OraSeCom
Orange-Senqu River Commission

Botswana | Lesotho | Namibia | South Africa

Southern African Development Community
Water Sector Support Unit - Gaborone

European Development Fund
African Transboundary River Basin Support Programme
Case of the Orange – Senqu River in Botswana
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A scoping study into operational Guidelines and Procedures which Strengthen ORASECOM

ORANGE - SENQU RIVER COMMISSION
BOTSWANA   LESOTHO
ORASECOM
NAMIBIA   SOUTH AFRICA
Established 2000

Report No. ORASECOM 005/2008

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EXECUTIVE SUMMARY

INTRODUCTION
This report outlines a scoping study into Operational Procedures and Guidelines for ORASECOM conduced with financial support from the EU. The study was conducted through interviews with Botswana, Lesotho and South Africa, as well as the Secretariat. Unfortunately, due to time constraints Namibia could not be visited.

The intention of this work was to identify what procedures and guidelines[1] would be required to strengthen the organisation's ability to give effect to its mandate. It was a short scoping study, only identifying where guidelines and procedures may be necessary. This submission summarises the key findings of the report produced from this study, and summarises the recommendations for Guidelines and Procedures for approval by Council.

THE BASIS FOR THE STUDY
1. Operational guidelines and procedures are important to institutional strengthening and memory, especially in the light of the fact that the organisation is actually a collective of 4 Member States meeting on an irregular basis.
2. Operational guidelines for the organisation and for the preparation of delegations can contribute to robust debate on a level playing field.
3. Operational *procedures*, which Council can adopt as ORASECOM measures, must be distinct from *guidelines* which will advise the Member States on how to optimise their participation.
4. Operational procedures and guidelines must be prepared on a 'form follows function' basis, this requires an institutional analysis.
5. The relationship between ORASECOM and other institutions will increasingly represent an important aspect of the organisation's effective functioning and evolution. Operational procedures and guidelines will be needed optimise these interactions.

KEY FINDINGS
ORASECOM has evolved considerably since its inception, from joint negotiations between the Parties to establish the Agreement, through to identification, initiation and management of the technical studies required to give effect to its mandate. Throughout this period the organisational format has been appropriate to this evolution and institutional role. However, recently the character of the organisation has shifted considerably with the establishment of the permanent Secretariat. The role of the various bodies that make up this 'new' ORASECOM will need to shift to accommodate this critical shift. The organisation is facing an unprecedented flood of financial support, and a plethora of new projects – leading to the development of a Basin Wide Plan.

Without pre-empting the future of the organisation, it is likely that its role will shift towards the discussion, negotiation and development of recommendations for the management of the basin and monitoring and information programmes. This will require formalisation of institutional arrangements, procedures and guidelines to manage interaction with the Bilateral Arrangements, Parties and other implementing bodies. These will differ from the operational procedures needed to date.

Moreover, with the establishment of the Secretariat, the mandates, roles and responsibilities of ORASECOM's substructures (Task Teams) can also now be clarified with a view to streamlining functions. In addition, as a clearer path for the future of the basin is mapped out, the way in which the organisation interacts with the Press, Academic Institutions and other RBOs needs to be spelt out. In this the organisation has much to learn from other more established RBOs.

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[1] The Secretariat is already developing Procurement and Human Resources Procedures under gtz support, and ORASECOM has already developed and agreed operational procedures for Council. The additional guidelines and procedures investigated in this Assignment did not tackle these aspects.

CONTRAINTS AND OPPORTUNITIES

Constraints

1. The operating budget limits the size of the Secretariat. But increasing the contributions from the Member States poses a range of other potential problems for the least resourced Member States.
2. In its current configuration institutional memory must sit partially with Council and the Task Teams, which are not full time ORASECOM staff.
3. ORASECOM has a dual nature. Council has a fiduciary responsibility over the ORASECOM Secretariat and the sub-structures, and in terms of its mandate within the Basin. But the 4 delegations also have responsibilities towards their respective Parties.
4. The significant donor support, while representing an enormous opportunity for the organisation, does create 'absorption' problems potentially overloading the organisation with workshops, meetings, and administrative requirements.
5. The high turnover of Commissioners poses potential problems with regard to institutional memory – particularly in the absence of established guidelines and procedures.

Opportunities

1. The separation of the roles of Parties as 'implementors' and Council as a 'recommending body' (at least on paper), allows Council to think creatively about the best way to manage the basin without necessarily compromising the position of the Parties.
2. An Agreement that allows Council to determine its own rules of procedure, to support an effective and efficient organisation.
3. The fact that the Agreement does not affect the rights and obligations arising under the bilateral arrangements, means that the organisation can explore new ways of improving basin management without initially compromising established arrangements.
4. The organisation has established relationships with several other RBO's both regionally and internationally. This presents significant learning opportunities.

Together these free up the organisation to develop procedures that promote open and equal debate on a level playing field without compromising the Parties.

PROPOSED OPERATIONAL GUIDELINES AND PROCEDURES

The following proposal for Operational Guidelines and Procedures has been distilled from the study and the above discussion;

Procedures for Council

Operational procedures have already been developed and accepted by Council. However, there appears to be a need to formalise and operationalise these, specifically with a view to further building trust and consensus. New procedures pertaining to;

1. Council's corporate governance role vis-a'-vis its fiduciary oversight of the Technical Committee's and the Secretariat.
2. The induction and support to new Commissioners to build institutional memory and effective functioning of Council.
3. The discussion, negotiation and development of joint recommendations to Parties.
4. The Delegations to separately report back to Parties.

…may be required.

Procedures for the Task Teams

The following are proposed for the Technical Committees

1. The preparation of clear Terms of Reference and delegations of functions to these Task Teams, and clarification of their role as advisors to Council.
2. Clear separation of the role of the Secretariat and the Task Teams.
3. Clarity of the role of these Task Teams with respect to steering and management of the various projects.

Procedures for the Secretariat
The following are proposed for the Secretariat
1. Clear delegation of powers to the Executive Secretary, together with appropriate governance arrangements[2].
2. Operational procedures (outside of the HR and Procurement Procedures) to support its effective functioning
3. Roles and procedures for the Secretariat to interact with external groups including stakeholders, ICPs, SADC, other RBOs, the Press and Academic Institutions.
4. Guidelines for sharing information to Parties, Council and Task Teams for decisions required between the formal meeting processes.
5. Responsibilities to manage the projects in collaboration with the Task Teams.

Guidelines for Parties
The following are proposed to be developed as recommendations to Parties;
1. Guidelines for the appointment of their Delegations and Members of the Task Teams to ensure continuity of effective representation.
2. Guidelines for briefing of the delegations before the Council meeting to ensure that the Parties position is adequately represented.
3. Guidelines for Parties to manage, share and disseminate ORASECOM information with stakeholders and interested Parties.

Guidelines for ORASECOM's engagement of the Bilateral Arrangements
The following are recommended;
1. Formalisation of the interaction, information sharing and decision making processes between the bilateral arrangements and ORASECOM.
2. Guidelines for other Parties to engage in bilateral arrangements in which they have an interest.
3. Clarity on the relationship between water authorities (like LHDA, TCTA, Rand Water, Sedibeng Water etc) and ORASECOM.

Guidelines for ORASECOM to engage SADC
The following are recommended;

1. Procedures for reporting ORASECOM's adherence to the 'Shared Watercourses Protocol'.
2. In the unlikely event of irresolvable differences emerging between Delegations, procedures to engage SADC in the resolution of this conflict

It is clear that the development of these Guidelines and Operational Procedures must be underpinned by a more thorough Institutional Analysis.

RECOMMENDATIONS

It is recommended that;
1. That Guidelines and Procedures as outlined above are eveloped by the Secretariat with support from the EU.

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[2] Some of this will be addressed in the HR and Procurement Procedures, but other responsibilities are envisaged.

1. INTRODUCTION

1.1   Background to the Study

An overarching EU funded project to support the capacity building of ORASECOM was put out to tender in mid 2007, and a consortium of WS Atkins, Pegasys and Water for Africa were awarded the tender in early 2008. The consultant Team Leader began work on 1 March 2008.

The project includes 42 months of input from a Consultant Team Leader, and 21 months of input from an Information, Communication and Training Specialist. The ICTS is primarily responsible for the awareness raising and capacity building components of the project.

In addition to this, the project makes provision for 25 months of input from Category I experts (greater than 15 years experience), and 10 months of Category II experts (greater than 10 years experience). These inputs will be used to deliver targeted assignments in the following six Result Areas.

- **Result area 1:** Basin management institutions and organisations strengthened;
- **Result area 2**: Capacity for Shared Water Courses Management in all riparian states enhanced;
- **Result area 3:** Contributions to a shared information system that promotes the development of a common understanding for decision-making;
- **Result area 4**: ORASECOM communication and awareness building processes enhanced;
- **Result area 5:** Contributions to the development of the Orange-Senqu River Basin Water Resources Master Plan;
- **Result area 6**: Water conservation and environmental strategies developed.

The assignment dealt with in this report contributes to Result Area 1, and forms part of:

Activity 1.1 - Identify appropriate roles, responsibilities, mandates, and operational procedures for ORASECOM institutions.

This Assignment used ½ month of Category I input to undertake a study into the scope of potential Operating Procedures and Guidelines for ORASECOM which will strengthen the functioning of the organisation. The Terms of Reference for this Assignment are available from the Team Leader at quibellg@dwaf.gov.za.

1.2   Scope and Objectives

The overall objective of this assignment is described as:

To identify and agree the scope of Operational Procedures and Guidelines for ORASECOM that strengthen the ability of the organisation to fulfil its mandate.

In order to achieve this, three areas of work were envisaged;
1. Review the ORASECOM Agreement, Inception Report and Terms of Reference
2. Describe the current operational procedures in the organisation.
3. Make recommendations for operational guidelines and procedures.

1.3   Approach for the Study

These ToR guided interviews with Botswana, Lesotho and South Africa; unfortunately due to time and availability constraints, the Namibian delegation was not visited. Themes were synthesised from the identified issues and these were used to formulate the key areas for operational procedures.

Early in the study, it became apparent that the relationship between ORASECOM and other institutions increasingly represent an important aspect of this river basin organisation's effective functioning and evolution. A brief institutional perspective was therefore developed as part of this study as a backdrop against which the operational procedures and guidelines were developed. As such this represents an important element of the institutional strengthening process for ORASECOM.

Other issues to emphasise include:

➢ Why are operational guidelines and procedures important to institutional strengthening and institutional memory (especially in the light of the fact that ORASECOM outside the Secretariat is actually a collection of 4 organisations, and that it's functioning may be perceived as additional or external to the core business of these organisations.)

➢ How operational guidelines and procedures can contribute and 'operationalise' provisions for the level playing field in the ORASECOM Agreement and SADC Protocol.

➢ How operational procedures (which will be adopted and effected by Council), might differ from 'guidelines' which will advise Parties and other entities in engaging with ORASECOM.

➢ How this work differs from the existing procedures for Council, and the HR and procurement procedures being developed by the Secretariat.

➢ That this is a scoping study, only suggesting where these procedures and guidelines might be necessary. These will be tabled at the Council meeting on 23 October, and if adopted a follow on study will actually develop the procedures and guidelines.

➢ These will be developed on a 'form follows function' basis. So we will look at what is it the various structures should be doing, and then identify if operational procedures will be necessary to operationalise and sustain that institutional function.

The structure of the document follows the process of providing context for the study in Chapter 2. This lead into the identification of themes relating to identified operational issues, opportunities and constraints for ORASECOM in Chapter 3. Chapter 4 proposes possible operational procedures and guidelines that may be developed for ORASECOM, while Chapter 5 charts a possible way forward in developing these.

2 INSTITUTIONAL CONTEXT

2.1 Legal Context

ORASECOM has its origins soon after the establishment of the SADC Protocol on Shared Watercourses[3]. ORASECOM Member States, recognising the need to implement the provisions of the Protocol, initiated the establishment of the Orange-Senqu River Commission (ORASECOM). ORASECOM is one of the first Shared Watercourse Institutions to be established under the Protocol.

However, the importance of water in the economy of the region had already prompted the development of a number of bilateral commissions and agreements which established water sharing arrangements between South Africa and its neighbours.

ORASECOM is founded on the principles of increased regional integration and cooperation, and the use of shared water resources to address poverty and food security. The Revised SADC Protocol also recognised the importance of maintaining aquatic ecosystem functioning in the water resources in each of the Basin States. This initial vision for ORASECOM and the importance of the existing bilateral arrangements in managing the water resources of the basin influenced the ORASECOM Agreement, and the functioning of the organisation.

The agreement to establish the Orange-Senqu River River Commission was signed on behalf of the Governments of Botswana, Lesotho, Namibia and South Africa by the then Ministers of Water (representing the Parties) on 3 November 2000. The agreement establishes ORASECOM as an advisory and recommending body to the Parties. Its main objective is to optimise the further development of the water resources of the Orange-Senqu River Basin for the benefit of all the people in the Basin States. Importantly, the ORASECOM Agreement recognised the existing water sharing arrangements in the Basin, and did not replace existing rights and obligations under the bilateral arrangements.

An Interim Secretariat was set up in June 2006 to spearhead the establishment of a permanent Secretariat. The permanent Secretariat was established in 2007, and an Executive Secretary was appointed in late 2007. The Secretariat is relatively small, and will be made up of the Executive Secretary, a water resources management specialist, and financial manager, and office administrative support[4]. The Secretariat consequently has limited resources and currently serves primarily as a coordinating and support function to ORASECOM. While the Secretariat will be able to draw on considerable donor support pledged over the next few years, in its present configuration ORASECOM has limited resources for implementation, which will to some extent define and limit its role. This differs from some other transboundary river organisations, which have larger Secretariats with more of an implementation role.

The ORASECOM Agreement establishes the Council as the highest body of ORASECOM. Council is made up of four Delegations, one from each of the Parties. Council must meet at least once a year, but may meet more frequently if required. Delegations must be made up of no more than three Commissioners, who may be supported by no more than three technical advisors. This helps ensure that Council can not be dominated by any one nation. The ORASECOM Council can establish its own operating procedures, and has established a number of Task Teams to support its functioning.

To date a Technical Task Team, a Legal Task Team and a Groundwater Task Team have been established. ORASECOM is in the process of establishing a Programme Strategy Committee which will

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[3] The process of establishing ORASECOM was initiated before the SADC Shared Watercourses Protocol was revised. However, the revised Protocol retains the provisions for establishing Shared Watercourse Institutions.

[4] Currently only the Executive Secretary is in place.

serve to coordinate support from International Cooperating Partners (ICPs). Members of these sub-committees and structures are drawn primarily from the Departments of Water in the Member States.

Beyond this the following bilateral commissions or arrangements also operate in the basin;

- Permanent Water Commission between Namibia and South Africa,

- Lesotho Highlands Water Commission (between Lesotho and South Africa),

- Joint Permanent Technical Committee between Botswana and South Africa,

- Transfrontier Aquifer Task Team investigating the Karoo Aquifer between Namibia, Botswana and South Africa, and

- A multi-sector arrangement between Namibia and Botswana meets every two years and addresses a number of issues, including water.

The ORASECOM Agreement does not affect the rights and responsibilities of Parties under these agreements, and ORASECOM must liaise with these commissions. These bilateral commissions therefore contribute to the framework within which ORASECOM functions. Current practice is for these Commissions report on their work to the Council, and they may work together with Council in certain areas.

The objectives, functions and powers of the Council specified in the Agreement are instructive as to the role of ORASECOM. The Objectives are to "serve as technical advisor to the Parties relating to the development, utilisation and conservation of the water resources in the River System" and "other functions . . . as the Parties may agree to assign". This is captured in the functions of Council "to make recommendations, or to advise the Parties" on:

- *Measures and arrangements to determine long-term safe yield . . .*

- *equitable and reasonable utilisation of the water resources . . to support sustainable development on the territory of each Party*

- *the investigations and studies . . with regard to the development of the River System*

- *extent to which the inhabitants in the territory of each Party concerned shall participate in the planning, development, utilisation, protection and conservation . . .*

- *the standardised form of collection. Processing and disseminating data or information . . .*

- *the prevention of the pollution of water resources and the control over aquatic weeds . . .*

- *contingency plans and measures for responding to emergency situations or harmful conditions . . .*

- *the regular exchange of information and consultation on the possible effects of planned measures*

- *measures with a view to arriving at a settlement of a dispute between one or more of the Parties*

To do this the Council has the powers to establish "working groups or committees" and to "appoint technical experts to provide expert opinion and advice". Since being established as an international body in South Africa, ORASECOM has the powers of a juristic person in South African law. Currently no additional functions or powers have been assigned to ORASECOM. An important element of this is that ORASECOM is empowered to provide advice and make recommendations, but not to implement this unless requested to by the Parties. It is therefore an advisory rather than a water management body. Furthermore, the inception report highlighted three main principles upon which the agreement is based and which should be considered in developing operational procedures:
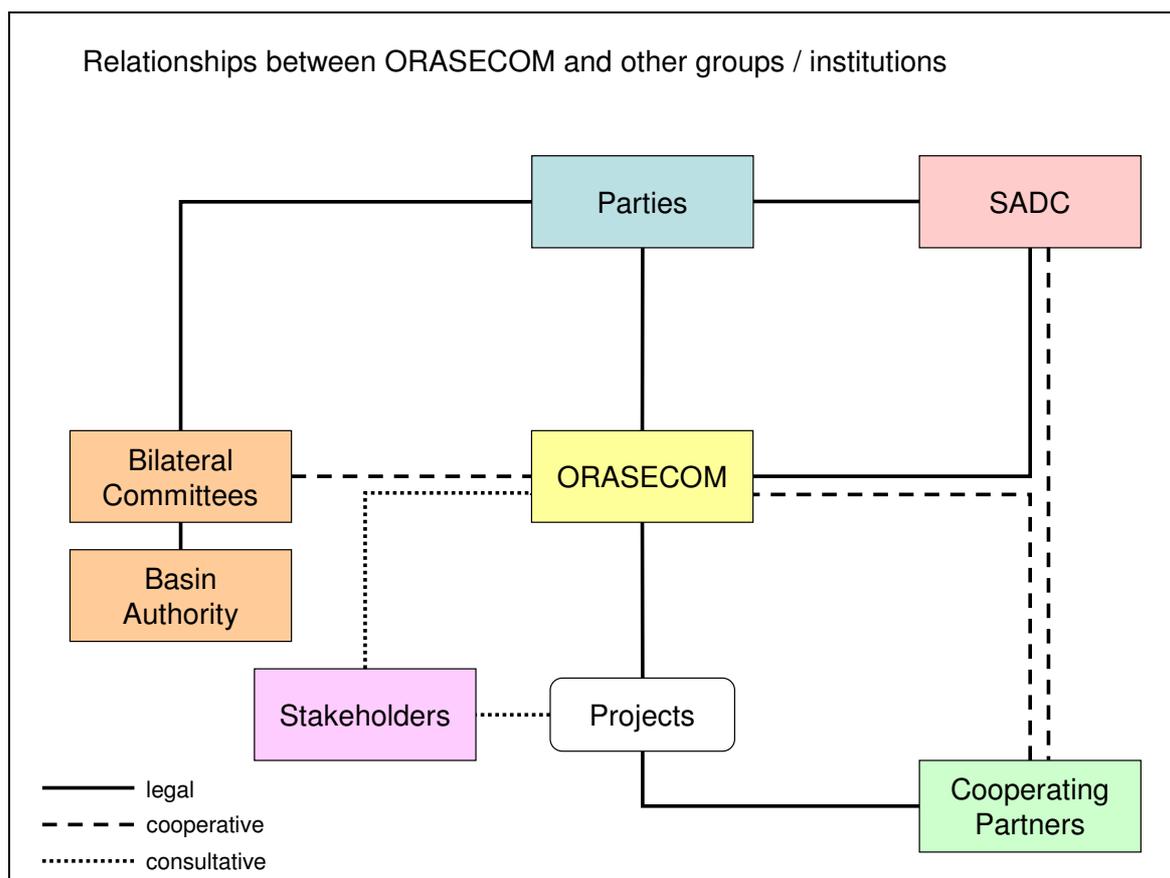
- *ORASECOM is limited to an advisory and recommending role to Parties, but may support actions that enable it to develop and provide viable recommendations.*
- *The discretion to implement these recommendations remains with the Parties, and that ORASECOM's actions should not undermine this discretion, and*

- *Parties may assign functions to ORASECOM and Council, but Council (as a collection of Delegations from Parties) may not be able to assign these functions to itself.*

2.2   Institutional Arrangements

This legal context provides the basis for the institutional arrangements of ORASECOM, both in terms of the roles and responsibilities of the different elements within ORASECOM, namely the Council, Technical Committees and Secretariat, as well as the relationships between ORASECOM and other institutions.

The following diagram outlines the key legal, cooperative or consultative relationships between ORASECOM and other institutions.

Relationships between ORASECOM and other groups / institutions

	Parties		SADC
Bilateral Committees	ORASECOM		
Basin Authority			
Stakeholders	Projects		Cooperating Partners

——— legal
– – – cooperative
·········· consultative

The relationship with the *Parties* is primarily governed by the Agreement, and to a lesser extent the Protocol on Shared Watercourses.

The direct relationship with *SADC* (represented by the Secretariat) is primarily governed by the Protocol, while the Parties also represent ORASECOM in terms of the SADC Treaty.

The *Bilaterals* are recognised by the Agreement and require cooperation with ORASECOM, but they have no direct legal relationship, except through the relevant Parties.

ORASECOM manages *projects* by legally contracting implementing agents and/or consultants to provide services.

Stakeholders within the basin may be consulted, primarily through projects, although there may be some direct broad-based consultative arrangement (to be developed), including the private sector and NGOs.

Cooperating Partners provide important sources of funding and technical support, but this is primarily through projects.

This indication of possible formal arrangements between ORASECOM and other groups provides a framework against which to view possible operational procedures and guidelines.

2.3   Evolution of ORASECOM as a Transboundary Basin Organisation

From an institutional and organisational perspective, ORASECOM has evolved considerably over the past decade. Pre-agreement the bilateral committees / commissions represented cooperation in the basin. Prior to the establishment of ORASECOM, joint negotiations between the Parties were primarily focused on establishing the Agreement.   Once this was signed in 2000, ORASECOM seemed to operate effectively as a "committee" format, with a revolving secretariat and limited technical committees. During this period the organisation focussed on initiating the technical studies required to give effect to its mandate. The key output to this process was the establishment of the ORASECOM Work Plan in 2001, outlining 30 key 'projects' - and the subsequent endorsement of this Work Plan by the Parties. Since 2001 the organisation has concentrated its attention on the management of projects under the workplan.

The decision to establish a permanent Secretariat was a major point in the evolution of ORASECOM, as this introduces continuity and represents a shift from a "committee" format to an "organisational" format. This has coincided with a shift in emphasis towards studies aimed at strengthening the organisation and the gradual development of a Basin Wide IWRM Plan. These studies will see the formulation of recommendations to Parties, and consequently the evolution of the organisation into its intended role (see the previous section).

Throughout this process, ORASECOM's organisational format has therefore been appropriate for its stage of evolution and institutional role, and ORASECOM has performed its functions well at the relevant level of evolution. However, with the establishment of the permanent secretariat with up to 4 people, there is a need for the organisation to focus on corporate governance required for effective organisational functioning, as well as the water governance required for effective basin wide management. Importantly, the organisation is facing an unprecedented flood of financial support from ICPs, and a plethora of new projects are being initiated over the following few months.

Without pre-empting the future evolution of ORASECOM, it is consequently likely that ORASECOM will need to take on greater coordination responsibilities, joint planning initiatives and information management functions. Ultimately, this will lead to recommendations to Parties. As this evolution continues, it is clear that this will require greater formalisation of the institutional arrangements, procedures and guidelines (between ORASECOM and other groups as well as internal procedures) for effective water governance in the basin and improved corporate governance procedures for effective management of the organisation and its elements.

It is important in all of this to recognise that institutional and organisational development is a gradual process an ORASECOM is still a fledgling organisation. However, experience does indicate that this, together with the dynamic and adaptive nature of the organisation, require the implementation of good systems and procedures to ensure that strategic evolution, effective functioning and relevant culture are embedded in the organisation. In addition, effective systems will be needed to insure that institutional memory is maintained.

2.4   Implications for Organisational and Corporate Governance

ORASECOM, as a newly established organisation, faces the challenge of putting in place the necessary procedures and guidelines to minimise conflict and optimise collaborative working between the Parties. This is particularly important because of the complex, dual nature of ORASECOM, partly as a meeting point for the four Parties, partly as an organisation (the secretariat) for which the Parties have common corporate responsibility. Experience from other organisations demonstrates the need for and possible nature of procedures and guidelines.

The Global Water Partnership, an international NGO developed to promote the concept of IWRM, holds some parallels and lessons for ORASECOM. GWP consists of two separate but linked elements: the GWP Organisation (GWPO) which is the permanent secretariat based in Stockholm; and the network of Regional Water Partnerships. A Steering Committee has fiduciary responsibility for the

GWPO, and a guidance and leadership role in relation to the network partners. Clear procedures and guidelines are necessary for a complex organisation of this nature to function effectively and to minimise conflict. A Technical Committee established by the Steering Committee serves to perform analyses of strategic issues impacting on water management; facilitate and support the development of GWP programmes; and give advice and guidance on IWRM priorities and development of IWRM proposals.

The GWP has grown significantly over the 10 years since its inception, and the roles and relationships between the various structures have changed as the organisation has grown. Lack of clear procedures and role definition has, on occasion, led to conflict and confusion within the GWP, for example, around the role of the Executive Secretary versus the Steering Committee in the initiation of a staff remuneration review. In relation to the network partners, criteria had to be developed for the accreditation of Regional Water Partnerships in order to ensure that the basic tenets and principles of the GWP were being adhered to by partners.

OKACOM has a complex structure similar to that of ORASECOM and GWP. There are three governance structures in OKACOM: the Commission, the Okavango Basin Steering Committee (OBSC) and the Secretariat. The Commission, made up of representatives from the Parties, is responsible for the development of policy and general supervision of the activities of OKACOM. Chairing of the Commission rotates between Chairpersons of National Commissions or delegations of the member states. Members of the Commission are senior civil servants from the governments of the member states.

The Okavango River Basin Steering Committee is a technical advisory body to the Commission. This committee plays a key role in implementing decisions of OKACOM at national level.

The Secretariat, headed by an Executive Secretary, is an internal organ of OKACOM, with the legal capacity and mandate to assist OKACOM in implementing its decisions. It provides administrative support and is instrumental in information sharing and communication.

The Murray Darling basin (which although not strictly speaking an international river basin organisation, operates in many ways similar to an IRBO) has in place detailed procedures which ensure smooth running of the organisation. The high level committee business rules for the MDBC are attached as an example. Such procedural clarity is critical in a transboundary context where language and cultural differences are present and where different national objectives may result in increased conflict potential.

2.5   Understanding Institutional Capacity and Strengthening

It is clear from the preceding discussion that both internal systems and external arrangements are needed to maintain an effectively functioning ORASECOM. Some of these are in place, while others need formalisation and/or codification of existing practice, and still others may require further clarification and/or development.

For the purposes of this study, it is useful to distinguish:

- *Operational procedures* governing the internal functioning of the organisation (particularly Council, Technical Committees and the Secretariat) that may be endorsed or approved by Council (acting in its capacity as the Board; and

- *Operational guidelines* for external interactions with other institutions and groups (specifically Parties governments, SADC, Cooperating Partners and Bilaterals) that may be recommended by Council, primarily through the Parties.

Together these provide one part of the process of institutional strengthening, as interpreted in the following seven elements of institutional capacity.

- *Mandate*: clarity in the institutional roles, responsibilities, authority, functions and strategy of the organisation (ORASECOM) and its elements (Council, Technical Committee & Secretariat), based on its legal mandate provided by the Parties.

- *People*: technical and managerial capability and skills of the organisation's staff (also supported by the availability of potential contractors) to perform the required functions of the organisation to achieve its mandate and functions.

- *Infrastructure*: suitability of the organisation's premises, vehicles, machinery, etc to support staff in performing their functions.

- *Finance*: adequacy and sustainability (reliable access) of funding to cover the current and future human and infrastructural resource requirements of the organisation.

- *Administration*: suitability of the organisational structure and systems (and procedures) to enable effective and efficient functioning of the organisation.

- *Network*: strength of the organisation's relationships with other institutions and bodies that can technically or financially assist it in performing its functions.

- *Stakeholders*: relevant levels of credibility and legitimacy of the organisation to those groups that have an interest in its functioning and outcomes.

3   ORASECOM PROCEDURAL REQUIREMENTS

3.1   Existing Procedures in ORASECOM

There is a set of guidelines for the operation of the Council, which sets out the mandate of the Council, and how the Council is to conduct its business. It does not deal with detailed guidelines and procedures. For example, it refers to the mandate of the Council to draw up and approve tenders, but does not give details of how tenders are to be advertised and evaluated.

Procedures relating to the management of the secretariat, such as HR and financial management procedures are currently under development, and are not dealt with further in this assignment.

Understanding constraints and opportunities

Constraints:

The limited operating budget of ORASECOM limits the size of the Secretariat, while the fact that some of the Basin States have limited resources to attend meetings equally places limitations on interactions and engagement between Parties and the ability to respond to issues. Operational procedures must recognise this and facilitate full participation by the least resourced states. ORASECOM is also unique in SADC in that it is the only RBO where the Member States are paying their dues. Procedures must be designed to respect this and to enable the Secretariat and Council to operate effectively within budgetary constraints. Procedures must also be designed to take into recognition the limited time that Council members have to devote to ORASECOM business.

ORASECOM is an organisation with a dual nature. There are procedures that relate the fiduciary responsibility of Council members to the ORASECOM secretariat and the relationships between ORASECOM structures such as Council, sub-committees and the secretariat. At the same time, the delegates to Council represent the various Parties to the Agreement so that the whole may be seen as a collective of organisations with different objectives and drivers, rather than a single organisation with a mandate or common vision of its own.

ORASECOM is attracting huge donor support, which presents an enormous opportunity for the organisation, but due to the relative newness of the organisation and the small Secretariat, absorption capacity is low. This is exacerbated by what appears to be a high level of turnover of Commissioners in some of the Member States.

Opportunities:

The opportunities facing ORASECOM include the separation of the roles of the Parties and Council (at least on paper). This allows the Council some freedom to think creatively about how to manage the basin. While the role of the organisation is currently purely advisory, as the organisation matures there is the opportunity for the Parties to assign a wider range of functions to ORASECOM.

A further opportunity is that the provisions to allow Council to determine it's own rules of procedure, which enable the development of effective procedures and guidelines that support a more effective and efficient organisation.

The fact that the Agreement does not affect the rights and obligations of the bilateral agreements allows ORASECOM some leeway to operate without having to engage with changing established agreements. This is particularly important for a new organisation which still needs to develop and test operating procedures, and build levels of trust.

The management of transboundary river basin organisations is receiving a lot of attention internationally, which provides valuable opportunities to share information and develop relationships with other commissions through various international bodies, such as SADC, ANBO, AMCOW and INBO. Opportunities also exist to work with NGOs, research institutions and the private sector in insuring alignment with basin management priorities.

### 3.2   Emergent Themes of Interest from the Parties

A detailed list of issues identified during the interview process is presented in Appendix A, largely based on the experience of delegates and technical committee members over the past few years. While a number of specific concerns and opportunities were raised (and will be captured in the next section), some important themes emerged.

- ORASECOM has established itself with robust operational practice and credibility in the basin over the past decade.

- While there have been successes, clear achievements have yet to be demonstrated on the ground, due to the relatively short time frame.

- The development of cooperation and trust between the Parties is a cornerstone of the organisation and activities needs to contribute towards this.

- The permanence and evolving nature of the organisation requires improved and formalised procedures (systems) to ensure continuity and stability.

- The formal advisory role to Parties needs to be entrenched and distinguished from the ongoing operational responsibilities of the organisation.

- The need to clarify responsibilities between the Council, Technical Teams and Secretariat, while ensuring continuity and the development of institutional memory.

3.3   A Framework for Operational Procedures and Guidelines

The following diagram captures the areas of focus (numbered) for operational procedures, against the institutional backdrop presented earlier. The first three areas focus on internal procedures (Council, Technical Committees and Secretariat), the next three focus on external guidelines (Parties, SADC and Bilaterals) and the seventh being a mixture around projects.

Detailed requirements for operational procedures and guidelines are presented in the following discussion according to these generic categories.
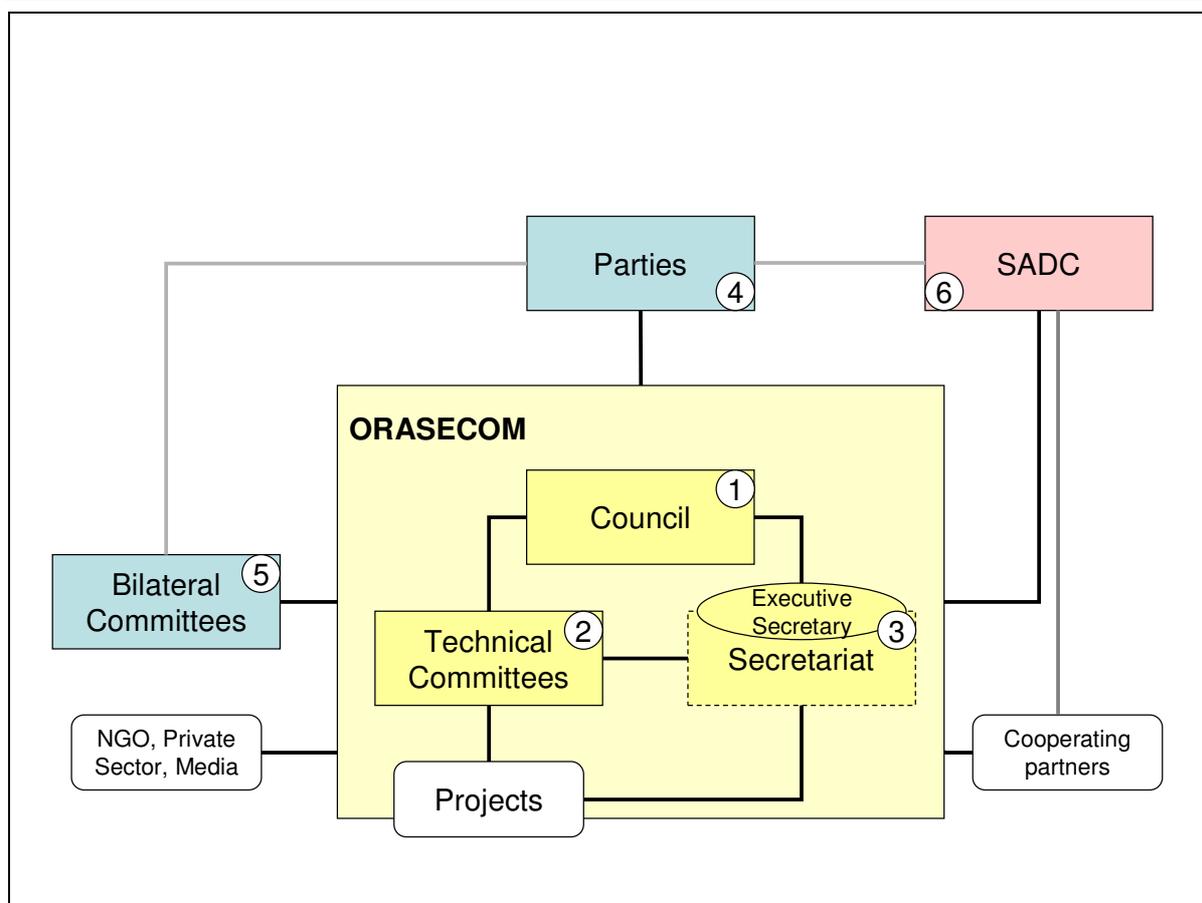
(1)   Procedures for Council Operations

The main focus for Council should be around the formalisation of its accepted procedures and its governance responsibilities.

There are three main areas of potential focus for Council Procedures, namely:

- o   The formalisation of existing practice for Council functioning in line with the ORASECOM Agreement, etc, with specific attention on building trust and consensus.

- o   Clarity of the role and corporate governance of Council with respect to the Technical Committees and Secretariat.

- o   Induction and support to delegates around ORASECOM issues and previous decisions, to build institutional memory and effective functioning of Council.

An important sub-set of the procedures should govern the relationship between ORASECOM and the Parties, including:

- o   Formalisation of the process for Council to jointly advise the Parties as distinct from delegates reporting to their principles individually.

- o   Required formal support to the delegations in reporting to their principles, including clarity on what requires endorsement from Parties versus information provision.

(2)   Procedures for Technical Committee Operations

The main issues for the technical committee relates to:

- o Role and procedures of technical committees in providing recommendations to Council.

- o Process of the committees in managing / steering ORASECOM projects, considering resource constraints of ORASECOM and the Parties.

(3)   Procedures for the Secretariat Operations

With the establishment of a Permanent Secretariat, the roles and responsibilities of the Secretariat should formalised, in terms of:

- o Clear delegations of powers to the Executive Secretary, together with the appropriate governance procedures around reporting and accountability.

- o Operational procedures for the effective functioning of the organisation.

- o Roles and procedures for the Secretariat in interacting with external groups, including stakeholders, cooperating partners, NGOs, private sector, media and SADC.

- o Guidance and mechanisms around sharing information to Parties, Council and Technical Committees between meetings.

- o Responsibilities to manage ORASECOM projects in cooperation with the relevant Technical Committee.

(4)   Guidelines / recommendations for Parties engagement with ORASECOM

Specific issues requiring attention for guidelines to the Parties include:

- o The process and considerations for appointing delegations to ensure effective representation (i.e. continuity, skills, country positions, joint representation on Council & Tech Committees)

- o Briefing and pre-Council caucus of the delegation to ensure adequate and continuous (consistent) engagement of Parties in Council.

- o Accepted approaches for Parties to manage, share and disseminate ORASECOM information with stakeholders and interested parties.

(5)   Guidelines for ORASECOM's engagement of the bilaterals

Clearer and common understanding of the roles and relationships of bilaterals with respect to ORAECOM is required by all the Parties, which requires:

- o Formalisation of the interaction, information sharing and decision making process between bilaterals and ORASECOM and the most appropriate ways for other Parties to interact with bilateral decisions in which they have an interest.

- o Clarity on the relationship between ORASECOM and water authorities (such as LHDA) and the influence or monitoring of operational decision that impact on the basin.

(6)   Guidelines ORASECOM's engagement of SADC

The two relevant areas for interaction between ORASECOM and SADC (are represented by the Water Division) relate to SADC's responsibilities under the Protocol, namely:

- o Monitoring, guiding and supporting ORASECOM's adherence to the Protocol, as well as sharing lessons with other basin organisations, which may diminishe as ORASECOM evolves and is strengthened.

- o In the unlikely event of irresolvable differences emerging between Parties, to facilitate and/or assisting in resolution of this conflict, in terms of the Protocol.

Institutional Analysis for ORASECOM

As context to these procedures and guidelines, it would be valuable to further investigate the institutional arrangements for ORASECOM within the basin, and to develop broader recommendations on the evolving roles and relationships of ORAECOM to other institutions and bodies. In addition to the abovementioned relationships, this may include engagement with broader stakeholders (state and non-state actors) within the basin as well as cooperating partners.

Scoping of Guidelines and Procedures to Strengthen ORASECOM

4   SCOPING OF REQUIRED PROCEDURES AND GUIDELINES

Following the preceding analysis, procedures could be grouped around the following;

Guidelines for the Preparation of Delegations for Council to ensure that they reflect the position of the Parties

Up to now this has not been that critical given the 'committee' role of the organisation. But now this will become much more important because of the move towards 'implementable' recommendations. Council must develop recommendations which will Parties can and will implement

Operational Procedures for Negotiation and consensus seeking within Council

See above…over the next few years Council will increasingly move towards negotiation of recommendations and the separation between 'Parties' and ORASECOM. How Council moves towards consensus building and the formulation of recommendations for Parties will be important.

Operational procedures for Council

These are largely in place, but continuity (induction procedures) will be required.

Operational Procedures for the Secretariat

HR and procurement stuff – being done elsewhere.

ToR and institutional roles and responsibilities

ToR and separation of powers and duties for the committees, Secretariat and Council, what they should be doing and why.

Reporting and liaison roles

How do they interact with SADC, bilaterals and Parties

APPENDIX A: IDENTIFIED ISSUES BY MEMBER STATES

Various issues, opportunities, challenges and concerns were raised through the review and interview process. The following represent a capture of the key issues that have informed the procedures that need to be developed:

- o roles and responsibilities technical committee, wrt council

    - o tor for tech comm., how TT recommendations processes by council, etc

    - o tasks, roles and size of TT may be dynamic – depend on function and project

- o briefing of country delegations prior to council

    - o development of country positions

    - o consistency-continuity of position

- o tradeoff between effectiveness and efficiency (logistics/costs)

    - o council and tech meetings back-to-back

    - o need for written input to council / prepared 'text' of recommendations from Council to be debated in next meeting

- o increasing project steering roles for tech comms

    - o need for interim project meetings

    - o procedures for ORASECOM management of projects (exec and tech) – and how these support the requirements of the ICPs

    - o How the task teams brief and prepare Council

- o role of delegates as country reps and need to advise Parties

    - o recommendation role of ORASECOM

    - o strengthening of delegates within Departments (report back)

    - o formal joint representation to Ministers / Parties

- o governance roles of council (around organisation)

    - o delegations and responsibilities of exec sec

    - o duty of care and fiduciary duty of delegations/ Commissioners

- o ORASECOM as a vehicle for building trust/joint confidence between parties

    - o around methodologies, information, etc for common use

    - o bring parties to common understanding

    - o bridge different / uneven capacity / length of involvement of delegated

    - o emerging role as more of a negotiation forum on key issues

- o managing turnover of council members

- o induction and continuity (succession planning)

- o creating institutional memory (rather than individual capacity)

- o recommendations (to Parties) for representation on Council / Tech

  - o roles and types of skills

  - o responsibilities and seniority of delegates

  - o considerations for busy commissioners (other responsibilities)

  - o dual representation on council/TT (by one delegate?)

    - ▪ useful to separate representation (accountability / oversight)

    - ▪ allows tt to move towards advice and council to represent / advise parties

- o dealing with differences of perspective (tensions) within a process

  - o developing consensus/compromise positions through discussion/negotiation

  - o issues are debated/negotiated/refined (how to do this effectively)

  - o issue of silence as consent

  - o position as a negotiated joint outcome (implications for technical process/analysis)

- o What needs to go back to parties (ORASECOM responsibilities)

  - o Organisational / natural person

- o Distinction between ORASECOM and country procedures

- o Relationship between ORASECOM and bilaterals

  - o Information / planning procedures

  - o Role of ORASECOM as umbrella body

  - o Effectiveness at making decisions

  - o Mandate of bilaterals and escalation of decisions/info, duty to liaise

  - o Need for transparency

  - o Difference between new and existing bilaterals.

- o Relationship with infrastructure authorities (LHDA)

- o Clarification/formalisation of council process

  - o Delegates

  - o Template for minutes

- o Stage of evolution of ORASECOM

  - o Up ladder of cooperation

 - o Implications for divergent perspectives/expectation of Parties

- o Shift from project management (as council) to oversight/accountability (board)

- o Clear strategic direction to exec sec and tech comm

- o Relationship between SADC Secretariat and ORASECOM

  - o Meaning of monitoring/sharing/advice vs facilitate/conflict resolution ito Protocol

  - o Diminishing/changing role of SADC (demand driven)

  - o Organic nature of ORASECOM (not SADC driven)

  - o Possible SADC guidelines on minutes, template, etc

  - o SADC's role in helping find consensus in contentious issues.

- o Inadequate relationship between Ministers (Parties) and Delegates (ORASECOM)

- o Dissemination of ORASECOM information by Parties

  - o Sharing between member states

  - o Joint info / transparency and sharing with stakeholders

- o Role of executive secretary / secretariat (as it stands now, with the resources it has available)

  - o Link for all ORASECOM activities (Parties, SADC, RBOs, donors, projects)

    - ▪ Institutional linkages and internal organisational linkages

  - o Delegations to Exec Sec

  - o Information dissemination at council and tech comm

  - o When to disseminate interim information (what info)

  - o Clarification of role and responsibilities (guideline)

- o Requirements / procedures for information warehousing/sharing

- o ToR for each part of ORASECOM

  - o Operational manual – define roles and links to others

- o Decision making around training / learning opportunities

  - o ORASECOM requirements versus political representation

  - o Role of Exec sec in identifying needs/contributions from Parties

  - o Possible reporting template for representatives (joint report – not ES)

APPENDIX B: COMPARATIVE ANALYSIS OF OTHER ORGANISATIONS

B.1   Global Water Partnership

The Global Water Partnership is an international network organisation focused on the promotion of Integrated Water Resources Management. It has an international Steering Committee, a secretariat (the GWP Organisation) and a number of regional and country water partnerships. It also has a technical committee. The Sponsoring Partners are a group of countries that supported the original establishment of the organisation, as required by Swedish law. Representatives of the Sponsoring Partners meet once a year to approve new nominations to the Steering Committee and to approve financial statements. However, the Sponsoring Partners do not play a role in the strategic direction or running of GWP.
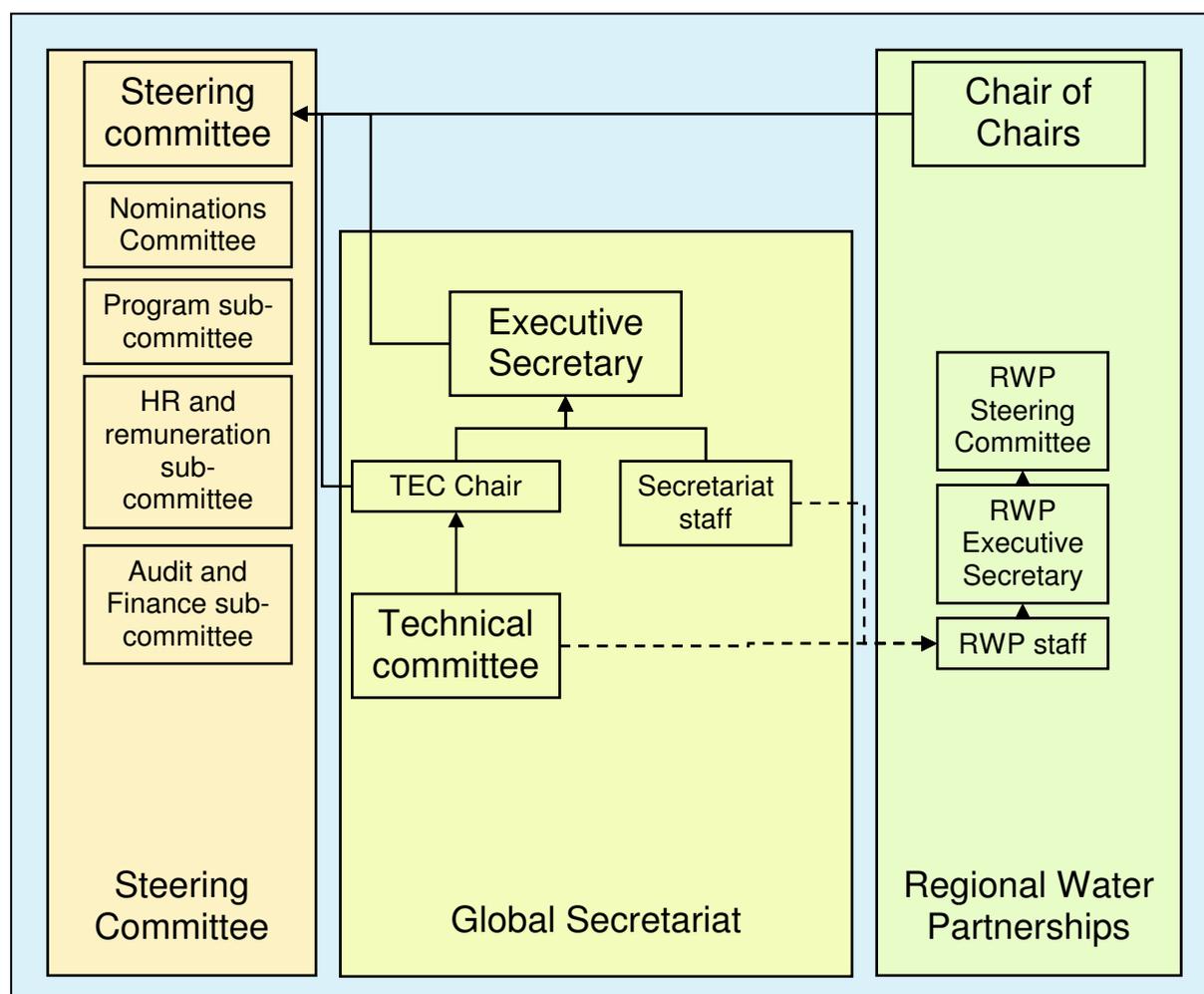
Steering Committee

The statutes of the GWP describe the function of the Steering Committee as being to:

- Develop the policy of the Network and the work of the Organisation in support of the Network, taking into account the strategic directions and policies adopted by the Network Meeting;

- Create and appoint a Technical Committee, taking due account of the Technical Committee of the Network, functional prior to the entry into force of these Statutes;

- Create and appoint such other committees or groups as it finds necessary for the performance of its functions, which may include members of the Steering Committee and other individuals as appropriate;

- Issue by-laws, work-plans, budgets and instructions for the Organisation and for groups and committees that have been established by it;

- Review the work of the committees and groups that have been established by it;

- Decide on proposals and recommendations from such committees and groups, unless such proposals must be submitted to the Network Meeting or the Meeting of the Sponsoring Partners;

- Appoint the members of the Nomination Committee, taking into account this Committee's task to find candidates which reflect a balance in terms of professional background, geographical representation, gender and level of development of the person's home State;

- Decide on recruitment, appointment and removal of the Executive Secretary;

- Recommend new Sponsoring Partners to be approved by the Meeting of the Sponsoring Partners;

- Supervise that Partners respect the principles of the Network and recommend to the Network Meeting the expulsion of a Partner in case of a violation of these principles;

- If necessary, recommend amendments to these Statutes in accordance with Article 17;

- Establish links with and accredit Regional Water Partnerships, Regional Technical Committees and Country Water Partnerships, and authorise such and other entities to use the name "Global Water Partnership" as part of their name or in a similar manner to indicate stronger links than normal partnership;

- Convene the Network Meeting in accordance with these Statutes;

- Convene the Meeting of the Sponsoring Partners in accordance with these Statutes;

- Present a yearly activity report to the Partners and the Sponsoring Partners;

- Present a yearly financial statement to the Partners for information and to the Sponsoring Partners for approval at the Meeting of Sponsoring Partners;

- Comment on and distribute the audit report or reports to the Partners and to the Meeting of Sponsoring Partners.

The statutes further state that "Decisions of the Steering Committee shall be taken by simple majority. Decisions require the presence of at least half of its members plus one, when taken at a meeting, and require participation of three-quarters of the members when taken through distant communication."

The Steering Committee is responsible for the strategic direction of the organisation and has fiduciary responsibilities over the GWP Organisation. The Steering Committee is not responsible for the Regional Water Partnerships other than in relation to the use of centrally disbursed funds.

GWP Organisation

The GWPO consists of the secretariat, based in Stockholm. The Regional Water Partnerships are part of the network, but not part of the GWPO. In relation to the GWPO, the statutes state that

(1) The Executive Secretary is the chief executive officer of the Organisation and the head of the Secretariat. The Executive Secretary shall serve as the secretary of the Steering Committee and shall report to and be responsible to the Steering Committee for the activities of the Secretariat.

(2) The Executive Secretary shall be appointed by the Steering Committee for a period that shall not exceed five years, which may be subject to renewal.

(3) The Executive Secretary shall:

- Implement the decisions of the Steering Committee;

- Execute instructions from the Chair;

- Approve new Partners of the Network;

- Support the committees and groups established by the Steering Committee;

- Appoint such staff as may be required to carry out the objectives of the Network and the Organisation;

- Be responsible for the financial management and accounting of the Organisation;

- Be authorised to issue statements and enter into obligations in the name of and on behalf of the Organisation within the scope of her or his mandate or as authorised by the Steering Committee;

- Make an oral presentation at the Annual Network Meeting of the yearly activity of the Network and the Organisation.

Technical Committee

The Statutes of the GWP do not give any direction in terms of the functions of the Technical Committee (TEC) other to say that it may be established. The Technical Committee (TEC) "consists of up to 12 internationally recognised professionals selected for their experience in different disciplines relating to integrated water resources management. TEC provides professional and scientific advice to GWP's members by:

- performing analyses of strategic issues impacting on water management

- facilitating and supporting the development of GWP programmes

- giving advice and guidance on IWRM priorities and development of IWRM proposals

- identification and performance evaluation of the Associated Programmes." (GWP)

The TEC Chair reports to the Executive Secretary, and is an ex-officio member of the Steering Committee. S/he reports to the Steering Committee on the activities of the TEC. S/he develops an annual business plan which is presented to the Steering Committee for ratification.

Regional Water Partnerships

There are a number of GWP Regional Water Partnerships around the world. These are accredited by GWP, and form part of the network. They receive some funding from GWPO, but are also expected to raise their own funds. While there are certain criteria that an RWP must meet in order to be accredited, they are not directly accountable to the GWPO other than for centrally disbursed funds. They have their own Steering Committees and Chairs, and some have regional TECs. Historically the RWPs have elected a "Chair of Chairs" to represent them on the Steering Committee, but there are currently discussions about increasing representation on the Steering Committee to 6 positions (half of the nominated positions on the SC).

Procedures and guidelines

The GWP grew rapidly over ten years, and in some ways has moved beyond the original statutes. Procedures and guidelines for operation have been developed as necessary over time. The role of the Steering Committee has been a contested one over the past few years, with the SC demanding an

increasingly proactive and engaged role in the direction of the GWPO. Lack of clear policies and procedures led historically to some conflict between the Steering Committee, the Executive Secretary and the Chair on occassions. For example, the Executive Secretary commissioned an investigation into the revision of remuneration of the Secretariat staff. The staff was informed of the investigation and their expectation of increased remuneration was raised before the matter was presented to the SC. The matter was presented to the SC when the work was already well advanced. This led to the SC feeling as through their authority regarding determination of remuneration was being undermined, while the ES felt that his function in terms of managing the staff effectively was being undermined. Clear procedures and roles and responsibilities would have made the matter easier to handle.

B.2   OKACOM

The Permanent Okavango River Basin Water Commission (OKACOM), was established by Angola, Namibia and Botswana. The main objective of OKACOM is:

> to advise the three member states on matters relating to development, conservation and utilisation of the water resources of the Okavango river and the delta.

Although there is no clause in the agreement binding states and enforcing the implementation of OKACOM objectives, Article 3(3.5) promotes cooperation and consensus in all decisions taken by the Commission. Key functions of OKACOM include giving advice on[5]:

- Measures to determine the long term safe yield of the available water resources

- Reasonable water demands of stakeholders in the basin

- Suitable criteria for conservation, equitable allocation and sustainable water use

- National and regional investigations to do with the development of the resources

- Pollution prevention and the control of aquatic weeds

- Short-term measures to alleviate water shortages due to droughts, taking into account the availability of stored water supplies and national water needs

The objectives of OKACOM are similar to principles of the UN Convention (1997) in as far as they focus mainly on managing interstate relationships with regard to the management of trans-boundary rivers. However, stakeholder participation remains one of the pillars of effective basin management. To ensure participation by relevant stakeholders, OKACOM with support form international donors has proactively initiated mechanisms for stakeholder participation that recognise the critical role played by basin communities at a local level. See sub-section 4.2.5 below for additional information on stakeholder participation.

Operational and Management Structure

Structure

On May 2007 the OKACOM member states signed the Agreement on the Organizational Structure of OKACOM which defines three organs within OKACOM, namely the Commission, the Okavango Basin Steering Committee (OBSC) and the Secretariat.

The Commission is responsible for the development of policy and general supervision of the activities of OKACOM. Chairing of the Commission rotates between Chairpersons of National Commissions or delegations of the member states. Members of the Commission are senior civil servants from the governments of the member states.

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[5] OKACOM Agreement, 1994

The Okavango River Basin Steering Committee is a technical advisory body to the Commission. It is made up of both permanent and non-permanent members and is chaired by a Commissioner from the same member state chairing the Commission at the time and appointed by that member state. This committee plays a key role in implementing decisions of OKACOM at national level.

The Secretariat is an internal organ of OKACOM, with the legal capacity and mandate to assist OKACOM in implementing its decisions. It will also provide administrative support and assume an instrumental role in information sharing and communication. The Secretariat is headed by an Executive Secretary who works under the guidance of the Commission.

Local communities of the three riparian states are encouraged to participate through the Basin Wide Forum established by OKACOM. Thirty (30) community members, ten from each riparian country including traditional authorities, craft makers, fisherman, and farmers, women and youth associations form part of this important forum. At a national level, the forum member s are referred to as Country Forum Members.