

Draft Report

**Harmonization of National Laws
with the SADC Protocol on
Shared Watercourse Systems**

June 1999

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Harmonization of National Laws with the SADC Protocol on Shared Watercourse Systems

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1. Introduction and Overview

The Southern African Development Community (SADC) has developed a Protocol on Shared Watercourse Systems (hereinafter called the “Protocol”). It is important that national laws be harmonized with this Protocol to assure its smooth implementation.

This Terms of Reference has been prepared for the SADC Water Sector Coordination Unit (WSCU). It is anticipated that the analysis it describes will greatly assist SADC member states, the WSCU and other cooperating partners in the process of harmonizing national laws and regulations with the provisions of the Protocol.

This document includes background information on the Protocol itself, a brief overview of national legislation in the region, an enumeration of the benefits of harmonization, the major areas in the national legislation that require harmonization with the Protocol, and a terms of reference for achieving agreement on harmonization needed and moving towards its realization. An initial study of the extent of agreement between national laws and the Protocol was carried out in 1996 for certain Southern African countries in the Zambezi Basin. However, further analysis is needed to enable the smooth implementation of the Protocol at national level.

The Terms of Reference (TOR) lays out the main elements of a further study on this topic. It includes an “audit” of national laws, regulations and practices relevant to the Protocol’s subject areas and provisions. It also provides for a review of current and prospective arrangements at government agencies and non-governmental bodies to better understand the likely conflicts between national laws and the Protocol, and how best to address them.

The analysis of required harmonization to be prepared will be vetted in two consultative gatherings. The first will be a workshop of legal and water experts and policy makers to review policy and institutional aspects of the harmonization question. The second will be a “stakeholders’ workshop” to solicit the views of a cross-section of the major affected parties and thereby move toward a better understanding of the Protocol and a consensus on what is required to assure implementation without unduly interfering with national and local prerogatives.

The process outlined in the TOR would be overseen by a senior international water law specialist, who would serve as Team Leader for the activities described in the TOR, and also be responsible for the preparation of all written deliverables. The other team members would be a legislation expert and a water expert. The entire exercise is anticipated to take approximately one year. A time line is included in Section 9, and estimated level of effort for implementation of the activities described in the TOR is in Annex A.

2. Background

The origins of the SADC Protocol on shared watercourse systems lie in the Zambezi River System Action Plan (ZACPLAN) which was a creation of riparian states supported by UNEP as part of the Environmentally Sound Management of Inland Water (EMINWA) programme. First to be established was a Working Group of Experts from Zambia, Botswana, Zimbabwe, Malawi, Mozambique, Tanzania and the United Nations Council for Namibia. The first meeting of the Working Group took place in Nairobi, Kenya, in April 1985, which was also attended by representatives of international organizations. The only riparian state which did not attend this meeting was Angola, although it had been invited. Subsequent meetings followed in Lusaka, Zambia, in March 1986 and in Gaborone, Botswana, in January 1987. Later in 1987 at its meeting in Lusaka, the SADC (at that time SADCC) Council of Ministers adopted ZACPLAN as a SADC (SADCC) programme to be coordinated and implemented by the Sector Coordinator for Soil and Water Conservation and Land Utilization (SWCLU) (later ELMS) in Lesotho.

The Working Group identified various problems in the environmental management of the shared Zambezi system. Among them:

- a) inadequate land use and river basin planning,
- b) inadequate environmental impact assessment of water related development projects,
- c) inadequate monitoring and exchange of information relating to water quantity and quality, pollution control, climatic data, etc.,
- d) inadequate consultation and coordination among countries lying in a common river basin,
- e) deforestation and soil erosion causing sedimentation, and
- f) general degradation of natural resources, including flora and fauna.

Although at the inception of ZACPLAN there were no serious conflicts between riparian states over the use of water resources in the Zambezi basin, the need for ZACPLAN was nonetheless recognised because of the great development potential of the basin, which in turn had the potential of creating conflicts unless development was controlled, particularly over equitable sharing of the water resources and preservation of the environment. It was therefore

necessary to have a mechanism for coordination and management of the shared water resources of the Zambezi basin. With this objective in mind, 19 Zambezi Action Plan Projects (ZACPROs) were developed as part of ZACPLAN. ZACPRO 2 is the one relevant to what is now the SADC Protocol on shared watercourse systems.

More specifically, ZACPRO 2 was designed to develop regional legislation for management of the Zambezi River. The project focused on reviewing national and international legislation and proposing a new treaty among riparian states of the Zambezi River for effective joint management of the Zambezi river system.

Since ZACPLAN had already been adopted as a SADC programme, it was logical to extend ZACPRO 2 to cover all shared watercourse systems in the SADC region. Instead of development of a treaty among riparian states of the Zambezi River, the objective became a Protocol, under the SADC Treaty, on shared watercourse systems in the SADC region.

3. The Protocol

The Protocol was the culmination of a review of national legislation within SADC, as well as international legislation, followed by preparation of reports specific to each SADC country, indicating strengths and deficiencies of each country's national legislation. The review of national legislation at that time excluded South Africa, Mauritius, Sychelles and the Democratic Republic of Congo, which at that time were not members of SADC. Review of legislation was followed by preparation of a draft protocol on shared watercourse systems covering areas in which agreements among countries in the SADC region were required. The reports and the draft protocol were discussed at a meeting of legal experts in Livingstone, Zambia, in April 1993. Thereafter, a revised protocol was prepared which, after passing through and obtaining the approval of the SADC Council of Ministers, was ultimately signed by the Heads of State at Johannesburg, South Africa, on 28th August 1995.¹ The Protocol entered into force in September 1998 after receiving two-thirds majority ratifications of the eleven (11) preambular member states, namely Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Of these, all except Angola and Mozambique had ratified the Protocol by September 1998. Of the non-original signatories, namely the Democratic Republic of Congo, Mauritius and Seychelles, only Mauritius has acceded to the Protocol.

The purpose of the Protocol is to lay down principles, guidelines and a legal framework common to all SADC member states on the joint management, development, equitable and sustainable utilization of shared watercourse systems in the region. The Protocol lays down the general principles to be followed by member states sharing a watercourse system. Briefly stated these principles establish that:

- a) every riparian or basin state shall be able to utilize the watercourse systems within its territory; but that in so doing, the state is to have regard for the interests of the other riparian or basin states;
- b) member states within the basin of a shared watercourse are to maintain a proper balance between resource development and environmental conservation;
- c) member states within a shared watercourse system shall establish close cooperation among themselves regarding the study and execution of all projects

¹ By then South Africa had become a member of the regional grouping.

that are likely to have an effect or impact on the regime of the watercourse system;

- d) member states within a shared watercourse system shall exchange information and data regarding hydrological, hydrogeological, water quality, meteorological, and ecological conditions of the shared watercourse systems;
- e) member states shall utilize shared watercourse systems in an equitable manner and balance optimum utilization with adequate protection of the watercourse system;
- f) any person intending to use waters of a shared watercourse system within a member state for a non-domestic purpose, or to discharge waste into such waters, must first obtain a permit from the relevant authority of that state;
- g) a member state shall quickly notify any other state or international organization likely to be affected by any emergency arising within its territory;
- h) every member state shall do everything possible to prevent introduction into a shared watercourse system of alien aquatic species which may be detrimental to the ecosystem;
- i) member states shall protect shared watercourse systems and watercourses from pollution; and
- j) shared watercourse systems, waterworks and any installations shall be used only for peaceful purposes in line with the principles enshrined in the SADC Treaty and in the Charter of the United Nations, and in time of international and internal conflicts such waterworks and installations are to be inviolable.

It should be noted that the above is established by the original principles of the Protocol. SADC member States have since proposed further general principles which are subject to approval by the SADC Council of Ministers. Although these are not yet part of the Protocol, it is useful to have them in mind as they show the direction in which the Protocol is being taken. If approved, these principles will establish that

- a) Watercourse states shall participate in the use, development and protection of a shared watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the Protocol;

- b) State Parties shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of a shared watercourse;
- c) 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 thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified states to evaluate the possible effects of the planned measures;
- d) Unless otherwise agreed, a State Party providing notification as herein required shall allow the notified states a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;
- e) This period shall, at the request of a notified state for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months;
- f) During the period for reply to notification, the notifying state shall cooperate with the notified states by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation, and shall not implement or permit the implementation of the planned measures without the consent of the notified parties;
- g) The notified states shall communicate their findings to the notifying state as early as possible within the period for reply to notification. If a notified state finds that implementation of the planned measures would be inconsistent with the principle of reasonable and equitable utilization of a shared watercourse or the principle that each State Party shall, in utilizing a shared watercourse in its territory, take all appropriate measures to prevent the causing of significant harm to other watercourse states, it shall attach to its findings a documented explanation setting out reasons for the findings;
- h) If within the period for reply to notification, the notifying state receives no communication, it may, subject to the principles of reasonable and equitable utilization of a shared watercourse and that each State Party shall, in utilizing a shared watercourse in its territory, take all appropriate measures to prevent the causing of significant harm to other watercourse states, proceed with the

implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified states;

- i) State Parties shall, in utilizing a shared watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States;
- j) Where significant harm nevertheless is caused to another watercourse state, the states whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard to the principle of reasonable and equitable utilization of a watercourse in consultation with the affected states, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation;
- k) State Parties shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of a shared watercourse;
- l) State Parties shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution and environmental degradation of a shared watercourse that may cause significant harm to other watercourse states or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies and legislation in this connection;
- m) State Parties shall individually and, where appropriate, in cooperation with other states, take all measures with respect to a shared watercourse that are necessary to protect and preserve the aquatic environment, including estuaries, taking into account generally accepted international rules and standards;
- n) State Parties shall, at the request of any of them, enter into consultations concerning the management of a shared watercourse, which may include the establishment of a joint management mechanism;
- o) State Parties shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of a shared watercourse;
- p) Unless otherwise agreed, watercourse states shall participate on an equitable and reasonable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake;

- q) State Parties shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to a shared watercourse;
- r) State Parties shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regards to:
 - i) The safe operation and maintenance of installations, facilities, or other works related to a shared watercourse, and
 - ii) The protection of installations, facilities or other works from willful or negligent acts or the forces of nature;
- s) State Parties shall individually and, where appropriate, jointly take all appropriate measures to prevent or mitigate conditions related to a shared watercourse that may be harmful to other watercourse states, whether resulting from natural causes such as flood, siltation, erosion, salt-water intrusion, drought or human conduct such as water-borne diseases or desertification.

The Protocol in its present form gives member states power to establish, as may be necessary, appropriate institutions for its effective implementation. This is a strength in the sense that it gives member states much needed flexibility.

While maintaining this flexibility, the Protocol goes on to establish some of the institutions necessary for its proper implementation. These are:

- a) a monitoring unit based at the SADC Environment and Land Management Sector (ELMS);
- b) River Basin Commissions involving basin states for each drainage basin; and
- c) River Authorities or boards for each drainage basin.

The objectives of the River Basin Management institutions are

- a) to develop a monitoring policy for shared watercourse systems;
- b) to promote the equitable utilization of shared watercourse systems;

- c) to devise strategies for the development of shared watercourse systems; and
- d) to oversee and monitor the execution of water resources development plans in shared watercourse systems.

One of the functions of the River Basin Institutions which is relevant to this exercise is that, in consultation with watercourse states, they shall harmonise national water resources policies and legislation.

4. National Legislation in the Region

While there are wide variations from country to country, one thing that is common is that national legislation on water resources treats water purely from a domestic or national point of view, taking water as a national asset owned by the people of that country and entrusted to the government for management. National legislation does not specifically address the issue of management of shared watercourses, nor even make mention of international water management.² This is an obvious weakness because silence on existing regional legislation, such as the Protocol, hinders the implementation of the Protocol at national level. It is important to harmonize national laws with the Protocol because the legal systems of most SADC countries establish that treaties, protocols and international conventions do *not* apply at national level unless and until their obligations have been incorporated domestically as part of national law.

It follows that since most national legislation is silent on international obligations contained in the Protocol, those obligations are therefore not applicable at national level. There is a clear need for the obligations in the Protocol to be incorporated into the national legislation so that the Protocol and national legislation are in conformity, thereby facilitating Protocol implementation at national level. That is the harmonization sought.

The first review of national laws in each SADC country (except Angola) was done in 1993 under ZACPRO 2. The Protocol was not in existence then, so the purpose of the review was not to harmonize the laws with the Protocol, but rather to identify gaps or weaknesses in national legislation and conflicts in legislation between countries, and to recommend how to harmonize the national laws with international rules, at that time the Helsinki Rules.³

A first study to determine the extent of agreement between the Protocol and some countries in the Zambezi Basin was conducted in 1996. There has not been any further study aimed at determining similarities or differences between the Protocol and national laws.

² An exception is the South African National Water Act of 1998.

³ HELSINKI RULES

- a) A system of rivers and lakes should be treated as an intergrated whole, not piece-meal;
- b) Each basin state is entitled within its territory to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin;
- c) Basin states must respect the legal rights of each other, including preventing others, for whose acts the basin state is responsible under international law, from violating the legal rights of the other basin states;
- d) Rivers and lakes are navigable if they are currently used for commercial navigation.

All countries in the SADC have laws and regulations for regulation of different aspects of their water resources. The main objective of water legislation in each country is to provide a framework for the allocation, use, protection or conservation and control of water resources. The comprehensiveness of the legislation differs from country to country. Malawi, Zimbabwe, Mozambique and South Africa have fairly comprehensive statutes on water, with South Africa's being the most comprehensive in the region. Zambia's Water Act is comprehensive, but it lacks the required regulations. Apart from the Water Act, Zambia also has enacted into law a Natural Resources Conservation Act, a Zambezi River Authority Act of 1987, and an Environmental Protection and Pollution Control Act of 1990, all of which deal with issues related to water. Tanzania, Lesotho and other SADC member states also have passed laws touching on some aspects of water. For example, Tanzania enacted a Water Utilization (Control and Regulation) Act 1974 and amended it in 1981 and 1989, as well as a Waterworks ordinance (cap. 281), and the National Environment Management Act (1983).

In Lesotho, various aspects of water are regulated by the Water Act of 1956, the Water Resources Act of 1978, Land Act of 1979, the Water Pollution Control Regulations of 1980, the Lesotho Highlands Order of 1986, and the Water Sewage Order of 1990.

The examples of Zambia, Tanzania and Lesotho cited here illustrate a problem, namely that in some countries legislation is fragmented and scattered, which leads to inconsistencies between Acts of the same country and promotes duplication of institutions and activities.

While within SADC laws differ from country to country, there are some other shared difficulties as well, arising mostly from the laws governing allocation of water rights and tenure of those rights. Additional problems arise because of the absence of well-defined institutional responsibilities, such as for provision of water supply and for sanitation services and pollution control, and lack of guidelines on water pricing. In some countries, like Malawi, there is also the problem of legislation that does not provide adequate means for enforcement.⁴

Other problems that are prevalent in most countries are existence of ambiguous laws, ignorance by the majority of citizens of their own laws, lack of translation of laws into the local languages used by the majority of the people, nonavailability or limited availability of legal services to the majority of the people, lack of appropriate mechanisms for enforcement of the law, and prescription in the laws of fines that are too low to be of any meaning or to deter offenders.

⁴ However, it should be noted that the proposed Water Resources Act attempts to remedy this problem.

5. Benefits of Harmonization

Given this background, there are several obvious benefits of harmonizing national laws with the Protocol:

- Harmonization will make the Protocol implementable at national level;
- National jurisdictions would benefit by use of the institutions created, or which can be created, under the Protocol to improve enforcement of the law;
- Once harmonized with the Protocol, any provision in the national law which is in conflict with any provision of the Protocol will be deemed to have been repealed and to be of no effect to the extent of its inconsistency with the Protocol;⁵
- It will become possible to transfer or exchange expertise among SADC member states to assist with services in relation to matters under the Protocol which shall have also become part of SADC member states' national laws;
- Certain aspects, such as water pollution, would have a common standard of measurement, thereby reducing the risk of down stream states receiving water which by their laws is polluted, but which by the laws of the up stream states, which allowed the discharge, is not polluted.

More broadly, the harmonization of national laws with the Protocol, which creates institutions whose objectives include formulation of strategies for the development of shared watercourse systems and monitoring of execution of integrated water resources development, would be a major step towards achieving SADC's overall objective of attaining an integrated regional economy for the benefit of all member states.

The other reason for wishing to harmonize national laws arises no doubt from the difference among member states in their colonial past, and therefore legal systems. Some countries in the region have a British colonial heritage (e.g. Zambia, Malawi, Botswana, Lesotho). Others have a French heritage (e.g., Seychelles and Mauritius) or a Portuguese (e.g., Angola and Mozambique). And there are yet others with a settler past (e.g., Zimbabwe and South Africa). And recently one country with a Belgian colonial heritage (The Democratic Republic of Congo) has joined the regional grouping. With such a varied colonial experience, it is only natural that the bases and justification for the member states' national laws as well as the

⁵ In other words, where inconsistency exists, the provision in the Protocol will prevail.

purpose of the laws and the interests intended to be served will be different. With changed times in which these countries now find themselves belonging to a common regional community which seeks to achieve a more integrated regional economy, which in turn requires integrated management and development of shared water resources, the laws regulating the allocation, utilization, conservation and control of those resources in their respective countries need to be harmonized with the regional Protocol to which they are signatory.

6. Specific Provisions Requiring Harmonization with the Protocol

The specific provisions of national legislation which should be harmonized with the Protocol are those touching on:

- a) equitable utilization of a watercourse system;
- b) collection, analysis, storage and dissemination or exchange of information concerning a watercourse which is likely to affect the hydrological or hydrometeorological regime of the watercourse;
- c) the protection or conservation of a watercourse and the environment in general;
- d) the application for and the granting of water rights, such as the right to discharge wastes into a watercourse;
- e) water pollution control;
- f) the control of aquatic weeds and species;
- g) waterworks and safety of dams;
- h) environmental impact assessment of water related development projects within shared watercourse systems;
- i) regulation of stream flow and drainage;
- j) flood and drought mitigation ;
- k) the establishment of hydro-electric installations and generation of hydro-electric power;
- l) the use of water for non-domestic purposes;
- m) control of deforestation along watercourses, soil erosion and sedimentation; and
- n) offences and penalties.

7. Specific Activities Necessary to Harmonize National Laws with the SADC Protocol on Shared Watercourse Systems

Although the SADC Protocol on Shared Watercourse Systems has been ratified by the necessary two-thirds of the member states, its implementation remains constrained by the conflict or incompatibility or potential conflict or incompatibility between national laws, regulations and practices concerning water and related natural resources on the one hand and the Protocol on the other. For this reason, the WSCU and USAID/RSCA saw the need to smooth the path for the implementation of the Protocol by engaging consultants to carry out activities necessary for harmonization of national laws with the Protocol. The following are terms of reference for this consultancy:

1. National Legislation “Audit”

- a) Conduct a national legislation “audit” by collecting and examining national laws pertaining to water and the environment from all SADC member states as well as related national laws such as legislation on waterworks, hydro power, navigation, fisheries and irrigation. Compare provisions of such legislation with those of the Protocol.
- b) Also collect and examine existing joint river basin agreements and any other bilateral and multilateral agreements in the region on the utilisation of common watercourses and compare them to the Protocol.

In examining national legislation and bilateral and multilateral agreements, the purpose will be to identify provisions in the Protocol (and their purposes and implications) which are either not also reflected in the national laws, or which are treated differently. Where national legislation is silent on provisions covered in the Protocol, or treats the subject matter differently, the consultant will need to determine whether changes in such legislation are required to assure its compatibility with the Protocol and to facilitate implementation of Protocol provisions at the national level.

2. Determine views and practices regarding management of shared watercourses and the place of the Protocol in management of water resources

- a) In the course of collecting and considering national legislation, joint river basin agreements and other bilateral and multilateral agreements in the region dealing with utilization of shared watercourses and river basins, the consultants will interview key personnel in the Departments or Ministries of Water Affairs and Legal Affairs in each country to determine whether there are existing informal arrangements between countries on the utilization of shared watercourses, and to compare those arrangements with the Protocol.
- b) The consultants will also use this interview process to develop an understanding of countries' perception of the Protocol vis a vis their national laws and existing joint river basin agreements and other bilateral and multilateral agreements within the Region to which they are party in order to come up with a clear picture of whether or not member states believe that the Protocol is implementable and what needs to be done to make it implementable.

3. Analyze prior attempts at harmonizing national legislation with regional compacts governing shared watercourses systems, especially in the Zambezi River Basin

Find out the lessons learnt from the harmonization of national laws between countries sharing one or more river basins, drawing particularly from the experience of countries in the Zambezi River Basin, and bring those lessons to bear on the exercise of harmonizing national laws in the SADC region with the Protocol.

4. Identify laws requiring amendment

- a) In the course of conducting the interviews (#2 above) and examining national legislation against the Protocol, identify national laws, and provisions of national laws, relevant to the management of watercourse systems that are shared by two or more countries.

- b) Analyze those laws and compare them with the Protocol, identifying conflicts and inconsistencies, as well as provisions in national laws which directly inhibit the implementation of the Protocol or any part thereof, and isolate all such provisions with a view to recommending their amendment or removal from the national laws.

5. Analyze past attempts to harmonize national legislation with the SADC Energy Protocol

Draw from this exercise insights and approaches that should be considered in drawing up a program to harmonize national legislation with the Protocol on Shared Watercourse Systems.

6. Prepare draft report

- a) Produce a draft report outlining the deficiencies in national legislation on the management of shared watercourses, focussing on those differences, conflicts and inconsistencies between national laws, joint river basin agreements, and bilateral and multilateral agreements on the one hand and the Protocol on the other which make implementation of the latter difficult. The report should discuss options for harmonizing national legislation with the Protocol where necessary, indicating in detail which institutions need to take action to ensure harmonization.
- b) The report should recommend what should be done with respect to every national law, joint river basin agreement, bilateral and multilateral agreement in the region that (i) treat shared watercourse systems, and (ii) are in conflict or in discord with the Protocol in ways that inhibit implementation of the Protocol. Additionally where, in the judgement of the consultants, new legislation is required at national level to facilitate smooth implementation of the Protocol, the draft report will so recommend, indicating why such legislation is needed.

The report should further identify instances where national legislation is in conformity with the Protocol as models which can be used in developing approaches to resolving problems of conflict and incompatibility where they exist.

7. Work with SADC/WSCU to convene a workshop of legal experts and policy makers to discuss the draft report

The institutions to be involved in this workshop should be:

- a) the SADC Water Sector Coordination Unit (WSCU) " Chair;
- b) the SADC Environment and Land Management Sector (ELMS);
- c) Government departments or ministries of water affairs;
- d) Government departments or ministries responsible for environmental management; and
- e) Government departments or ministries of legal affairs.

8. Produce a revised report incorporating the recommendations emanating from the meeting of legal experts and policy makers

9. Work with SADC/WSCU to convene a broader based stakeholders' workshop to discuss the revised report and agree on actions to be taken

To harmonize the national laws, joint river basin agreements, and bilateral and multilateral agreements in the region dealing with the utilization of shared watercourses with the Protocol. Participants to this workshop are to be drawn from

- a) the SADC Secretariat;
- b) the SADC-WSCU (convenor, sponsor and chair);
- c) SADC-ELMS;
- d) USAID/RCSA (observer);
- e) UNDP (observer);

- f) Representatives of government water ministries or departments;
- g) Government legal experts;
- h) Policy makers;
- i) Representatives of joint river basin commissions; and
- j) Representatives of GWP-SATAC.

10. Produce a final report which takes into consideration and, as appropriate, reflects recommendations made at the stakeholder's workshop

The structure of the report will be much the same as the draft (TOR #6 above).

8. Qualifications of Team to Carry Out Terms of Reference

1. International Water Law Specialist (Team Leader)

Holder of a U.S. Doctor of Laws (JD) or Bachelor of Laws (LL.B.) degree. If training is received in the U.K. or in Europe, or in a country where legal training is similar to the British or European system, a Ph.D. in International Water Law is required. In either case, the incumbent should have at least 10 years of experience in matters of international water law including, ideally, experience in harmonization of water laws between two or more countries sharing a watercourse or river basin. He/She will also have worked with people from a number of water related disciplines, and must have strong communication and interpersonal skills. He/she must be self-motivated with strong leadership qualities.

Prior knowledge of national water laws of SADC member states of the one hand and the SADC Protocol on Shared Watercourse Systems on the other will be an obvious advantage.

He/She may be from within the SADC region or outside. A working knowledge of Portuguese and French languages will be an added advantage.

2. Legislation Specialist

A lawyer with a Masters or Bachelors degree with, for a holder of a masters degree, at least 5 years' experience in legislation analysis, preferably analysis of water legislation. For a holder of a Bachelors degree, at least 7 years' experience in analysis of water legislation will be required. Knowledge of national water legislation in SADC countries and experience in its analysis will be an obvious advantage. If training is received in the U.S., a JD on LL.B. degree will substitute for a Masters' degree.

Thorough knowledge of the SADC Protocol on Shared Watercourse Systems is a must. He/She must be a self starter and must be able to work comfortably and well in a team environment. He /She will be a national or permanent resident of a SADC country. A working knowledge of Portuguese and French will be an added advantage.

3. Water Expert

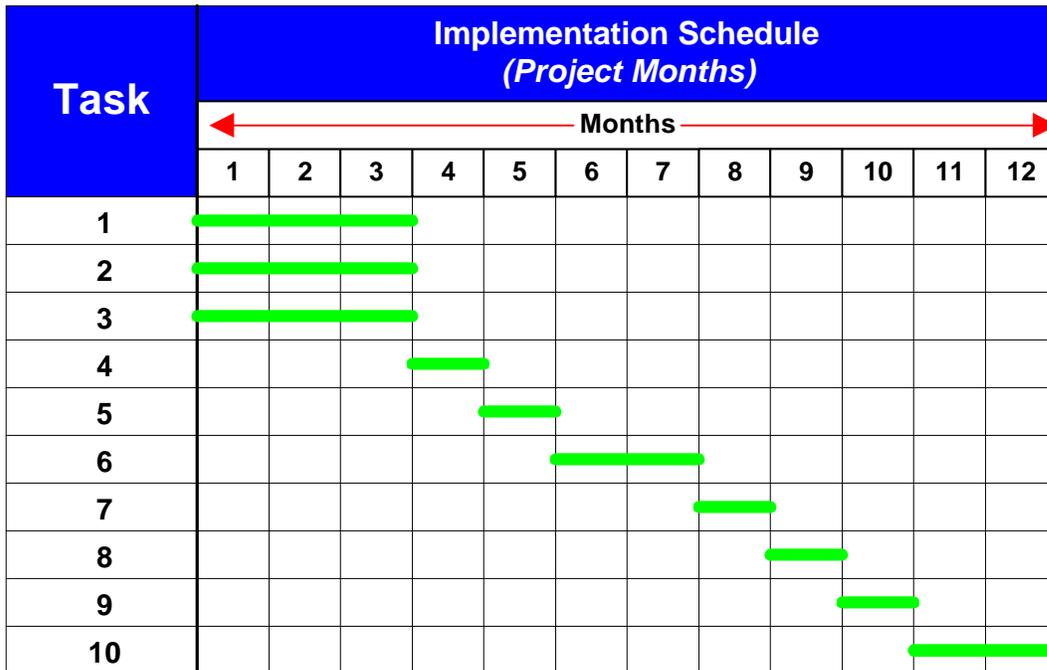
The incumbent should hold at least a Masters degree in a water-related field, with not less than 5 years' relevant experience. He/She must be a self starter, capable of working effectively within the interdisciplinary field of Integrated Water Resources Management. He/She will have strong interpersonal skills and will ideally have interacted and worked with people from the water sector in the SADC, and already possess good relations with them and with the major water sector stakeholders in the region. He/She will be a national or permanent resident of a SADC country. A working knowledge of Portuguese and French languages will be an added advantage.

9. Time Requirements and Schedule

- a) **Tasks 1, 2 and 3:** Three months
- b) **Task 4:** One month
- c) **Task 5:** One month
- d) **Task 6:** Two months
- e) **Task 7:** One month
- f) **Task 8:** One month
- g) **Task 9:** One month
- h) **Task 10:** Two months

All in all, the project will be completed in one year.

Exhibit 1: Time Line



Annex A: Level of Effort

STAFFING AND PERSON MONTHS	
ACTIVITY No. 1	
International Water Law Specialist	1.5 Person months
Legislation Specialist	1.5 Person months
Water Expert	
Research Assistants	2 Person months
ACTIVITY No. 2	
International Water Law Specialist	1 Person month
Legislation Specialist	1 Person month
Water Expert	1 Person month
Support Staff	1 Person month
ACTIVITY No. 3	
International Water Law Specialist	15 Person days
Legislation Specialist	15 Person days
Water Expert	10 Person days
ACTIVITY No. 4	
International Water Law Specialist	1 Person month
Legislation Specialist	1 Person month
Water Expert	
ACTIVITY No. 5	
International Water Law Specialist	
Legislation Specialist	1 Person month
Water Expert	
ACTIVITY No. 6	
International Water Law Specialist	2 Person months
Legislation Specialist	2 Person months
Water Expert	1.5 Person months
ACTIVITY No. 7	
International Water Law Specialist	1 Person month
Legislation Specialist	
Water Expert	
Support Staff	2 Person month

STAFFING AND PERSON MONTHS	
ACTIVITY No. 8	
International Water Law Specialist	1 Person month
Legislation Specialist	10 Person days
Water Expert	10 Person days
ACTIVITY No. 9	
International Water Law Specialist	1 Person month
Legislation Specialist	
Water Expert	
Support Staff	2 Person months
ACTIVITY No. 10	
International Water Law Specialist	1 Person month
Legislation Specialist	15 Person days
Water Expert	10 Person days