**Proposals for Stakeholder Participation in**

**ORASECOM**

November 2009

Stakeholder Participation in ORASECOM

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**EXECUTIVE SUMMARY**

Introduction

The ORASECOM Agreement establishes the Council as a technical advisor to the Parties, as

well as setting out the objectives and functions of the Council, how it will conduct its

business in relation to general and financial obligations, how disputes are to be settled and

the mechanisms for withdrawing from the Agreement.

Article 5 of the ORASECOM Agreement provides a number of key focus areas for

recommendations, indicating that Council can make recommendations on the form and

extent of stakeholder participation required. However, the Agreement does not detail how

stakeholders should participate in making recommendations or ORASECOM functioning, but

notes that the Council shall take “all measures required to make recommendations or to

advise the Parties”. This may require stakeholder participation to ensure that the

recommendations are viable and implementable. This report addresses stakeholder

participation in ORASECOM functioning and not that required to develop implementable

recommendations.

ORASECOM Stakeholder Participation Roadmap

In May 2005 the four Ministers of the riparian countries gave a clear mandate to the

Commissioners to develop modalities for stakeholder engagement with ORASECOM. In

February 2006 Member States and other stakeholders mapped out what could be

considered as key elements of a stakeholder participation strategy. Thereafter, findings

were refined into a Stakeholder Roadmap that provides a broad framework by describing a

progressive development of participatory approaches. This is done via four key focus areas

with the provision of a number of suggestions and options that will assist in constructing a

stakeholder participation process. The Roadmap does not differentiate between

stakeholder participation in projects and participation in the business of ORASECOM.

This study builds on this Roadmap by articulating the steps to allow for the progressive

implementation of the ORASECOM Stakeholder Roadmap with regard to the latter.

International Conventions

International Treaties on water largely focus upon a suite of normative principles and

substantive rules that guide transboundary basin management. These provide a framework

to ensure cordiality through the “equitable and reasonable” utilisation of the shared

resource. However, neither the UN Convention nor the Revised SADC Protocol include

provisions for stakeholder participation and the participation referred to in these

conventions refers to that of Member States in terms of ensuring equitable and reasonable

use.

The Berlin Rules (2004), as articulated by the International Law Association, set out the

requirements for stakeholder participation in the decisions that have an impact upon them.

Articles 18 and 19 of these Rules underpin the rights of affected people to information, and

the obligations on States to both educate people and to provide information. However, the

ILA commentaries specifically link these requirements to the following principle; ”In

contemporary society, legitimacy largely depends on the consent of the governed, and

hence on the sense that the governed have a voice through direct participation,

representation, deliberation, or other methods. “ This recognises that participation remains

an obligation of the State through democratic processes, and not transboundary

organisation per se.

Therefore, stakeholder participation in transboundary basin management is not set out as a

suite of normative rules in existing instruments of International Water Law, but is

increasingly recognised as an obligation of the State (perhaps even as international

customary law).

SADC Treaty

The SADC Treaty (2004) provides the basis for cooperation within the region and clearly

supports participation of stakeholders in programmes and projects towards socio-economic

development. This is woven into many SADC policy statements and strategies.

In particular, the SADC Regional Water Policy (2005) supports and promotes the idea of

stakeholder participation. This is reiterated in a number of sections such as:

• Shared Watercourse Institutions (SWCI): (viii) Stakeholder participation in decision

making shall primarily be through Member States’ government representatives, while

any SWCI shall ensure stakeholder consultation at a joint project level.

• Shared Watercourse Institutions: (ix) In the interests of IWRM, SWCIs are encouraged

to foster cooperative relationships with non-governmental and civil society groupings

within the shared watercourse.

• Participation and Capacity Development: (i) Water resources development and

management at all levels shall be based on a participatory approach, with effective

involvement of all stakeholders.

• Participation and Capacity Development: (ii) All stakeholders shall be empowered to

effectively participate in the management of water resources at regional, river basin,

national and community levels, particularly in shared watercourses.

• Participation and Capacity Development: (iii) Member States and SWCIs shall recognize

the positive role played by NGOs in water resources management particularly at

community level, and shall facilitate their participation in water development and

management activities

The raft of instruments available in SADC therefore promotes the concept of stakeholder

participation primarily via Member States government representatives.

Case Studies

The Okavango, Danube, Murray Darling, Mekong and Nile basins, whilst having differing

approaches developed under the influences of political, social and historical contexts, all

have a strong recognition of the need to improve stakeholder participation in basin

management, and at more senior levels to influence recommendations. Through the case

studies the following key considerations can be distilled:

• Progressive development of stakeholder participation through an agreed strategy,

starting with improved awareness and, with the developed capacity, takes

stakeholders through to more active collaboration.

• Nationally based forums are favoured and have been established in most instances.

• The kind of messages given to national, regional and project specific bodies differ.

Messages to regional stakeholder bodies tend to emphasise international

cooperation and the shared nature of the basin, national body messages focus on

nationally important issues in the transboundary basin, whereas project specific

stakeholder bodies focus on the impact of the project on the stakeholders.

• External projects and initiatives can provide useful stakeholder engagement and,

where possible, a formalised agreement is useful to cement relations.

• Basin wide structures favour expertise and basin wide skills/understanding as part of

the membership of an Advisory Committee, rather than grassroots participation.

Further Considerations

There are a range of considerations that underpin stakeholder processes within the basin.

These include sovereignty, differing types of participation, the range of possible structures

to support participation, challenges of scale and representivity, issues of capacity

differentials, difficulties in maintaining an active process and, finally, ensuring sufficient

financial resources.

While the body of international law and conventions would suggest that stakeholder

participation is primarily a State responsibility (and not that of the transboundary

organisation per se), it is also likely that these organisations need to establish transparency,

credibility and legitimacy across borders. This will further support the implementation of

recommendations by Member States. Stakeholder participation in transboundary

organisations like ORASECOM therefore needs to include more than just participation in

developing implementable recommendations, but also in the functioning of the organisation

itself. However, this may only be at an observer level.

Most importantly, one must consider how stakeholder participation can develop

progressively as the information required by stakeholders varies over both space and time.

This then provides for increasing levels of participation, in accordance with the International

Association of Public Participation’s (IAPP) spectrum of participative approaches, as well as

enabling the progressive development of capacity. These considerations have been distilled

into the following recommendations.

Stakeholder Participation in ORASECOM: A Way Forward

A number of key steps forward are recommended for ORASECOM.

Step 1: ORASECOM creates awareness of ORASECOM’s roles and responsibilities, aligned

with the Communication Strategy, and via existing structures within Member States. This should follow the IAPP’s level of “Inform”. (See Table 1 on page 17)

Step 2: ORASECOM establishes national participation structures within each Member

State linked to the development of the Basin Wide Plan. This should follow the

IAPP’s levels of “Inform -Consult”. (Table 1) These national participation

structures must be supported through the governments of the Member States,

and should be the subject of a recommendation from Council.

Step 3: A Basin Wide Advisory Committee may be established once these national

committees are functioning effectively and could support Basin Wide Planning.

This would typically be made up of high level specialists from each of the Member

States rather than grass roots stakeholders. Furthermore, the concept of high

level Observers to Task Team meetings is also recommended in the longer term.

However, these observers should not be associated with any particular Member

State, but from internationally or regionally recognised bodies or NGOs. This

should follow the IAPP’s levels of “Inform-Consult-Involve”. (Table 1)

Throughout these steps ongoing monitoring and evaluation of participative processes is

essential. For this purpose, it is important for the ORASECOM Secretariat to establish

internal capacity with regards to communications and stakeholder participation.

**1 INTRODUCTION**

1.1 Background to the Study

The EU funded support to the Orange-Senqu River Commission (ORASECOM) forms part of

the wider African Transboundary Rivers support programme. This support is secured by a

Financing Agreement between the Southern African Development Community (SADC) Water

Sector Support Unit and the Delegation of the European Commission (DEC) in

Gaborone. SADC commissioned this study and has appointed the ORASECOM Secretariat as

the implementing agent.

The overarching EU funded project will 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 outlined contributes to Result Area 4, and will deliver on Activity 4.2 –

Propose a structure for the establishment of a stakeholder forum in each basin state

designed to bring primary and secondary stakeholders together.

1.2 Scope and Objectives

The specific purpose of this assignment is described as:

*To propose a structure for the establishment of a stakeholder forum in each basin state designed to bring primary and secondary stakeholders together.*

In order to achieve this, a number of areas of work were envisaged;

• The ORASECOM Roadmap for stakeholder participation is analysed.

• Meetings with (potential) stakeholders will have been conducted.

• Proposals for the structure of the stakeholder forum

• Terms of Reference for the stakeholder forum

This particular report reflects upon the first task which provides for an analysis of the

ORASECOM stakeholder Roadmap, a desktop review of participation in other transboundary

basins, and then through discussion with Member States the development of a proposed format for stakeholder participation in ORASECOM’s process of formulating recommendations to Parties.

1.3 Approach for the Study

This study has taken the following steps:

• Desktop study of Stakeholder participation in other River Basin Organisations.

• Reflection upon the scope of challenges faced in securing stakeholder participation

in support of ORASECOM’s core mandate.

• Analysis of the ORASECOM Stakeholder Roadmap.

• Meetings with Commissioners, and Task Team members to reflect upon approaches

To stakeholder participation.

• Proposals for structure stakeholder participation in support of ORASECOM’s core

mandate.

**2 ORASECOM**

2.1 ORASECOM Agreement

The ORASECOM Agreement provides for the establishment of the Council, which is the

highest body of the Commission. The Agreement establishes the Council as a technical

advisor to the Parties, as well as sets out the objectives and functions of the Council, how it

will conduct its business in relation to general and financial obligations, how disputes are to

be settled and the mechanisms for withdrawing from the Agreement.

Article 5 of the ORASECOM Agreement outlines the issues on which ORASECOM may

develop recommendations to Parties, while Article 5.2.4 indicates that Council can advise

parties on “the extent to which the inhabitants in the territory of each Party concerned

shall participate in respect of the planning, development, utilisation, protection and conservation of

the River System”. However, the Agreement does not expand on how stakeholders should

participate in making recommendations. Article 5 does note that the Council shall take “all

measures required to make recommendations, or to advise the Parties”. This may require

stakeholder participation to ensure that the recommendations are viable and

implementable.

Furthermore, all measures may imply a due diligence in reaching a recommendation. In this

regard stakeholder participation is widely regarded as a central tenet of Integrated Water

Resource Management.

2.2 ORASECOM Stakeholder Roadmap

In May 2005 the four Ministers, of the riparian countries gave a clear mandate to the

Commissioners to develop modalities for stakeholder engagement with ORASECOM. In

February 2006 a seminar was held with representatives from the Member States and other

stakeholders to map out what could be considered as key elements of a stakeholder

participation strategy. The key issues identified at that seminar were:

• Stakeholder participation is a mandate of ORASECOM and is regarded as critical

for equitable sharing of water resources.

• A focused strategy is needed which, among other things, would develop

guidelines on minimum levels of stakeholder participation and should ideally be

developed within the context of the overall ORASECOM strategy.

• Streamlining of institutions was seen as important for enhancing efficiency and

effectiveness. Having three separate commissions on one river was seen as a

replication.

• There was a need to ensure that links to bi-lateral and national institutions were

clearly established, which should involve developing the strategy (accompanied

by adequate monitoring and evaluation arrangements) at all levels including

basin, national level, project, regional level without compromising the

sovereignty of member states.

These key issues and the various working documents developed at the seminar were reworked

by a number of experts into the Roadmap. The Roadmap:

• provides a broad framework,

• describes a progressive development of participatory approaches, but

• does not differentiate between stakeholder participation in projects and

participation in the business of ORASECOM.

The Roadmap does provide some suggestions and options centred around four key focus

areas, these being:

• Communication and information,

• Institution creation and development,

• Capacity building, and

• Institutional interfaces.

These combined focal points will assist in constructing a stakeholder participation process,

although there are other key and underlying elements that require careful consideration in

deriving an appropriate process.

**3 INTERNATIONAL CONVENTIONS**

International Treaties on water largely focus upon a suite of normative principles and

substantive rules that guide transboundary basin management. These provide a framework

to ensure cordiality through the “equitable and reasonable” utilisation of the shared

resource. However, neither the UN Convention nor the Revised SADC Protocol include

either provisions for stakeholder participation and the participation referred to in these

conventions refers to that of Member States in terms of ensuring equitable and reasonable

use.

The principles for transboundary basin management are captured in a number of

conventions and include:

• Convention On The Protection And Use of Transboundary Watercourses and

International Lakes, Helsinki,1992

• United Nations Convention on the Non-navigational Use of International

Watercourses, 1997

• Protocol on Shared Watercourse Systems in the Southern African Development

Community (SADC) Region, 1995

• Revised Protocol on Shared Watercourse Systems in the Southern African

Development Community (SADC) Region, 2000

However, these Conventions do not include provisions for transboundary stakeholder

participation.

Over time the International Law Association has reflected upon the state of legal

understanding regarding transboundary basin management and this has resulted in:

• Helsinki Rules on the Use of the Waters of International Rivers, 1966

• Berlin Rules on Water Resources Law, 2004

The more recent Berlin Rules (2004) set out the requirements for stakeholder participation.

Article 4, notes that States have an obligation to respect the right that those impacted upon

by a decision should have the opportunity to influence the decision. It is pointed out that

this needs to be recognised as a part of the progressive development of customary

international law rather than a part of existing international law. However, the Berlin Rules

talk to all basins and not specifically to those of a transboundary nature, and secondly, they

do not make any references to the modalities of that participation.

Article 18 of the Rules suggest that States have an obligation to ensure that people who are

affected by decisions have the opportunity to participate in decision making, and that there

is a duty to make information available to people. Article 19 suggests that States have an

obligation to educate people. However, these Articles are not included in Chapter III which

deals specifically with transboundary obligations. The commentary on Article 18 notes that;

“In contemporary society, legitimacy largely depends on the consent of the governed,

and hence on the sense that the governed have a voice through direct participation,

representation, deliberation, or other methods. Without a sense of legitimacy, attempts

to govern founder on popular resistance, whether active or passive.”

Stakeholder participation is consequently linked to the rights of ‘governed’ peoples. In this

sense, public participation should deepen democracy and contribute to stability – but

through State structures.

Stakeholder participation is recognised as a fundamental right in the Berlin Rules. However,

this should be done through State Parties.

**4 SADC TREATY**

The SADC Treaty (2004) provides the basis for cooperation within the region and clearly

supports, in a broader sense, the participation of stakeholders in programmes and projects

towards socio-economic development. Furthermore, the Treaty highlights the need to

support regional integration by involving the peoples of the region and non-governmental

organisations.

The Treaty also recognises that, in order to achieve its objectives, steps should be taken to

harmonise political and socio-economic policies and plans of the Member States. Certainly

an analysis of the different water policies of Botswana, Lesotho, Namibia and South Africa,

as well as other SADC states, shows that these countries have been involved in water policy

reform and that the new policy positions largely reflect the spirit of IWRM, which promotes

participatory processes as a fundamental concept. However, these are internally focused

policies not focussed on transboundary basin management.

The SADC Regional Water Policy (2005) supports and promotes the idea of stakeholder

participation and takes cognisance of the transboundary basin context. This is reiterated in

a number of places such as:

• Shared Watercourse Institutions (SWCI): (viii) Stakeholder participation in decision

making shall primarily be through Member States’ government representatives,

while any SWCI shall ensure stakeholder consultation at a joint project level.

• Shared Watercourse Institutions: (ix) In the interests of IWRM, SWCIs are

encouraged to foster cooperative relationships with non-governmental and civil

society groupings within the shared watercourse.

• Participation and Capacity Development: (i) Water resources development and

management at all levels shall be based on a participatory approach, with effective

involvement of all stakeholders.

• Participation and Capacity Development: (ii) All stakeholders shall be empowered to

effectively participate in the management of water resources at regional, river basin,

national and community levels, particularly in shared watercourses.

• Participation and Capacity Development: (iii) Member States and SWCIs shall

recognize the positive role played by NGOs in water resources management

particularly at community level, and shall facilitate their participation in water

development and management activities.

Therefore, SADC promotes the concept of stakeholder participation as a broad principle for

programmes and projects and as a key element of transboundary basin management, but

primarily via Member States.

**5 CASE STUDIES OF STAKEHOLDER PARTICIPATION**

In order to provide some form of modality for stakeholder participation in ORASECOM, it is

useful to consider international best practice. A number of case studies were chosen from

around the world that provide, by the nature of their history, some experience in working

towards a basin management regime.

5.1 Okavango Basin

The most widely recognised model for stakeholder participation in transboundary basin

management in SADC is found in the Okavango River basin and the “Every River Has Its

People programme”. This targeted communities in the basin in all of its Member States,

providing an opportunity for communities to interact across borders. The Every River

programme has established a Basin Wide Forum (BWF).

The BWF is a transboundary committee comprising of ten representatives from each of the

riparian states. These members are representative of community-based organisations,

small-medium enterprises of the agriculture, tourism and fisheries sectors, as well as

representatives of the craft associations and traditional authorities. In addition,

representatives from the national ministries, the commissioners, SADC and representatives

from other river basin organisations participate in the forum. At the national level, the

members are called Country Forum Members, and they meet twice a year, at national level,

whilst the BWF meets at least once a year.

The BWF largely aims to create awareness and a shared understanding of issues that face

the basin. These meetings have, to a certain extent, managed to build trust between the

basin countries and across the basin. The BWF has observer status in the Okavango

Commission (OKACOM).

Key elements are:

•The BWF plays an advisory / observer role and does not have decision making

powers.

• The basin does not have the complexity of basins such as the Orange-Senqu, making

the process to structure a BWF easier. Despite this, the logistics of getting the BWF

and Commissioners together has proven difficult.

• The process was formulated through an already established project and not just for

the support of OKACOM activities per se. This then provided a structure, issues and

a process around which participation was structured.

• The initiative was funded by donor support. This support has now been

withdrawn and the participants are facing challenges in keeping the process alive.

• The Okavango Basin plays less of a strategic role in the economy of the Member

States and the region, and therefore, sovereignty-related issues appear less

important.

5.2 Danube Basin

Public participation is a fundamental part of the European Union’s Water Framework

Directive (WFD) with particular emphasis on the participation of stakeholders in the

development of basin management plans. Furthermore, the approach to participation in

the Danube has been shaped by the Aarhus Convention which states a clear case for

stakeholder participation in environmental issues. The International Commission for the

Protection of the Danube River (ICPDR) has developed a Strategy for Stakeholder

Participation (2003), an Operational Plan (2004), and has also held an international

conference on stakeholder participation (2005).

The ICPDR has recognised that participation is indeed multi-dimensional in nature.

Therefore, the strategy towards this end focuses on spatial scales, on the one hand, and

upon progressive levels of involvement on the other hand. The spatial scales indentified

are:

• international: Danube River Basin level (provides the framework and possibilities for

coordination and unity throughout the river basin)

• national (seen to be the “implementing” and management level)

• sub-basin (can be transboundary or/and national)

• local (the actual implementation level)

The progressive levels of participation are based upon the EU WFD Article 14 and are

provided as Information Supply, Consultation and Active Involvement. Using these, an

operational plan has been developed. The ICPDR has identified national focal points which

would actively support participation at national, sub-basin and local levels.

The ICPDR structure also allows for Participants with Consultative Status and Observers to

attend meetings of the Commission. However, whilst they can provide views and insights,

they cannot participate in decision making. Furthermore, it is important to note that such

participation is aimed more towards organisations and persons of technical expertise that

have some form of mandate, as well as regional or basin-wide perspectives.

Key elements are:

• ICPDR has played a central role in facilitating and coordinating all stakeholder

participation in the basin.

• Recognition of participative processes around the basin is important and needs to be

factored into the broader participation strategy.

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• A phased approach of increasing involvement develops capacity and understanding

of roles and responsibilities.

• Empowered (technical, basin perspectives etc) observers attend Commission

meetings to provide input, but do not participate in making decisions on

recommendations.

5.3 Murray-Darling Basin

While the Murray Darling basin is not a transboundary basin in the true sense, the strongly

federal system in Australia requires similar engagements to typical transboundary basins. In

the Murray Darling Basin the Basin Community Committee (BCC) is composed of members

who are formally appointed for a four year term and who possess a wide range of expertise

and networks throughout the Basin. The role of the BCC is to advise the Ministerial Council

from a community viewpoint on critical natural resource management issues including

indigenous community issues within the Basin. The BCC enhances awareness and a sense of

ownership within the basin, as well as to participate in community engagements activities

and policy development processes.

The BCC meets four times a year and also meets jointly with the Ministerial Council

annually. It periodically holds joint meetings or workshops with the Commission. The

Chairperson of the BCC may be invited to attend the Ministerial Council meetings, but

purely as an observer.

A Basin Officials Committee (BOC) has also been established which brings together

representatives of the administrations of the various basin States. This Committee also

provides advice to the Ministers Council.

Key elements are:

• An experience-based Advisory Committee (BCC in this instance) with a fixed

mandate and term of office provides for a more formal stakeholder engagement.

• Such a Committee can provide a conduit for two-way communication with

communities.

• Role is advisory and may have observer status at meetings, from time to time.

• A Committee for Officials (BOC) provides for technical discussions between States (as

with the Task Teams of ORASECOM) to support recommendations.

5.4 Mekong Basin

The Mekong River Commission (MRC) is committed to improving engagement with its many

stakeholders at all levels of the institution including through its programmes i.e. the Basin

Development Planning Process and the Joint Committee and Council. However, the MRC

has limited overall strategic direction for public participation and recent efforts have

focused largely upon programmes. It has been noted that stakeholder participation has

been insufficient in certain instances, and is left to the National Mekong Committees, which

coordinate MRC programmes at the national level and provide links between the MRC

Secretariat and the national ministries and line agencies. There have been, therefore,

distinct disparities between countries. Capacity challenges within the Secretariat have also

impacted upon the efficacy of stakeholder processes.

A recent Organisational Review team recommended the MRC improve upon its current

stakeholder engagement and formalise a consultative process at the MRC Joint Committee

and Council, the highest levels of decision-making within the organisation. The Joint

Committee, at a Special Session in 2007 agreed to “formalise a stakeholder (NGO and civil

society) consultative process as part of MRC annual meetings.”

The MRC Secretariat was tasked to develop standard principles for the organisation along

with a policy focused on increasing the meaningful participation of stakeholders within the

Joint Committee and Council. The stakeholder engagement policy is also to include a

process for its implementation.

The “Mekong Region Water Dialogues” (MRWD), initiated by IUCN and regional partners,

aim to support improved water governance in the Mekong region, specifically Viet Nam,

Lao, Cambodia and Thailand by facilitating the participation of stakeholders (from

government, business and civil society) in a transparent and participative water governance

and decision-making process to promote livelihood security, human and ecosystem health

in the Mekong Region.

For each country, a National Working Group (NWG) will be established with about 10

members representing the government, private sector, civil society, donors, universities and

research institutions. The NWG will shape the agenda for the national dialogues and help

establish connections with decision-and policy-makers, ultimately to promote improved

water governance in their countries, as well as in the Mekong Region. These dialogues

could ostensibly be championed by the National Mekong Committees which could take

recommendations to the Joint Council.

Furthermore, linkages have been created between the Mekong and Murray Darling Basins

with the idea that the Mekong look to the adoption of the Community Advisory Committee

approach.

Key elements are:

• The MRC has been influenced by decisions taken during its formative years which

have influenced the legitimacy of the Commission, which will take considerable

participation to regain. Earlier and more strategic approaches to participation would

have created a more accepted institution.

•A stronger National approach was developed in the first instance through the

National Mekong Committees.

• Other initiatives such as the Regional Water Dialogues can be used to support the

raising of issues for the nationally based Committees.

• The establishment of National Working Groups provides a national Advisory

Committee approach that can pre-empt the establishment of a basin-wide

Committee.

• There is recognition that there needs to be stakeholder engagement at higher levels

and not just through projects and national level committees. This engagement must

include NGOs and Civil Society. The disconnect between local projects that are

participative in nature and the process of making recommendations at basin level is

seen as a key lesson from the Mekong.

5.5 Nile Basin

The Nile Basin Initiative (NBI) is a partnership initiated and led by the riparian states of the

Nile River. The NBI consists of the Council of Ministers of Water Affairs of the Nile Basin

Countries (Nile-COM), the Technical Advisory Committee (Nile-TAC); and the Nile Basin

Secretariat (Nile-SEC).

During the early years after establishment the NBI largely focused upon ensuring a stronger

sense of collaboration between Member States and the relevant government Departments.

Bearing in mind the history of disagreement over the management of the Nile Basin, this

may be considered a pragmatic approach. In 2005, the NBI embarked upon a Confidence-

Building and Stakeholder Involvement programme which, amongst other objectives, looks

to improve the involvement of stakeholders in programmes.

Civil Society and NGO structures have coordinated themselves via the Nile Basin Society and

the Nile Basin Discourse which aim to improve the involvement of stakeholders in the

management of the basin. Whilst the NBI and Nile Basin Discourse have signed a

Memorandum of Understanding to further the cooperation and involvement of

stakeholders, at this stage this is still limited to projects. Recognising the need to work with

the different Member States and their respective government Departments, the Nile Basin

Discourse has established nationally based Nile Basin Desk Forums. Through these Forums it

is hoped that issues will be raised via Member States to higher levels in the NBI.

Key elements are:

• In an instance where there has been considerable disagreement, the focus on

getting consensus among Member States prior to engaging stakeholders in an

intensive manner, may be a more pragmatic first step.

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• Stakeholder participation is focused primarily on projects and building capacity

rather than exposure at more senior levels. This can also be regarded as being

confidence building levels within the basin.

• There has been a clear drive outside of the Commission to bring stakeholders

together via the Nile Basin Discourse, amongst others. The development of a

Memorandum of Understanding was a solid step to creating a firmer relationship.

5.6 Summarised Findings

Transboundary basin organisations have differing approaches developed under the

influences of political, social and historical contexts. However, in all instances there is a

strong recognition of the need to improve stakeholder participation in basin management,

and at more senior levels to influence recommendations. Through the case studies a

number of key considerations can be distilled:

• Countries have tended to see participation as a joined-up process within which

involvement in projects and in making recommendations are seen more holistically.

The Danube and Murray Darling basins have clearly established this format in

multiple participation structures whilst in the Mekong and Nile basins the

disconnection between projects and basin wide perspectives is missing.

• Progressive development of stakeholder participation through an agreed strategy is

considered pragmatic. This involves starting with improved awareness and, with the

developed capacity, take stakeholders through to more active collaboration.

• Nationally based forums are favoured and have been established in most instances.

These forums remove the challenges of possible language and cultural differences,

as well as have an understanding of the countries participative history and

structures. This also then involves advice to in-country departments and agencies as

opposed to multiple ex-patriot departments and agencies. Furthermore, issues of

sovereignty are then minimised.

• External projects and initiatives can provide useful stakeholder engagement, as in

the Okavango and Nile basins, and, where possible, a formalised agreement is useful

to cement relations.

• In the more complex basins, Danube and Murray Darling, the basin wide structures

favour expertise and basin wide skills/understanding as part of the membership – in

an Advisory Committee role.

**6 GENERAL CONSIDERATIONS IN STRUCTURING STAKEHOLDER**

**PARTICIPATION**

From the discussions held with Commissioners and Task Team members, as well as from

various literature sources, it is clear that there are a number of issues to consider in

structuring a stakeholder participation process.

6.1 Issues of Sovereignty

States ultimately have sovereign authority within their territory, and this has been central to

most understanding of international relations and international law. However, States can

cede some levels of authority through an agreement with other States to a shared or

independent authority (usually created through an international agreement). Authors such

as Jackson1 have argued that within recent years the concept of sovereignty has indeed

changed. Hence, the broad principles for sharing water have been codified in the UN

Convention for Non-navigational Use of Shared Watercourses (1997) and various others

conventions.

This modern view of sovereignty can be understood in the context of the European Union

and indeed within SADC (albeit different in nature to the European Union) where States are

finding clear benefits to working as a collective. However, it is clear that States will take

time to really understand what this requires and what the implications may well be.

Therefore, sovereignty remains a key consideration on the format for stakeholder

participation.

Perhaps more significantly, the Berlin Rules recognise that stakeholder participation

underpins governance and social stability. This would suggest that participation in

transboundary water management should be undertaken via the Member States, and not

the transboundary organisation per se, and that this process should underpin the

recognition that sovereign States are responding to the needs of their people. The body of

international law and conventions therefore suggest that stakeholder participation is

primarily a Member State responsibility.

However, it is also important that transboundary organisations establish transparency,

credibility and legitimacy across borders. This will further support the implementation of

recommendations made by these organisations via the Member States. Stakeholder

participation in transboundary organisations like ORASECOM therefore needs to include

more than just participation in developing implementable recommendations, but also in the

functioning of the organisation itself, albeit only be at an observer level.

6.2 Types of Participation

There are differing ways of viewing participation and different authors have structured

these accordingly. Possibly one of the most well known is the spectrum provided by the

International Association for Public Participation (IAPP)2. Under the IAPP spectrum five

different forms of participation are recognised:

1. Inform

2. Consult

3. Involve

4. Collaborate

5. Empower

This spectrum is useful in that it helps to shape the type of participation that is required for

the initiative at hand. For the purposes of this study the notion of “Empower”, in the

context of transboundary RBOs, is not really considered a valid option. This is because

“Empower” is defined as an autonomous decision making process, which is not catered for

in most legislation and, considering the issue of sovereignty in transboundary basins, is

unlikely to be achievable or acceptable in the near future. Certainly, even within countries

most legislation would not allow for such autonomy. With this in mind, the revised

spectrum of participation is provided in Table 1, overleaf.

Whilst each type of participation has its place, processes of more active involvement (or

collaboration) with key stakeholder groups provide for more sustainable and more

productive projects. By informing and consulting, there are limited opportunities to identify

public values and priorities, let alone opportunities to solicit and incorporate stakeholder

expertise and local knowledge. When stakeholders are more actively involved they begin to

develop ownership over decisions, and are more likely to support and implement final

decisions outcomes.

The IAAP spectrum provides a format for progressive development of participation over

time, with developing capacity and improved levels of trust.

Table 1: The spectrum of Public Participation (adapted from the IAPP)

|  |  |  |  |
| --- | --- | --- | --- |
| INFORM | CONSULT | INVOLVE | COLLABORATE |
| Public participation goal |  |  |  |
| To provide the public with balanced information to assist them in understanding the problem, opportunities, solutions and alternatives | To obtain public feedback on analysis, alternatives and decisions | To work directly with the public throughout the process to ensure that public concerns are consistently understood and considered | To partner with the public in each aspect of the decision-making process including the development of alternatives and the identification of preferred solutions |
| Commitment |  |  |  |
| We will keep you informed | We will keep you informed, listen to and acknowledge concerns and aspirations, provide feedback on how public input influenced the decision | We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how the public input influenced the decisions | We will direct advice and look to you for innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible |
| Tools and Techniques |  |  |  |
| Newsletters Fact Sheets Newspaper and Radio  Web sites | Public comment  Focus groups  Public meetings Surveys | Polling  Workshops | Citizen advisory committees  Forums Consensus building Participatory decision-making |

6.3 Different Participative Structures

International experience shows that there is no one particular model that can be considered

best practice, due to the differing characteristics of each basin. It is, therefore, important to

consider the models and options available, and, together with stakeholders, determine an

appropriate model and process forward. Whilst the ORASECOM Stakeholder Roadmap

suggests a progressive development of stakeholder participation, with the suggestion of

both national forums and a basin wide forum, it also makes it clear that there is an iterative

process that one needs to work through with stakeholders to generate an agreed structure

and process.

Basin wide stakeholder consultation model

In this model consultation takes place at the basin level, driven by the Commission or by an

external programme with some form of agreement to ensure effective coordination. The

basin-wide approach reduces, to a certain extent, the differences in consultation that might

take place under a national model. However, potential imbalances in stakeholder capacity

and levels of influence between stakeholders, is also a concern and must be dealt with

carefully. This model offers two approaches:

• for the Commission to put in place a permanent, formal stakeholder body on which

stakeholders from across the basin are represented, such as a basin wide forum.

Members could be elected by stakeholder groups.

• for the Commission to put in place a permanent, formal Advisory Committee which

has a more formal structure which requires experience, skills and an understanding of

basin-wide issues.

Whilst the former may have a stronger support base from a broader stakeholder

community, with representation from stakeholder groups, the latter will have a stronger

skills base and understanding of the issues at hand, and would have sound understanding of

the issues and challenges faced by various stakeholder groups.

National stakeholder consultation model

In the national stakeholder consultation model each Party conducts their own stakeholder

consultation, within their national borders, according to national legislation, guidelines and

practice. This enables alignment of consultation processes with similar national programmes

and approaches. Government representatives to the basin Commission then carry the

results of this national consultation processes into their engagement at transboundary basin

level.

One of the challenges associated with the national consultation model is that it is difficult

for Parties to influence the level of consultation taking place in any of the other riparian

states. This makes it possible for extremely different levels of participation to be conducted

in each of the basin states. It also prevents engagement between stakeholders in the

different countries.

A Hybrid Model

One could consider a hybrid of these models which would allow a basin wide forum or

Advisory Committee to synthesise stakeholder inputs from the various National Stakeholder

Forums to provide the Commission with a more cogent basin wide view. This reflects the

models within the Danube and Murray Darling basins. This suggests the establishment of an

Stakeholder Participation in ORASECOM

Advisory Committee which has the ability to synthesise and capture issues and provide solid

motivation.

Another way to conceive this hybrid approach is to consider the development of the model

over time and progressively. This is the approach that has been used in the Danube, and

provides an opportunity for stakeholders to develop capacity and grow with the model. This

would then provide for progressive development, such as:

• Step 1: Use existing current in-country forums and structures: Create awareness

and to start dialogue over participation in the basin.

• Step 2: Establish national stakeholder forums: Stakeholders would articulate their

position to the national Delegations. Which inform the position taken by the

Delegation.

• Step 3: Establish a basin wide structure: National Stakeholder Forums would submit

issues to the basin wide structure that would then synthesise and motivate.

Observer status at Council meetings

In certain basins observers are allowed to attend Council meetings. In others they are

allowed to attend Task Team or Committee meetings, but not Council meetings. There are

distinct advantages to both scenarios in that it takes the participative process full circle and

can create trust, as well as an understanding of the challenges Council faces in reaching

consensus. However, as these are politically sensitive processes there is a level of maturity

and understanding of observer status that is required.

6.4 Issues of Scale and Representivity

Typically, the modality of participation must carefully consider the institutional

arrangements, the stakeholder environment and the geographic size of the basin. The larger

the catchment or basin, the greater the challenge to structure this appropriately. However,

this must consider that, especially within the SADC context, not all stakeholders have the

time or the resources to travel great distances to attend meetings.

Closely linked to the above issue is that of representivity. The larger the geographic area at

hand, the greater the challenge to structure the participation in such a way as to have

meaningful representation. A clear premise of such participative processes is that

stakeholders come to meetings representing a constituency and with a mandate. After

meetings, the representative needs to give feedback to the constituency that he/she

represents. This becomes increasingly difficult in large basins.

6.5 Capacity Differentials

Part of the value and richness of any participative process is the diversity of views and

opinions obtained. In order for such meaningful discussions to take place there is a required

“capacity”. Certain stakeholder groupings are indeed well capacitated, often through

protracted exposure to the issues. Others enter such processes with political or economic

“clout”. These issues can be dealt with to a certain extent through extra capacity building

sessions, or through careful facilitation, but these often only have a limited impact. In a

transboundary basin these capacity differentials can be challenging , especially when

exacerbated by language or cultural differences.

6.6 Maintaining an Active process

Keeping a stakeholder process active and vibrant is a challenge to most processes. Even

within a country and for a specific project this can be difficult. It is therefore important to

carefully consider the role of stakeholders; when are their inputs most needed and how

often are meetings, newsletters and other “activities” really needed. In addition, an

important consideration in this regard is how the process needs to develop over time, with

improved capacities and aligned to the institutional development. If this is not thought

through, then participation will be fraught with poor attendance and lack of continuity.

6.7 Financial issues

Participative processes require time and financial support. The costs involved can become

quite considerable and could include travel, venues, accommodation, meals,

documentation, distribution of documentation and in some instances secretarial costs.

Whilst the benefits can often outweigh the costs in creating a more sustainable outcome,

there will be a requirement to secure funds. Ultimately, this would require an increased

contribution by Parties to secure these processes.

**7 STAKEHOLDER PARTICIPATION IN ORASECOM**

7.1 Recommendation

There is clearly an array of considerations for any participative process. For ORASECOM

there appear to be a number of key issues that need deliberation in order to determine a

pragmatic way forward. Interviews with Commissioners and Task Team members within

each Member State, held during May 2009, reflected the desire to construct this in a more

progressive and practical way.

The ORASECOM Agreement establishes the Council to act as Technical Advisor to the

Parties, while Art 5.2.4 indicates that Council should recommend appropriate levels of

participation for Parties (but not, by implication, to undertake this participation itself).

However, Council is empowered to take “all measures” necessary to formulate

recommendations. This would require stakeholder participation in the projects and studies

on which these recommendations are based. This is consistent with the principles expressed

in the Berlin Rules and the SADC Regional Water Policy, and is aligned to international

trends.

However, this report has primarily focussed on the level of participation in the business of

the organisation. ORASECOM is in an institution-building phase and is clarifying issues to put

the organisation on a trajectory for further development.

A three step approach is recommended for this participation, and at this juncture:

Step 1: ORASECOM creates awareness of ORASECOM’s roles and responsibilities,

aligned with the Communication Strategy, and via existing structures within

Member States. This should follow the IAPP’s level of “Inform” (see Table 1 on

page 17).

Step 2: ORASECOM establishes national participation structures within each Member

State linked to the development of the Basin Wide Plan. This should follow the

IAPP’s levels of “Inform -Consult”. (Table 1) These national participation

structures must be supported through the governments of the Member States,

and should be the subject of a recommendation from Council.

Step 3: A Basin Wide Advisory Committee may be established once these national

committees are functioning effectively and is established to support Basin Wide

Planning. As part of this process Observers to Task Team meetings is also

recommended. However, these observers should not be associated with any

particular Member State, but should be from internationally or regionally

recognised bodies or NGOs. This should follow the IAPP’s levels of “Inform-

Consult-Involve” (Table 1).

A separate report outlining the modalities of establishing the observer status is currently

under preparation.

7.2 Towards a Participation Strategy via Awareness Creation

There have been considerable levels of participation within the Orange-Senqu basin over

the years, and at a variety of scales. Participative structures come and go as projects are

started and completed, and as issues arise and are solved. Furthermore, with the Member

States having different scale related challenges, there are disparities in the number of

structures and processes.

In order to start structuring a process of raising awareness with regards to ORASECOM,

aligned to Step 1 as recommended above, and which would be done in accordance with an

agreed Communications Strategy, Table 2 provides a first snapshot of the structures in place

that can be targeted. These will be further elaborated in a further report.

Table 2: Current Participative Structures in the Orange-Senqu Basin.

|  |  |  |  |
| --- | --- | --- | --- |
| Member State  (Level) | Structure | Contact | Comments |
| Botswana  (National) | Botswana  Country Water  Partnership | Mr. Monty Montshiwa  Kalahari Conservation Society  Plot 112 Independence Ave.,  Extension 3  Gaborone, Botswana  Tel: +267 3974557  Fax: +267 3914259  E-mail:  projectmanager@kcs.org.bw |  |
| Botswana  (Local) | Localised Forums | Ms Tracy Molefi International Waters Unit (River Basin Organisations)  Tel: +267 390 3456  Cell: +267 717 09183  Fax: +267 3914259  E-mail: trsmolefi@gov.bw | There have been a  number of forums based  around projects |
| Lesotho  (National) | Lesotho  Country Water  Partnership | Mr. Peter Nthathakane Commissioner of Water  Pvt. Bag A440  Maseru, Lesotho  Tel: +266 22 320127  Fax: +266 22 324529  E-mail: commwater@lesotho.com | Appropriate national  structure as the entire  country falls within the basin. In addition, active and  capacitated |
| Namibia •  (National) | Namibia • Country Water Partnership | Ms. Clarence Mazambani  Desert Research Foundation  (DRFN)  P.O Box 20232, Windhoek,  Namibia  Tel: +264 61 377500  Fax: +264 61 230172  E-mail: Clarence.Mazambani@drfn.org.na |  |
| Namibia  (Local) | Orange-Fish Basin  Management  Committee  Nossob-Auob Basin  Management  Committee | Ms Anne Amwaama  Ministry of Agriculture, Water and  Forestry  Tel: +264 61 2087259 | Orange-Fish already  established.  Nossob-Auob recently  established. Largely a  groundwater focus  Basin Management  Committees also have  sub-committees. |
| South Africa  (National) | South African  Country Water  Partnership |  | This CWP does not  appear to be functional at  this stage |
|  | Advisory Committees | Mr Zach Maswuma •  Tel: +27 12 336 7500  Mr Moloko Matlala  Tel: +27 12 336 7500 | These include a variety of  Committees and possibly most relevant to ORASECOM at this time is the Monitoring and information Advisory committe  A fuller analysis will be required to assess  whether functional and o determine the role it can play. |
| South Africa  (Local) | Limpopo CMA Reference Group | Mr A Matukane Africa Reference Chief Director: Limpopo Region  Private Bag X9506  POLOKWANE  0700  Tel: (015) 295 1237  Fax: (015) 295 3217  Cell: 082 807 5643  Ms MM Komape  Director: WRM  Tel: (015) 290 1463  KomapeM@dwaf.gov.za  Ms M Mmola  Assistant Director: WRM (Limpopo) | Established to support MA establishment  process and still fairly active. Sub-committees established in Mokolo,  and Mogalakwena |
|  | Crocodile West  Marico water management area forums:  Apies Pienaar  Upper Crocodile  Lower crocodile  Elands  Marico  Upper Molopo  Provincial  Growth and  Development  Structures | Mr Rens Botha  Chief Engineer: Water Resources  Management Crocodile (West)-Marico Water CMA P/Bag X 995, Pretoria, 0001  Tel (012) 392-1308  Fax (012) 392-1408  Cell 082 808-9560  bothar@dwaf.gov.za  Ms Cynthia Chisimbe  SANGOCO North West  CynthiaC@sangoco.org.za  cynthia@sangoconorthwest.org.za  Tel: +27 18 381 4901  Fax: +27 18 381 6258 | These forums were very active during 2000-2004 in the  CMA establishment  process. All inputs  were coordinated via a central “Coordinating  and Liaison  Committee”. However,recent activity has been  very limited.  Cynthia has been a  strong supporter of  lifting water on to  Provincial agendas and  has been active on the  various Committees |
|  | Upper Vaal  Catchment  Management  Forums | Mr Marius Keet  DWAF Gauteng Regional Office  Tel: +27 12 392 1300  KeetM@dwaf.gov.za  Ms Kavita Pema  ILISO Consulting (Pty) Ltd  Environmental Management  P.O. Box 68735  Highveld, 0169  Tel: 012 665 3602  Fax: 012 665 1886  Cell: 082 804 3186  e-mail: kavita@iliso.com | These forums were  established largely to  focus upon water quality  issues but were in place  to support the  establishment of the  CMA. Whilst there were  some 14 forums some  are more active than  others. The DWAF has  put in effort to revitalise  these. |
|  | Middle Vaal  Forums:  −Sand-Vet  −Modder Riet | Mr TP Ntili (Chief Director)  PO Box 528  BLOEMFONTEIN 9300  Tel: (051) 405 9000  Fax: (051) 430 8146  Cell: 082 803 3204  Mail: ntilit@dwaf.gov.za | Largely focused upon  water quality challenges,  these two forums were  the most active in the  Region |
|  | Lower Vaal,  Upper Orange  and Lower  Orange  Upper Orange  Mr TP Ntili (Chief Director)  PO Box 528  BLOEMFONTEIN  9300  Tel: (051) 405 9000  Fax: (051) 430 8146  Cell: 082 803 3204  ntilit@dwaf.gov.za | Lower Vaal & Lower Orange  Mr Abe Abrahams  DWAF Northern Cape Region  Director: Institutional  Development  Tel: +27 53 830 8800  AbrahamsA@dwaf.gov.za | Participation in these  areas has largely been  focused around  particular projects and or  Water User  Associations. In  particular, this has been  the case in the Upper  and Lower Orange dueto logistical challenges  and has focused around the large schemes |