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Regional Approach for Water Policies in Southern Africa

Agathe Maupin

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Introduction

In Southern Africa, international and regional influence (via the elaboration of treaties, protocols or models[i]), as well as political and economic changes, have encouraged and contributed to reorganising water management. The region includes around fifteen transboundary catchment areas, i.e. watercourses shared between two or more States[ii].

During the 1990s, several States modified their laws and policies on water, following the evolutions of their political contexts. Other elements contributed also to new legislations, such as the Orange-Senqu River Treaty followed by the Orange-Senqu River Commission which recommended the reorganisation of national water management to certain riparian States, e.g. Botswana and Namibia[iii]. Approaches and models diverged from one State to another: Botswana and Namibia relied on very centralised methods of resource management, while South Africa, Mozambique and Zimbabwe followed decentralisation policies more or less successfully.

Since 1994, the Southern African Development Community (SADC) decided to favour policy harmonisation. What place does water have in the regional integration policy launched by the SADC? What interactions can be brought out between regional and national policies?

Regional integration as planned by the SADC is not yet ready, despite the presence of regional legislative and institutional initiatives (1). Disparities within SADC States are not only economic, political and social: important factors of differentiation and organisation as regards water resource management also exist (2). Sharing water resources at the regional level, with institutional links at the national and local levels remains partly theoretical (3). Some initiatives, while implementing partnerships between several States around the shared management of water resources, give hope for evolution (4). Transboundary initiatives are often the product of actions carried out outside a complex institutional system (5), and supported by multiple partnerships.

1. A Regional Integration?

Since its creation in 1992, the SADC has been promoting regional integration, including water management. Several reference texts on water management have been promulgated, the SADC Water Protocol and its revised version in particular. On the basis of these protocols, agreements have been signed, ratified and have come into force for certain transboundary regional watercourses. They are behind the establishment of organisations in charge of managing river basins, i.e. River Basin Commissions. Subsequently, the SADC, which was restructured at the beginning of the second millennium, also elaborated policies and strategies concerning water resources in the region, and developed action plans.

The SADC operates on the basis of protocols which are ratified by member States, and which lead to the establishment of institutional mechanisms to fulfil its objectives. These protocols are elaborated jointly around a sector or resource (energy, transport, water, forests etc., in total 21 sectors) and require the approval of all member States.
The SADC did not wait for the 1997 Framework Convention of the United Nations[iv] to ratify its first protocol on water: in 1995, the Protocol on Shared Watercourses (SADC, 2008a) was the first sector-based protocol developed by the SADC (Ramoeli, 2002). In the preamble of the first version, the Helsinki Rules[v] were mentioned. The revised version of 2000 (SADC, 2008b) includes certain general principles of the 1997 Framework Convention of the United Nations, on the initiative of certain States like Mozambique, which is the "downstream State" of Southern Africa: several transboundary watercourses of the region, like the Limpopo and Zambezi Rivers for example, end their course on Mozambican territory before flowing into the Indian Ocean[vi].

At the beginning of the second millennium, the 21 sectors

of the SADC – each one being managed by one of the member States – were restructured: until then the Water Sector had been managed by Lesotho from Maseru. In 1998, its Water Sector Coordination Unit had elaborated a Regional Strategic Action Plan (RSAP) for the Integrated Management of Water Resources (SADC, 1999, RSAP I), which was adopted by all the member States within the framework of the general regional development plan. In 2004, a new plan was established (SADC, 2003, RSAP II): the development of the Integrated Management of Water Resources (see Insert on IMWR) became the responsibility of the new Water Division of the Directorate of Infrastructure and Services of the SADC. Since 2011, the RSAP III has been taking over and will do so until 2015. It relies on three pillars: water governance, infrastructure development and water management, carried out in the form of a "water cube" (SADC, 2011, RSAP III). These three successive plans serve as reference to fulfil and assess the SADC's regional objectives as regards water management (provision of water, food security, establishment of waterways and hydroelectric production).

Transboundary River Basin Commissions, with their establishment being recommended already with the first water protocol, represent a form of institutional support in realising these objectives[vii].

Out of all transboundary catchment areas included in Southern Africa, several are endowed with multilateral River Basin Organisations: Okavango, Orange, Limpopo, Zambezi[viii], while others are managed jointly by agreements that did not give rise to the establishment of a Commission, such as the Incomati-Maputo[ix] system. Moreover, the SADC mentions several difficulties around these agreements, i.e. signature, ratification or membership (SADC, 2009).

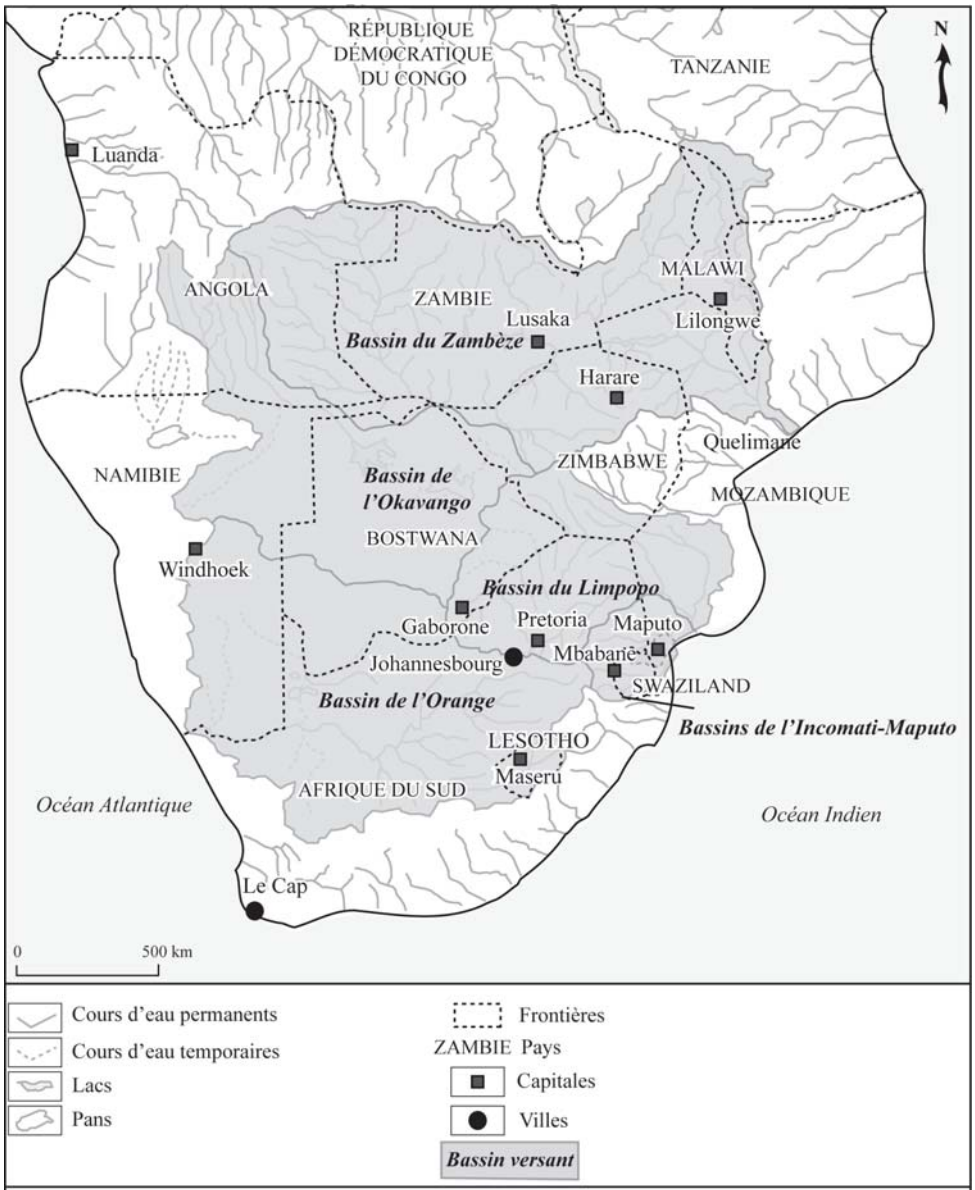

Figure 1. Transboundary Catchment Areas of Southern Africa

The regional management of water, as elaborated by the SADC, is supposed to be a general framework which would include international agreements, national laws, environmental projects, without for all that losing sight of the long term regional development objective (including making up for inequalities between members States in all areas). The structural reorganisation of the SADC only partly explains the difficulties in assessing the importance of water as far as regional integration is concerned: several waves of institutional reforms have also taken place at the national level.

2. Different National Policies

Even before adopting the above-mentioned regional plans and protocols, several national legislations and policies of SADC member States were renewed. Certain States chose to adopt an even more decentralised water management system organised around river basins, while others maintained their national water management organisations centralised. While similar institutions came into existence, making contact between them within the framework of transboundary river basin division has been a rather difficult situation. From one State to another, water management institutions do not have the same functions and autonomy, and as such their interactions are not obvious. The recent legislative formulation and the establishment of water institutions took on different forms: national plans, national policy, development policies, etc. All of these led to the establishment of an orientation framework for the national water policy of the States.

Responsibilities are shared generally between institutions managing legislative aspects and institutions dealing with water services. As such, the elaboration of new water policies in Southern Africa did not systematically go through the promulgation of new laws on water. This is the case of Botswana which still relies on the 1968 law on water; other laws in other countries have been regularly amended before being replaced altogether[x].

Botswana continues to modify progressively its water legislation[xi]. Water services in Botswana have been restructured thanks to a new sectorial plan promulgated in 2006. The Ministry of Minerals, Energy and Water Affairs (MMEWA) is behind the orientations of the new national water policy. The two units under the directives of the Ministry are the Department of Water Affairs (DWA) and the Water Utilities Corporation (WUC). These two bodies manage water for the entire country. Botswana has been relying on a form of management which is still very centralised nationally but autonomous locally, which corresponds to dynamics specific to the way the territory is organised. In Southern Africa, Botswana is somehow the State of all Commissions: it is the only State which is a signatory of treaties instituting four transboundary River Basin Commissions, i.e. OKACOM, ORASECOM, LIMCOM and ZAMCOM as previously mentioned. All of Botswana's water resources are shared. Indeed, adding to the fact that it is enclosed in the Southern region, it is the Southern African State which depends the most on good neighbourly relations.

The reorganisation of the national water policies of the Republics of **Malawi** and **Angola** took place in similar political, economic and social contexts. In either case, the State and its President in particular, are the guarantors and owners of water resources: they rely on decentralised bodies at the level of provinces or catchment basins, when these are used as a reference for management units.
The cases of the Kingdoms of Lesotho and Swaziland are different. **Lesotho** recently modified her legislation on water which dated back to 1978. The management of environmental resources is currently being reorganised (Environment Act, Lesotho, 2001), and a new legislation on water has recently been promulgated (Water Act, Lesotho, 2008). With this new legislation, the nation, through its sovereign, is still considered as the owner of water resources. Related legislations, those concerning local governments in particular, such as the 1997 Local Government Act of Lesotho, serve as medium for the establishment of water institutions at the local level. **Swaziland** being also a kingdom, the configuration of its national water policy is linked to the fact that the king owns water resources, while the traditional chiefs who are his representatives are those in charge of water management.
The Republic of **Namibia**, which has been independent since 1990, benefits from a national water policy very similar to that of South Africa, since 2008 only. Namibia adopted as early as the beginning of the millennium, the principle of integrated water resource management per river basin, by creating Basin Management Committees (BMC).

As such, the decentralised hierarchical management model has known some degree of success in Southern Africa: a Ministry and a Department, an Authority or Council globally manage resources at the national level and subdivide the territory into Regional Authorities often based on the catchment basin unit. The local scale is often represented on the one hand by Water User Associations and on the other by urban or rural Municipalities.

3. Potential Institutional Structuring

The South African, Zimbabwean and Mozambican cases offer an interesting institutional comparison. **South Africa** created Catchment Management Agencies (CMA), **Mozambique** Regional Water Agencies or *Administraçôes Regionais de Aguas* (ARA), and **Zimbabwe** Catchment Council (CC). The institutionalisation process turned out longer than expected in all cases[xii]. These agencies and councils are headed by the central bodies of the country[xiii] and their roles for now remain limited. Operating on similar scales, CMAs, ARAs and CCs have begun to establish partnerships in transboundary river basins.

Theoretically, the objective of water resource management decentralisation resides in a division of responsibilities and authority at the regional and local levels. Without listing the complete composition of the South African legislative arsenal, the National Water Act of 1998 involves the creation and establishment of Water Resources Management Institutions such as CMAs, each one overseeing a Water Management Area (WMA).
The legislation on water in Mozambique (*Lei de Águas*, 1991) which was elaborated in 1991, makes of water resources a property of the Mozambican State, and of water management (infrastructures, large-scale works etc.) a State prerogative. This law was later on completed with the elaboration and publication of national water policies (1995 and 2007), which contributed to specify and re-orient priorities. The National Water Department (DNA) established five ARAs, determined according to catchment basins (for example, ARA-Zambezi includes the Mozambican section of the Zambezi River Basin). ARAs are in charge of managing water resources based on a model similar to that of CMAs in South Africa (see Maud Orne-Gliemann's article) or, still, Water Agencies in France. The new tasks of these decentralised administrations are developing progressively: they touch various domains (elaboration of integrated basin management plan, tax collection, regulating water licences according to usage, etc.). ARAs relay the Mozambican State within Transboundary River Basin Commissions. As such, representatives of ARA-Sul (which covers the basins of the Limpopo and the Incomati-Maputo system in Mozambique) are present in addition to DNA representatives in the meetings organised by the Transboundary River Basin Commissions which include Mozambique.
As part of a general decentralisation process, the Government of Zimbabwe established seven CCs via its new Water Act of 1998, the year during which South Africa also promulgated her new Water Act. That same year, the Zimbabwean Government also instituted the Zimbabwe National Water Authority Act, thereby establishing the Zimbabwe National Water Authority

(ZINWA) which operates as a public enterprise with a Committee. The decentralisation process in Zimbabwe was carried out with the creation of a centralising national water management authority and with river basin institutions. With the ZINWA, water management was divided into two distinct branches: on the one hand, that of water management policy which remains the jurisdiction of the Ministry, and on the other that of the development and the economic as well as technical management of water, under the aegis of the ZINWA. Subsequently, CC autonomy was considerably restricted with the compulsory nomination of an executive member employed by the ZINWA.

Theoretically, CMAs, ARAs and CCs are in contact with transboundary river basin organisations. Within the framework of the tripartite agreement between South Africa, Mozambique and Swaziland[xiv], which concerns the joint management of the transboundary basins of the Incomati and Maputo Rivers, it is mainly the Incomati CMA (ICMA) which is in contact with ARA-Sul: these two institutions take part in the institutional meetings planned in the Agreement on the Incomaputo. The Komati Basin Water Authority[xv] also takes part in it.

In the case of the treaty concerning the Limpopo River Basin establishing the Limpopo Watercourse Commission (LIMCOM)[xvi], the South African CMAs (Limpopo, Levuvhu-Letaba, Crocodile West-Marico and Olifants), ARA-Sul for Mozambique and CC Mzingwane should work together during the LIMCOM meetings. Yet, the reports distributed by LIMCOM highlight significant differences concerning the way ARAs, CMAs and CCs operate: the ARA-Sul offers a consultation platform for actors who are concerned with the integrated management of the Limpopo River Basin, while the CMAs and the CC Mzingwane allow for active participation. The case of Botswana is mentioned as a 'separate' case, due to the distinctive organisation of its water management[xvii].

The similarities and disparities between institutions in charge of water management do not facilitate exchanges from one State to another, including within the Transboundary River Basin Commissions. It can be difficult to identify institutional interlocutors, thereby affecting the time it takes to build relationships.

Moreover, outside the Zimbabwean crisis which partly explains why the institutional restructuring of water management is blocked, to date the establishment of CMAs and ARAs is still unachieved. Problems linked to decentralised institution financing and to the lack of skilled personnel per basin, partly explain their delay. The fact that former power relations were not challenged, whereby the same actors with the same powers continue to manage water resources, is also another plausible reason.

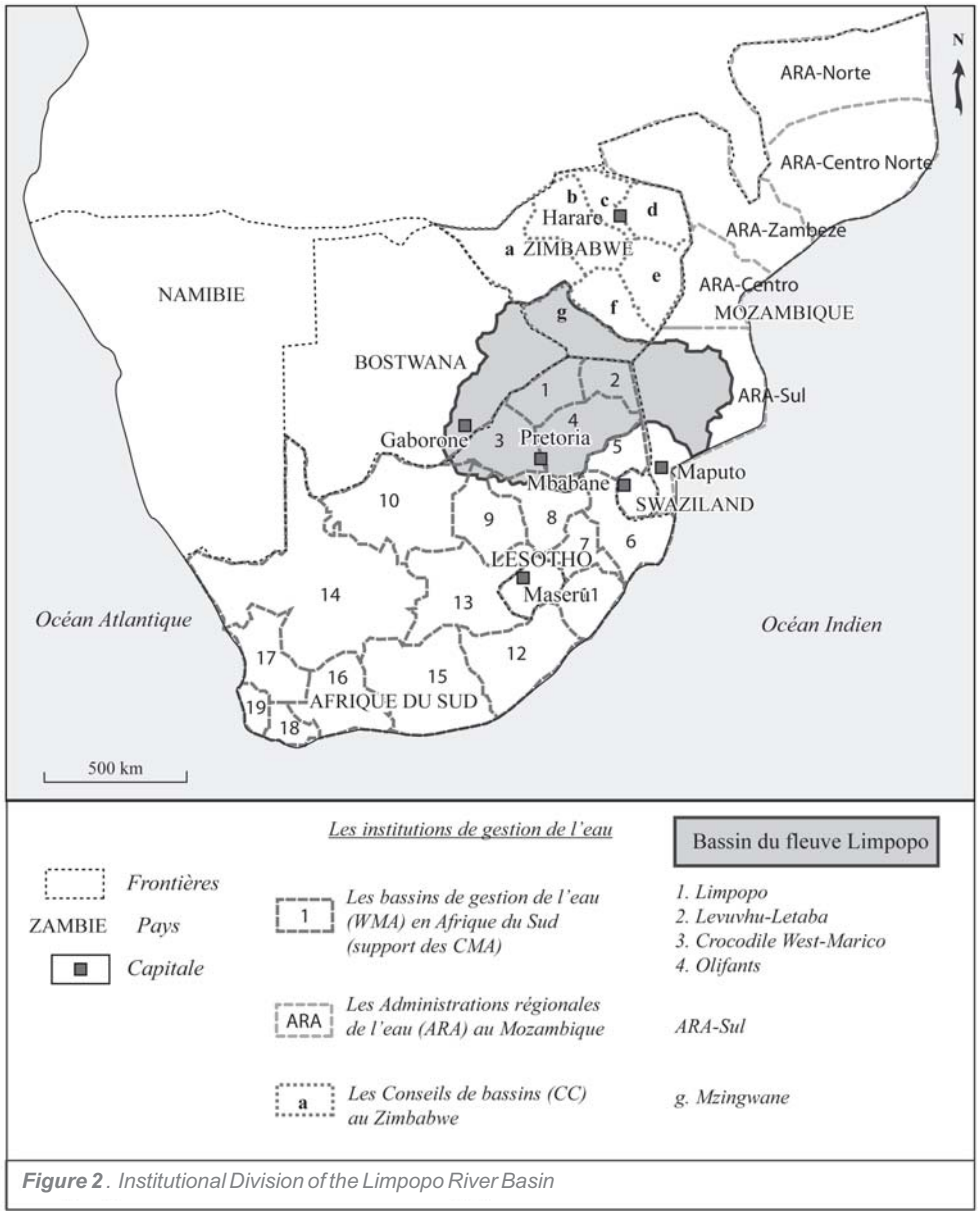

Figure 2. Institutional Division of the Limpopo River Basin

4. Initiatives per Basin

Water management initiatives slipping from institutional frameworks are quickly taken over by preferred management units, i.e. the catchment basin bodies. As such, research conducted on ephemeral watercourses has been slowed down by institutional divisions which differ in Namibia and Botswana. Conversely, the initiative called *Every River Has Its People*, launched by the Kalahari Conservation Society, highlighted and made up for a number of problems within the

framework of the joint water management of the Okavango River Basin. Since then this initiative is being tested in the Zambezi River Basin.

The project on ephemeral river basins in semi-arid and arid regions (*Ephemeral River Basins*, ERB), concerned the study of pilot areas in Namibia, Botswana and South Africa, with a view to improving their management. The Fish River, Buffels River and Boteti River were part of these pilot areas. Confronted with multiple institutions and uses to be taken into account[xviii], several analyses highlighted the difficulty and necessity of integrating all these institutions in the same River Basin Committee[xix].
The *Every River Has Its People* initiative concerned the Okavango River Basin which is shared between Angola, Botswana, Namibia (and Zimbabwe). It was to facilitate community participation within the Permanent Okavango River Basin Commission (OKACOM). The project enabled communities to take decisions on issues relating to the evolution of the management of the Okavango River Basin. Such increased participation was materialised during the Basin Wide Forum (BWF)[xx].
A similar initiative has since then been launched in the Zambezi River Basin and named *Zambezi Has Its People* (ZHIP). This initiative operates as part of the vast action programme called ZACPRO 6.2, conducted by ZAMCOM under the aegis of the SADC. Its objective is to succeed in integrating all actors into a regional participative model, to ensure they join in the management of the Zambezi River Basin[xxi].

The restructuring of water management in Southern Africa is above all a legislative and/or an institutional matter. Increasing importance has been given to the elaboration of integrated water resource management plans. Results are currently very mitigated, and this for several reasons. On the one hand, the elaboration of such plans requires first that institutions be established and exchange the necessary information. Yet, while the functions and powers of these institutions are often described in detail in legislations and national policies, interactions between them are rarely mentioned. On the other hand, the links between national/local and international institutions are not determined any clearer in national laws and policies. Finally, inter-institutional interactions do not represent a priority for the States which are more concerned about restructuring water services, than linking the various scales of water resource management.

5. Conclusion: An Increasingly Complex Institutional System

Southern Africa does have at its disposal more or less recent legislative and institutional tools to manage water resources. The coexistence of a regional water policy and an institutional framework and national water policy restructuring contribute to the current institutional complexity of the region.

Despite the States' desire to see regional development benefit from joint management, priorities vary from one State to the other: South Africa, through internal reforms, is trying to structure the management of resource distribution by sector and within her population, while Botswana is busy securing water resources shared with other States. Mozambique remains one of the States of Southern Africa and in the world where the water and sanitation access rate is very low: although the institutional structure of water management in Mozambique is similar to that of South Africa and Zimbabwe, the water and sanitation access rate urgently needs to increase by almost two-thirds.

Discourses on institutional reorganisation are structured around two elements: integrated water resource management and restructuring water services. Yet, in the end, a truly integrated water resource management is obscured by these two very distinct priorities in the pieces of legislations promulgated by the Southern African States.

The bilateral and multilateral agreements evoked in this article reflect also the difficult reconciliation of national and regional policies, as well as national and supranational managing bodies: according to the regional States, the completion of institutional reforms is more or less at an advanced stage. Yet, the main idea behind effecting change among institutions in charge of managing water resources is to make them more efficient, so as to meet growing needs, catering for competition between sectors and making up for inequalities, among others. Therefore, while it is difficult to assess exchanges between water institutions, the processes and stages of their institutionalisation can constitute interesting indicators of their regional integration in Southern Africa.

i. The 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, also known as the New York Convention; Protocol on the shared watercourses of the Southern African Development Community (SADC, 1998, 2003); Integrated Water Resource Management (IWRM) model, see insert p.9.
ii. According to the accounts of the SADC **http://www.sadc.int/english/regional-integration/is/water/river-basins/** (consulted online on 10 October 2012).
iii. According to the technical report for ORASECOM (Tompkins, 2007).
iv. This Convention was adopted on the 21st of May 1997 by the United Nation General Assembly. It offers a general framework of co-operation between States to improve the sharing, management and protection of international watercourses. To date, this Convention has still not come into effect, for lack of ratification: in October 2012, only 16 countries out of 28 had signed it (ONU, 2012).

v. The Helsinki Rules consist of a series of principles which were defined by the International Law Association in 1966. They are known as the "Helsinki Rules on the Uses of International Rivers" (Salman, 2007).

vi. As far as international law on water is concerned, the Convention ensures the recognition of certain principles, particularly the rights of States situated downstream of transboundary watercourses.

vii. These River Basin Commissions can be defined as "permanent structures of consultation for managing transboundary hydrographical catchment areas, with the purpose of co-ordinating the actions of the various States in favour of regional integration and in accordance with the socioeconomic and environmental principles evoked in the Protocol for the management of shared watercourses in the SADC." (Carles and Maupin, 2010).

viii. The basins of the Okavango, Orange, Limpopo and Zambezi Rivers benefit from the OKACOM (*Permanent Okavango River Basin Commission*), the ORASECOM (*Orange-Senqu River Commission*), the LIMCOM (*Limpopo Watercourse Commission*) and the ZAMCOM (*Zambezi Watercourse Commission*) respectively.

ix. The Incomati-Maputo system is managed by a tripartite technical agreement signed by the Republics of South Africa and Mozambique and the Kingdom of Swaziland in 2002.

x. This is the case of the Zambian water legislation which has been amended in 1950, 1955, 1959, 1965, 1970 and 1994 before being replaced altogether in 2011.

xi. In 2005, Botswana developed a Draft Water Bill to reinforce or even replace its 1968 water legislation.

xii. Only a few South African CMAs were truly autonomous before the announcement of a complete restructuring in 2011, going from nineteen to nine CMAs, and in the case of ARAs, only three are fully operational. The Zimbabwean case is different following the major difficulties with which the country has been confronted in every domain since 2000.

xiii. Department of Water Affairs (DWA) is the central organ for water management in South Africa; Direcção Nacional de Aguas (DNA) is the Mozambican equivalent; finally, the Zimbabwe National Water Authority (ZINWA) is in charge of centralising water management in Zimbabwe.

xiv. The Tripartite Incomaputo Interim Agreement was signed symbolically in 2002 during the Summit on Sustainable Development in Johannesburg. The Agreement provides for the creation of commissions on the Incomati and Maputo River Basins. However, the current Technical Committee does not consider the elaboration and implementation of a Commission as a priority.

xv. The Komati Basin Water Authority (KOBWA) is a bilateral management organisation which was established by South Africa and Swaziland in 1993, after the signature in 1992 of the Treaty establishing a joint commission between the two States to manage the Incomati River Basin (this Treaty excluded Mozambique). A joint South African-Swazi website exists in this regard: **http://www.kobwa.co.za**

xvi. LIMCOM was formally established in 2009 with the establishment of a permanent Secretariat in Maputo (Mozambique), following the ratification of a multilateral treaty between South Africa, Botswana, Mozambique and Zimbabwe (LIMCOM, Mozambique, 2003).

xvii. According to a report available online:
http://www.limpoporak.com/_system/DMSStorage/3451en/LIMCOM%20Stakeholder%20participation%20workshop_workshop%20report_draft%20final_1%20Dec%202010%20(2).pdf

xviii. 45 organisations have been identified in the Fish River Basin within the framework of this study.

xix. Desert Research Foundation of Namibia – DRFN (2010), *Ephemeral River Basins – ERB-SADC project, Proceedings of the eighth Orange-Fish River Basin Stakeholder Forum Meeting*, 16-17 February 2010, Keetmanshoop, Namibia, DRFN, Windhoek.
http://www.drfn.info/docs/erb/workshop_proceedings/Proceedings_8th_OFRB_stakeholder%20meeting_Feb_10.pdf

xx. The initiative concerning the Okavango River Basin is available online **http://www.kcs.org.bw/index.php/programmes/erp**

xxi. This participative community project is all the more difficult to realise since Zambezi River Basin is shared between no less than eight States (Angola, Botswana, Namibia, Malawi, Mozambique, Tanzania, Zambia and Zimbabwe). The initiative concerning the Zambezi River Basin is available online:
http://www.kcs.org.bw/index.php/programmes/zhip

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