

Agreement between the State of Ara and the State of Bora on the Sustainable Use and Protection of River Cauro

Whereas the State of Ara and the State of Bora (hereinafter jointly referred to as the ‘Parties’ and individually as the ‘Party’);

Conscious of the mutual advantages of cooperation with regard to the utilisation and development of shared transboundary water resources and the significant contribution which such cooperation could make towards the peace and prosperity of the Parties;

Acknowledging the effects of Climate Change on the water resources of River Cauro;

Expressing the common desire to proceed with sustainable development on the basis of the 2030 Agenda for Sustainable Development and associated Sustainable Development Goals as adopted by UN General Assembly Resolution 70/1;

Committed to the management and development of River Cauro on the basis of international law, including the Convention on the Law of the Non-navigational Uses of International Watercourses, the Convention on the Protection and Uses of Transboundary Watercourses and International Lakes, and other relevant multilateral environmental agreements;

Hereby agree as follows:

Article 1 – Definitions *[to be negotiated and agreed]*

Groups should decide whether or not to include a definition of the river, river basin or related terms:

Possible options, or a combination thereof, might include:

Option A

‘River Cauro’ means the system of surface and groundwaters of River Cauro constituting by virtue of their physical relationship a unitary whole and flowing into a common terminus.

(See Article 2, Watercourses Convention, Practical Guide, p. 13-14).

Option B

‘Basin’ means the geographical area bounded by the watershed limits of River Cauro.

(See Article 1, 2003 Lake Tanganyika Convention. See also Article II, 1966 ILA Helsinki Rules, Practical Guide, p. 13-14).

Option C

'River Cauro basin ecosystem' means the interacting components of air, land, water and living organisms, including humans, and all of the streams, rivers, lakes, and other bodies of water, including groundwater, that are in the drainage basin of River Cauro.

(See Article 1(c), 2012 Agreement between Canada and the United States of America on Great Lakes Quality: Practical Guide, p. 13-14)

Article 2 – Scope

The Agreement applies to the protection and use of the River Cauro.

Nb: the provision on scope may be modified based on outcomes of the negotiation on Article 1 on definitions, and Article 3 on objectives.

Article 3 – Objective(s) [to be negotiated and agreed upon]

Groups should decide what objectives to include in the Agreement, ie., whether to have one overarching objective only or both an overarching objective and specific objectives.

Possible options, or a combination thereof, might include:

Option A

The objective of the Agreement is to establish legal and institutional foundations for cooperation towards achieving rational and environmentally sound use and protection of water and other natural resources and ecosystems of the River Cauro basin in the interests of population and sustainable development of Ara and Bora.

Option B

The objective of the Agreement is to establish legal and institutional foundations for cooperation towards achieving rational and environmentally sound use and protection of water and other natural resources and ecosystems of the River Cauro basin in the interests of population and sustainable development of the Parties.

In particular, the Parties shall cooperate in implementation of the following:

- a) Development and sustainable water use based on the principles of rational utilisation and protection of water and other natural resources and ecosystems of the River Cauro basin;*
- b) Considerable reduction of pollution of the River Cauro basin;*
- c) Prevention of deterioration and rehabilitation of ecosystems as well as conservation of biodiversity in the River Cauro basin;*
- d) Prevention and mitigation of adverse water impacts caused by natural and anthropogenic factors.*
- e)*

(See Article 1, 2012 Dniester Treaty; Practical Guide, p. 15-16)

Article 4 – Equitable and Reasonable Utilisation [to be negotiated and agreed]

Groups should decide whether to include a provision in the Agreement related to equitable and reasonable utilisation, and if included, the proposed text of that provision.

Possible options might include:

Option A

The River Cauro basin shall be managed and utilised in an equitable and reasonable manner.

Option B

1. *The River Cauro basin shall be managed and utilised in an equitable and reasonable manner.*
2. *In the application of Equitable and Reasonable Utilisation, the Parties 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 Parties;*
 - c) *the population dependent on the River Cauro in either of the Parties' territories;*
 - d) *the effects of the use(s) of the River Cauro in either of the Parties' territories;*
 - e) *existing and potential uses of the waters of the River Cauro;*
 - f) *existing and planned infrastructure which has the capacity to regulate streamflow of River Cauro;*
 - g) *conservation, protection, development and economic use of the water resources of River Cauro and the costs of measures taken to that effect;*
 - h) *the availability of alternatives of comparable value, to a planned or existing use of the waters of River Cauro; and*
 - i) *agreements in force between the Parties.*
3. *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 that basis.*

(See Article 8, 2019 Buzi Agreement; Practical Guide, p.19-20)

Article 5 – Prevention of [significant] transboundary harm

1. A Party that performs activities or work for utilising the water resources of River Cauro, in their respective territories, shall adopt all the necessary measures to avoid causing [significant] transboundary harm to the other Party or the environment.
2. When causing [significant] transboundary harm to the other Party or the environment, the Party who caused the [significant] transboundary harm shall adopt all the necessary measures to eliminate or mitigate such harm.

(See Article 7, 2010 Guarani Aquifer Agreement; Practical Guide, p. 21-22)

Article 6 – Exchange of Data and Information

The Parties shall exchange reasonably available data on a) environmental conditions of River Cauro basin; b) experience gained in the application and operation of best available technology and results of research and development; c) emission and monitoring data; d) measures taken and planned to be taken to prevent, control and reduce transboundary impact; e) permits or regulations for waste-water discharges issued by the competent authority or appropriate body.

Article 7 – Monitoring and assessment

The Parties shall cooperate in the field of monitoring and assessment of the conditions of River Cauro.

Article 8 – River Cauro basin commission

For the purpose of implementing this agreement, the Parties commit to establish the River Cauro basin commission.

Article 9 – Notification and consultation of planned measures *[to be negotiated and agreed]*

Groups should decide whether to include a provision in the Agreement related to notification and consultation, and if included, the proposed text of that provision.

Possible options might include:

Option A

No provision on notification and consultation.

Option B

A Party planning any project, programme or activity with regard to the River Cauro basin which may have a significant adverse effect upon the other Party shall forthwith notify the Commission and provide all available data and information with regard thereto.

Option C

- 1. Whenever a Party considers that a project or an activity to be undertaken in its territory causes or may cause a [significant]transboundary impact, it shall notify the other Party thereof and provide it with the relevant information.*
- 2. If a Party considers that a project or an activity causes or may cause a [significant]transboundary impact and has not been notified thereof, it shall request the necessary information from the other Party, stating the grounds for such request;*

3. *As a result of the above-mentioned notification, the Parties shall enter into consultations whenever there is sufficient evidence that a project or activity causes or may cause a [significant]transboundary impact.*
4. *These consultations shall be conducted within the Commission during a period of six months which may be extended by mutual agreement for an equal period, with the aim of providing a solution to prevent, eliminate, mitigate or control the impacts. In such an event, the abovementioned period may be extended twice.*
5. *The provisions of Article 10 of this Agreement shall apply whenever the Parties fail to reach an agreement within the Commission during the period defined in the previous paragraph.*
6. *If in the course of the above-mentioned consultations, the Parties ascertain the existence of [significant]transboundary impact, they shall suspend the execution of the project, wholly or in part, for a mutually acceptable period, unless a different agreement is reached within a period of two months. Furthermore, in the event of ongoing activities, the Parties shall not undertake any further measure which may exacerbate the situation.*
7. *In the event of the suspension of the project or the failure to carry out the measures referenced to in the previous paragraph, involving irreparable harm to the protection of public health or safety, or of any other relevant public interest, the Party concerned may carry on with the execution of the project or proceed with the activity, without prejudice to its possible responsibility.*

(See Article 8, 1998 Albufeira Convention; Article 7, ORASECOM Agreement, Practical Guide, p. 71-71)

Article 10 – Dispute settlement [to be negotiated and agreed]

Groups should decide whether to include a provision in the Agreement related to dispute settlement, and if included, the proposed text of that provision.

Possible options might include:

Option A

No provision on dispute settlement.

Option B

1. *A dispute between the Parties on the interpretation or application of the Agreement shall be settled by negotiation or any other manner agreed by the Parties.*
2. *The negotiations shall be launched within three months from the date when one of the Parties presents a request for negotiations to the other Party through diplomatic channels.*

Option C

1. *If a dispute arises between the Parties on the interpretation or application of this Agreement, they shall seek a solution by negotiation.*
2. *If an agreement is not reached within six months one of the parties may unilaterally seek good offices, mediation or conciliation.*
3. *If, after a further six months, an agreement is not reached following good offices, mediation or conciliation, one of the parties may refer the dispute to arbitration or to the International Court of Justice.*

(See Article 30, 2009 Agreement between Finland and Sweden Concerning Transboundary Rivers, Article 21, 2004 Zambezi Agreement, Practical Guide, p. 94-96)

Article 11 – Entry into force

1. This Agreement shall be subject to ratification by each Party.
2. This Agreement shall enter into force thirty (30) days after the deposit of the instrument of ratification by the Parties and shall remain in force for a period of ten (10) years.