WATER CHALLENGES IN THE IGAD REGION: TOWARDS NEW LEGAL FRAMEWORKS FOR REGIONAL COOPERATION

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What is IGAD?

- 1986: ‘Intergovernmental Authority on Drought and Development’ (IGADD)
  - drought-related problems affecting the Greater Horn of Africa.
- 1996: ‘Intergovernmental Authority on Development’ (IGAD) with expanded mandate
  - current mission: ‘to assist and complement the efforts of the member states to achieve, through increased cooperation, food security and environmental protection; promotion and maintenance of peace and security and humanitarian affairs, and, economic cooperation and integration’ (Agreement establishing IGAD).
- Member countries: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Uganda (all Nile basin states except Djibouti & Somalia)
- 2000s: water resources (transboundary) on the agenda
- 2012: IGAD Water Programme (INWRMP)
Why an IGAD **regional** policy and legal framework for WR management?

- Many transboundary/shared water resources
- Uneven water distribution (different climatic conditions, but over 60% of the region is arid) → competition for available resources
- Different levels of socio-economic development
- Need for development (& infrastructure)
- Recognition of water as development engine
- Different national approaches to water resources management
- Different stages of development of national policy, legal and institutional frameworks
- **Therefore need for common approach**
Surface (transboundary) water resources
Transboundary aquifers
Regional policy and legal frameworks: examples elsewhere in Africa

- **SADC: regional integration**
  - 1992: SADC Treaty
  - 1995: Protocol on Shared Watercourse Systems
  - 2000: Revised Protocol
  - 2005: Regional Water Policy
  - 2006: Regional Water Strategy
  - Watercourses agreements & commissions, authorities, boards (some earlier than Protocol)

- **EAC: regional integration; common market**
  - 2001: start of Lake Victoria Development Programme
  - 2003: Protocol on Sustainable Development of Lake Victoria
    - Establishment of LVBC
  - Present: Regional Water Policy
SADC institutional framework

- Ministerial Committee
- Technical Committee
- Water sector coordinating unit
- Watercourse commissions, authorities and boards (OKACOM, LIMCOM, ZAMCOM, ORASECOM, etc.)
ADVANTAGES

• Better knowledge of the shared resources
• Improved dialogue and cooperation
• Common approaches to WR management and planning, within a basin context
• Harmonized national policy and legal frameworks

THUS

– Demands may be met based on defined (& agreed) criteria -> equitable utilization
– Improved access to water and sanitation
– Better water quality
– Satisfaction of environment protection needs
– Conflicts prevented
Framework development process at IGAD

- 2012: Start of IGAD Water Programme (INWRMP)
- Result area 2: improvement of policy & legal frameworks
- Main output: draft regional policy & legal framework
- Regional Water Resources Policy
  - Based on regional synthesis of national policy & legal frameworks
  - Draws lessons from int’l water law, similar regional policy & legal frameworks & existing basin agreements in the region (NRBCF)
  - National & Regional Workshops (stakeholder participation)
  - Endorsed by water ministers of member states 21 January 2015
- Draft Regional Water Resources Protocol
  - Informed by Policy
  - Does not reinvent the wheel either
  - To be further discussed under separate funding (INWRMP ended March 2015)
  - Must be approved by Assembly (heads of state & govt) upon recommendation of Council of Ministers
- Assistance provided to MS, upon request, to update national legislation
  - for instance, new draft Water Law for Somalia
POLICY : MAIN CONTENT

• Brief situational analysis (context)
• Vision
• Objectives
• Scope
• Guiding principles
• Statements
  – Regional cooperation (General)
  – Development & poverty reduction (on water-using sectors)
  – Protection & preservation (W quality & environment)
  – Security from water-related disasters
  – Information management
  – Climate change
  – WR development & management (core principles)
  – Institutional framework
  – Stakeholder participation & capacity building
  – Financing
DRAFT REGIONAL PROTOCOL

• Art. 17 of IGAD Agreement
• Objectives: same as Policy
• Overall
  – to promote closer cooperation in the equitable, sustainable and coordinated utilization, protection, conservation and management of transboundary/shared water resources in the IGAD region.
• Specific
  – to promote and facilitate the establishment of agreements on, and institutional arrangements for, the management of transboundary/shared water resources in the IGAD region;
  – to promote the approximation/harmonization of policies and legislation on the use, development, protection, conservation and management of transboundary/shared water resources, and of the resources related thereto;
  – to promote research, technology development, awareness creation and capacity building in the development and management of transboundary/shared water resources.
Nature of provisions

• Many taken from
  – UN Watercourses Convention
  – Draft Articles on Transboundary Aquifers
    • f.i., provisions on river basin or aquifer agreements (respecting the existing arrangements, e.g., Nile basin)
    • ….notification of planned measures
    • GW-specific provisions

• Informed by Agreement on Nile RB Cooperative Framework

• But consider the situation on the ground (also Djibouti & Somalia)

• Substantive rules
  – Equitable & reasonable utilization
  – No significant harm

• And procedural rules
  – Exchange of information
  – Notification of planned measures

• Though, more specific as to the duties of member states
Situation-tailored provisions

• Resource monitoring
  – Transboundary
  – National

• Public participation
  – In decision making relating to policies, plans and measures
  – In project design, planning and implementation

• EIA

• Explicit duty to approximate policies, legislation and financial tools

• Awareness raising
Institutional framework (Policy & Protocol)

• At IGAD level (regional)

• Institutional mechanisms for
  – transboundary/shared surface water resources
    (river basins, lakes, etc.)
  – Transboundary aquifers
    (*commissions, committees, authorities, etc.*)
IGAD institutional set up for WR

Ministerial Committee on WR
Adoption of policies/strategies
Programme/project approval
Important decisions

Regional Technical Committee
Formulation of policies/strategies;
Preparation of the decisions of the ministerial committee

National Focal Point

Water Unit

National Focal Point

National Focal Point

National Focal Point
Policy & legal framework implementation

Regional policy

Regional protocol

River basin/aquifer agreements

National policy and legal frameworks
(harmonized)