

The right to water for man or for birds?

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Introduction

- Conflicting international obligations:
 - > Right to water (human rights documents)
 - > Duty to protect wetlands (Ramsar convention)
- Principle of reasonable and equitable use
- Common river basin management
- Can conflicts be solved along these lines?
- Multilateral situations
- Case: Orange River (southern Africa)

The right to water (I)

- Intl. Conv. on economic, social and cultural Rights, Art. 12
- General Comment No. 15
- Conv. on the rights of the child, Art. 24
- Conv. on the elimination of all forms of discrimination against women, art. 14(2)(h)
- Little attention for relationship to environmental policy

The right to water (II)

- National constitutions
- S27 Bill of Rights South Africa
 - > Social right
 - > Enforceable in courts
 - > National legislation
 - National Water Act, Water Services Act
 - 25 litres of safe drinking water within 200 metres

Obligation to protect wetlands

- 1971 Ramsar Convention (wetlands of international importance)
 - > Wise use: maintaining ecological character
 - > Transboundary wetlands
 - > Participation local communities/stakeholders
 - > Integration in river basin management

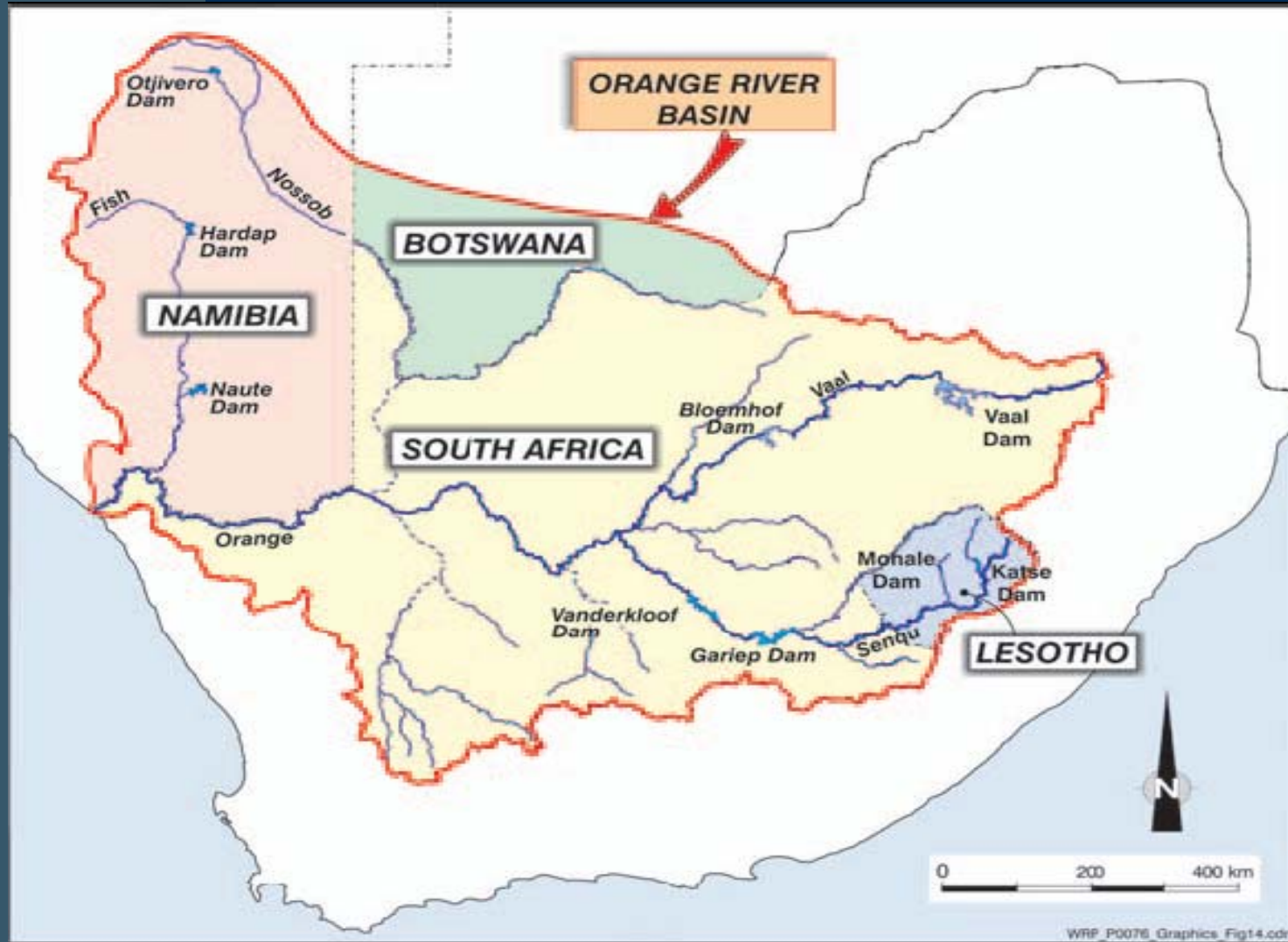
Reasonable/equitable use + common river basin management

- UN Conv. on the law of the non-navigational uses of intl. watercourses
- UNECE Conv. on intl. watercourses and transboundary lakes
 - > Joint body
 - > Ecosystem (integrated) approach
- SADC Protocol on shared watercourse systems
- Conclusion: obligation to balance all water uses maintaining the integrity of the ecosystem

Case study: Orange river

- Orange-Senqu river basin
- Population of 14+ million
- Orange River Mouth transboundary wetland under the Ramsar Convention
 - > Limited downstream rainfall
 - > Intensified upstream water uses
 - > Area degraded

Orange River Basin



Orange River Mouth wetland



Findings (I)

- (1) Principles of reasonable/equitable use + common river basin management are helpful to transnational decision-making on water uses
 - > Common ground, guidance to talks
 - > Integration of concepts at the intl. level (water management/nature conservation, not –yet – human rights)
 - > People only know and use the basic concepts

Findings (II)

- (2) National law makes things complicated
 - > Different legal systems and a variety of competent authorities (in each country)
 - Different legal qualifications of water types
 - Different goals, sometimes too optimistic goals
 - > The “Reserve” (SA NWA)
 - Improvement by new acts, aligned by the SADC protocol, but differences remain
 - > Water Resources Management Act

Findings (III)

- (3) There are a lot of joint commissions
 - > ORASECOM (Botswana, Lesotho, Nam, SA)
 - > Permanent Water Commission (Nam, SA)
 - > Joint Irrigation Authority (Nam, SA)
 - > ORMIMC (Nam, SA)
 - All stakeholders
 - No formal legal status
 - Driving force behind initiatives

Findings (IV)

- (4) Co-operative governance approach is applied, but is no guarantee for success
 - > Informal structures involving all stakeholders offer a platform to reach agreements
 - > Establishment of co-management
 - Sustainable use
 - Voluntary compliance
 - At which level? (river basin or wetland?)
 - > The law is kept out of the process

Findings (V)

- > After agreements have been reached: legal procedures will have to be followed
- > Risky:
 - Does existing legislation enable the execution?
 - Do stakeholders recognize the agreements in the final decisions taken by competent authorities?
 - Do competent authorities discard informal structures after an agreement has been reached?
 - Do competent authorities fall back in their old positions?

Conclusions (I)

- Right to water more or less recognized as a human right in international law
- Little attention to possible conflicts with other uses, such as nature conservation
- Integration of international fresh water law and nature conservation law:
 - > Common river basin management
 - > Reasonable and equitable, and sustainable use

Conclusions (II)

- Legal complexity makes it difficult to balance these interests, especially in a multilateral setting
- Co-operative governance approach is an important mechanism
- Stakeholders temporarily withdraw from the legal specifics
- Implementation of agreements is risky
- The co-operative governance process should continue after agreement has been reached