

Transboundary Water Cooperation

National Commitment, Stakeholders and IWRM in the Mekong, the Nile and SADC/Zambezi

Lessons learned and which way forward?

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WORKSHOP PAPER

Introduction and purpose

This document is a discussion paper for the workshop on the roles of national commitment and stakeholder/civil society in transboundary water cooperation (TWC).

Countries which share rivers across an international border can be called the riparians. National commitment has a very important role to play by riparians. It involves actions by national governments, usually at high levels, to negotiate water sharing for many purposes (economic development, drinking supplies, improving health, and maintaining basic ecological functions to support fisheries and other subsistence activities, as well as to maintain water quality, salinity balances and so on). The activities which reflect national commitment vary from place to place but usually involve establishing agreements, laws, policies, programs and plans to share water across borders. Participation by relevant water stakeholders - persons or groups with a direct interest, involvement, or investment in water resources management and use – is a very important related task. Stakeholders come from civil society, donor organizations, non-government organizations, the private sector as well as national government water departments. Increasing stakeholder participation improves the likelihood of cooperation rather than conflict at a societal level, and can lead to a greater range of issues being considered. Not all stakeholder involvement is successful and conflict frequently arises.

This discussion paper develops lessons learned from two sources: from general experiences of TWC around the world, and then specifically experiences from basins related to the workshop: the Mekong River basin, the SADC Protocol Countries/Zambezi River basin and the Nile River basin. Finally, two key questions are provided for consideration at the workshop.

Learning from experience – general experiences

Some lessons learned

There is growing practical experience in TWC around the world and there are also several useful evaluations of experience. Several lessons have been learned and span the two themes of the workshop and others:

- Cooperation not conflict is becoming the norm in TWC, but basic problems remain
- The critical first step is to get parties to the table to cooperate on joint water management where no agreement exists. This takes time: sixteen years in the case of the Tigris-Euphrates

- A real problem is to hold countries that have agreements, treaties or other coordinating mechanisms accountable for implementing those agreements
- There are different types of enforcement mechanisms which can be used to promote compliance, but international law, such as the UN Convention on the Law On Navigational Uses of International Watercourses can be a useful starting point
- Measuring performance in water sharing is difficult due to poor data and information availability
- Indicators of water sharing provide a valuable tool to show evidence of progress or lack of it, but they are poorly developed
- New regional approaches based on integrated water resources management (IWRM) need to focus on both river basin and groundwater province management (conjunctive use), and emphasize both social needs and environmental sustainability
- Calculating equitable water sharing requires coordination of water demand management with supply management, and coordination between different sectors
- Sharing can be perceived as a threat to sovereignty, so mechanisms which include tradeoffs are needed and which respect a nation's right to manage its own water
- Water policies and programmes will need to focus on interdependency at a basin scale to meet environmental challenges which are bigger than local issues and solutions
- New water sharing models should not imply that only optimal solutions are acceptable. Transboundary water sharing should be realistic
- Trust, as reflected in data sharing and joint planning, is a hallmark of effective TWC
- Most transboundary river basins are marked by economic and political asymmetries among riparians, shaping the nature of cooperative possibilities and constraints.

Pre-existing conditions

As well as these lessons learned, there is conflicting evidence as to whether reciprocity (where countries exchange comparable concessions) and goodwill is required before TWC can be started. Some say pre-existing, stable international agreements on other matters (e.g. trade, health) are needed before TWC can commence. Likewise, there needs to be evidence of lack of conflict over resource use between basin member nations.

Others suggest these pre-existing international relationships need not always apply. So there is no one foolproof method.

Benefit sharing and a stepped approach

There is increasing acceptance that TWC requires a strong institutional framework to be established between riparians in the long term. This framework is needed to address the challenges of water sharing, such as entrenched positions on historical rights, cultural values and political persuasions. Progress appears possible using the concept of 'benefit sharing', where sharing the benefits of water use are a better a solution than sharing the water itself, and building workable institutional arrangements around that concept. This suggests the pre-eminent role of national governments to take the lead in TWC through international negotiation, joint water policy development and joint water planning.

Once cooperative water regimes are established through treaty, they turn out to be impressively resilient over time, even between otherwise hostile riparians and even as conflict is waged over other issues. This suggests that institutional arrangements for TWC require benefit sharing to be specified clearly in ad-hoc

procedures (memoranda of understanding, goodwill visits, technical tours and exchanges), formal/legal procedures (laws, agreements, treaties), transboundary projects and national water policies.

TWC across international boundaries requires a stepped approach to establish ongoing cooperation. One would expect that the first stage of TWC requires institutional development – say in a treaty or compact or agreement. However, experience suggests information exchange (hydrological data sets, for example) may be an appropriate way to start to build confidence between water entities. TWC may start with relatively basic functions such as engagement of relevant institutions within the basin, issue identification, crisis response, data sharing, modelling, and joint project feasibility studies. As the relationship develops between riparians, more substantial and comprehensive tasks can be undertaken.

One model of this stepped approach is that developed for river basin organizations (Table 1).

Table 1: Functional stages in the evolution of an adaptive river basin organization

Functions	Initial RBO	Emerging Auto-adaptive RBO	Mature Auto-adaptive RBO
Group 1: Water (and natural resource) data collection and processing, systems modeling, water and natural resources planning, stakeholder consultation & issue clarification	X	X	X
Group 2: Project feasibility, design, implementation, operation and maintenance, raising funds, ongoing community consultation and awareness raising	X	X	X
Group 3: Allocating and monitoring water shares (quality and quantity and possible natural resources sharing), cost sharing principles		X	X
Group 4: Policy and strategy development for economic, social and environmental issues, community awareness and participation			X
Group 5: Monitoring water use and shares, monitoring pollution and environmental conditions, oversight and review role for projects promoted by RBO partners, monitoring and assessing the health of the basin's natural resources, monitoring the sustainability of resource management, review of strategic planning and implementation of modified plans			X

Fundamental requirements

These general observations suggest two fundamental requirements:

1. **Political will and commitment by national governments.** National commitment should focus on improving mechanisms to get ‘parties to the table’ first, then build process. This may take a long period of time but without this process being done in a transparent and equitable manner, further actions will not result.
2. **Improved stakeholder/civil society involvement.** It requires the use of timely procedures to ensure representation is achieved at the ‘first roundtable’ of the riparians. There is the need for an appropriate, representative mix of stakeholders who will ensure that the TWC issues are relevant and are identified from the start.

These two requirements involve institutional development: building realistic, **politically-feasible environments** for cooperation, which include:

- **communication** between riparian parties at both technical and political levels in order to start a dialogue and **develop a joint vision or strategic plans**
- **dialogue** enhanced by a body of **data and information for common analysis and interpretation**
- **third party financing** of the TWC process
- in the long term, **support for process** – once institutions have been established, which has to be come **from the riparians themselves**
- a **facility to support these transboundary initiatives** (such an ‘International Shared Water Facility’).

This means the riparian governments are required to commit politically to a process of negotiation at the outset, and to commit themselves financially or in financial partnership with donors as time progresses.

Financing can be done sequentially: initiating process, paying the cost of institutional management and programme implementation and creating investments in regional water management facilities. In this case, donor agencies have a greater role than funding but also provide support roles. There are several financing options which can be considered (water charges, TWC service charges, private sector investments, endowment or trust funds, permits or allowance-based contributions). More work is needed to develop rigorous financing mechanisms as these options are difficult to implement and the fall-back is to depend on multi-lateral donor agencies.

Participation by civil society should run parallel to building national commitment in the TWC process. The focus should be on enhancing the entry role of civil society and local government into TWC, including specifying their role in river basin organizations. Specific roles of civil society are included in Table 2.

Table 2: A structured role of civil society in TWC

Stages of process	Possible role of civil society
Initiating process	Civil diplomacy between neighbouring groups; construction of dialogue through networks of civil society groups at a regional level
Institutional arrangements	Observers to the main meetings; development of networks to feed into policy development and data collection
Programme implementation	Capacity building, independent monitoring of process; assistance in feedback of ideas and impacts from local communities
Investment in water management works	Implementation and co-funding, where appropriate; provision of technical expertise in development of management works including social and environmental impact assessment

Source: (Anonymous 2001)

The two processes, national commitment and stakeholder/civil society involvement, need to be backed up by a range of **legal and policy dimensions**, which can create conditions for agreement:

- the development of transboundary water institutions which act as public good organizations for donor financing
- agreement on principles for participation (who is involved and at what level, roles and responsibilities),
- agreement on which benefits should be apportioned (rigorous methods of benefit sharing are required)
- legal conventions such as those based on the UN Convention on the Law On Navigational Uses of International Watercourses. While still to be ratified, it has been used as a basis for the Mekong River Agreement and the SADC Water Protocol, although some Convention provisions are missing in these two cases. The principles for TWC in this protocol include: equitable and reasonable utilisation, obligation not to cause significant harm, prior notification, co-operation on the basis of sovereign equality and mutual benefit. Substantial work remains to operationalise these principles due to political issues.

Learning from specific basin experiences

Mekong Basin

Setting:

The Mekong river basin encompasses an area of 787,800 sq km² of Southeast Asia and comprises six riparians:

Riparian	Area of country in basin(in km ²)	% area of country in basin
Laos, People's Democratic Republic of	198,000	25.14
Thailand	193,900	24.62
China	171,700	21.79
Cambodia (Kampuchea)	158,400	20.10
Vietnam	38,200	4.84
Myanmar (Burma)	27,600	3.51



Water resources management of the Mekong river basin occurs under the Mekong River Commission (MRC), established in 1995. The Mekong River Commission Secretariat is based in Vientiane, Lao PDR. The MRC was built on a foundation of nearly 50 years of knowledge and experience in the region starting in 1957 when it began as the UN-founded Mekong Committee. It incorporates four countries of the lower Mekong Basin – Cambodia, Lao PDR, Thailand and Vietnam, as equal partners. The MRC consists of three permanent bodies: A Ministerial council, a Joint Committee, and a Secretariat. National Mekong Committees act as focal points in each of the member-countries. China and Myanmar both occupy the upper Mekong basin and are currently observers on the Commission.

The MRC Agreement limits the autonomy of the organization to issues that promote cooperation among the four countries in river basin development but in a way that protects the integrity of the basin's environmental resources and reflects the sovereign right of the countries to manage and protect their own national resources. Moreover, the Ministerial Council has the final say regarding any activities. As each country is represented on the Council and a consensus vote is needed on most issues, each country has some ability to control which issues are debated and approved. The MRC is only 12 years old and represents a modern and legally based organization, partially supported by the World Bank and the Global Environment Facility.

The MRC Agreement provides only the basic concepts or rules that underpin a water sharing agreement and not the specific water shares themselves. Work is underway to develop more precise processes that will define either how water quantities are to be shared or how the benefits from various development scenarios are to be shared. The needs of the riverine ecology are being specifically studied so that any water sharing proposals will expressly take into account the needs of the river systems and of the people that rely on them for their livelihoods.

Lessons learned:

What have been the lessons learned about national commitment to and stakeholder/civil society involvement in TWC? The questions raised include:

(a) Can current legal and institutional frameworks ensure good governance? There are many institutional instruments within riparian states and international agreed principles on sustainable development. "Procedures" based approaches appear inadequate to implement international agreements. Will member nations commit to these frameworks?

(b) Can national interests be transcended for the sake of a basin's future? Do the range of interests of member riparians give fair representation and reasonable hearing? Does 'in the national interest' for each riparian augur well for overall basin management and will member nations commit to these broader interests?

(c) Can integration for improved river basin management occur? National and international arrangements and institutions appear to be more important than the business of basin organizations. This offers a challenge politically and economically to member nations and will they place river basin management in a central position in their governments?

(d) Can the institutional culture of existing basin organizations be reconciled to the political culture of their member countries? How will national commitments address this issue? There is an inherent contradiction between a culture of non-interference and dispute resolution through flexibility and a culture of top-down decision-making by a transnational water authority. This top down/bottom up dilemma suggests the need for an adaptive management approach by basin organizations.

(e) Who runs the Mekong River Commission and for whose benefit? How do member nations' national commitments agree with or are they in conflict with those of the MRC?

(f) As with most new basin organizations, the MRC is only beginning to assess the appropriate options for consulting with the basin's stakeholders and the participation processes which could be followed to facilitate stakeholder input to decision making. Awareness programs are not yet in place for all stakeholder levels, but it is recognized that these need to be well entrenched before effective stakeholder participation can occur. As each country has a different approach to stakeholder consultation and participation, which processes for stakeholder involvement are acceptable and are agreed to by all four countries?

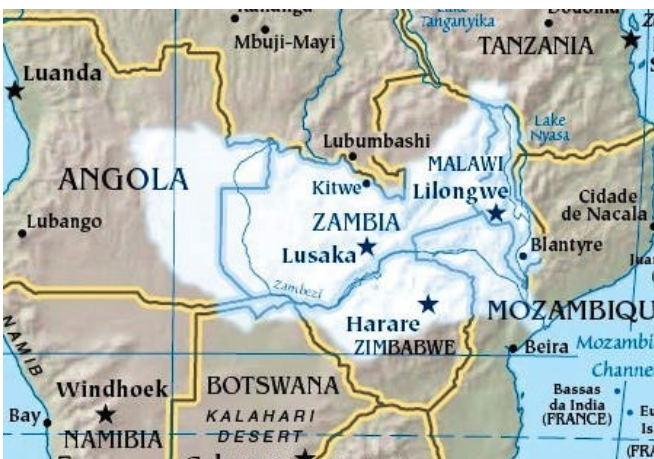
These questions reflect the evolutionary development of TWC in the Mekong basin.

SADC Protocol Countries/Zambezi River Basin

Setting:

The Zambezi basin of Central eastern Africa encompasses an area of 1,385,300 sq km² and comprises nine riparians:

Riparian [all are SADC members]	Area of country in basin(in km ²)	% area of country in basin
Zambia	576,900	41.64
Angola	254,600	18.38
Zimbabwe	215,500	15.55
Mozambique	163,500	11.81
Malawi	110,400	7.97
Tanzania, United Republic of	27,200	1.97
Botswana	18,900	1.37
Namibia	17,200	1.24
Congo, Democratic Republic of (Kinshasa)	1,100	0.08



Water resources management of the Zambezi river basin occurs broadly under the provisions of the Southern African Development Community (SADC) Water Protocol on Shared Water Course Systems (1995), ratified in 1998. This protocol, and the Revised Protocol of 2003, have an overall objective *to foster closer collaboration for judicious, sustainable and coordinated management, protection and utilisation of shared watercourses and advance the SADC agenda on regional integration and poverty alleviation.*

SADC is a regional economic community structured by a 1992 Treaty for economic development and poverty reduction. SADC member countries include all Zambezi basin countries listed above, plus Lesotho, Madagascar, Mauritius, South Africa, Swaziland and the United Republic of Tanzania. SADC is headquartered in Harare, Zimbabwe.

SADC established a Regional Strategic Plan (RSAP) for Integrated Water Resources Management in SADC Countries in 1998. The RSAP reviewed the role of water in the regional development agenda and proposed a wide-ranging strategic programme of projects to carry this forward. One of those projects included an implementation programme for the SADC Protocol. These have not been vigorously pursued.

Article 22 of the Treaty (1) provides that member states should conclude a series of protocols with clearly stipulated objectives and scope as well as institutional mechanisms to address issues that underlie cooperation and integration. The practice and procedure has been that the protocols are developed, negotiated, deliberated and then agreed upon.

As well as the SADC Protocol, and it appears quite separate to it, there is a river basin organization in the Zambezi – the Zambezi River Authority. Its functions include reservoir and dam construction, operation and management; hydrological information collection and management; and making recommendations to its Council of Ministers as to ensure the effective and efficient use of the waters and other resources of the Zambezi. Electricity production and bulk distribution assets were allocated to the national electricity undertakings of the two states in 1987. The Council of Ministers consist of four members, two of whom are Ministers in the Government of the Republic of Zambia and two of whom are Ministers in the Government of Zimbabwe. The Authority traces its origins to 1964 when the Central African-Council appointed the Inter-Territorial Hydro-Electric Commission. The current Authority was established in 1987 when the Zambezi River Authority Act was passed.

The authority is an example of a focused purpose river basin organization – hydro-power production. This organization does not include membership of all Zambezi riparians. In its statements of purpose and functions, at least that reported on its websites, there is no indication of its congruence with the SADC Protocol. Similarly, there is little evidence of how the SADC Protocol interacts with the work of the Zambezi River Authority.

Lessons learned:

What have been the lessons learned about national commitment to and stakeholder/civil society involvement in TWC? They include:

(a) There is a significant disconnect between SADC Protocol and the work of the Zambezi River Authority. Both the SADC institutional arrangements and the basin organization have failed to develop and enact a dialogue as to how water resources management for hydro-electric production forms part of integrated water resources management.

(b) Success has been seen in attitudinal change and this can be regarded as a hallmark of progress. There is a willingness to cooperate on projects, respect of parties for international law and exchange of information.

(c) The constraints on effective TWC lie in poor capacity to apply, monitor and enforce regulatory measures by member nations, existing transboundary water organizations and limited national commitment to regulation.

(d) National commitment was demonstrated to the critical step forward of ratifying the 2003 Revised Protocol (for water sharing). But slow bureaucratic processes have hindered progress in protocol implementation.

(e) Further national commitment to institutional strengthening of river basin organizations within SADC protocol countries (including the Zambezi River Authority) is needed in such areas as:

- harmonization of basin management goals between those of the SADC Protocol and those of basin organizations
- ensuring that the level of appointment of basin commissioners be made at the executive level of government (this ensures decisions have a greater political impact in member riparians)
- ensuring the correct organization in a riparian be involved in basin-level decisions
- ensuring the basin organization has a permanent executive office
- improving the capacity of staff in basin and related organizations in legal, negotiation, dispute resolution, technical and diplomacy skills
- the need for a monitoring and evaluation system using peer review and agreed sets of process indicators, and these be housed in the SADC Water Division (the in-house organization for the Protocol)

(f) There has been strong endorsement of stakeholder and public participation in the operation of the Revised Protocol – the feeling is that river basin organizations have a major role to play in public participation in local issues.

(g) There is a potential for conflict in the Revised Protocol due to the large knowledge gaps between riparians and the lack of integration of the water sector with other sectors. This suggests the need for greater national commitment to the Protocol to drive integrated water resources management and the need for improved stakeholder involvement to canvass a greater range of issues than has previously been used in water resources development projects.

(h) There is a need for sustained levels of funding for all relevant organizations linked to the TWC process. One possible model is one with commission members funded by participating governments as a simple and sustainable funding model.

Nile Basin

Setting:

The Nile basin of north-eastern and central Africa encompasses an area of 3,031,700 sq km² and comprises thirteen riparians:

Riparian	Area of country in basin(in km ²)	% area of country in basin
Sudan	1,927,300	63.57
Ethiopia	356,000	11.74
Egypt	272,600	8.99
Uganda	238,500	7.87
Tanzania, United Republic of	120,200	3.96
Kenya	50,900	1.68
Congo, Democratic Republic of (Kinshasa)	21,400	0.71
Rwanda	20,700	0.68
Burundi	12,900	0.43
Egypt, administered by Sudan	4,400	0.15
Eritrea	3,500	0.12
Sudan, administered by Egypt	2,000	0.07
Central African Republic	1,200	0.04



Water resources of the Nile river basin are not managed by a transboundary organization. There is a Nile Basin Initiative (NBI), established in 1999, which is a transitional mechanism that includes nine Nile riparians as equal members in a regional partnership to promote economic development and fight poverty throughout the basin. Member countries include: Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. The vision of the NBI is to achieve sustainable socio-economic development through the equitable utilization of, and benefit from, Nile Basin water resources.

The Nile-COM (Council of Ministers) serves as the highest decision-making body of the NBI. The Nile-COM is supported by Nile-TAC, (technical advisory committee) which is composed of two senior officials from each member country. The NBI maintains a secretariat, the Nile-SEC, located in Entebbe, Uganda.

The NBI includes firstly a Strategic Action Program consisting of two complementary sub-programs: firstly, a Shared Vision Program - Building a Foundation for Cooperative Action addressing issues related to environmental management, power, trade, efficient water use for agriculture, water resources

planning and management, confidence-building, stakeholder involvement, applied training, socio-economic development and benefit-sharing. Secondly, Subsidiary Action Programs in the Eastern Nile region (Egypt, Sudan and Ethiopia) and the Nile Equatorial Lakes Region have been established and include the six countries in the southern portion of the Basin, as well as the downstream riparians of Sudan and Egypt.

Lessons learned:

What have been the lessons learned about national commitment to and stakeholder/civil society involvement in TWC? They include:

- (a) The TWC experience since the establishment of NBI suggests endorsement of a dialogue approach to open up opportunities for realising win-win solutions by riparians. With this, TWC initially requires confidence building. Nile basin governments need to commit nationally to a process which seeks to find agreement on a shared vision for water management across their international borders in a basin, and to a process to identify the most critical issues and the prioritization of actions.
- (b) There is a perception that current NBI actions provide a 'business as usual' approach to water resources management and development. Civil society organizations such as the Nile Basin Discourse have endeavoured to influence the development of the NBI and other Nile-related programmes to give greater representation of stakeholder interests.
- (c) The move towards greater national commitment is shown in the recent announcement of the forthcoming Nile Basin Cooperation Framework, which recognises each riparian's right to water. There appears to be emerging upstream-downstream hydrosolidarity as reflected in national commitments to this framework.
- (d) TWC agreements will require further national commitment and can be hampered, as they have in the past, by factors including conflict of interests between riparians, the willingness to 're clothe' existing projects to suit new funding arrangements, unwillingness to include all stakeholders and the large geographic scale of Nile basin management which precludes easy information exchange.
- (e) The issue of stakeholder/civil society involvement from very functionally disparate and geographically separate groups and from nations at different levels of economic and institutional development remains a formidable challenge. The role of consultative bodies needs clarification regarding decision-making about water allocation.
- (f) A staged approach is needed. Once established, TWC needs to move beyond visions, and develop specific regulatory mechanisms, data and information sharing protocols and financing mechanisms to put transboundary water management firmly on the ground. There is yet to emerge any national commitment to legal conventions, such as the UN Convention on the Law On Navigational Uses of International Watercourses, by the Nile basin riparians.

Key questions

From these general and basin-specific lessons learned, two groups of key questions emerge and are suggested for discussion at the workshop:

- (1) National commitment to process building: Who is responsible for building a TWC process in a river basin and what is its legal status? Can riparians build commitment at the top political level to endorsing

the UN Convention on the Law On Navigational Uses of International Watercourses? What are the first TWC tasks nations should commit to?

(2) Stakeholders and civil society involvement: Who is involved? How are they involved? What is their role at local, national and basin levels? How do TWC programmes keep and maintain stakeholders and civil society engaged? Who pays for their involvement? Can their involvement be direct or is it constrained by having to go through national level committees/representation first?

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