

MEMORANDUM OF UNDERSTANDING

ON THE PROCESS LEADING TO THE ESTABLISHMENT

OF THE

AI-AIS/RICHTERSVELD

TRANSFRONTIER CONSERVATION PARK

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

AND

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

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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 sovereignty, equality and territorial integrity of their states;

FURTHER RECOGNISING the legal rights of all Stakeholders as major contributors of land and resources to the Ai-Ais/Richtersveld Transfrontier Conservation Park;

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

ACKNOWLEDGING the necessity to conserve shared natural resources and the environment for the benefit of all the people of Southern Africa;

RECALLING the provisions of the Southern African Development Community (SADC) Treaty and Declaration of Heads of State and Government (Windhoek, 1992), SADC Protocols on Trade and Industry (Lesotho, 1996), Tourism (Mauritius, 1998), Wildlife Conservation and Law Enforcement (Maputo, 1999);

~~WISHING~~ ^{Treaty} to initiate a process with this Memorandum of Understanding that will result in ^{jointly} an agreement to establish and manage the Ai-Ais/Richtersveld Transfrontier Conservation Park;

RECALLING that the countries promoting the Transfrontier Conservation Area (TFCA) initiative are signatories of, or Parties to, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) (Washington, 1973) and the Convention on Biological Diversity (Rio de Janeiro, 1992); and

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

HEREBY AGREE as follows:

ARTICLE 1

Definitions

In this Memorandum of Understanding (hereinafter referred to as the "MoU"), unless the context indicates otherwise -

"action plans" means action plans provided for in Article 10(4)(d);

"conservation" means the protection, maintenance, rehabilitation, restoration, enhancement and sustainable use of natural resources and the environment;

"draft Management and Development Plan" means the plan provided for in Article 10(4)(e);

"National Co-ordinating Agencies" means the institutions designated by the Parties in terms of Article 7;

"Stakeholders" means individuals or groups of individuals or representative institutions with an enforceable right in land, which is included in the Transfrontier Conservation Park;

"sustainable use" means use in a manner and at a rate that does not lead to the long-term decline of natural resources

ARTICLE 2

Establishment of the Transfrontier Conservation Park

- (1) The Parties hereby agree to initiate and actively participate in a process that will result in an agreement to establish and manage a Transfrontier Conservation Park (hereinafter referred to as the "TFCP"), which shall include -
 - (a) in the Republic of Namibia, the area known as the Ai-Ais Hot Springs Game Park;
and
 - (b) in the Republic of South Africa, the area known as the Richtersveld National Park

- (2) In defining the abovementioned geographic areas intended for inclusion in the TFCP, it is understood that this does not preclude the later inclusion of additional areas into the TFCP, provided that such inclusion will be done by mutual consent of the Parties and in accordance with Article 6 and other relevant Articles in this MoU

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 sub Article (1); and
- (3) to take appropriate steps, in compliance with their applicable domestic law, to designate land that will constitute the ~~proposed~~ TFCP

ARTICLE 4

Interim name of the proposed Transfrontier Conservation Park

The ~~interim~~ name of the area as described in Article 2 (see ~~Appendix A to this MoU~~ ^{Annex 1} for a map of the ~~proposed~~ TFCP) shall be the Ai-Ais/Richtersveld Transfrontier Conservation Park.

ARTICLE 5

Co-operation

- (1) The process of establishing the proposed TFCP shall be done through joint decision-making processes adopted within the Institutional Framework outlined in Article 8 of this MoU

- (2) The Parties shall ensure meaningful participation of the Stakeholders through effective consultation processes

ARTICLE 6

Objectives of the proposed TFCP

- (1) The objectives of the proposed TFCP, when established, shall be -
- (a) to foster trans-national collaboration and co-operation between the Republic of Namibia and the Republic of South Africa in implementing ecosystem management through the establishment and development of the proposed TFCP;
 - (b) to promote alliances in the management of biological and cultural resources encouraging social, economic and other partnerships among the Parties and the Stakeholders;
 - (c) to enhance ecosystem integrity and natural ecological processes by harmonising wildlife management procedures across international boundaries and strive to remove artificial barriers impeding the natural movement of wildlife;
 - (d) to develop frameworks and strategies through which local communities can participate in, and tangibly benefit from, the management and sustainable use of natural resources that occur within the proposed TFCP; and
 - (e) to promote cross-border tourism as a means of fostering socio-economic development
- (2) The Parties may, after consultation with the Stakeholders, agree to other objectives

ARTICLE 7

National Co-ordinating Agencies

- (1) In order to give effect to the intent and objectives expressed in this MoU, the Parties agree that the Government of the Republic of Namibia shall designate, through the Minister responsible for Environment and Tourism, the Department of Natural Resource Management (hereinafter referred to as the "DNRM") as its National Co-ordinating Agency. The Government of the Republic of South Africa designates, through the Minister of Environmental Affairs and Tourism, the South African National Parks (hereinafter referred to as "SANParks") as its National Co-ordinating Agency.
- (2) Both Parties hereby delegate such powers and functions to the DNRM and SANParks as are required for the co-ordination of the process and activities leading to the establishment of the proposed TFCP. To the extent that it affects the enforceable rights of the Stakeholders, it is understood that the DNRM and SANParks will develop consultative structures to enable the Stakeholders to make representations for the co-ordination of the activities leading to the establishment of the proposed TFCP.

ARTICLE 8

Institutional Framework for Collaboration

The Institutional Framework (see Appendix B to the MoU) for the operations of this MoU shall be -

- (a) the Ai-Ais/Richtersveld TFCP Bilateral Ministerial Committee;
- (b) the Ai-Ais/Richtersveld TFCP Bilateral Technical Committee;
- (c) the Ai-Ais/Richtersveld TFCP National Technical Committees;
- (d) the Ai-Ais/Richtersveld TFCP Project Coordinator ; and
- (e) any other Ad Hoc Committees that may be established as necessary

ARTICLE 9**TFCP Bilateral Ministerial Committee**

The Bilateral Ministerial Committee shall –

- (a) consist of the Ministers responsible for the environment and tourism in both countries of both Parties;
- (b) be responsible for overall policy guidance in the process of establishing the proposed TFCP;
- (c) be hosted on a rotational basis, in accordance with the "host-chair-the-meeting" principle. Each Party shall be responsible for its own costs for attendance at the meetings. Organisational and administrative costs shall be borne by the Party hosting the meeting;
- (d) subject to this MoU, determine its own rules and procedures and the times of its meetings, provided that at least one meeting is held annually;
- (e) monitor progress in the establishment of the TFCP; and
- (f) take decisions by consensus

ARTICLE 10**TFCP Bilateral Technical Committee**

- (1) The Bilateral Technical Committee shall be comprised of members of the National Co-ordinating Agencies and such other members as may be designated by the Parties. The TFCP Project Co-ordinator, as referred to in Article 12, shall be a member of the Bilateral Technical Committee

- (2) To maintain continuity, designated members of the Bilateral Technical Committee shall endeavour to attend all meetings in person and where an alternate is to attend a meeting, the nominated member shall ensure that the alternate is fully briefed and given the necessary mandate to act as a member of the Bilateral Technical Committee.
- (3) National and international conservation organisations supporting projects in the proposed TFCP may be invited to participate in meetings of the Bilateral Technical Committee, either as observers or advisors
- (4) The Bilateral Technical Committee shall be responsible for -
 - (a) identifying all aspects required for establishing the proposed TFCP;
 - (b) translating directives of the Bilateral Ministerial Committee into operational guidelines and policies;
 - (c) providing guidance and advice to the Bilateral Ministerial Committee;
 - (d) developing action plans for the process leading to the establishment of the proposed TFCP; .
 - (e) preparing a draft Management and Development Plan of the proposed TFCP;
 - (f) consulting Stakeholders with respect to the establishment, future development and management of the proposed TFCP;
 - (g) monitoring the establishment of the proposed TFCP;
 - (h) administering funds generated for the establishment of the proposed TFCP;
 - (i) preparing reports for the Bilateral Ministerial Committee; and
 - (j) setting up Ad Hoc Committees for undertaking specific activities for the development of the proposed TFCP
- (5) The Bilateral Technical Committee shall be hosted on a rotational basis, in accordance with the "host-chair-the-meeting" principle. Each Party shall be responsible for its own costs for attendance at the meetings. Organisational and administrative costs shall be borne by the Party hosting the meeting
- (6) The Bilateral Technical Committee shall adopt its own rules and procedures.
- (7) The Bilateral Technical Committee shall meet at least four times a year, or more frequently depending on the urgency of the issues tabled for discussion

- (8) Decisions of the Bilateral Technical Committee shall be taken by consensus

ARTICLE 11

TFCP National Technical Committees

- (1) The National Technical Committees shall be composed of representatives appointed by relevant government departments and Stakeholders in each of the Parties, to ensure their input in the planning and establishment of the TFCP at the national levels. The National Technical Committees shall be free to interact and work with conservation organisations in the respective countries
- (2) The National Technical Committees shall be responsible for -
- (a) representing the interests of different sections of society in the planning and development of the TFCP;
 - (b) collecting and passing on information on issues to be discussed in Bilateral Technical Committee meetings, receiving feedback, and transmitting relevant information to different Stakeholders;
 - (c) monitoring activities of important institutions in the planning and development of the TFCP, in particular but not limited to the field of immigration, customs, veterinary services, archaeology and security; and
 - (d) facilitating discussions on matters of mutual interest between the National Technical Committees
- (3) The National Technical Committees shall adopt their own rules and procedures

ARTICLE 12

TFCP Project Co-ordinator

- (1) To promote efficiency, co-ordination and accountability in the TFCP planning and development process, it is agreed that a TFCP Project Co-ordinator be appointed by the Bilateral Ministerial Committee on the recommendation of the Bilateral Technical Committee

(2) The functions of the Project Co-ordinator shall be -

- (a) to drive and co-ordinate the activities associated with the planning and development of the proposed TFCP;
- (b) to ensure that a working programme focussed on achieving the objectives of the TFCP is sustained;
- (c) to co-ordinate the drafting and implementation of an effective Action Plan for achieving the objectives of the proposed TFCP, with full participation of the relevant Stakeholders;
- (d) to ensure that appropriate processes and procedures in planning and developing the proposed TFCP are followed, in accordance with regional protocols and international treaties;
- (e) to prepare reports on key resolutions and directives emanating from the Bilateral Ministerial Committee and the Bilateral Technical Committee;
- (f) to facilitate the convening of meetings of the different TFCP committees;
- (g) to liaise with the Bilateral Technical Committee in identifying activities that would require funding and identifying sources for funds; and
- (h) to undertake other assignments deemed necessary by any of the TFCP committees, subject to the consent of the TFCP Bilateral Technical Committee

ARTICLE 13

Financing of the process leading to the establishment of the proposed TFCP

- (1) The Parties undertake to contribute financially towards the planning and development of the proposed TFCP in accordance with the principles of equity and shared responsibility.
- (2) The Parties will further endeavour to raise funds towards the establishment and development of the proposed TFCP from other sources, including non-governmental organisations and Stakeholders.
- (3) All funding proposals shall be developed in consultation with the Bilateral Technical Committee.

*ARTICLE 14**Settlement of Disputes*

- (1) Any dispute between the Parties arising out of the interpretation or implementation of this MoU shall be settled amicable through consultation or negotiation between them
- (2) Should the dispute not be resolved in the manner provided for in sub Article (1), any Party may submit the dispute to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating between Two States, as in effect at the time of the entry into force of this Agreement. The Party who wishes to submit a dispute to arbitration shall notify the other Party thereof in writing ("the notification"). The Parties shall immediately confer with each other to appoint an arbitrator within fourteen days after receipt of the notification, failing which the appointing authority shall be the Secretary General of the Permanent Court of Arbitration at The Hague
- (3) Notwithstanding the existence of a dispute or the referral of a dispute to arbitration, the Parties undertake for the benefit of each other to use their best endeavours to ensure that the process of establishing the proposed TFCP continues

*ARTICLE 15**Entry into Force*

This MoU shall enter into force after the Parties have notified each other in writing through the diplomatic channel of their compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

*ARTICLE 16**Amendments*

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

ARTICLE 17

Termination of the MoU

- (1) Either Party may terminate this MoU at any time by giving one year's written notice to this effect to the other Party through the diplomatic channel.
- (2) This MoU shall automatically terminate upon the entry into force of a Treaty on the Ai-Ais/Richtersveld Transfrontier Conservation Park

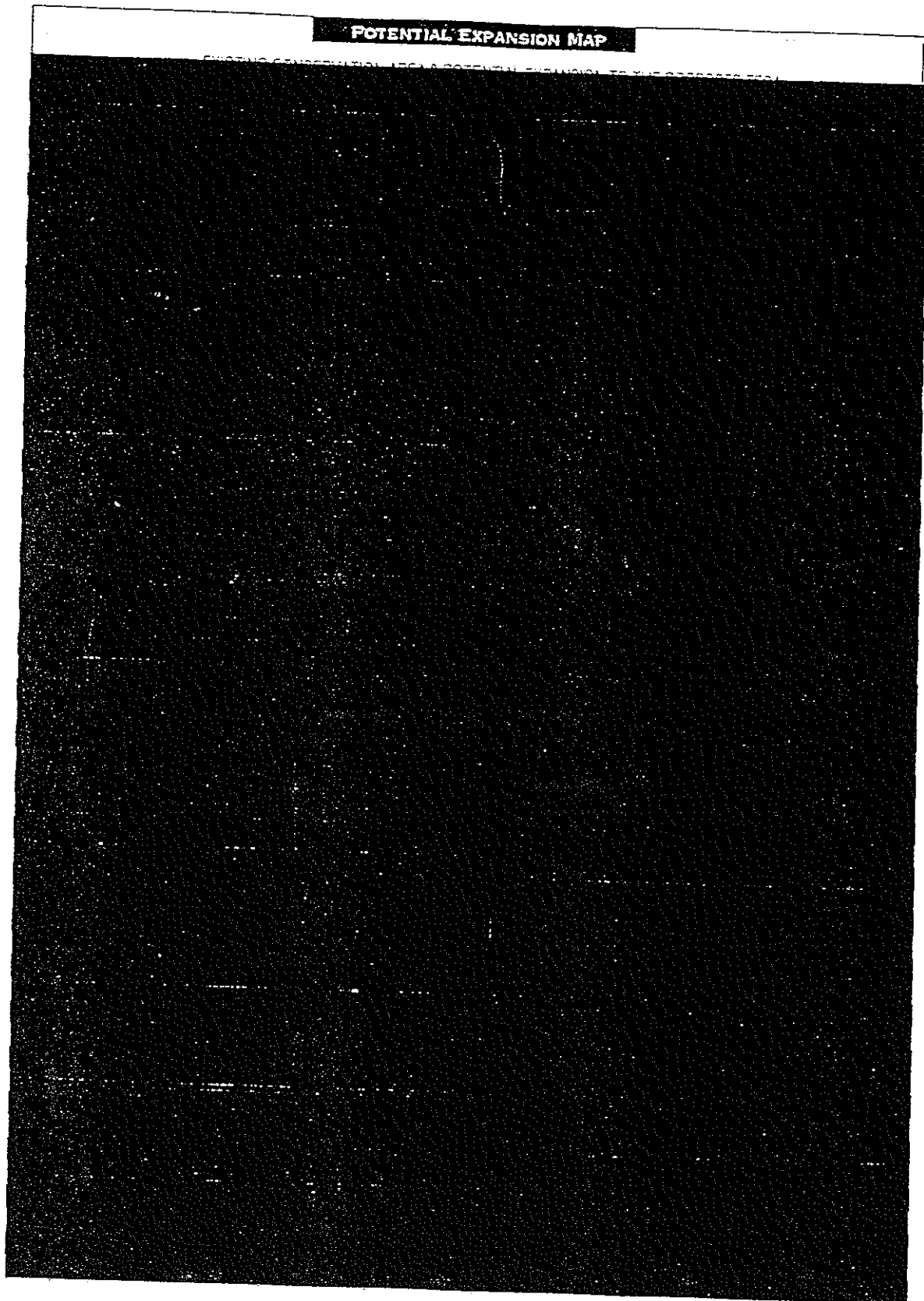
IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Memorandum of Understanding in duplicate in the English and Afrikaans languages, both texts being equally authentic.

SIGNED at _____ on this _____ day of _____ 2001

FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

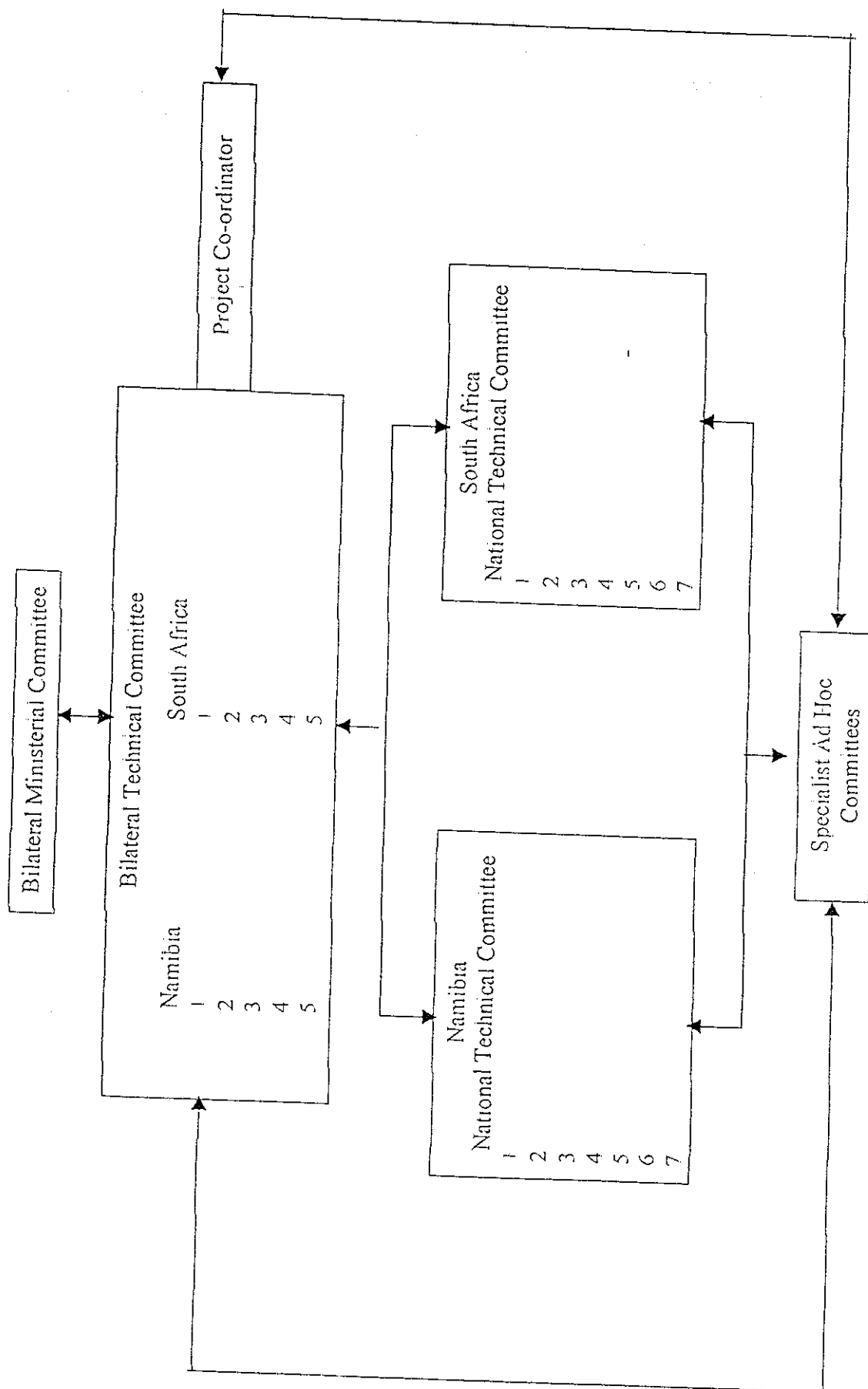
FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

MAP OF THE PROPOSED TFCA



APPENDIX B

AI-AIS/RICHTERSVELD TFCP INSTITUTIONAL FRAMEWORK



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WV PNM

SIGNED at WINDHOK on this 17th day of August 2001

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FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

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FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA