



Public Participation in Transboundary Water Management

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Theme 4: Agency Beyond the State

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1 Introduction

Water is without doubt one of the most valuable natural resources and needs to be safeguarded for future generations. A large portion of the world's freshwater resources lies within transboundary river basins: at present approximately 260 transboundary river basins exist, covering 45 percent of the land surface of the earth (excluding Antarctica) (Wolf et al., 1999). In order to assure the preservation of high quality water resources, competent water management is required. Today it is widely recognised that effective water management is only possible with real involvement and commitment of the relevant stakeholders of a river basin.

On the one hand, involving the public at the transboundary scale might prove more challenging than usual, but on the other the public can also assume a role that helps competing governments within an international basin find new ways of co-operation. This paper provides an outline of the main principles and the legal provisions of public participation in transboundary water management; it concludes with encouraging practical examples from Europe and Southern Africa.

2 Transboundary Integrated Water Resource Management – New approaches to governance are needed

With the adoption of the Millennium Development Goals at the World Summit on Sustainable Development in 2000, and particularly in connection with Goal No. 7 (to reduce by half the proportion of people without sustainable access to safe drinking water by 2015), the need to protect freshwater resources was brought to international attention. In the following years lack of good governance was identified as one of the main reasons for the deterioration of the world's freshwater resources. Consequently, the second United Nations World Water Development Report has been titled "Water: a shared responsibility" and has placed emphasis on the problems of water management being a consequence of a crisis of governance.¹

The UNDP Water Governance Facility at SIWI – founded in 2005 – defines water governance by "[...] the political, social, economic and administrative systems that are in place, and which directly or indirectly affect the use, development and management of water resources and the delivery of water service delivery at different levels of society."² Governance systems do not only include "the government", but also local authorities, the private sector and civil society. They also cover a range of issues intimately connected to water, ranging from health and food security to economic development, land use and the preservation of the natural ecosystems on which our water resources depend.

On the transboundary level, the concept of governance includes additional aspects. International river basins go beyond national boundaries; as a result, management plans and programmes of measures must refer to a geomorphologic area and not to political borders. In this way the naturally determined area of a river basin assumes the function of an area for political action. As a consequence, transboundary river basin management needs an organisational structure that covers the whole area of the basin; this structure can be very discrepant from the prevailing governance structures (Moss, 2003). In this problem area the mismatch of ecosystem and political-administrative spatial units may create considerable difficulties for an integrated water resources management. Karkkainen observed that under these circumstances the long-established governance systems, bound to the principle of sovereignty, often fall into crisis. New forms of governance increasingly include non-governmental stakeholder groups into unconventional institutional arrangements (Karkkainen, 2005).

¹ UNESCO (2006): "Water a shared responsibility – The United Nations World Water Development Report 2", download at <http://www.unesco.org/water/wwap>, 22.03.2007.

² UNDP Water Governance Facility at SIWI: "What is water governance?", download at <http://www.watergovernance.org/aboutwatergovernance/whatiswatergovernance.html>, 22.03.2007.

Particularly in transboundary river basins, stakeholders are more often geared towards regarding natural boundaries than administrative ones. They tend to build up informal networks with the aim of smoothing information exchange, in the process creating pools of expertise in water management practice which people can rely on in critical times. Gunderson demonstrated that these so-called “shadow networks” are able to remain more independent in cases where formalised processes fail their objectives. As a result, shadow networks may drive the process to the development of new governance approaches and institutions (Gunderson, 1999).

Thus fostering public participation in transboundary river basin management is not only an add-on to conventional management regimes. It can also be a strong instrument on the way towards innovative and adaptive approaches under newly arising challenges or in the case of government crisis.

3 International Provisions for Public Participation in Transboundary Waters

The first comprehensive declaration which addressed the requirement for public participation in decision-making in water management was made in 1992. The Dublin International Conference on Water and the Environment established four guiding principles³ for managing freshwater resources, the second of which is solely concerned with public participation. The principle states that “water development and management should be based on a participatory approach, involving users, planners and policy makers at all levels”.

Principle 10 of the Rio Declaration on Environment and Development⁴ (United Nations Conference on Environment and Development, Rio de Janeiro, 1992) reconfirms the need for public involvement by stating that environmental issues are best handled with the participation of all concerned citizens, at the relevant level.

The first legal commitment to public information as the first pillar of public participation is recorded in the 1992 UNECE Convention. The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes⁵ provides extensive provisions for public information in its Article 16. This article includes the following statements:

“The Riparian Parties shall ensure that information on the conditions of transboundary waters, measures taken or planned to be taken to prevent, control and reduce transboundary impact, and the effectiveness of those measures, is made available to the public. For this purpose, the Riparian Parties shall ensure that the following information is made available to the public:

- (a) Water-quality objectives;
- (b) Permits issued and the conditions required to be met;
- (c) Results of water and effluent sampling carried out for the purposes of monitoring and assessment, as well as results of checking compliance with the water-quality objectives or the permit conditions.”

In addition to these points, “the Riparian Parties shall ensure that this information shall be available to the public at all reasonable times for inspection free of charge, and shall provide members of the public with reasonable facilities for obtaining from the Riparian Parties, on payment of reasonable charges, copies of such information.”

The Protocol on Water and Health to the UNECE Convention⁶ adds to these requirements, stating that Parties, in order to achieve the objectives of the Protocol, will ensure public participation in decision-making (Article 6, Paragraph 2). Further, under Article 16, Paragraph 3 (g), it is demanded to consider the need for further provisions on access to information, public participation in decision-making, and public access to judicial and administrative review of decisions.

³ The Dublin Statement on Water and Sustainable Development, Dublin, Ireland, January 31, 1992, often referred to as the “Dublin Principles on Integrated Water Resource Management”.

⁴ UN General Assembly 1992: Rio Declaration on Environment and Development, Agenda 21.

⁵ Often referred as Helsinki Convention as it was adopted at Helsinki on 17 March 1992. The Convention entered into force on 6 October 1996.

⁶ UN-ECE 1999: Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. The Protocol was adopted in London, on 17 June 1999 at the Third Ministerial Conference on Environment and Health and entered into force in August 2005, becoming legally binding for the ratifying countries. So far, it has been signed by 36 countries and ratified by 20. The first meeting of parties took place in Geneva, 17 January 2007.

The most influential international agreement in regard to information and participation of the public is the so-called Aarhus Convention⁷. Its principles are grouped in three pillars that implement the principles of the Rio Declaration mentioned above.

- Access to environmental information, including the collection and dissemination of this information (Art. 4 and 5),
- Public participation in decisions on specific activities, in particular plans, programmes and policies relating to the environment as well as executive regulations and other generally applicable legally binding normative instruments (Art. 6-8),
- Access to justice in the form of a court of law or another independent and impartial body established by law (Art. 9).

The Convention requires the establishment of structures that enable the public to exercise these rights vis-à-vis public administrations and other institutions. The rights guaranteed by the convention shall be exercised by the broad public, regardless of nationality or place of residence.

3.1 Requirements of the WFD

The European Water Framework Directive⁸ sets very comprehensive legal provisions regarding public participation in river basin management for all EU Member States. At the same time, the directive gives considerable creative leeway to Member States in the design of public participation, particularly regarding active involvement of stakeholders.

In the final version of the WFD (2000/60/EC), public participation is regulated by Preamble 14 and 46, Article 14 and Annex VII A (points 9 and 11). Preambles 14 and 46 stress the need and the importance of a sound information policy and active involvement of the public. Preamble 14 underlines that the success of the WFD depends directly on a successful involvement of the public. Preamble 46 highlights the importance of timely information to ensure public participation.⁹

The core public participation provision of the WFD is Article 14, "Public Information and Consultation". Three levels of participation are mentioned in this article – information, consultation and active involvement – which are modelled after the first two pillars of the Aarhus Convention.

In three rounds (December 2006, 2007 and 2008), the Member States have to publish the necessary documents in the river basin management planning process. The public is invited in each round to deliver comments in writing within six months. Member States have to provide additional background information upon request. For this purpose contact points and procedures have to be included in the River Basin Management Plan (Annex VII A.11).

Moreover, Annex VII A.9 of the WFD requires that the Management Plan document the measures taken to inform and consult the public, the results of the consultations, and the respective changes made. This gives the European Commission the means to monitor compliance and initiate infringement proceedings if a Member State does not fulfil the public participation requirements of Article 14 of the WFD (Jekel, 2002).

The third level of participation mentioned by Article 14 is active involvement, a higher level of participation than consultation and which "shall be encouraged" by the Member States. Active involvement implies that interested parties are invited to actively contribute to the planning process, discuss the issues and contribute to their solution. There are three levels of active involvement:

- 1) participation in the development and implementation of plans,
- 2) shared decision-making and
- 3) self-determination (Drafting Group 2002, p. 20).

The Member States can decide for themselves the level of active involvement. Encouraging the first level is the minimum requirement for active involvement, while the other two levels can be considered as best practice in specific cases.

⁷ UN-ECE 1998: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Aarhus, Denmark, 1998. The Convention entered into force after the 16th ratification on 30 October 2001.

⁸ European Union, the European Parliament, the Council 2000: Directive of the European Parliament and of the Council concerning establishing a framework for community action in the field of water policy (2000/60/EC).

⁹ For more detailed analysis of the background and the legal requirements of public participation in the WFD please refer to Kampa et al., 2003, and Barreira and Kallis, 2004.

In the final analysis, it is the appointed competent authorities that are responsible for the outcome of the successful implementation, and they decide to what extent they will share their power with other stakeholders. The rationale behind leaving the choice of the level of active involvement to the responsible authorities is pointed out in Preamble 13, which stresses that “there are diverse conditions and needs in the Community which require different specific solutions”.

4 Practical Implementation of Public Participation under the WFD

Nearly seven years have passed since the adoption of the European Water Framework Directive on October 23, 2000, and its implementation has made significant progress. In the beginning there was some disorientation among competent authorities, practitioners and stakeholders regarding what the new requirements for the involvement of the public would actually mean in practice.

In order to fill this vacuum, the EU Member States, Norway and the European Commission decided to develop a common strategy for supporting the implementation of the Directive 2000/60/EC. Under this “Common Implementation Strategy”, a Drafting Group on Public Participation was established, which elaborated the “Guidance on Public Participation in Relation to the Water Framework Directive – Active Involvement, Consultation, and Public Access to Information”. This Guidance was adopted by the Water Directors in Copenhagen in November 2002 (Drafting Group 2002; section 1.2).

But other efforts have also been made for a better understanding of public participation, of its benefits, and for providing practical advice and tools to support it. The project “Harmonising Collaborative Planning” (HarmoniCOP), funded by the European Commission within the thematic area ‘Energy, Environment and Sustainable Development’ of the 6th European Framework Programme, added to the knowledge base contained in the CIS guidance document.

The HarmoniCOP project provides for a comprehensive knowledge base for public participation in water management. The project draws lessons from past approaches to public participation in European Member States and gains insights from case studies conducted in nine European river basins. In the context of the project a handbook providing practical tools was developed, which offers an easy-to-use approach for the practical application of experience gathered during the project (for more information refer to the project’s website at <http://www.harmonicop.info>).

Other projects and experiences are less scientific driven. Instead, they search for creative concepts that need to be tested in real life conditions. The RhineNet and the Danube Day use such approaches and are presented in the following sections.

4.1 The Rhine

Background

The Rhine is the second largest river basin in the European Union and has become a symbol for both major environmental disasters and huge success stories in environmental protection. The International Commission for the Protection of the Rhine (ICPR), founded in 1950, is one of the oldest River Basin Organisations in Europe and the world. The public has played an important role in water management in the river basin, which began with the protests of enraged citizens after major chemical pollution accidents, and which today includes multiple forms of involvement and co-operation between NGOs, government agencies, the private sector and other groups.

This section shall introduce the project RhineNet¹⁰, an international project supported by the INTERREG IIB NWE Programme. Partners to the project are NGOs, government agencies and scientific institutes from the Netherlands, Belgium, France, Germany and Switzerland.

The RhineNet

RhineNet’s objective is to promote sustainable water management through the involvement of relevant stakeholders and local citizens in the respective decision-making processes. This was achieved on the one hand through:

- information,
- education,

¹⁰ For more information on the project please refer to the project’s website <http://www.rhinenet.net>.

- sensitisation of the public,

and on the other hand through:

- implementation of case studies,
- consultation of stakeholders.

The project developed several tools for public awareness-raising, particularly helpful in larger transboundary river basins as they manage at the same time to address local issues and to provide a sense for the multitude of relevant aspects in the whole basin.

International Rhine Bathing Day (part of the European Riverswimming day "Big Jump")

The international Rhine Bathing Day, inspired by the Elbe Bathing Day, was conducted in 2005 in all riparian countries in the context of a European Bathing Day. On this day people gathered at various locations along the Rhine river to take a bath or to do other actions. The International Rhine Bathing Day has the aim of bringing the population back to the Rhine and its tributaries with through activities that are fun and which have positive connotations, and to increase sensitivity for the value of river systems and their ecological interdependencies. The understanding of measures for the re-establishment of a good ecological quality is to be likewise increased by these actions.

(http://www.rhinenet.net/rhinenet_en.html)

Rivers of Images, Streams of Words - a pedagogical program

Rivers of Images, Streams of Words is an environmental art and poetry programme which has the aim of promoting a better understanding of river basins and their ecology by the means of art and poetry. The programme is addressed to young people between 11 and 18 as future decision makers.

An educational guide of the European Rivers Network, *Loire Vivante*, created for the Loire, was adapted for Rhine conditions and tested 2004 in Luxembourg. This guide was sent to interested teachers, environmental federations and other networks.

The result of the programme was either a painting or a poem on arts tissue provided by the organisers of the contest. The best paintings and poems received a prize from a committee and were presented in an itinerant exhibition during a boat trip from Rotterdam to Basel from June 3 to July 2, 2005.

(http://www.rhinenet.net/rhinenet_en.html)

4.2 The Danube

Background

The Danube is the longest river (2.860 km) and the largest basin (817.000 km²) of the European Union. Ten countries¹¹ are riparian states to the Danube. It originates in Germany near Passau, passes through a multitude of different landscapes and ecosystems and finally flows into the Black Sea, forming an enormous delta considered one of the most important UNESCO World Natural Heritage Sites. Despite the richness of ecosystems and biodiversity, the Danube also belongs to the ten most endangered rivers of the world. A survey of the international nature conservation NGO World Wide Fund for Nature (WWF) underlines that since the beginning of the 19th century almost 80 percent of the wetlands and floodplains have been destroyed and 78 percent of the stream course has been damaged (EUWID, 2007).

In 1998, the International Commission for the Protection of the Danube River (ICPDR) was created. The ICPDR comprises different bodies:

- Ordinary Meeting Group: charged with taking the political decisions,
- Standing Working Group: charged with providing political guidance,
- Technical Expert Groups: charged with preparing the technical background documents.

The ICPDR maintains a Secretariat located in Vienna, Austria.

¹¹ Germany (7.5%), Austria (10.3%), Slovakia (5.8%), Hungary (11.7%), Croatia (4.5%), Serbia, Bulgaria (5.2%), Romania (28.9%), Moldova (1.7%), and Ukraine (3.8%); in addition, the drainage basin includes parts of ten more countries: Italy (0.15%), Poland (0.09%), Switzerland (0.32%), Czech Republic (2.6%), Slovenia (2.2%), Bosnia and Herzegovina (4.8%), Montenegro, Republic of Macedonia, Moldova, and Albania (0.03%).

Public Participation

Under the auspices of the ICPDR, a stakeholder strategy¹² for the period from 2003 until 2009 was prepared. The strategy comprises participation measures at the transboundary, national and local levels. The main instruments granted for the involvement of the public at the transboundary level are the following:

- Stakeholder groups with a demonstrated basin-wide interest may apply to be appointed as observers to the meetings of the ICPDR,
- Basin wide stakeholder conferences,
- Danube Day (ICPDR, 2007).

For the sake of providing an example of public participation in the Danube Basin, the 2005 Stakeholder Conference, held on Danube Day, shall be depicted in the following section.

The Danube Day was celebrated for the first time on June 29, 2004, to mark the 10 years anniversary of the Danube Convention. Since then, the yearly Danube Day is an occasion for holding a large array of public events, activities and happenings, that aim to raise the awareness of water issues among the citizens of the basin.

The 2005 Stakeholder Conference, held in Budapest on June 28-29, 2005, aimed at convening all relevant stakeholders of the basin for the presentation of the results of the Danube Basin Analysis (WFD Roof Report, 2004). About 100 stakeholders took part in the conference, in which they learnt about ICPDR activities and provided feedback on the '2004 Roof Report', which was prepared to meet the official reporting requirements of the EU Water Framework Directive.

More specifically, the following issues were presented and discussed with the stakeholders:

- ICPDR's Programme of Action and current initiatives in the basin,
- ICPDR's current approach to public participation; with a special view to granting an observer status to stakeholder groups,
- Exchange on the 2004 Roof Report for the Danube basin; elicitation of feedback from stakeholders regarding the status analysis in view of the Programme of Measures to be developed by 2005,
- ICPDR's 'Action Programme on Sustainable Flood Protection' (ICPDR, 2005).

This conference was an example of how public participation can be assured on the level of a large river basin such as the Danube. The incorporation of the stakeholder conference within the context of the other public awareness activities in the basin assured that the contents of the discussions were visible to an audience much larger than that which a conference can address.

5 Public Participation in Southern Africa

Current-day transboundary co-operation in water management in Southern Africa occurs in the context of an initiative of the Southern African Development Community (SADC)¹³. In 1995, a Protocol on Shared Watercourse Systems was signed as part of efforts to implement the SADC Treaty. The protocol came into force in 1998. This protocol referred in many aspects to the 1966 Helsinki Rules. In consideration of new developments, in particular of the 1997 UN Convention on the Law of non-navigational Uses of International Watercourses, the 1995 protocol was revised. The Revised Protocol, which significantly improved provisions relating to the environment, was signed by SADC leaders¹⁴ on August 7, 2000 and entered into force on September 22, 2003.¹⁵

¹² ICPDR (2003): Danube River Basin Strategy for Public Participation in River Basin Management Planning 2003-2009, <http://www.icpdr.org/wim07/download.php?itemid=9140&field=file1>, download 23.03.2007.

¹³ SADC has its origins in the end of the 1970ies. Initially founded as the Southern African Development Co-ordination Conference (SADCC) it aimed at fostering the regional development in Southern Africa by joining national efforts and building trust among each other. SADC restructured in 1992 and 2001. Today it is engaged in all relevant political, social and economic sectors in Southern Africa including the water sector.

¹⁴ The Republic of Angola, the Republic of Botswana, the Kingdom of Lesotho, the Republic of Malawi, the Republic of Mauritius, the Republic of Mozambique, the Republic of Namibia, Republic of Seychelles, the Republic of South Africa, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Zambia and the Republic of Zimbabwe.

¹⁵ Southern African Development Community: "Status of protocols", <http://www.sadc.int/english/documents/legal/protocols/status.php>, download 23.03.2007.

The 1995 Protocol on Shared Watercourse Systems contains the first provisions relevant to the introduction of public participation in transboundary water management in Southern Africa. It urged Member States to establish appropriate institutions including a Monitoring Unit, River Basin Commissions and River Authorities or Boards in respect to each drainage basin (Art. 3). According to Art. 5 paragraph b) IV), one function of the river basin management institutions shall be “[to stimulate] public awareness and participation in the sound management and development of the environment including human resources development”¹⁶. In the Revised Protocol this paragraph has been omitted. In the Regional Indicative Strategic Development Plan (RISDP), however, Chapter 3.3.5, “Water”, states that the revised Protocol shall be made operational through a Regional Strategic Action Plan (RSAP) for Integrated Water Resources Management and Development in the SADC Region; this plan includes significant provisions for the strengthening of public participation. Among the seven key priorities are information acquisition, management and dissemination; awareness building; education and training; and public participation¹⁷ (cf. Kidd, 2005).

The two case studies of the Okavango and Orange rivers represent encouraging examples of these new approaches to transboundary water management under the light of public involvement.

5.1 The Okavango

Background

The Okavango River originates in Angola, runs southeast forming the border between Angola and Namibia, and finally enters Botswana. After 1600 km the river ends up in the Kalahari desert, forming the famous Okavango Delta, home to an astonishing richness of ecosystems and biodiversity.

Water requirements in the Okavango basin differs significantly from state to state. To date, domestic water use prevails in Angola; in Namibia it is irrigated agriculture that is the most important user of Okavango water, and in Botswana tourism depends on water for the preservation of the unique Okavango Delta ecosystems.

In 1990 a first technical committee was established for the Okavango River Basin. At the time Angola was not included in the committee, but it was involved in the establishment of the Okavango River Basin Commission (OKACOM), founded in 1994 by the governments of Angola, Namibia and Botswana (Khupe, pers. comm., 2006)

Public Participation in the Okavango

In the year 1996 the pressure on the water resources of the Okavango increased. Botswana requested the use of more water for its mining activities, and Namibia required more water for its expanding capital Windhoek. Several NGOs and individuals from the private sector were put on the alert by these developments. They started to form a liasing group, and in 1998 they approached the OKACOM with the request to be involved in water management planning. The Commission agreed to set up a forum with the character of “advisory board” to the Commission. This forum consists of a total of 30 participants, with 10 persons coming from each country. Stakeholders of the forum are mainly representatives of community-based organisations (CBO), 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 basins also participate in the forum (Montshiwa, pers. comm., 2006).

Establishing the forum was a long process. In the beginning, a socio-ecological survey was conducted in the communities of the Okavango basin. This survey had two main objectives: firstly, it identified the needs of the communities related to water and, secondly, it identified the relevant stakeholder groups for the forum.

Initially stakeholders did not understand the need for co-operation. Rivalries arose among the groups; everybody wanted to be the leader. This struggle only ended when a role of co-ordinator for the establishment of the forum was assigned. The NGO “Every River Has its People”, with support of the Swedish International Development Co-operation Agency (SIDA), took over project co-ordination. The development of the participation strategy took three years. The work done included extensive

¹⁶ Southern African Development Community: “*Protocol on Shared Watercourse Systems*”, http://www.sadc.int/english/documents/legal/protocols/shared_watercourse.php, download 23.03.2007.

¹⁷ Southern African Development Community: “*Regional Indicative Strategic Development Plan (RISDP)*”, <http://www.sadc.int/english/documents/risdp/chapter3.php>, download 23.03.2007.

grassroots fieldwork in the communities. The interests, the future tasks, and the perspectives of each single NGO and CBO were identified. In addition, three-day workshops were held in each country, which gathered all stakeholder groups for the development of a common vision for the Okavango Basin. As a result of this long process the forum, with 30 participants, was established. By that time OKACOM had realised the value of the forum's input for its own work, and as a result the commission offered an observer-status seat to one representative of the forum (Earle, pers. comm., 2006).

The case of the Okavango shows that public participation can significantly influence decision-making. It is an example of a grassroots, bottom-up movement which had the good fortune of counting with understanding and acceptance from the River Basin Organisation. It is, however, also an example that significant time and financial resources need to be committed in order to achieve results, in addition to the necessary personal commitment required of the people involved.

5.2 The Orange

Background

The Orange river basin lies within the territories of South Africa, Lesotho, Namibia and Botswana. It covers an area of about one million square kilometres. The landscapes of the Orange Basin vary from high mountains at its source in the Lesotho Highlands, over pastures and semi-arid savannah grasslands, to the extremely arid deserts near the Atlantic Ocean on the border between Namibia and South Africa. The estuary of the Orange is not formed by a large surface delta; it is however regarded as one of the hotspots for wetlands conservation in Southern Africa and of utmost importance to the region's ecology and biodiversity.

While in Lesotho the river is called Senqu; the Orange is also known as the Gariep River. Major tributaries to the Orange are the Vaal, Fish, Caledon, Molopo and Nossob Rivers.

Major threats to water resources in the Orange Basin are water scarcity, climate change, pollution and land degradation. Water shortages apply to both surface and groundwater. This is also aggravated by the fact that water distribution networks are not sufficiently developed.

The highly industrialised areas of the Gauteng and the adjacent provinces lead in the past to rapidly increasing water demand, and pollution due to industrial and domestic sewage. The Inter Basin Transfers of the Orange Development Project and Lesotho Highlands Water Project brought about river habitat changes and potential impacts on ecological integrity.

In November 2000, the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa established the Orange-Senqu River Commission (ORASECOM). The commission was founded in consideration of existing international water law, the Protocol on Shared Watercourses of the Southern African Development Community and in the wish of strengthening co-operation and building up good neighbourhood relations. ORASECOM was the first commission to be created within the framework of the Revised SADC Protocol (Böge, 2006).

Before the establishment of ORASECOM, transboundary co-operation in water management was limited to bilateral agreements. Prominent examples for these agreements are the above-mentioned Lesotho Highlands Water Project and the Orange Development Project. To date, the institutional structure of ORASECOM is still under development. While the commissioners have established regular meetings on a bi-annual basis with support of a technical task team, central structures such as a Secretariat are still forthcoming (Pyke, pers. comm., 2006).

Public involvement in water management planning in the Orange

In the past, public participation was neglected in transboundary water management planning processes in the Orange. Public participation did not take place in the large inter-basin water transfer projects (Kidd et al., 2005), for instance. So far, the public has not been involved on the level of ORASECOM either. With the restructuring of the institutional set-up and the establishment of a secretariat in the near future, this deficit has been the subject of intensive discussions among commissioners, stakeholders, technical staff and international consultants (Earle, pers. comm., 2006).

In May 2005, the water ministers of the riparian states to the Orange mandated the Commissioners to develop a strategy for stakeholder participation in the Orange-Senqu river (ibid.). While the final strategy on public participation in the Orange Basin is still to be presented, the development of the strategy has been an interesting process in itself. The first meeting in this respect took place in February 2006. In addition to ORASECOM Commissioners and stakeholders from the Orange Basin,

representatives of other basins such as the Limpopo and the Okavango participated in the meeting. The experiences made with public participation in other Southern African basins provided valuable inputs to the forthcoming stakeholder participation strategy. The commissioners have provided the main drive behind the process. This implies a top-down approach on the one hand, but on the other it also means that the commissioners will be committed to the strategy. The first meeting resulted in a first draft of the strategy. In a next workshop, that should include a broader audience of stakeholders, the strategy shall be finalised. The final approval of the strategy is expected for summer 2007 (ibid.).

6 Conclusions

These four examples from different corners of the world shed some light on the usefulness of public participation in transboundary water management. In all cases, a clear requirement for the involvement of public stakeholders was perceived. Nevertheless, and according to the particular contexts, different approaches were chosen. In the case of the Danube and the Orange, for example, a more formalised start with a top-down approach was chosen to formulate a participation strategy (Orange) or to organise a stakeholder conference (Danube). The Okavango Basin Forum, on the contrary, started as a grassroots initiative. The RhineNet project, on the other hand, is a completely different case: it complements to the “official” involvement strategy of the ICPR¹⁸. Its guiding concept is to find creative ways to establish new networks that are able to build up synergies with conventional approaches. In coherence with the widely recognised principle that sound and effective information is the overall basis for public participation in river basin management (Drafting Group 2002; Langaas, Timmerman 2004; Ginkel 2005), in all these examples a strong emphasis on information management was placed.

The cases presented in this paper, although only partial examples in the broad range of experiences made in public participation, indicate the ways in which public participation on the transboundary level can be used to confront the emerging vacuum in water governance, in view of growing risks and uncertainties as generated for instance by climate change. The case studies do not constitute completed processes; rather, they find themselves in different stages of process development.

The case of the Okavango, for instance, has proven that a grassroots initiative can be the point of origin for the participation of the public, but that these kinds of initiatives still require support from third parties, as for instance support by mediators that facilitate the process, or financial support. The Okavango also shows that interaction of all actors is indispensable. The river basin commission realised that involving the stakeholders would advance the management of the Okavango, and supported the integration of the forum, as a parallel structure, into the commission.

In the Orange, it was the official side that initiated the public participation process, but if they fail to get the buy-in of stakeholders the initiative will stay on paper and problems may remain unresolved.

This important interplay of actors and its learning effects is often referred to as social learning (q.v. Craps 2003). The cases already provide some evidence to show that social learning is also of high importance at the transboundary level. Social learning, however, could also acquire an additional dimension at this level. In the transboundary context, the problem of mismatch between ecosystem and political-administrative spatial units can always be observed. In all the examples given (Danube, Rhine, Okavango, Orange), significant efforts have been made to overcome this mismatch by establishing a River Basin Organisation. These organisations, however, are composed of different parties that stand for their national priorities, instead of conforming a homogeneous body that solely acts with a basin-wide perspective. In all the cases described, the rationale behind including stakeholders was clear, aiming at achieving a basin-wide understanding of the problems in water management. In the Orange basin, in which participation is still very much in its beginnings, the idea to involve stakeholders was brought in from two sides. On the one hand, experiences from other basins in the region proved to be very positive in terms of strengthening co-operation; on the other, the experiences within the commission itself brought the commissioners to the insight that co-operation is an important means towards more effective management (Earle, pers. comm., 2006). In the Okavango growing water stress due to increased water demands led to the stakeholders to desire to be included in decision-making. It was particularly the stakeholders of the Okavango Delta that drove this process. Tour operators realised that they had to share benefits with up-stream population, because their business depends on constant water flow to the Delta. As a result, they started building alliances with stakeholders in the upstream countries (Montshiwa, pers. comm., 2006). In the case of RhineNet, the

¹⁸ International Commission for the Protection of the Rhine.

idea on the ground of the project was to create stronger stakeholder networks by means of creativity. These very informal events and actions, however, were always conducted in close co-operation with water management administration. The aim of the project is to find to new forms of co-operation that in future can also be used for other issues. Finally, in the Danube it is a declared objective to achieve a more coherent approach to water management in the boundaries of the basin. In the public participation strategy of the ICPDR it is stated, in the context of how the strategy should be implemented: *“It is intended to compliment and assist national actions by providing a coherent framework with links to the international levels on one hand, and by offering a strategic approach to organising actions – with possible implications for securing funding – on the other hand.”* (ICPDR 2003)

It is still a long way to arrive to new approaches in water governance that effectively address the problem of mismatch and that can tackle newly arising challenges in water management regimes. But in this process it is always important to look beyond the local context and to learn from experiences in other basins.

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