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**Water Sector Support Unit - Gaborone**

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**African Transboundary River Basin Support Programme**

**Case of the Orange – Senqu River in Botswana**

**Lesotho, Namibia and South Africa**

**Global Financial Commitment No. 9 ACP RPR 53**

## **Proposals for Stakeholder Participation in ORASECOM**

**Report No. ORASECOM 008/2009**

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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 re-worked 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.

- 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.

- 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 Jackson<sup>1</sup> 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.

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<sup>1</sup> Jackson, J. 2003. Sovereignty Modern: A new approach to an outdated concept. Am. Jnl. Int. Law. Vol (97: 782)

## 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)<sup>2</sup>. 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.

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<sup>2</sup> <http://www.IAP2.org/spectrum.html>

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

Increasing level of public engagement→			
INFORM	CONSULT	INVOLVE	COLLABORATE
<b>Public participation goal</b>			
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
<b>Commitment</b>			
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 look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible
<b>Tools and Techniques</b>			
<ul style="list-style-type: none"> <li>• Fact Sheets</li> <li>• Newsletters</li> <li>• Newspaper &amp; Radio announcements</li> <li>• Web sites</li> </ul>	<ul style="list-style-type: none"> <li>• Public comment</li> <li>• Focus groups</li> <li>• Surveys</li> <li>• Public meetings</li> </ul>	<ul style="list-style-type: none"> <li>• Workshops</li> <li>• Polling</li> </ul>	<ul style="list-style-type: none"> <li>• Citizen advisory committees</li> <li>• Forums</li> <li>• Consensus building</li> <li>• Participatory decision-making</li> </ul>

### 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

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 Representativity**

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 representativity. 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)	<ul style="list-style-type: none"> <li>• Botswana Country Water Partnership</li> </ul>	<ul style="list-style-type: none"> <li>• Mr. Monty Montshiwa Kalahari Conservation Society Plot 112 Independence Ave., Extension 3 Gaborone, Botswana Tel: +267 3974557 Fax: +267 3914259 E-mail: <a href="mailto:projectmanager@kcs.org.bw">projectmanager@kcs.org.bw</a></li> </ul>	
Botswana (Local)	<ul style="list-style-type: none"> <li>• Localised Forums</li> </ul>	<ul style="list-style-type: none"> <li>• Ms Tracy Molefi International Waters Unit (River Basin Organisations) Tel: +267 390 3456 Cell: +267 717 09183 Fax: +267 3914259 E-mail: <a href="mailto:trsmolefi@gov.bw">trsmolefi@gov.bw</a></li> </ul>	<ul style="list-style-type: none"> <li>• There have been a number of forums based around projects</li> </ul>
Lesotho (National)	<ul style="list-style-type: none"> <li>• Lesotho Country Water Partnership</li> </ul>	<ul style="list-style-type: none"> <li>• Mr. Peter Nthathakane Commissioner of Water Pvt. Bag A440 Maseru, Lesotho Tel: +266 22 320127 Fax: +266 22 324529 E-mail: <a href="mailto:commwater@lesotho.com">commwater@lesotho.com</a></li> </ul>	<ul style="list-style-type: none"> <li>• Appropriate national structure as the entire country falls within the basin.</li> <li>• In addition, active and capacitated.</li> </ul>

Namibia (National)	<ul style="list-style-type: none"> <li>Namibia Country Water Partnership</li> </ul>	<ul style="list-style-type: none"> <li>Ms. Clarence Mazambani Desert Research Foundation (DRFN) P.O Box 20232, Windhoek, Namibia Tel: +264 61 377500 Fax: +264 61 230172 E-mail: <a href="mailto:Clarence.Mazambani@drfn.org.na">Clarence.Mazambani@drfn.org.na</a></li> </ul>	
Namibia (Local)	<ul style="list-style-type: none"> <li>Orange-Fish Basin Management Committee</li> <li>Nossob-Auob Basin Management Committee</li> </ul>	<ul style="list-style-type: none"> <li>Ms Anne Amwaama Ministry of Agriculture, Water and Forestry Tel: +264 61 2087259</li> </ul>	<ul style="list-style-type: none"> <li>Orange-Fish already established.</li> <li>Nossob-Auob recently established. Largely a groundwater focus</li> <li>Basin Management Committees also have sub-committees.</li> </ul>
South Africa (National)	<ul style="list-style-type: none"> <li>South African Country Water Partnership</li> </ul>		<ul style="list-style-type: none"> <li>This CWP does not appear to be functional at this stage</li> </ul>
	<ul style="list-style-type: none"> <li>Advisory Committees</li> </ul>	<ul style="list-style-type: none"> <li>Mr Zach Maswuma Tel: +27 12 336 7500</li> <li>Mr Moloko Matlala Tel: +27 12 336 7500</li> </ul>	<ul style="list-style-type: none"> <li>These include a variety of Committees and possibly most relevant to ORASECOM at this time is the Monitoring and Information Advisory Committee.</li> <li>A fuller analysis will be required to assess whether functional and to determine the role it can play.</li> </ul>
South Africa (Local)	<ul style="list-style-type: none"> <li>Limpopo CMA Reference Group</li> </ul>	<ul style="list-style-type: none"> <li>Mr A Matukane Chief Director: Limpopo Region Private Bag X9506 POLOKWANE 0700 Tel: (015) 295 1237 Fax: (015) 295 3217 Cell: 082 807 5643</li> <li>Ms MM Komape Director: WRM Tel: (015) 290 1463 <a href="mailto:KomapeM@dwaf.gov.za">KomapeM@dwaf.gov.za</a></li> <li>Ms M Mmola Assistant Director: WRM (Limpopo)</li> </ul>	<ul style="list-style-type: none"> <li>Established to support CMA establishment process and still fairly active. Sub-committees established in Mokolo, and Mogalakwena</li> </ul>
	<ul style="list-style-type: none"> <li>Crocodile West Marico water</li> </ul>	<ul style="list-style-type: none"> <li>Mr Rens Botha Chief Engineer: Water Resources</li> </ul>	<ul style="list-style-type: none"> <li>These forums were very active during the period</li> </ul>

	<p>management area forums:</p> <ul style="list-style-type: none"> <li>• Apies-Pienaar</li> <li>• Upper Crocodile</li> <li>• Lower Crocodile</li> <li>• Elands</li> <li>• Marico</li> <li>• Upper Molopo</li> </ul> <ul style="list-style-type: none"> <li>• Provincial Growth and Development Structures</li> </ul>	<p>Management Crocodile (West)-Marico Water Management Area P/Bag X 995, Pretoria, 0001 Tel (012) 392-1308 Fax (012) 392-1408 Cell 082 808-9560 <a href="mailto:bothar@dwaf.gov.za">bothar@dwaf.gov.za</a></p> <p>• Ms Cynthia Chisimbe SANGOCO North West <a href="mailto:CynthiaC@sangoco.org.za">CynthiaC@sangoco.org.za</a> <a href="mailto:cynthia@sangoconorthwest.org.za">cynthia@sangoconorthwest.org.za</a> Tel: +27 18 381 4901 Fax: +27 18 381 6258</p>	<p>2000-2004 towards the CMA establishment process. All inputs were coordinated via a central "Coordinating and Liaison Committee". However, recent activity has been very limited.</p> <p>• Cynthia has been a strong supporter of lifting water on to Provincial agendas and has been active on the various Committees.</p>
	<ul style="list-style-type: none"> <li>• Upper Vaal Catchment Management Forums</li> </ul>	<ul style="list-style-type: none"> <li>• Mr Marius Keet DWAF Gauteng Regional Office Tel: +27 12 392 1300 <a href="mailto:KeetM@dwaf.gov.za">KeetM@dwaf.gov.za</a></li> <li>• Ms Kavita Pema <b>ILISO Consulting (Pty) Ltd</b> Environmental Management P.O. Box 68735 Highveld, 0169 Tel: 012 665 3602 Fax: 012 665 1886 Cell: 082 804 3186 e-mail: <a href="mailto:kavita@iliso.com">kavita@iliso.com</a></li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
	<ul style="list-style-type: none"> <li>• Middle Vaal Forums: <ul style="list-style-type: none"> <li>- Sand-Vet</li> <li>- Modder Riet</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Mr TP Ntili (Chief Director) PO Box 528 BLOEMFONTEIN 9300 Tel: (051) 405 9000 Fax: (051) 430 8146 Cell: 082 803 3204 Mail: <a href="mailto:ntilit@dwaf.gov.za">ntilit@dwaf.gov.za</a></li> </ul>	<ul style="list-style-type: none"> <li>• Largely focused upon water quality challenges, these two forums were the most active in the Region.</li> </ul>
	<ul style="list-style-type: none"> <li>• Lower Vaal, Upper Orange and Lower Orange</li> </ul>	<p>Lower Vaal &amp; Lower Orange</p> <ul style="list-style-type: none"> <li>• Mr Abe Abrahams DWAF Northern Cape Region Director: Institutional Development Tel: +27 53 830 8800 <a href="mailto:AbrahamsA@dwaf.gov.za">AbrahamsA@dwaf.gov.za</a></li> </ul>	<ul style="list-style-type: none"> <li>• 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 due to logistical challenges and has focused around</li> </ul>

		<p>Upper Orange</p> <ul style="list-style-type: none"><li>• Mr TP Ntili (Chief Director) PO Box 528 BLOEMFONTEIN 9300 Tel: (051) 405 9000 Fax: (051) 430 8146 Cell: 082 803 3204 <a href="mailto:ntilit@dwaf.gov.za">ntilit@dwaf.gov.za</a></li></ul>	the large schemes.
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