

The Commission shall consist of three permanent organs:
a). The Council of Ministers or Council;
b). The Joint Steering Committee or Committee; and
c). The Secretariat.

ARTICLE 5

Powers and Duties of the Commission

The powers of the Commission shall be to:

a) Assist in the gathering and processing of information on any relevant matters on which it is to advise the Parties and may exercise any power or make any decision relating thereto as may be agreed by the Parties;

b) Deliberate and make recommendations to the Parties on any interests of either Party on resources of common interest;

c) Form committees and task forces, which will be empowered to look at topical water and other resources concerning the Parties as may be required;

d) Appoint consultants, contractors and suppliers to assist with specific assignments as and when deemed necessary; and

e) Prepare and adopt its own rules and procedures in accordance with the objectives and principles of this Convention.

ARTICLE 6

Seat of the Commission

1. The Headquarter of the Commission shall be in Kyela, Tanzania;

2. The Host State undertakes to accord, in respect of the Commission, its staff and its property, the privileges, immunities and facilities as agreed to by the Parties from time to time;

3. The Council may authorise the establishment of centres of the Commission in any location of the Parties.

ARTICLE 7

The Council

1. The Council shall consist of a delegation of each Party consisting of not more than six (6) permanent members and such other advisers as each Party may determine, provided that a delegation may be accompanied by not more than six advisers at any meeting of the Council unless otherwise determined by the Council at that particular meeting;

2. The Council delegation shall be the Minister or a Deputy Minister from the ministries responsible for i) Water, ii) Lands, iii) Energy, iv) Irrigated Agriculture; and v) Local Government. The Council delegation shall be empowered to make policy decisions on behalf of their Governments;

3. Each Party shall nominate and designate a member of the delegation as the leader of its delegation and shall expeditiously notify the other Party at every Council meeting.

Chairmanship of the Council

4. The Council shall have two Co-Chairs, one from each Party.

Sessions of the Council

5. The Council shall convene at least one regular session every year and may convene special sessions whenever it considers it necessary or upon the request of a Party. The requesting Party may invite observers to its sessions upon agreement with the other Party as it is deemed appropriate by both Parties;

6. Unless otherwise determined by the Council, ordinary meetings shall take place on a rotational basis at a venue and dates determined by the Council.

Functions of the Council

7. The functions of the Council shall be to:

a). Provide overall oversight for the Commission;

b). Make policies, decisions and provide other necessary guidance concerning the promotion, support, cooperation and coordination in joint activities and projects in a constructive and mutually beneficial manner for the sustainable development, utilization, conservation and management of the Basin waters and related resources, and protection of the environment and aquatic conditions in the Basin as provided for under this Convention;

c). Decide any other policy-making matters and make decisions necessary to successfully implement this Convention, including but not limited to approval of the rules and procedures of the Committee, the Songwe River Basin Development Programme and major component projects/programs; establish guidelines for financial and technical assistance of development projects and programs; and if considered necessary, invite the Development Partners to coordinate their support through a Development Partners Consultative Group;

d). Receive, consider and approve annual work plans and reports; approve the budget of the Commission drawn up by the Joint Steering Committee and such budget as is to be financed by revenue generated from the assets, the international community (Development Partners countries) and other sources;

e). Entertain, address and resolve issues, differences and disputes referred to it by any Council member, the Joint Steering Committee or any Party on matters arising under this Convention.

Rules and Procedures for the Council

8. The Council shall develop and adopt its own rules and procedures in accordance with the objectives and principles of this Convention, and may where necessary seek technical advisory services for the development of the said rules and procedures.

Decisions of the Council

9. Decisions of the Council shall be by consensus except where provided for in the Council's rules and procedures.

ARTICLE 8

The Committee

1. The Committee shall be composed of five (5) members from each Party, out of which one member should come from districts' authorities within the Basin;

2. The Committee members shall be at Head of Department level or their representative from the ministries that constitute the Council delegation unless otherwise agreed upon by the Parties.

Chairmanship of the Committee

3. The Chairmanship of the Committee shall rotate between the Parties and shall be for a term of one year.

Sessions of the Committee

4. The Committee shall convene at least two (2) regular sessions every year and may convene special sessions whenever it considers it necessary or upon the request of a Party;

5. The Committee may invite advisors to its sessions whenever it deems appropriate upon agreement between the two delegations.

Functions of the Committee

6. The functions of the Committee shall be to:

a). Implement the policies and decisions of the Council and such other tasks as may be assigned by the Council, and where appropriate assist the Partner States in harmonizing the policies, strategies legislation, institutional frameworks and plans for effective management and development of the Basin in order to achieve the set goals;

b). Formulate development programmes and projects for approval by the Council, which would be periodically reviewed and revised as necessary;

c). Confer with Development Partners, directly or through their consultative group(s), to obtain the financial and technical support necessary for project/program implementation;

d). Provide oversight over the construction and maintenance of all infrastructure under SRBDP, including flood warning, hydropower, irrigation systems, social infrastructure and operation of the dam;

e). Provide oversight over the operation of the hydropower plants and maintaining the dam and works, the irrigation system and the water supply and over the equitable sharing of the benefits thereof;

f). Conduct appropriate studies and assessments for the protection of the environment and maintenance of the ecological balance of the Songwe River Basin; and facilitate the implementation of water resources development projects for the basin;

g). Assign tasks and supervise the activities of the Secretariat as is required by this Convention;

h). Receive and approve programmes, training for Integrated Water Resources Management and development of personnel, annual work plans, budgets and reports (technical and progress reports) prepared by the Secretariat prior to submission to the Council for final endorsement;

i). Make recommendations to the Council for approval of the organizational structure, modifications and restructuring of the Secretariat, and establish informal working groups as necessary as would be recommended by the Secretariat;

j). Provide the necessary background information for issues and differences that may arise and are referred to the Council;

k). Review and approve studies for the personnel of the Parties involved in Songwe River Basin activities as appropriate and necessary to strengthen their capability to implement this Convention, and ensure an effective succession plan;

l). Subject to endorsement by the Council, to:

i) establish general standards and guidelines for the management of the Commission;

ii) establish posts and determine the conditions of employment of the staff and adopt or amend the Staff Regulations of the Commission;

iii) give guidance to the Head of the Secretariat on the implementation of policy and decisions taken by the Council;

iv) recruit and terminate Senior Staff of the Secretariat; and

v) prepare the sessions of the Council.

7. The Committee shall where necessary recruit expatriates that are technical and administrative staff and consultants, to facilitate capacity building and knowledge transfer required for the implementation of this Convention.

Rules and Procedures of the Committee

8. The Committee shall develop rules and procedures in accordance with the objectives and principles of this Convention which shall be approved by the Council;

9. The rules and procedures shall allow for the formation of *ad hoc* and/or permanent sub-committees or working groups including the ability to seek technical advisory services.

Decisions of the Committee

10. Decisions of the Committee shall be by consensus except as otherwise provided for in its rules and procedures.

ARTICLE 9

The Secretariat

1. The Secretariat shall be headed by the Executive Secretary (ES) who shall be appointed from the nationality of the Parties by the Committee and approved by the Council on a rotating basis.

2. The ES shall be-

   a) responsible for overseeing the work of the Commission according to the directions of the Committee and the Council;

   b) submitting reports on the work and audited accounts to the Committee and the Council; and

   c) the accounting officer for the Commission.

3. The ES shall be assisted by the Deputy ES who shall be appointed by the Council. The Deputy ES shall be of a nationality different from that of the ES.

   PROVIDED ALWAYS that there shall be an interval of not less than six (6) calendar months between the expiry of the contracts of the ES and the Deputy ES.

4. Both the ES and Deputy ES's terms of office shall be three (3) years, renewable once;

5. The technical and administrative staff of the Secretariat shall be at the minimum cover areas of expertise in water resources, agriculture/irrigation, hydropower, natural resources, finance and administration and shall be recruited by the Committee from the Parties' countries on an approved technical competence basis, and the number of posts shall be assigned on an equal basis between the Parties;

Functions and Duties of the Secretariat

6. The functions and duties of the Secretariat shall be to:

a) Carry out the decisions and tasks assigned by the Council and the Committee under the direction of Committee with direct responsibility to the Committee;

b) Provide management and technical services and financial administration and advice as requested by the Council and the Committee;

c) Prepare programmes, annual work plans and reports as required;

d) Formulate the annual work program, and prepare all other plans, project and program documents, studies and assessments as may be required in collaboration with the Local Councils and any other relevant institutions;

e) Implement the annual work plans as approved by the Committee and in collaboration with the Local Councils and any other relevant institutions;

f) Maintain and disseminate data and information on hydrology and water quality, environment, ESIA and any other areas as required by the Council;

g) Manage on a daily basis the construction, operation and maintenance of all infrastructure under SRBDP, including flood warning, hydropower, irrigation systems and operation of the dam; social infrastructure and regularly obtain, update and exchange information and data as necessary, including the development and use of a decision support system;

h) Provide secretarial services for sessions of the Council and the Committee;

i) Advise the Committee on all matters as may be directed by the Committee and the Council.

ARTICLE 10

Assets and Rights and Obligations of the Commission

The Commission shall:

a) assume ownership of the entire infrastructure developed under the SRBDP and any other assets acquired thereafter on behalf of the Parties;

b) be responsible for all the rights and obligations in the execution of the SRBDP; and

c) be responsible for the management of all the revenues generated from or by use of the assets developed under the SRBDP including the operation and maintenance of the said assets.

ARTICLE 11

Obligations and Responsibilities of the Parties

Each Party shall, in respect of its territory and subject to its laws:

a) Supply such information and plans relating to the development and utilization of the water resources of the Songwe basin to the Commission, as the Commission may require from time to time for the performance of its functions; and

b) Provide the members of the delegations to the Commission, and appointed consultants with all the necessary access rights required for the exercise of their functions under this Convention.

ARTICLE 12

Financial Arrangements

1. Each Party shall in respect of all meetings of the Commission be covered by contributions to the Commission by the respective Parties or revenues from the operations of the assets, to be incurred in connection with the attendance and participation of their delegations, and any person co-opted as advisers as mutually agreed;

2. All other costs incurred and liabilities accepted by the Commission in the performance of its functions and the exercise of its powers shall be equally shared between the Parties unless agreed otherwise by the Parties through contributions to the Commission or revenues from operations of the assets owned by the Commission on behalf of the Parties;

3. Any report prepared by the Commission on any matter referred to in Articles 8 and 9 of this Convention shall include estimates of the cost involved in the implementation of the advice of the Commission and may include proposals for the apportionment of such costs between the Parties through their annual contributions and from the revenues from operation of assets owned by the Commission on behalf of the Parties.

ARTICLE 13

Dispute Resolution

1. Any dispute arising out of interpretation or application of this Convention shall be settled peacefully in an amicable means by the Parties;

2. Where the Parties are unable to resolve the difference or dispute within ninety (90) days, either Party shall request the assistance of mediation through an entity or a party mutually agreed upon by the Parties;

3. Where the assistance of mediation specified in Article 13.2 fails to resolve the dispute, the Parties shall refer the matter to the SADC Tribunal or shall appoint an *ad-hoc* arbitrator through mutual agreement which shall be in writing. The Arbitrator's decision shall be final and binding on the Parties.

ARTICLE 14

Status of the Convention

The Convention shall supersede all previous agreements on the Basin and all rules and procedures adopted under such agreements;

ARTICLE 15

Entry into Force of the Convention

1. This Convention shall enter into force on the first day of the second calendar month after the date on which the Parties have notified each other in writing of their compliance with the requirements under their respective domestic laws for the implementation of the Convention;

2. The dates of entry shall be calculated from the date of the last notification.

ARTICLE 16

Termination of the Convention

1. This Convention shall remain in force until terminated. Either Party may terminate this Convention upon giving a minimum of six (6) months' notice in writing to the other Party;

2. Any obligations assumed by either Party under or pursuant to this Convention shall, to the extent necessary to fulfill such obligations, survive the termination of this Convention.

ARTICLE 17

Amendments of the Convention

1. This Convention may be amended at any time by mutual consent of the Parties through an exchange of notes between the Parties through their respective diplomatic channels;

2. Such an amendment shall enter into force on the first day of the second calendar month after the date on which the Parties have notified each other in writing of their compliance with the requirements under their respective domestic laws for the implementation thereof;

3. The dates of entry shall be calculated from the date of the last notification.

ARTICLE 18
Scope of the Convention

1. This Convention shall form the entirety of the Parties' agreement to cooperate for the sustainable development of the Songwe River Basin;

2. Parties may enter into other bilateral or multi-lateral special agreements or arrangements for implementation and management of any programs and projects to be undertaken within the framework of this Convention. Such agreements shall not be in conflict with this Convention and shall not confer any rights or obligations upon the Parties not signatories to this Convention, except as otherwise stipulated under this Convention.

ARTICLE 19
Confidentiality

Any information, documents and results made available to each Party in the execution of this Convention, shall not be revealed to third parties unless a written authorization is given by the other Party.

ARTICLE 20
Depository

The originals of this Convention in English language shall be deposited with the Executive Secretary of SADC and the Secretary General of the United Nations.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments have signed and sealed this Convention.

DONE at LILONGWE - MALAWI, this 18TH day of MAY 2017

Honourable Eng. GERSON H. LWENGE (MP)
MINISTER FOR WATER AND IRRIGATION

for and on behalf of:

THE GOVERNMENT OF
THE UNITED REPUBLIC OF TANZANIA

Honourable AGGREY C. MASI (MP)
DEPUTY MINISTER OF AGRICULTURE, IRRIGATION AND WATER DEVELOPMENT

for and on behalf of:

THE GOVERNMENT OF
THE REPUBLIC OF MALAWI