

# **DRAFT SUGGESTED WORKING TEXT FOR A MEMORANDUM OF UNDERSTANDING RELATING TO COOPERATION ON THE SIO-MALABA-MALAKISI**

## **I. PREAMBLE**

Taking into account that the Republic of Uganda and the Republic of Kenya hereinafter the Parties are riparians of the Sio-Malaba-Malakisi;

Considering that the Parties have since 2005 been engaged in discussions and activities in the Sio-Malaba-Malakisi basin, in the context of fostering transboundary water governance and development;

Aware of the importance of furthering regional cooperation regarding the utilisation and development of common water resources;

Mindful of existing cooperation efforts between the countries through agreements and other joint initiatives of conservation and development of shared waters;

Recognizing the contribution that such cooperation efforts could make towards peace and prosperity of the Eastern African region;

Agree that it is in the mutual interest of the Republic of Uganda and the Republic of Kenya (individually referred to as a “Party” and collectively “the Parties”) to establish the following Memorandum of Understanding (hereafter “MoU”).

## **II. SCOPE**

### ***Art. 1 Scope of the Memorandum of Understanding***

The MoU applies to the uses of the Sio-Malaba-Malakisi (hereafter referred to as “SMM”), its waters and to measures of cooperation, protection, preservation and management related to the uses of its waters.

### ***Art. 2 Use of Terms***

*Transboundary waters:* any surface or ground waters which mark cross or are located between two or more States.

*Riparian States:* The Republic of Kenya and the Republic of Uganda.

*Integrated Water Resources Management:* an approach of integrated management of the different phases of water, according to which States should make efforts to achieve the unified management of

surface, ground waters and any other waters considered relevant, as well as include the management of other natural resources.

### III. OBJECTIVES

#### ***Art. 3 Objectives***

1. This Memorandum of Understanding has the following objectives:

To establish the basis for the design and development of a cooperative framework aiming towards the effective management, protection and development of the SMM.

- a) To foster cooperation among the Parties and ensure sustainable development and peace in the region.
- b) To establish the foundations and guiding principles for creating the joint mechanisms for the sustainable management of the SMM, its resources and its catchment.
- c) To ensure scientific and technical capacities of the Parties in the management of the SMM;
- d) To promote the involvement and inclusion of local communities and civil society.
- e) To encourage the development of an effective regulatory and institutional framework that is stakeholders inclusive to foster cooperation and the sustainable development of the basin.

2. The Parties, subject to terms of this MoU, agree to strengthen, promote and develop long-term cooperation in the field of integrated water management on the basis of equality and mutual benefit.

#### ***Art. 4 Areas of cooperation***

1. Specific areas of collaboration, activities and projects will be identified on the basis of programmatic and/or other relevant criteria and will be specified in one or more agreed annual work plans and budgets.

2. Potential areas of collaboration include:

- a) Promoting the knowledge and practice of water governance at multiple levels;
- b) Joint research, development and design project, including mutual exchange of research findings, scientific and technical documentation and information.

- c) Enhancing capacity and knowledge to implement basin, sub-basin, national and subnational frameworks contributing to transboundary water governance in the SMM Basin.
- d) Strengthening the institutional framework for transboundary cooperation among Basin states.
- e) Any other areas of cooperation in the field of shared water management to be mutually agreed by the Parties.

#### **IV. GUIDING PRINCIPLES**

##### ***Art. 5 Cooperation***

1. The Parties agree to cooperate in the effective management of the SMM on the basis of sovereign equality, territorial integrity, mutual benefit and good faith, in order to ensure the optimal utilization and the adequate protection of the waters and its ecosystems.
2. In determining the manner of such cooperation, the Parties may consider the establishment of Joint Bodies to facilitate cooperation on relevant measures and procedures in the light of experience gained through existing cooperation mechanism in the region.
3. In order to achieve this purpose, exchange of information, consultations, notifications and other forms of cooperation are carried out on the basis of good faith.
4. The Parties will support each other in working towards the achievement of the objective and the fulfilment of their respective commitments.

##### ***Art. 6 Equitable and Reasonable Utilization***

1. The Parties agree to utilize the waters of the SMM in an equitable and reasonable manner. In particular, the SMM and its waters will be used and developed by the Parties with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interest of the Parties, consistent with adequate protection of the SMM.
2. The Parties agree to participate in the use, development and protection of the SMM in an equitable and reasonable manner. Such participation includes both the right to utilize the SMM and the duty to cooperate in its protection and development.

##### ***Art. 7 Avoidance of Harm***

1. When utilizing the waters of the SMM, Parties agree to take all appropriate measures to prevent the causing of significant harm.

2. Where significant harm is caused to another Party, the Party whose use causes such harm agrees to take appropriate measures in consultation with the affected Party, to eliminate or mitigate such harm.

#### ***Art. 8 Ecosystem Approach***

The Parties agree to cooperate in the management of the SMM, its territories and waters on the basis of the ecosystem approach, in order to integrate the management of land, water and living resources and promote their conservation and sustainable use in an equitable way.

#### ***Art. 9 Public Participation and Information***

1. The Parties agree to ensure appropriate access to information and the opportunity to participate in the decision-making process of all stakeholders involved.
2. The Parties will make sure that information on the conditions of transboundary waters, measures taken or planned to be taken and the effectiveness of those measures, is made available to the public.

### **V. COMMITMENTS**

#### ***Art. 10 Maintaining environmental flows***

In the management of the water resources of the basin, environmental flows will be provided for the conservation of aquatic ecosystems.

#### ***Art. 11 Adoption of integrated strategies and efficient internal measures***

The States will make all efforts to adopt integrated policies, strategies, and regulations in order to achieve a sustainable development, conservation and use of the shared water resources of the Basin.

#### ***Art. 12 Harmonisation of policies, strategies and legislative frameworks***

The States will provide for the harmonisation of their policies, strategies and legislation in relevant areas of water management and development

#### ***Art. 13 Promotion of good environmental practices***

The State will encourage the use of good environmental and traditional practices and local know-how in all areas of the sustainable management of the water resources of the Basin.

#### ***Art. 14 Enhancing the cooperative framework***

In the implementation of the MoU, the States will endeavor to work towards the adoption of a framework for cooperation to coordinate all initiatives pertaining to the Basin.

***Art. 15 Policies and strategies of conservation and sustainable use***

The States agree to jointly design, depending on the circumstances and means, jointly design and implement strategies, policies, plans, programmes, and development projects for the conservation and sustainable use of water resources in the Basin.

***Art. 16 Collection and sharing of data and information***

- (i) The States agree to, through their national institutions facilitate joint campaigns for data collection on all the water resources of the basin.
- (ii) They agree to harmonize data collection methods and techniques, processing and storage.
- (iii) They agree to regularly communicate and share the totality of the information, appropriate scientific and technological data on the water resources of the Basin.
- iv. They agree to adopt common databases on the water resources of the Basin.

***Art. 17 Joint Studies and assessment***

When a conflict arises in the use of the water resources of the Basin, the States agree to carry out joint surveys and assessments that will allow for appropriate and satisfactory solutions to these problems.

***Art. 18 Sensitisation of the local communities***

The States agree to provide for the sensitization of local communities to raise their awareness for improved protection and conservation of the water resources of the Basin.

***Art. 19 Capacity building***

The States agree to design and implement capacity building programmes for all stakeholders involved in the sustainable management of the shared water resources of the Basin.

***Art. 20 Joint scientific research***

The States will encourage research institutions to undertake joint research programmes on the management and use of water resources.

***Art. 21 Control and reduction of water pollution***

The States agree to undertake actions to control and reduce water pollution, and if applicable, take measures for an ecologically sound management of wastes, which will ensure the protection of human health and of the environment.

The States will endeavor to ban the importation of foreign waste into the Basin.

***Art 22. Emergency plans***

The States agree to develop and implement joint emergency preparedness plans to address unforeseen situations which may be injurious to the people, environment and the water resources of the Basin.

***Art. 23 Water resources audits and monitoring***

The States will promote a better knowledge of the water resources by taking stock of the situation through assessments of the water resources of the Basin.

The States agree to set up a mechanism to regularly monitor the quantity and quality of the water resources as well climatic data of the Basin.

***Art. 24 Protection of waters***

The States, in close collaboration with the local communities, agree to implement programmes to control desertification and erosion of the Basin.

They should also ensure the protection and restoration of the rivers.

***Art. 25 Control of water-related diseases***

The States agree to develop and implement programmes and strategies to prevent and eradicate water-related diseases.

***Art. 26 Conservation of aquatic biodiversity***

For a sustainable use and better conservation, the States will identify, regularly carry out inventory and monitor aquatic biodiversity and take appropriate measures for their conservation, in particular through protected areas.

***Art. 27 Control of invasive aquatic species***

The States agree to adopt all relevant measures to control invasive aquatic flora and fauna that adversely affect the ecosystem of the basin.

Particular attention will be paid to aquatic endangered species, and to those offering more potential for a sustainable use.

***Art. 28 Soil conservation***

The States agree to undertake measures for the protection, conservation and restoration of soils to ensure sustainable use of the land and water resources.

## **VI. IMPLEMENTATION MECHANISMS**

### ***Art. 29 Implementation***

In order to ensure the effective implementation of this MoU, the Parties agree to take the following steps:

- a. The Parties accept to exchange information to fullest extent possible on matters of common interest as well as documentation relating to the projects, in order to attain better complementary action and effective coordination;
- b. The personnel of each Party, actively involved in specific collaboration activities, will seek to meet on a regular basis, and at a minimum once every calendar year, to develop joint work plans and monitor implementation with a view to achieving effective joint implementation;
- c. Each Party will nominate and notify to the other Party a focal point dedicated specifically to coordinating the collaboration and communication under this MoU, and the specific activities undertaken pursuant to the Annual Workplans agreed by the Parties;
- d. Each Party will ensure that any changes made to the list of its focal points will be communicated promptly to the other Party.

### **INSTITUTIONAL FRAMEWORK (BASED ON PREVIOUS SMM MEETINGS)**

### ***Art. 30 Joint Working Group***

The Joint Working Group will facilitate cooperation among the Parties and will be responsible for:

- a. Approving and updating the SMM Basin Investment Framework
- b. Assessing project proposals and formally including those that meet the minimum criteria into the SMM Basin Portfolio
- c. Prioritizing projects in the SMM Basin Portfolio according to the Benefit Opportunities Assessment framework
- d. Maintaining a database of relevant project proposals, as well as of projects under implementation, and projects completed.
- e. Actively liaising with national authorities, development partners, and other potential funders to explore funding opportunities to implement the basin priority projects.
- f. Monitoring and evaluating the implementation of the SMM Basin Investment Framework

***Art. 31 The Joint Working Group will be comprised of:***

## **VII. IMPLEMENTATION MECHANISMS**

### ***Art. 32 Timeframe and Financial Conditions***

1. The Parties agree to establish a set of collaboration activities in the framework of the Annual Workplans according to the availability of funds and resources to be approved by the appropriate administrative authorities of each Party; and undertaken in accordance with the Parties' respective established policies and procedures.
2. Financial, administrative and reporting provisions relating to any collaboration activities between the Parties should be expressly agreed in the relevant Annual Workplans and Budgets.

### ***Art. 33 Dispute Resolution***

Any dispute arising out of or in connection with this MoU will be settled by amicable negotiation between the Parties.

### ***Art. 34 Representation***

Neither Party will have the authority to incur any liability or make any commitment on behalf of the other Party vis a vis any third party, contractually or otherwise, without the other Party's advance express written consent.

### ***Art. 35 Duration, Amendment, Termination***

1. The MoU will enter into force on the date of signature by both Parties and will remain in effect indefinitely until and unless terminated by either Party.
3. This MoU may be amended by mutual written arrangement of the Parties.

### ***Art. 36 Non-enforceability***



This MoU is a non-binding statement of the Parties' mutual understanding of their proposed collaboration framework. The MoU is not intended to create any legally enforceable rights or obligations in respect of either Party, including any obligation on their part to enter into any supplemental agreements.

Make this a separate article This MoU is signed in English, in two (2) original copies of identical wording, legal value and date, each of which will be deemed an original, and which together will constitute one and the same instrument.

Luganda

Swahap

IN WITNESS WHEREOF the undersigned, being duly authorised, have on behalf of the Parties hereto signed this MoU at the place and on the day below written.

Republic of Kenya

Republic of Uganda