

# STRENGTHENING TRANSBOUNDARY WATER MANAGEMENT INSTITUTIONS: THE CASE OF THE ORANGE-SENQU RIVER COMMISSION IN SOUTHERN AFRICA

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## Background

Activities aimed at strengthening water management institutions typically aim to increase the ability of the organisation to effectively deliver on an IWRM paradigm. Generally, strengthening intends to better equip the organisation with the mandate, finances, networks, tools, procedures, staff and skills to manage the protection and use of water resources; within a particular social, economic and political context. However, transboundary water management institutions provide particular challenges to achieving these goals.

Often countries sharing watercourses have widely differing abilities to turn water use into GDP and jobs, may have very different underlying socio-political drivers, and different developmental trajectories. In the absence of economic integration, freedom of movement, and strong regional political bodies, finding the compromises necessary to deliver on IWRM goals may be complicated. Applying public trust principles across borders in these cases is often difficult, and transboundary water management institutions are often limited by sovereignty issues. Strengthening these organisations means increasing their ability to influence their Member States into courses of action that in turn deliver on a basin wide IWRM perspective.

This is certainly the case with the Orange-Senqu River Commission (ORASECOM) in southern Africa. This paper will report on the design of an EU funded project with the following objective;

*To support institutional strengthening and to build the capacity of institutions for the implementation of priority projects and development of water conservation and environmental strategies and policies in the Orange-Senqu River basin.*

## The establishment of ORASECOM

ORASECOM has its origins soon after the establishment of the SADC Protocol on Shared Watercourses. Botswana, Lesotho, Namibia and South Africa, recognising the need to implement the provisions of the SADC Protocol, initiated the establishment of the organization. ORASECOM was therefore intended to give effect to the vision of shared river basin commissions espoused in the SADC Protocol, and was one of the first Shared Watercourse Institutions to be established under the Protocol.

However, this did not mark the first transboundary water management arrangements in the Basin. The importance of water to drive the economy of the region had already prompted the development of a number of bilateral commissions and agreements. These established the water sharing arrangements between South Africa and its neighbours even before the SADC Protocol on Shared Watercourses came into force. These water sharing arrangements still dominate the management of water resources the basin, and largely address water sharing between the nations.

The initial drive to establish ORASECOM was therefore primarily to realise a vision of a more unified SADC, within the framework of the now Revised SADC Protocol for Shared Watercourses (SADC, 2000). ORASECOM was therefore not established to address identified water resource problems *per se*, but rather to foster greater regional integration based on IWRM Principles.

The revised SADC Shared Watercourses Protocol, which forms the basis of the ORASECOM Agreement, is based largely on the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE, 1992), and shares much in common with the EU Water Framework Directive (EU, 2000). Ultimately a strong ORASECOM will move towards the principles advocated in these texts. This initial vision for ORASECOM and the importance of the existing bilateral arrangements in managing the water resources of the basin has influenced the way the ORASECOM Agreement was drawn up, and influences the functioning of the organisation.

### **Understanding the ORASECOM Agreement**

ORASECOM's activities are limited by the terms of the ORASECOM Agreement signed between the Member States (Botswana, Lesotho, Namibia and South Africa), in November 2000 (ORASECOM, 2000). While the ORASECOM Agreement could be amended in future, at present it reflects the current political, economic and water resources reality of the basin.

The Agreement establishes the Council as the highest body of the Commission. The Council is made up of four Delegations, one from each Member State, and the Agreement includes provisions to ensure that none of the Member States can dominate Council. The Agreement then establishes Council as a technical advisor to the Parties on matters relating to the development, utilisation and conservation of the water resources in the River System. The Member States may, however, assign other functions, pertaining to the development and utilisation of water resources in the basin, to the Commission.

Article 5 of the Agreement empowers Council to take all measures to make recommendations on *inter alia*: water availability in the basin, equitable and reasonable sharing of water, studies on the development of the River System, the extent to which stakeholders should be involved in management of the system, standardised methods for collecting and disseminating information and data, the prevention of pollution and the control of aquatic weeds, and plans for emergency situations.

Importantly, however, the ORASECOM Agreement - in the absence of an agreement to the contrary – does not affect the rights and obligations arising from existing bilateral agreements. This means that existing bilateral arrangements (which address only parts of the Basin) provide a framework for any basin wide plan. ORASECOM can, however, make recommendations to Parties to consider adapting the terms of the bilateral agreements to be consistent with a basin wide perspective.

Three key principles therefore underlie the ORASECOM Agreement;

- ORASECOM is limited to an advisory and recommending role to Member States, but may undertake studies that enable it to develop and provide viable recommendations.
- The discretion to implement these recommendations remains with the Member States, and ORASECOM's actions should not undermine this discretion, and
- Member States may assign functions to ORASECOM, but Council (as a collection of Delegations from Member States) may not be able to assign these functions to itself.

These provisions provide the framework for strengthening the organisation.

### **What constitutes a strong ORASECOM?**

As a relatively young organization, ORASECOM has yet to establish itself as a key player in the management of the water resources of the basin. While an ORASECOM Stakeholder Roadmap (ORASECOM, 2007), it has not yet been implemented. Stakeholders, therefore, have yet to be engaged in any meaningful way. This, however, creates useful opportunities for strengthening the position of the organization.

One of the biggest steps toward creating a strong transboundary water management institution is the formal establishment of its mandate. Recognising that the existing agreement reflects a particular regional dynamic, negotiated over a period of 4 years, the key to strengthening ORASECOM therefore lies in understanding what would constitute a strong organisation within the current ORASECOM Agreement. Moreover, the organisation's current institutional and financial arrangements also constrain its role to some

extent. At present, therefore, strong ORASECOM will provide implementable advice and recommendations to the Member States, based on joint technical studies, data and information.

Implementable recommendations will in turn be characterised by solutions which;

- Are Consistent with the financial and human resource constraints of the implementing Member State(s);
- Are Permissible under the law applicable to that Member State;
- Address key water resources priorities in the Basin;
- Help realise the vision of the SADC Shared Watercourses Protocol;
- Support National Developmental Goals of the implementing Member State;
- Take a Basin Wide perspective, advising where necessary that bilateral arrangements may need to be amended, and
- Are seen to be equitable and reasonable by all the Member States.

Beyond this the organisation should;

- Provide a level playing field for the Delegations and Task Team members to participate in formulating recommendations.
- Foster active discussion around new ideas for managing the water resources of the basin, which can be converted to 'implementable' recommendations, and which improve the livelihoods of all the people of the Basin.
- Attract and facilitate access to financing for the implementation of recommendations by the Parties.
- Provide clear guidelines as to what constitutes 'equitable and reasonable sharing', significant harm' and 'significant impacts'<sup>1</sup> in the context of the Orange-Senqu basin.
- Suggest clear and implementable recommendations to protect aquatic ecosystem health and to minimise pollution in the Basin.
- Strengthen regional cooperation across all the sectors and outside of the water sector, setting the bar high for regional cooperation in SADC.
- Provide a repository and conduit for data and information on the water resources of the basin that is trusted by all the Parties.

More importantly, however, the process of developing these recommendations should not compromise the discretion of the basin states to implement, either by creating a groundswell of stakeholder support for a particular intervention, or within Council.

A key component of this process will be to develop mechanisms for stakeholders to influence the recommendations coming from ORASECOM, but without compromising this discretion to implement.

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<sup>1</sup> To be interpreted in line with the Revised SADC protocol on shared watercourses.