

GWP-SA Support to the Lesotho Integrated Catchment Management Programme

Regional Policy Harmonization Assessment

Analytical Framework

January 2021

Table of Contents

| | |
|-------------------------------------|----|
| 1 Background | 3 |
| 2 Methodology..... | 4 |
| 2.1 Process | 4 |
| 2.2 Analytical framework..... | 6 |
| 3 Stakeholder interview guide | 13 |

1 Background

The Global Water Partnership Southern Africa (GWP SA) is a SADC implementing agency and, in that capacity, supports the component “Support to Integrated Catchment Management (ICM) in Lesotho” of the broader BMZ and EU funded programme “Transboundary Water Management in the SADC region”, implemented by GIZ.

The Integrated Catchment Management (ICM) approach is an effort to reduce catchment degradation and ensure sustainable water availability to an increasing population under a changing climate. The Lesotho National Strategic Development Plans 2012-2017 and 2018-2023 (NSDP I and NSDP II) address this, and the Government of Lesotho sees the formulation of a National Integrated Catchment Management approach as a priority. The overall objective of the project is “to ensure that ICM facilitates socio-economic development and adaptation to climate change in Lesotho” with the specific objective that “ICM is institutionalized and under full implementation in Lesotho based on gender equality and climate change adaptation principles”.

The GWP-SA support is structured into and delivered across four distinct, but inter-related outputs, namely

Output 1: A harmonized policy framework for integrated catchment management

Output 2: Effective, efficient, and inclusive institutions

Output 3: Human capacities, skills, and knowledge

Output 4: Implementation of watershed rehabilitation measures

In support of Output 1, GWP-SA has commissioned a ‘Regional Policy Harmonization Assessment’ that will complement an ongoing ‘National Policy Harmonization Assessment’. The objectives of the Regional Policy Harmonization Assessment are to:

- a) Develop an understanding of the current policy context for ICM in Lesotho;
- b) Develop a replicable analytical framework for assessing
 - i. the level of alignment,
 - ii. the extent of practical implementation and compliance, and,
 - iii. opportunities of harmonization,of a country’s laws, regulations, guidelines, policies and institutional framework to the basin level and regional level strategic planning and policy context, and to the international treaties, protocols, agreements, and conventions that the country has ratified or acceded to. The framework must also be able to identify the gaps (jurisdictional/capacities/institutional/other) that must be overcome to enable full alignment and implementation.
- c) Apply the framework to the Lesotho context, assessing the level of alignment of existing Lesotho policies to the Orange-Senqu basin and regional policy contexts, and to the international treaties, protocols, agreements, and conventions that Lesotho has ratified and acceded to, to foster Integrated Water Resources Management. This includes assessing the level and extent of implementation, where the gaps are, and determining what measures need to be taken to ensure harmonization with the regional framework. Highlight how harmonization of policies, laws,

regulations, and institutions in the region could impact on the implementation of Integrated Catchment Management in Lesotho and in the region, and the knock-on impact on water, energy and food security, ecosystems health and climate resilience.

- d) Develop a policy reform strategy including a roadmap for the harmonization of existing policies, laws, regulations, and institutional frameworks in Lesotho relevant to Integrated Catchment Management to the regional policy context, and to international treaties, protocols, agreements, and conventions that Lesotho has ratified and acceded to, and highlight the capacity building, institutional and economic requirements for implementing this policy harmonization.

2 Methodology

The regional policy harmonization assessment builds on and complements the national policy harmonization assessment (undertaken by the Particip team). The inception report has laid out some detail on how the two inter-linked activities will be aligned and coordinated.

2.1 Process

This is reflected in the methodology for the regional assessment, which closely aligns with the methodological process as the national assessment (albeit using different assessment criteria). In terms of process the review follows the following steps.

- 1. Identification and collation of legal, policy, and strategy instruments relating to (relevant aspect of) ICM.**

To this end, an initial mapping of relevant instruments had already been done for national level and regional level instruments. Many of the instruments have already been obtained and filed. The remainder will be collected prior and during the stakeholder consultation process.

- 2. Review and analysis of legal, policy, and strategy instruments relating to (relevant aspect of) ICM**

This review forms of the core of the substantive analysis and reviews the substantive content and design of the instruments using the defined assessment criteria (presented in section 2.2. below).

- 3. Targeted stakeholder consultation**

The draft analysis will be ground-truthed with relevant stakeholders in close coordination and cooperation with the Particip team. A list of stakeholders has been identified and was presented in the inception report. The regional policy harmonization assessment component of the

consultation process will use the (draft) stakeholder interview guide (questionnaire) presented in section 3 of this report.

Key elements of the stakeholder participation process are to:

- a) Identify policy and legislative commonality and pinpoint best practices for the betterment of community of practice in policy harmonization;
- b) Identify shortcomings in the policy and legislative framework for (relevant aspect of) ICM on the basis of the findings of the above review and analysis.
- c) Identify proposals to address such shortcomings, whilst contributing to the elaboration of a reform strategy for a coherent policy and legislative framework for ICM;
- d) Develop proposals for necessary refinement of policy and legislative instruments
- e) Elicit feedback on preliminary recommendations
- f) Utilize opportunity to raise awareness amongst key stakeholders of the policy and legislative framework for ICM.

4. Development of preliminary recommendations for legal/ policy reform

Informed by the findings of the policy assessment, recommendations for a policy reform strategy and roadmap for policy alignment will be developed. The reform strategy will highlight priority areas for policy reform and provide concrete recommendations for proposed actions, i.e., the nature, scope, recommended timing for each proposed reform item.

5. Stakeholder validation of policy analysis and reform proposals

The draft analysis report will be submitted for review and consideration by relevant stakeholders. As highlighted in section 3.2.4 the review process is proposed to involve a technical review by a designated review panel (as advised by government, through the ICU) as well as a broader stakeholder validation at the validation workshop to be held by for Particip led ICM project.

6. Finalization of outputs

Following the stakeholder validation, the comments will be integrated, and draft reports finalised.

2.2 Analytical framework

The national policy harmonization assessment reviews the relevant legal and policy instruments against identified criteria.

These criteria to be applied at the national level are:

Effectiveness

a) Whether the measure appropriately addresses key elements and objectives of ICM:

- Breadth / sufficiency of mandate;
- Substantive coverage / scope of application; and
- Subsidiarity (decision-making at the lowest appropriate / practicable level of administration) having particular regard to the ongoing process of decentralization in Lesotho.

b) Whether the measure envisages, creates, or contributes to a practicable ICM regime for Lesotho:

- Sufficiently flexible;
- Sustainably implementable;
- Practically enforceable; and
- Financially sustainable.

Cross-sectoral application

c) Whether the measure links social and economic development with protection of natural ecosystems:

- Contribution to horizontal integration / fragmentation.

d) Whether the measure envisages, creates, or contributes to an integrated management framework;

e) Whether the measure links with the broader National Development Strategy / Planning Framework – across a mid- to long-term horizon;

f) Contribution to vertical integration / fragmentation;

g) Whether the measure coheres with global, regional commitments (e.g., re climate change):

- Contribution to vertical integration / fragmentation.

h) Whether the measure takes account of any recent, current, or impending significant infrastructure investments or commercial development need;

Proportionality

i) Whether the measure is likely to achieve its legitimate aims;

j) Whether the measure is cost-effective;

k) Whether the measure interferes to the least extent necessary with established interests, practices, or policies;

- l) Whether the measure involves an equitable and reasonable distribution of costs and benefits across all sectors.

Currency

- m) Whether the measure is outdated:

- Obsolete in objectives, scope of application or approach;
- Requiring updating (e.g., regarding penalties); or
- Requiring consolidation / codification (regarding amending measures).

Consistency

- n) Whether the measure promotes (at least some) elements and objectives of ICM;
- o) Whether the measure runs contrary to (certain) elements and objectives of ICM;
- p) Whether the measures conflicts with other national measures:

- Conflicting / overlapping roles and mandates;
- Gaps regarding key functions (e.g., enforcement); or
- Ambiguities regarding scope of application.

Participatory elements

- q) Whether the measure seeks to raise awareness of (elements and objectives) of ICM;
- r) Whether the measure promotes transparency – by means of freedom of public / stakeholder access to relevant information;
- s) Whether the measure promotes public / stakeholder participation in decision-making – by means of appropriately structured consultation;
- t) Whether the measure permits and facilitates reviewability – by means of a general right to review decisions made thereunder.

The regional policy harmonization assessment adds to this an international/ regional/ basin-wide dimension in that it assesses if, and to what extent, the national level legal and policy instruments provide the basis for Lesotho to meet its obligations committed to in international, regional, and basin-wide legal agreements and plans. It is therefore important to bear in mind that the regional policy harmonization assessment does not assess the suitability (or fitness for purpose) of the international/regional/ basin-wide legal and policy framework per se. Rather it is the regional dimension of the fitness for purpose of the national level policy and legal framework for ICM in Lesotho. Thus, the regional assessment builds on the criteria used for the national level assessment and assesses if, and to what extent, international/ regional/ basin-wide requirements can be implemented within the framework of the national legislation, policies, and strategies. Hence, while both the national and the regional level assessment can function as stand-alone assessments, they add the most value when viewed in conjunction, since the combined findings of these inter-related assessments provide a comprehensive assessment of the suitability of legislation/ policies/ strategies for ICM implementation, including the consideration of international/ regional/ basin-wide requirements. Consequently, when applied in a different transboundary setting it is also recommended that the combined methodology for national and regional assessment is used.

To assess the international/ regional/ basin-wide dimension of national legislation, policies and strategies, the analysis will provide for five key steps:

- 1. Identifying the relevant international/ regional/ basin-wide legal, policy and strategy instruments that Lesotho has committed to and which (ought to) guide/ influence ICM at national level.**

A preliminary list of instruments has already been drawn up and presented in the inception report. It is envisaged that this list forms the core of the assessment, but it is possible that some additional instruments might be identified during the research, or that some instruments might be removed if on closer inspection they bear little relevance for the analysis.

For the detailed analysis, the instruments are clustered into two categories. Category 1 are the instruments considered of direct relevance for ICM in Lesotho. These will undergo a detailed assessment. Category 2 are instruments considered of (at the most) indirect relevance for ICM in Lesotho. These will merely be screened rapidly for any elements that might be of relevance, which, if present, are then included in the analysis.

- 2. Identifying the key principles/ obligations set out in these instruments that Lesotho needs to adhere to/ implement at national level?**

This part of the analysis identifies and maps the key principles and/ or legal obligations set out in the international/ regional/ basin-wide instruments. This is critical for identifying if, and to what extent, the principles are reflected in national instruments (step 4), and whether the national instruments provide for the necessary tools (step 5) that practitioners need to implement ICM at national level in manner that adheres to international commitments.

- 3. Mapping the relevant national instruments (cor)responding to the international/ regional/ basin-wide instruments.**

As with the international/ regional/ basin-wide instruments, a preliminary list of relevant national level instruments has already been drawn up and presented in the inception report. It is envisaged that this list forms the core of the assessment, but it is possible that some additional instruments might be identified during the research, or that some instruments might be removed if on closer inspection they bear little relevance for the analysis. In an overview table (see below) the national level instruments will be shown as they correspond to the relevant international/ regional/ basin-wide instruments. It is important to note that in this analysis it is well possible (in fact likely) that several national instruments contribute to the implementation of one international/ regional/ basin-wide instrument. Likewise, the same national instrument can contribute to the implementation of several international/ regional/ basin-wide instruments. In showing these linkages the assessment table will provide a as comprehensive as possible matrix of the interlinkages between national and international/ regional/ basin-wide instruments.

- 4. Analyzing if the key principles and or legal commitments of the regional instrument are adequately reflected in the corresponding national level instruments.**

In this part of the analysis, it will be assessed if the national level instruments reflect the legal/ policy principles that Lesotho has committed to at the international level. Each national instrument would commonly only provide for the legal and policy tools to implement the principles and requirements set out in that instrument. Hence, if principles agreed at the international/ regional/ basin-wide level are not adopted in national instruments, there might be no clear legal/ policy basis that bind national level practitioners, and the instrument might also not provide catchment managers with the necessary legal basis and/ or tools to meet international obligations. It is therefore important that there is a high degree of reciprocity between the principles committed to at international/ regional/ basin-wide level and national level legal and policy documents. The analysis will show the degree of reciprocity and place emphasis on identifying possible gaps in the national level framework, which will subsequently be addressed in the proposal for policy reform.

5. Assessing if the national level instruments provide the necessary tools to implement ICM in a way that meets international legal obligations and joint planning commitments?

This part of the assessment is a logical continuation of step 4 in which the reciprocity of legal/ policy principles was assessed. Step 5 focuses on legal/ policy tools (e.g., legal provisions; budgeting guidelines etc.) that practitioners would need to effectively implement at national level the requirements from international/ regional/ basin-wide instruments. For example, if a regional or basin-wide agreement requires the exchange of data with other countries, national legislation needs to permit such exchange and provide for institutional mechanism through which such exchange can be facilitated. Likewise, if for example a notification process for a planned measure in another country requires a transboundary environmental impact assessment, national legislation in Lesotho needs to provide for the possibility of the consultants appointed by the project developer to consult stakeholders in Lesotho. This part of the analysis contains both quantitative (i.e., if the necessary tools are provided for) and qualitative elements (i.e., if the tools provided for are ‘fit for purpose’ in practice). Whether or not the provided for legal and policy tools are suitably fit for purpose in practice will be strongly informed by the findings from the stakeholder consultations, since these will provide a ‘real-life’ check of the tools with practitioners working on the ground. As with the assessment in step 4, this analysis will place emphasis on identifying gaps in the national framework and make suggestions (in the policy reform roadmap) of how these gaps could be addressed.

The five-step analysis described above, will be done in the form of a summary table following the example below, and complemented by a narrative description of the key findings.

Table 1: Overview of the analytical framework summary table

| Assessment category | International/ Regional instrument | Key principles/ obligations of member states | National instruments responding to the int./ reg. instrument | Are key principles (of int./ reg. instrument) reflected in nat. instrument? | Does nat. instrument provide necessary tools to implement int./ reg. principles |
|---------------------|------------------------------------|--|--|---|---|
|---------------------|------------------------------------|--|--|---|---|

| | | | | | |
|--|--|--|--|--|---|
| | | | | | and/ or obligations |
| Orange-Senqu basin-specific instruments | | | | | |
| 1 | ORASECOM Agreement | | e.g. Water Act | yes, e.g. Art. X refers to principle y | |
| 1 | LHWP Agreements | | | | |
| 1 | ORASECOM IWRM Plan | | Water Act | | Yes, Act provides for X,Y,Z; No in that the Act does not provide for Q,R,S |
| | | | Integrated Water Resources Management Strategy (IWRMS) | | Yes, IWRMS provides for x,y,z |
| 1 | Orange-Senqu Strategic Action Programme | | Integrated Water Resources Management Strategy (IWRMS) | | |
| Regional instruments | | | | | |
| Transboundary Water Management | | | | | |
| 1 | Revised SADC Protocol on Shared Watercourses | | | | |
| 1 | SADC Regional Water Policy (2005) | | | | |
| 1 | SADC Regional Water Strategy | | | | |
| 2 | SADC Regional Strategic Action Plan (RSAP) V | | | | |
| 2 | Regional Infrastructure Development Master Plan – Water (2012) | | | | |
| 1 | SADC Climate Change Adaptation Strategy and Gender Action Plan for the Water Sector (2015) | | | | |
| Environment | | | | | |

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|--|--|--|--|--|--|
| 1 | SADC Protocol on Environmental Management for Sustainable Development (2014)[1] | | | | |
| Land Use and Agriculture | | | | | |
| 1 | SADC Protocol on Forestry (2002) | | | | |
| 1 | SADC Regional Agricultural Policy, 2013 | | | | |
| 1 | SADC 2014 Food and Nutrition Security Strategy 2015 – 2025 | | | | |
| Industrial Development | | | | | |
| 1 | SADC Protocol on Energy (1996) | | | | |
| 1 | SADC Protocol on Mining (1997) | | | | |
| 1 | SADC Industrialisation Strategy and Roadmap (2015) | | | | |
| Overarching | | | | | |
| 2 | SADC Vision 2050 | | | | |
| 2 | SADC Treaty | | | | |
| 1 | SADC Protocol on Gender and Development (2008) | | | | |
| 2 | SADC Regional Indicative Strategic Development Plan (2020-2030) | | | | |
| International/ global instruments | | | | | |
| Transboundary Water Management | | | | | |
| 1 | UN Convention on Non-Navigational Uses of International Watercourses (1997) | | | | |
| 1 | Convention on the Protection and Use of Transboundary Watercourses and International Lakes | | | | |

| | | | | | |
|---------------------------------|--|--|--|--|--|
| | (UNECE Convention) | | | | |
| 1 | ILC Draft Articles on Transboundary Aquifers | | | | |
| Environment | | | | | |
| 1 | Sustainable Development Goals (2015) | | | | |
| 1 | Convention on Biological Diversity (1992) | | | | |
| 1 | Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) | | | | |
| 1 | Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES (1973) | | | | |
| 2 | Nagoya Protocol on Access and Benefit Sharing, ABS (2010) | | | | |
| Land Use and Agriculture | | | | | |
| 1 | United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, UNCCD (1994) | | | | |
| Climate Change | | | | | |
| 2 | United Nations Framework Convention on Climate Change, UNFCCC (1992) | | | | |

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|---|------------------------|--|--|--|--|
| 2 | Kyoto Protocol (2005) | | | | |
| 2 | Paris Agreement (2015) | | | | |

3 Stakeholder interview guide

As highlighted in the inception report, stakeholder consultations form an important element of the assignment and will be closely coordinated with the Particip team. As with the analytical framework, the questions for stakeholders need to be seen as building on and complementing the stakeholder interview guides developed for the national policy harmonization assessment. For the international/ regional component of the assessment the following stakeholder questions are proposed.

A: Policy and Legal Framework

1. What are the main national laws, policies, strategies and plans relevant for your work? Please list.
2. Are you aware of any international/ regional/ Orange-Senqu basin-wide agreements, strategies or plans that are relevant for your work? If yes, please list.

B: National Level Implementation

3. Please explain briefly **how** these international/ regional/ Orange-Senqu basin-wide agreements, strategies or plans are relevant for your work at national level.
4. Are the principles and requirements from international/ regional/ Orange-Senqu basin-wide agreements clearly reflected in the national laws, policies, strategies and plans relevant for your work?

