



Guidelines for Strengthening River Basin Organisations

ESTABLISHMENT AND DEVELOPMENT



The Guidelines on Strengthening River Basin Organisations were formulated through an all inclusive consultative process. Many thanks go to representatives of Member States who have been very supportive to this process especially through their participation in the Annual RBO Workshop series. The financial support provided by the American Government through USAID to the formulation process is greatly appreciated. Further thanks goes to our regional consultants for the guidance they provided to the SADC Secretariat's Directorate of Infrastructure and Services - Water Division. Last but not the least, all could not have been achieved without the technical and financial support from the German and UK Governments through GTZ.



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The overall purpose of the 2000 SADC Protocol on Shared Watercourses (hereinafter referred to as the Protocol) is to develop closer cooperation between the SADC Member States for the judicious, sustainable and coordinated management, protection and utilization of shared watercourses in the most beneficial way to advance the SADC agenda of regional integration and poverty reduction.

This comprehensive objective can only be achieved through the establishment of shared watercourse institutions or River Basin Organisations (RBOs), dedicated to facilitate and coordinate the joint management of shared watercourses, as advocated in the Protocol (textbox 1). Shared watercourse institutions can be established as River Basin Commission, Joint Water Commission/ Technical Committee or Joint Water Authority as may be determined by the respective parties.

The creation of RBO's is fundamental to facilitate the participation of the watercourse states in river management and to develop a strategic vision for the development of shared water resources.

The purpose of this guideline is to propose procedures that can assist Governments to establish appropriate institutions to manage shared watercourse systems. Institutional arrangements provide the necessary basis to develop human and financial capacities to ensure sustainable socio-economic development and environmental protection of natural resources.

The guideline is not intended to be exhaustive or prescriptive, but it is designed to advise practitioners by providing balanced information on strategic options and procedures based on best practices.

**Textbox 1: 2000 SADC Protocol on Shared Watercourses
(Article 5.3 Shared Watercourse Institutions)**

1. Watercourse States undertake to establish appropriate institutions such as watercourse commissions, water authorities or boards as may be determined.
2. The responsibilities of such institutions shall be determined by the nature of their objectives which must be in conformity with the principles set out in this Protocol.
3. Shared Watercourse Institutions shall provide on a regular basis or as required by the Water Sector Co-ordinating Unit, all the information necessary to assess progress on the implementation of the provisions of this Protocol, including the development of their respective agreements.



As stated in the Protocol, the establishment of shared watercourse institutions is guided by a series of general principles of customary water law. The most prominent are expressed below:

Equitable and Reasonable Utilisation

Shared watercourse shall be used and developed by Watercourse States with a view to attain optimal and sustainable utilisation, taking into account the interests of the Watercourse States concerned and consistent with adequate protection of the watercourse for the benefit of current and future generations.

Prevention of significant harm

State Parties shall, in utilising a shared watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other Watercourse States. Where significant harm is nevertheless caused to another Watercourse State, the State whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Prior notification

Before a State Party implements or permits the implementation of planned measures which may have a significant adverse effect upon other Watercourse States, it shall provide those States with timely Notification.

This guideline is derived from the experiences and best practices observed in river basin organisations operating in the region and in different parts of the world. Typically, the establishment of a RBO is described as a process resting on the implementation of a series of different steps ranging from stakeholder consultation to the implementation of the designed institutional arrangements. While the importance of adequately planning this process should not be undermined, proper considerations should also be given to issues relating to the

watercourse agreement and the organisational structure of the proposed RBO. The former provides the framework in which to establish the RBO, and the latter, refers to the institutional model adopted to manage the joint initiatives in the river basin. As illustrated in the figure below, all these three components are interlocked and decisions made at any stage will affect the system as a whole. The establishment of an RBO takes place in a dynamic system evolving with the Watercourse States needs to strengthen Integrated Water Resource Management.


Figure 1: RBO establishment and development system



As presented above, riparian countries aspiring to establish a RBO on a shared watercourse should consider addressing the following issues: *i)* establishment process, *ii)* watercourse agreement and *iii)* organisational structure. To address these issues, several interventions and methods are available; suitable instruments are presented in the tables below.

1. ESTABLISHMENT PROCESS

The establishment of a RBO rests on the implementation of a series of activities with a large number of stakeholders over a relatively long period of time. The salient features and main characteristics of this process are discussed below.

Development Stages	Possible interventions
1.1 Conceptualisation	<p>Identify water management issues of mutual concern and define the need for cooperation (e.g. water allocation, flood management, pollution control, power generation, transport)</p> <p>Pre-determine the organisation structure needed to support cooperation.</p>
1.2 Negotiation	<p>Discuss and draft an agreement at the technical level. Solicit legal inputs. Consult with and seek approval of politicians.</p> <p> TIP: The purpose of the agreement is to establish the legal and institutional framework for cooperation, not to define pre-establishment (e.g. water allocation).</p>
1.3 Establishment	<p>Obtain the signature of the agreement by designated members of cabinet in each Watercourse State.</p> <p>Have the agreement ratified in line with watercourse states constitutional requirements. Once ratified by the required number of signatories, the agreement becomes an instrument of international water law and enters into force.</p> <p> TIP: Find a champion to lead and ensure ratification in each Watercourse State.</p>
1.4 Operationalisation	<p>Assign staff, formulate issues and provide funding. Honor commitments made in the agreement. Facilitate the implementation of national programmes.</p>

Textbox 2: Values and principles contributing to successful negotiations

- Seek for a common ground
- Enter negotiations in good faith
- Refer to study that have been approved by all parties
- Keep in mind the SADC spirit of regional integration
- Use neutral resource person and moderators

2. WATERCOURSE AGREEMENT

The establishment of a RBO is normally achieved by means of an agreement between parties sharing a mutual interest. Although clauses will vary from one agreement to another, the composition of watercourse agreements are very similar.

Standard components	Possible clauses and/or provisions
2.1 Preamble	Consider making reference to: <ul style="list-style-type: none">• Importance of cooperation;• National, regional and international context;• Existing good relationship between the parties;• Recognised international instruments.
2.2 Establishment	State the following: <ul style="list-style-type: none">• Wish of the parties to establish a joint institution;• Legal status of the institution and the rights of the parties;• Objectives, functions and powers of the institution.
2.3 Governance	Consider making reference to: <ul style="list-style-type: none">• Composition of the institution (i.e. organs, membership);• Appointment procedures;• Arrangements of meetings (e.g. frequency, notification, minutes, attendance, quorum, voting, etc.)
2.4 Obligations	Give effect to the decisions of the respective Governments regarding: <ul style="list-style-type: none">• Development projects;• Information exchange;• Financial mechanisms;• Notification.
2.5 Legal arrangements	Include provisions on how to deal with issues such as: <ul style="list-style-type: none">• Dispute settlement;• Entry into force;• Accession;• Withdrawal;• Dissolution,• Force majeure,• Amendment,• Language and translation.



Textbox 3: Revised Protocol on Shared Watercourses (Article 6 Shared Watercourses agreements)

1. Nothing in the Protocol shall affect the rights or obligations of a State arising from a watercourse agreement that was in force before the State became party to the Protocol;
2. States may harmonise existing watercourse agreements with the provisions in the Protocol;
3. States may apply the provisions of the Protocol in watercourse agreements;
4. Watercourse agreements must define the waters to which it applies;
5. A watercourse agreement can apply to the whole or a part of a river basin, but the States party to the agreement must obtain prior consent from any State not party to such an agreement if any activity arising from the agreement will have a significant adverse effect on that State;
6. Nothing contained in a watercourse agreement between some of the Watercourse States will affect the rights or obligations of the remaining watercourse States under the Protocol;
7. Every Watercourse State is entitled to participate in negotiations about any agreement that applies to the whole shared watercourse system;
8. When a State will be affected to a significant extent by the implementation of a watercourse agreement, it is entitled to participate in the consultations about the agreement and, where appropriate, in the negotiations thereof with a view to become a party to the agreement in order to protect its use of the watercourse.



3. ORGANISATIONAL STRUCTURE

RBOs can take various forms to manage joint initiatives in a river basin. The structure adopted should be adapted to the mandate and functions outlined in the watercourse agreement.

Possible models

Considerations and/or methods available

3.1 River Basin Commission (RBC)

Act as technical advisor to the Parties on matters relating to the conservation, development and utilisation of water resources in shared river basins.

Considered as legal person who can enter into legal transactions such as holding property or entering into debt.

Supported by an executive secretariat to assist with technical and administrative work (e.g. communication, financial management, monitoring & evaluation, etc.).

Example: The Orange-Senqu River Commission (ORASECOM) promotes the equitable and sustainable development of water resources in the Orange-Senqu River Basin. ORASECOM provides a forum for consultation and coordination between the Watercourse States to promote integrated water resources management and development.

3.2 Joint Water Commission/ Joint Technical Committee (JWC/JTC)

Advise governments on the management of shared watercourses. Are not considered as legal entity as they operate through national implementing agencies, which provide all technical and administrative support.

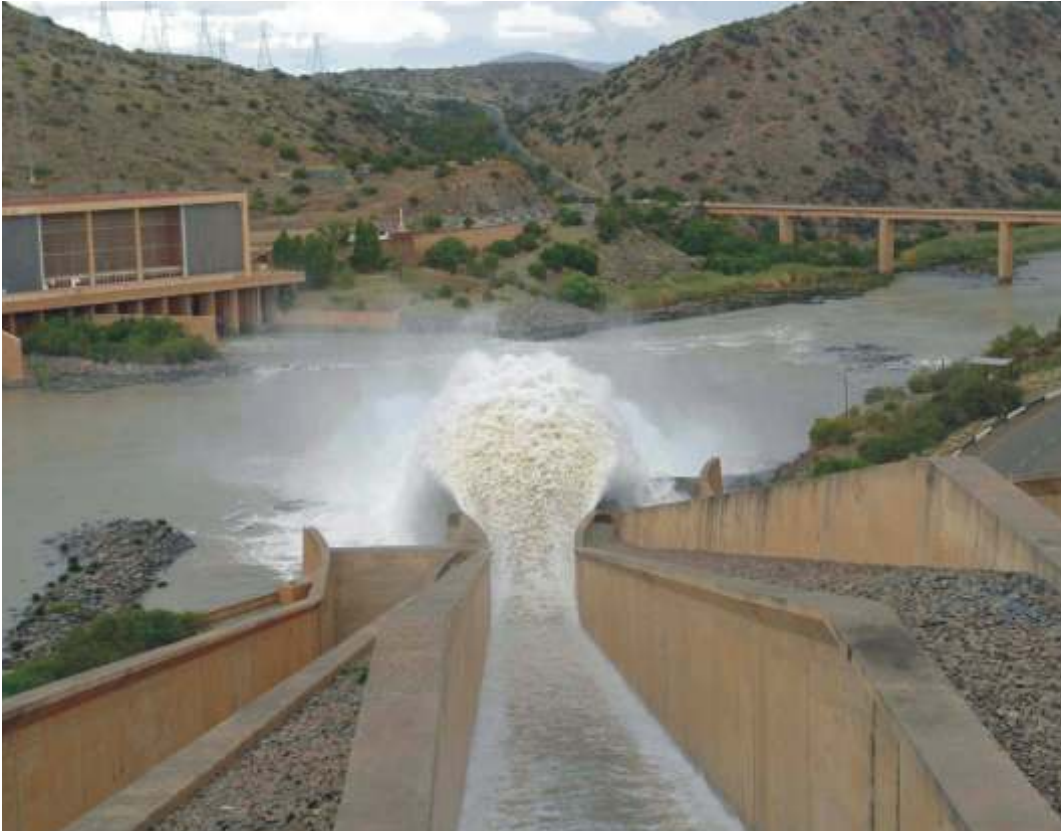
Example: The Tripartite Permanent Technical Committee (TPTC) is a collaboration between South Africa, Mozambique and Swaziland. TPTC assists the watercourse states with the management of water flows on the Inkomati River and Maputo River, specifically during times of drought and flood. Additionally TPTC advises Watercourse States with the protection and development on these watercourses.

3.3 Joint Water Authority (JWA)

Established to develop, implement, operate or maintain a joint project.

Normally operate under the auspices of a water commission and do not play a major role in interstate relations or policy formulation.

Example: The Komati Basin Water Authority (KOBWA) is a bi-national company formed in between the Kingdom of Swaziland and the Republic of South Africa. The purpose of KOBWA is to implement Phase 1 of the Komati River Basin Development Project. Phase 1 comprises the design, construction, operation and maintenance of the Driekoppies Dam in South Africa (Phase 1a) and the Maguga Dam in Swaziland (Phase 1b).



There are many approaches to the establishment of shared watercourse institutions. In all cases, the approach adopted should be tailored to reflect the unique characteristics of the river basin and the particular circumstances that led to the decision of establishing a RBO.

As experience demonstrates, the establishment of shared watercourse institutions is a state's prerogative. However, given the importance of transboundary water resources in Southern Africa, this process is also encouraged, supported and monitored by the SADC Secretariat, as stated in the Protocol. Still it is the responsibility of the basin States to take the initiative of establishing RBOs where required.

The guidelines elaborated in this publication are intended to assist Governments with this process by providing some clarity on best practices. The guideline gives a direction, based on lessons learnt, with the objective of ensuring the formalization of institutional arrangements for engaging watercourse states in adopting the concept of establishing appropriate basin management institutions.

However, the interventions presented in the guideline should only be interpreted as indications of best practices, because they are indicative and none of them are compulsory or mandatory. It is basically up to each State to decide which set of interventions is the most suited to its needs.

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