



Strengthening transboundary water governance and cooperation in the IGAD region

Progress to-date, lessons learnt and recommendations

1. Background

Although over 60% of the IGAD region¹ is made up of arid or semi-arid lands - which are among the most vulnerable areas to climate variability and drought in Africa - the IGAD region comprises a number of transboundary rivers, lake basins² and aquifers. Frequent droughts in these areas often lead to catastrophic famines and exacerbate competition and conflict for limited water resources. The IGAD Member States therefore recognize that central to the well-being of the population is access to reliable quantities of water of sound quality and predictable availability. In January 2015, IGAD Water Ministers endorsed a Regional Water Resources Policy with the overall objective to promote closer cooperation among member States on water management issues. Such cooperation focuses on the equitable, sustainable and coordinated utilization, protection and management of transboundary water resources in the region for poverty eradication, socio-economic development, regional integration, environmental sustenance and peaceful coexistence.

Since 2014, IUCN with partners have been supporting the IGAD Secretariat and IGAD Member States to implement the IGAD Regional Water Resources Policy. This support has been through two major initiatives i.e. Building River Dialogue and Governance (BRIDGE), funded by Swiss Development and Cooperation and a US Department of State, Bureau of Oceans and International Environmental and Scientific Affairs (OES). The focus of these support were around the following objectives, though the specific detailed activities were however, identified and elaborated through the situation analyses and stakeholders consultations both at the regional and a demonstration basin (Sio-Malaba-Malakisi) level:

1. Strengthening regional and basin level frameworks and stakeholder-inclusive governance mechanisms for cooperation and conflict mitigation on trans-boundary water resources in the IGAD region and in a demonstration basin;
2. Strengthening conflict mitigation, negotiation through joint visioning dialogues in the demonstration basin on opportunities for enhanced benefits, investment and development from collaborative management of shared water resources; and
3. Capacity building in hydro-diplomacy, international water law, negotiation and benefit sharing to improve trans-boundary water governance and cooperation.

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¹ The Intergovernmental Authority on Development (IGAD) is one of eight Regional Economic Communities (RECs) in Africa. It was established to foster regional co-operation in the eight countries that make up the Horn of Africa (Eritrea, Kenya, Ethiopia, Djibouti, Sudan, South Sudan, Somalia and Uganda) to promote peace and stability and support sustainable economic development

² Some of the main river and lake basins include: Nile River, shared by 11 countries of which 6 are IGAD members (Ethiopia, Eritrea, Kenya, South Sudan, Sudan and Uganda); Lake Victoria, shared by 5 countries of which 2 are IGAD members (Kenya and Uganda); Juba-Shabelle, shared by Ethiopia, Kenya and Somalia; Ogaden, shared by Ethiopia and Somalia; Awash River-Lake Abbe, shared by Ethiopia and Djibouti; Lake Turkana, shared by Ethiopia, Kenya, South Sudan and Uganda; Gash (Mareb), shared by Ethiopia, Eritrea and Sudan; and Barka (Baraka), shared by Eritrea and Sudan.

2. Progress to-date

At the regional IGAD level, the following have been achieved towards the realization of the above stated objectives:

1. A Negotiation Committee³ established for the IGAD Regional Water Resources Protocol and rules of procedure for conducting the Negotiation process agreed upon and subsequently three Negotiation Committee meetings organized to discuss the draft Protocol developed during the EU-funded IGAD Inland Water Programme (2012-2015). Upon its enactment, the Protocol will become legally binding, requiring the IGAD Member States to cooperate on the management and development of their transboundary waters, while taking into account the provisions of the International Water Law as stated in the 1997 UN Watercourses Convention and the 1992 Helsinki Water Convention. It will be a legally binding document meant to oblige the IGAD Member States to ensure cooperation on the following areas as it pertains to the provisions of the International Water Law:
 - a) Equitable and reasonable utilization of the transboundary water resources within their territories;
 - b) That any proposed project on the transboundary water does not cause significant harm or effect on another State;
 - c) Protection and preservation of the ecosystems including prevention, reduction and control of pollution, alien or new species that may cause significant harm to the ecosystems, transboundary water resources and human health;
 - d) Regularly exchange data and information between and/or among them on conditions of their transboundary water resources, in particular those data and information of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality, and to the effects of climate change, as well as related forecasts;
 - e) Consultations and, if necessary, negotiations takes place in good faith on planned measures with a view to arriving at an equitable resolution of the situation, this will promote win-win, peace and stability in the region;
 - f) Cooperation in establishing and operationalizing institutional framework responsible for the implementation of the Protocol; and
 - g) Observation of the general obligation to cooperate on the basis of sovereign equality, territorial integrity, sustainable development, mutual benefit and good faith in order to attain equitable and reasonable utilization and adequate protection of their transboundary water resources.



³ The Negotiation Committee consists of 21 members with three members from each of the seven IGAD Member countries. The members represent each country's Ministries of Water and Foreign Affairs and the Attorney General's Office.

2. Five training workshops organized for Negotiation Committee members for capacity strengthening in international water law, hydro-diplomacy, negotiation and benefit sharing and skills acquired helped them to effectively engage in the negotiation processes. Additional training was offered to members of the Negotiation Committee from countries with relatively lower human resources capacities – Somalia, South Sudan and Djibouti – to ensure equitable outcomes and levels of engagement. These trainings were conducted using analysis of conflict scenarios in fictitious basins shared by fictitious States to create a safe place for discussions. A Legal Analytical Framework was used to assess the effectiveness of transboundary water governance regimes. Through this Framework, effectiveness is determined by the following five elements:



- a. **Scope:** the legal reach of an agreement (hydrological and geographical boundaries/jurisdiction), the description of parties to the agreement, the types of water resources governed and the uses that are regulated by the agreement;
- b. **Substantive Rules:** the legal norms setting out the rights and obligations of Parties with respect to shared waters;
- c. **Procedural Rules:** practical mechanisms of implementing the substantive rules of the agreement, including processes that ensure the continuous management of shared water resources;
- d. **Institutional Mechanisms:** arrangements designated to monitor implementation of transboundary agreements; and
- e. **Dispute Settlement Mechanisms:** a set of procedures and institutions to resolve breaches of transboundary agreements

In addition to the training workshops, key stakeholders from the IGAD region participated in an exchange visit to the Sava River Basin in Eastern Europe, and visited the Rhine River Basin Commission Secretariat. They also met with members of the IUCN Academy in Bonn, Germany, to share lessons and experiences on transboundary water governance and the benefits of transboundary water cooperation - [IGAD Study Tour: experiences from the SAVA, the Rhine and IUCN Bridge Academy](#).

At the basin level, key achievements within program support towards SMM basin stakeholders¹ included:

1] Updating the SMM Basin 2008 Strategy. In the process, using a dialogue and decision support tool, the Benefit Opportunity Assessment Tool (BOAT), the SMM stakeholders agreed on four prioritized and preferred clusters of investment projects for the SMM Basin. Each cluster addresses a variety of stakeholder needs including infrastructure development, catchment restoration and protection and livelihoods enhancement. This approach of identifying benefits helps stakeholders to move away from the traditional volumetric water sharing to a more equitable and needs reflective approach to sharing of benefits. When implemented, these projects will promote sustainable development in the SMM Basin and integrate both natural and built water infrastructure. IUCN is supporting the SMM basin riparian governments with the resource mobilization for the implementation of these prioritized clusters of investment projects. In addition to the four SMM preferred clusters of investment projects, the program supported the production of the SMM Investment and Development Framework, whose objectives includes:

- a. To support the identification and preparation of investment projects with transboundary implications;
- b. To support the prioritization and sequencing of investment projects in the basin;
- c. To facilitate the mobilization of funding to implement investment projects in the basin; and
- d. To support the implementation of the investment projects in the basin by enhancing the monitoring and evaluation of their implementation.

The brochures on the SMM four clusters of prioritized investment projects and the SMM Basin Investment Framework were printed and distributed to the SMM key stakeholders – [SMM four prioritized investment projects and SMM Investment and Development Framework](#).

2] Review initiated for the Memorandum of Understanding (MoU) between the two SMM riparian states (Kenya and Uganda) and support for the establishment of the SMM Joint Working Group as an institutional framework for the coordination of the management and development of the SMM transboundary basin. The review was necessary because the current MoU only reflects the Nile Equatorial Lakes Subsidiary Action Project (NELSAP) based institutional arrangements. There is a need to have an institutional framework that is not project based, but rather reflects a multi-level and stakeholder-inclusive basin management and development body. The stakeholders noted that such an institutional framework should not only be inclusive and include multi-level stakeholder representation but also build on the existing structures from both countries, without creating parallel institutions. Some of the specific responsibilities for the SMM Joint Working Group as far as the implementation of the SMM Basin Investment Framework and its financing mechanism are outlined in the SMM Basin Investment Framework brochure (see the link above). Since sustainable financing mechanisms for such a joint institutional framework are important, stakeholders agreed on the need to involve representation - through the joint committee - from the Ministries of Finance from the two countries. This, along with potential engagement with the private sector, would facilitate the mobilization of financial resources.

3] Disseminating lessons learnt from the project through active engagement in a number of regional and international fora and media.

The following includes some of the presentations and contributions made:

1. Presentation titled “Stakeholder-inclusive assessment of benefits and opportunities in the Sio-Malaba-Malakisi basin” during the 2018 Stockholm Water Week;
2. Presentation titled “Transboundary water governance and cooperation through a Benefit Opportunities Assessment Dialogue in the Sio-Malaba-Malakisi Sub-Basin in the IGAD region” during the 5th Nile Basin Development Forum 2017 with a theme of “Investing in Nile cooperation for a water secure future”, October 23rd-25th, 2017, Kigali Rwanda;
3. Progress of the project and lessons learned from the Benefit Opportunity Assessment Dialogue in the SMM basin presented at the 12th and 13th sessions of the Working Group on IWRM under the Water Convention (Geneva, respectively in July 2017 and May 2018; at the Global workshop “Moving forward transboundary water cooperation: Building on its benefits” (Geneva, 6 - 7 February 2018); and at the 8th session of the Meeting of the Parties to the Water Convention (Astana, Kazakhstan, 10-12 October 2018);
4. Presentations titled “Experiences and lessons learned from strengthening transboundary water governance and cooperation in the IGAD region” and “Strengthening transboundary water governance and cooperation: the case of Sio-Malaba-Malakisi sub basin of the Nile” during the Uganda Water and Environment Week, March 18th-22nd 2019; and
5. Various articles and blogs, such as:
 1. [A fresh transboundary water governance model in Kenya and Uganda](#);
 2. [Supporting transboundary water cooperation in the IGAD region](#);
 3. [Enhancing hydro-diplomacy to facilitate discussions on the draft IGAD Regional Water Resources Protocol](#)

3. Lessons learned and best practices

The following were some of the key lessons learned and best practices from the project:

1. Capacity building of all key stakeholders is necessary to improve skills and understanding in transboundary water governance and cooperation. The program supported a number of training workshops and the study tour and the skills acquired improved the level and effectiveness of participation in the Protocol Negotiation process. Capacity building is important because stakeholders and policy makers have strong attachment to the traditional volumetric water sharing and coupled with national interests and priorities for water resources development, changing their attitudes towards embracing equity and benefit sharing principles is a slow process. Similarly, there is limited understanding among stakeholders on the requirement of the international treaties framing transboundary water cooperation e.g. the 1997 United Nation Watercourses Convention and the 1992 Helsinki Water Convention and their fundamental principles of Do No Harm (to your neighbors when using a shared water resource); ensure Equity; and Environmental Sustainability. Reconciling these principles with the reality on the ground in terms of economic development and national interest in relation to water demand is challenging and requires a lot of political good will and capacity building processes;



2. Legal and institutional framework at various levels are necessary for transboundary water governance and cooperation. At the regional level, the program supported the Protocol formulation which, when enacted, will provide an overarching framework for transboundary water governance. At the basin level, the program supported the establishment of an institutional framework that will coordinate the management and development of the SMM basin;

3. Transboundary water governance and cooperation is a multi-stakeholder and multi-level process. For the SMM basin, the Joint Working Group is an example of such a framework that represent stakeholders from various sectors and levels;

4. Transboundary cooperation is only possible when there is trust among riparian states and/or stakeholders. At the SMM basin level, there has been long-standing cooperation between the two riparian states and this existing working relationship helped in maintaining a smooth process. At the regional level, the politics of water development and vested national interest played out and slowed down the Protocol Negotiation process (see more on this on the challenges below). Negotiations on legal instruments to govern transboundary water and/or benefit sharing are not easy and are made more complicated with national vested interest in water development and use and deep rooted suspicion, lack of trust and good faith among riparian countries;

5. Point no. 4 above notwithstanding, in most cases, riparian countries are interdependent and rely on one another either through many factors including a common heritage, language, movement of people and trade. To build cooperation, it is essential to understand interdependencies and connectedness between countries and their increasing reliance on water and the need for joint strategies.

To conclude this section, it is important to highlight that two key factors that contributed to the majority of this program's success: **1]** cooperation from stakeholders (Kenya and Uganda has a long history of cooperation) and the implementing partners and; **2]** demonstration of the actual work with tangible results and/or of the principles of benefit opportunity assessment dialogue (BOAD) on the ground – moving from theory to action.

4. Challenges and recommendations

The negotiation process on the IGAD Regional Water Resources Protocol slowed down due to Ethiopia's reluctance positioning towards the process. Despite various efforts and different strategies proposed to re-engage with Ethiopia in the negotiation process, these remained unsuccessful. The negotiation of the IGAD Regional Water Resources Protocol is highly political and sensitive given socio-economic disparities between IGAD Member countries, and their complex political and geographical positioning and varying level of human resources capacity and negotiation skills. Due to Ethiopia's favourable geographical positioning as the upstream country and the country's ambitious water development plans to improve its socio-economic development, it can be questioned whether Ethiopia sees the possible benefits of participating in the multi-State Protocol process. In June 2017, a strategy for re-engaging with Ethiopia was presented to SDC, for additional co-funding to support the process. This was approved, with a conditionality that it could only be used if Ethiopia participated in the process. While it was hoped that the change in Government in Ethiopia would encourage their participation, this has so far not materialized, and the funding was not used. It has also been challenging to find the right balance for formal and informal contact between the IGAD Secretariat and the Ethiopian Ministers in charge of Water and Foreign Affairs, to encourage the re-engagement in the process. Moreover, in November 2018 an IGAD Committee was established under the chairmanship of the Kenyan Minister for Water and Sanitation and it was agreed that the Committee would reach out to the two Ethiopian Ministers in-charge of Water and Foreign Affairs in an attempt to disentangle the situation. This has also not materialized. In addition, a synthesis outlining some of the International Treaties that Ethiopia is a signatory was produced for the IGAD Secretariat to use in demonstrating that the articles in the draft Protocol are drawn from the best practice and the International Treaties some of which they (Ethiopia) are already a signatory to. It is important to note that Ethiopia has ratified a number of multilateral environment agreements that embrace various aspects of the fundamental principles of these Substantive Rules similar to the provisions in the draft IGAD Regional Water Resources Protocol that they don't want to negotiate, a notable example is the 2010 Nile Comprehensive Framework Agreement (CFA) which indeed is beneficial to Ethiopia because it is doing away with the 1929/1959 Nile Treaties that allocated almost all the Nile waters to the downstream countries i.e. Egypt and Sudan - at the expense of upstream countries including Ethiopia. One approach would be to discuss with Ethiopia the 2010 Nile CFA, already a sensitive issue discussion, to highlight the interdependencies and connected nature of the region to other IGAD member states in terms of issues such as trade and common heritage.

While the 1997 Convention on the Law of Non-navigational Uses of International Watercourses (the UN Watercourses Convention) and the 1992 Convention on the Use and Protection of Transboundary Watercourses and International Lakes codifies the main principles and rules of customary law relating to transboundary waters, which are per se commonly accepted by all States of the international community, it is extremely important to continue with the negotiations of a regional Protocol. Such a Protocol will contextualize those principles and rules to the features of the IGAD region, articulated in such a way as to provide the minimum standard to design a coherent and functional governance architecture of the basins within the region, and give predictability in terms of the practical implications of those principles and rules.

Finally, as a way forward on the IGAD Regional Water Resources Protocol negotiation process, it is highly recommended that the process should still proceed even without Ethiopia's participation. It is believed that there is a chance that once Ethiopia recognizes that the other IGAD member countries are moving on with the negotiation process, they will reconsider their position and re-engage with a notion that this would be welcomed by other countries in the region. Certainly, the difficulties this may create in terms of both joint and national investments in water are not new to the region, but this remains a missed opportunity and requires careful and consistent follow-up with the required skills at the local/regional level within the IGAD Secretariat.

As far as the investment planning process for the Sio-Malaba-Malakisi basin is concerned, the plan is to continue with the process of resource mobilization to support the implementation of the SMM four clusters of prioritized investment projects, of an estimated total budget of about USD 100 million. At the same time, continue with the process of finalizing the review and signing of the SMM MoU as well as the SMM Investment Plan and Financial Sustainability.

In conclusion, it is expected that the lessons learnt from the SMM sub-basin will in turn inform both regional level processes and cooperation efforts in other sub-basins in the Nile basin and in the IGAD region by demonstrating how inclusive dialogue processes among stakeholders can enhance benefit opportunities through collaborative management and development of water resources, leading to greater basin-level and regional stability.