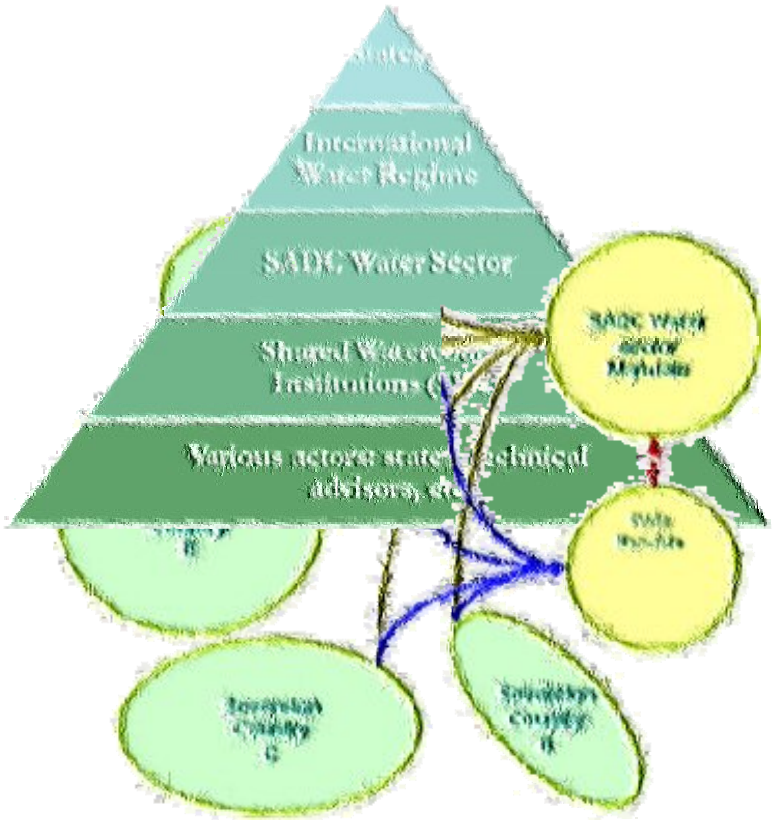
Understanding the Mandates of Shared Watercourse Institutions within the context of the SADC Water Sector



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1. Summary

This paper focuses on mandates of Shared Watercourse Institutions (SWI's) in the Southern African Development Community (SADC). This is achieved by exploring what a mandate is, how to strengthen it, and making some recommendations about how to approach SWI mandates in the SADC.

In response to the question "What is a mandate?" we look at the characteristics and processes that are linked to the formation and functioning of a mandate? In this regard we suggest that a mandate is dualistic concept.

1. It has a strongly legal dimension in that it is the product of joint consultation and consensus; provides a reason for an institution to exist; provides the broad parameters for institutional action.
2. It has a strongly political dimension in that it is the product of state interaction and negotiation. As such, mandates are not produced in a clinical and rationally calculating context; rather they are the product of a process of potentially heated debate, difficult compromise and nuanced conversations about allotment of power and resources.

In response to the question "How do we strengthen a mandate?" we consider what a strong mandate is and how different actors can go about strengthening mandates. We suggest that defining what a strong mandate is, is difficult as these phenomena are context specific and developed to suit unique and different demands and situations. What is a strong mandate is for one SWI may be useless to another.

In terms of strengthening mandates we propose three routes to follow which are directly related to the different actors or clusters of actors that can take responsibility for 'strengthening' mandates. Depending on the nature of the weakness in a SWI different actors or combinations of actors will need to play a role in strengthening SWIs.

1. A mandate of a SWI can be strengthened by the states that bring it into being;
2. A regional bloc or organization can play a role in strengthening a mandate;
3. The SWI itself may need to strengthen from within in terms of more effectively fulfilling its mandate.

Given this conceptual understating of mandate we offer four basic recommendations concerning how to approach the interpretation and judgement of mandates.

1. There is no 'magic solution' to the complex issue of defining, strengthening and implementing mandates of SWI's. However one chooses to approach mandates there is likely to be a haze of uncertainty and jumbled interpretation to contend with.
2. When attempting to evaluate and judge a mandate it is critical to look beyond the legal persona (usually the easily accessible and documented version) of the mandate.
3. Delving into the political elements of mandate require asking the question "What are you willing to work together on (and why)?"
4. Ascertaining the strength of a mandate is about asking the question "In what ways are you most disempowered in your daily work?" This question helps both to gauge where a SWI is most constrained and where the support needs to come from.

2. The importance of understanding mandates

There are at least two reasons for looking into the issue of mandates. Firstly, SWI's, like all other institutions, have to contend with mandates prior to and during their formation. Common mandate related questions are "Who gives us the authority to act?" "How much power do we have to act?" "What are the parameters in which we act?" "What is our responsibility?" "Who do we report to?" "What are we expected to achieve or deliver?" Clearly, these are the kinds of questions that both institutions as well as potential funders ask when strategically plotting their involvement, participation and role in a SWI.

The implicit assumption behind these mandate related questions is the idea that: a SWI that has a, so called, 'clearly defined', 'strong' and 'functional' mandate, it is more likely to be effective, predictable, reliable and manageable than one with a weak or poorly defined mandate. Clearly, this logic is rife with hazy assumptions and expectations. What is a clear, strong and functional mandate? What processes are at play when working with mandates? What can realistically be expected of the mandate of an SWI? The uncertainty around these questions makes it important to deepen understanding about mandates.

Secondly, there is a common assumption that the contents of a mandate is at the heart of answering the question what can a SWI achieve? This assumption arises out of the belief that a mandate is an expression of an agreement to work together on something or a common vision (Jacobs et al 2009: 12). Unfortunately, it often happens that there is uncertainty amongst commissioners and other stakeholders about exactly what the mandate or common vision is actually about. (Jacobs et al 2009: 13). In light of this challenge is seems that it is important to properly understand mandates and why they can be misunderstood or hindered by misconceptions.

3. Conceptualising Mandates

To begin to understand mandates it is necessary to have a clear conceptual picture of what a mandate is. This entails considering issues of definition, characteristic and processes linked to the production of a mandate.

When considering a mandate there are two overt concepts at play. The first is the legal persona of a mandate. This part of a mandate is about its statutory power, legal frameworks for action and setting out obligations. This dimension of mandate is the outcome of a process which results in some kind of formalized agreement which is usually documented and signed by the relevant stakeholders. The second concept at play within the term mandate is a political one. This element of mandate is about looking at the process that gives rise to a mandate in the first place. It is about looking at who the stakeholders in the negotiations are and what their relative power relations are. These two issues within the concept of mandate each have their own characteristics and processes linked to them and thus will be separately considered.

The legal persona of a mandate

The Merriam-Webster online dictionary (2009) defines mandate as “an authoritative order or command”, “a command or authorization to act in a particular way on a public issue given by the electorate to its representative” or “a command from a superior court or official to a lower one”. This, we believe, is a fairly standard understanding of what a mandate is. By ‘standard understanding’ we imply that this is basically what funders, authorities and institutions tend to, at very least, understand in the concept mandate.

This definition alludes to a number of characteristics of a mandate. A mandate:

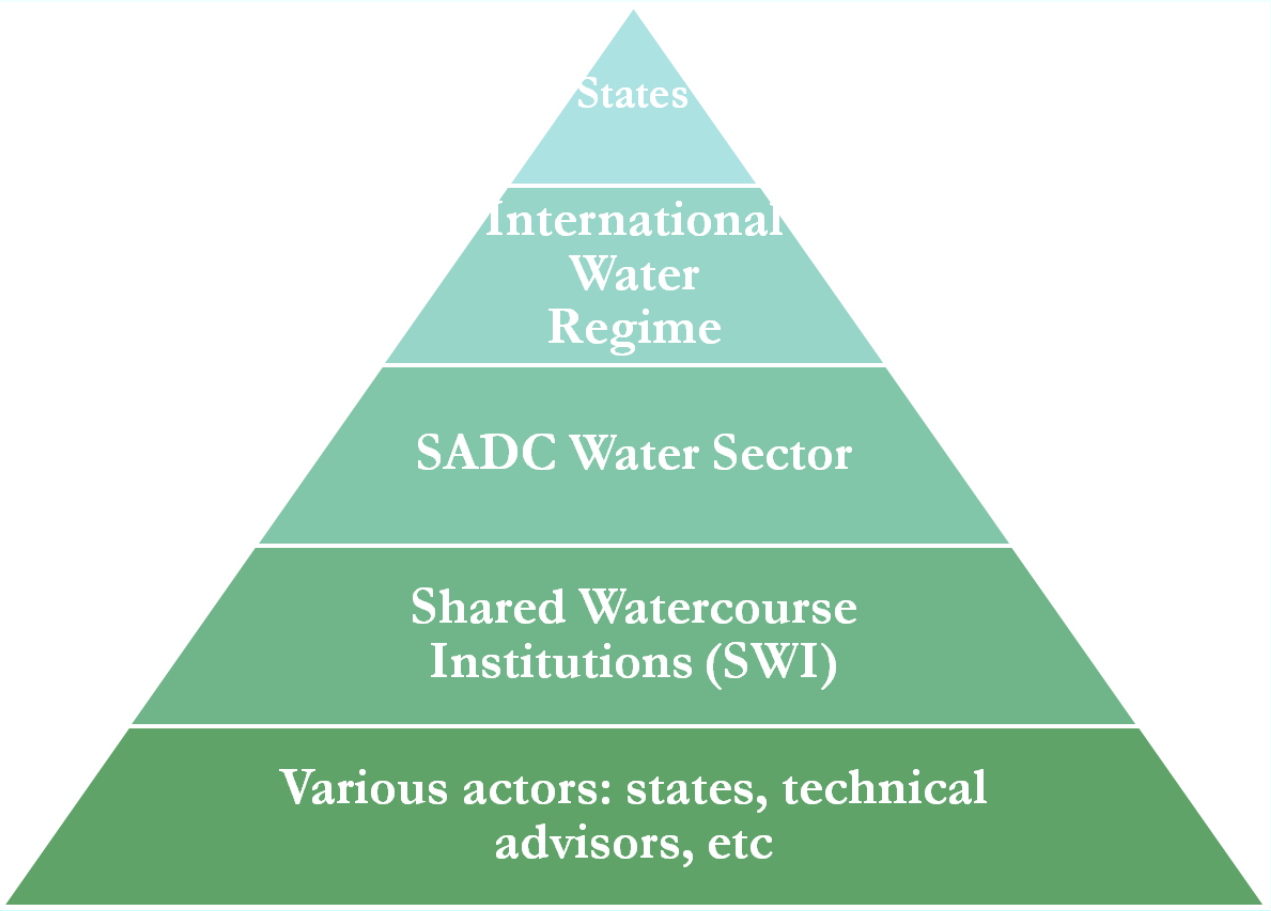
- Is the product of joint consultation and consensus;
- Provides a reason for an institution to exist;
- Provides the broad parameters for institutional action.

The processes or activities related to this definition are:

- Hierarchical, in the sense that actions and outputs of the constituted body must be compliant with the parameters that the issuing authority lays out, or must be complaint with the agreement reached during the consultation process. Thus, a lower body or institution may not, in any way, contravene the rules and protocols of the higher body that constituted it.
- Perceived to be rational in the sense that it follows a logical sequence of events, requires support from various stakeholders in order for the mandate to be adopted, requires signatories and requires that the process does not contravene any values or rules of a higher authority..
- Has a legal personality in the sense that obligations, rules, parameters for action, consequences for non- compliance and so on are all laid out in the final agreement.

The legal grounding of a mandate is critical to the sustainability of any agreement as it formalizes obligations, commitments and creates a precedent or standard according to which non-conformity can be compared and criticized. If an actor signs onto a mandate with some kind of legal status they are, at very least symbolically, bound to this mandate. To ignore, over-ride or violate the conditions of a mandate is then to be met with certain repercussions. This view is encouraged by the Global Water Partnership (2009: 29) in the comment that “basin organizations that have been set up by law have a strong mandate, as do those created within an international convention or treaty for transboundary waters”. Similarly, the Second GTZ workshop on the strengthening of RBO’s emphasized that in order to establish and manage an RBO (as a type of SWI) it is very important to start off by having a legal framework in place which will then provide a platform for further work and progress at basin level.

The legal element of the definition of mandate: An application to the SADC Water Sector



The legal (hierarchical) picture of a mandate

In light of the above discussion, and if applied to the example of the SADC Water Sector, it is clear that the legal part of the definition of a mandate can be visualized something like what is shown in the above diagram. The mandate process is hierarchical and linear, feeding from higher (often state) levels of authority downwards. Each lower level is answerable to the level or institution directly above it.

In the case of governance of water (particularly transboundary water), states for various reasons, will begin to sign onto bilateral and multilateral treaties and protocols. For example, the Convention on the Protection and use of Transboundary Watercourse and International Lakes and the UN Convention on the Non-navigational Uses of International Watercourses (Global Water Partnership 2009: 31). Over time these cumulative agreements form an international water regime.

In response to international trends, regional blocks (such as the SADC) pick up on specific trends and begin to formulate policy and protocols in response to global trends. For example, the SADC has adopted the Protocol on Shared Watercourse Systems in the SADC and has formed a Water Sector. This regional protocol authorises or mandates specific behaviours, institutions, and so on to fulfil their vision. The SADC water protocol, Article 3.1 reads: 'Member States hereby undertake to establish appropriate institutions necessary for the effective implementation of the provisions of the protocol. ….. Member states undertake to establish the following institutions: a monitoring unit, based at the SADC Environment and Management sector, River basin commissions between basin states and in respect of each drainage basin, and river authorities or boards in respect of each drainage basin' (SADC 2000; Workshop Proceedings 2007: 8).

It is interesting to note the legal-rational processes that were at play in terms of the amendment of the 1995 Protocol on Shared Watercourse Systems. Some member states had certain reservations about the contents of the protocol even at the time of signature. As such the summit approved that their concerns should be addressed through a formal process of consultation and negotiation, which started with these member states submitting their areas of concern and/or reservation to the Water Sector. This legal-rational process led to the formal adoption of the Revised Protocol in 2000 (Ramoeli 2002: 106).

This occurrence of protocol development and amendment in the SADC, is not only indicative of the legal-rational manner that states can choose to behave in, but is also reflective of how protocol amendment can be a useful mechanism for ironing out conflicts in an amicable way and pre-empting possible future conflicts. For example, the protocol stipulates that the sovereignty and right to develop water resources within the territory of member states must be respected (Ramoeli 2002: 107; Workshop Proceedings 2007: 13). This is clearly an effort to pre-empt conflicts that may have arisen related to this issue.

The SADC protocol also has value to states in the sense that the protocol is supportive of international trends, treaties and legislation regarding water. By signing onto the SADC Protocol, states gain certain international credibility and regional support in terms staying in line with international trends in water resource management. (Workshop Proceedings 2007: 3)

The SWI's mandated to exist by the 2000 Protocol vary in form and structure but share a commonality in the sense that they may in no way violate or over-ride the principles of the regional protocol that mandated them into existence. Once an institution like a SWI has been mandated into existence by a regional bloc it is up to various actors (ironically usually the states that initiated the process in the first place) to get these institutions up and running.

The political persona of a mandate

Before beginning to unpack the political aspects of the definition of mandate it is crucial to briefly clarify what is meant by the term 'political'. Heywood (2002: 4) suggests that "the inescapable presence of diversity (we are not all alike) and scarcity (there is never enough to go around) ensures that politics is an inevitable feature of the human condition". He also suggests that despite the inevitability of the political, "even respected authorities cannot agree on what the subject is all about" and as such, it should be treated as an "essentially contested concept". He points out that politics is defined in such different ways: as the exercise of power, the exercise of authority, the making of collective decisions, the allocation of scarce resources, the practise of deception and manipulation, and so on". Heywood contends that all of these definitions have varying degrees of value in different contexts. He also suggests that this diversity of definitions alludes to the fact that politics is something that states engage in, but is not exclusively in the realm of states.

In light of this conceptualization of politics it is clear that when considering the political one is alluding to:

- issues of power and their relative relations with each other
- the practise of bargaining and negotiation
- the act of petitioning for support for particular views
- Consideration of one's own interests in relation to external interests.

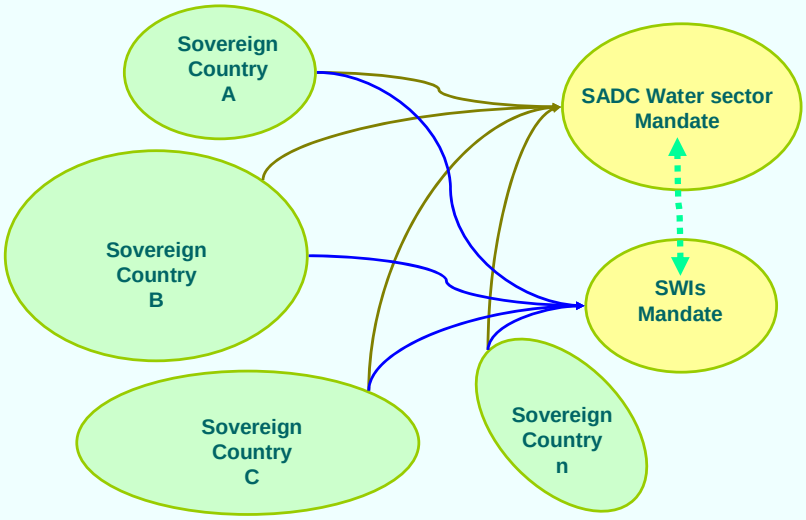
How then does politics relate to the definition of mandate? As has been previously suggested, the political issues at play in the concept of a mandate, most clearly manifest themselves in the negotiation stage. Politics are at play when different stakeholders are trying to answer the question; "What is it that we are willing to work on together?"

The political element of a mandate is characterized by the stakeholders who are involved in the negotiations. Usually the primary actors involved in the negotiation of mandates in relation to SWI's are states. There are two reasons for this. Firstly, states are 'political associations that establish sovereign jurisdiction within defined territorial borders and exercise authority in these borders" (Heywood 2002: 87), thus it is only sovereign entities who have the power to sign treaties, protocols and so on. Secondly, states exert control over resources (e.g. water) within their sovereign territories. Without their support a mandate is very unlikely to become anything more than an ignored scrap of paper. Thus "high level (state) support is key to establishing the legal frameworks, institutions and management structures that are needed for robust basin management systems" (Global Water Partnership 2009: 25)

Having recognised that state interaction characterises mandate negotiation; and knowing that states consciously and unavoidably engage in politics for their survival; it is critical to recognise that mandates are not produced in a clinical and rationally calculating context. Mandates are innately the product of a process of potentially heated debate, difficult compromise and nuanced conversations about allotment of power and resources. Thus, deeply politicized processes are at play in the negotiation of mandates.

The political element of the definition of mandate: An application to the SADC Water Sector

This diagram illustrates the iterative, politicised nature of SADC Water Sector process of mandate production. The green circles indicate different states that are at play with the SADC water Sector. These states are all different in terms of their relative power, economic development, social needs, and agendas. The states cautiously interact with each other, continuously juggling their different agendas and desires. The yellow circles illustrate the SADC Water Sector which mandates SWI's into existence. This part of the diagram bears some resemblance to the previous pyramid in the sense that there is a relationship between the Water sector and the SWI, where the SWI is subservient to the Protocols of the water sector as it, ideally, should not contravene the Protocol in any of its activity.



Having said this, however, this diagram illustrates that whilst the legal protocol is still in place and is an important tool in terms of legitimizing the activity of the SWI and Water sector, it is not the legal protocol that gives power to the SADC water sector or the SWI. Individual states (armed with their sovereign power and territorial control) are ultimately the actors that have to support both the SADC and specific SWI's. In other words, unless states choose to offer their support and political will to an institution, the institution is unlikely to survive or be a success. No amount of legal stature that an institution, such as an SWI in the SADC, has is going to make a state support something that it is disinterested or threatened by.

Similarly, having an accepted and adopted legal framework in place is not necessarily the only or most important way of 'spurring states into action'. Pieter van Niekerk of DWAF points out that many RBO's were established in Southern Africa long before the SADC protocol made SWI's fashionable. Not only this, but he also suggests that SADC mandated SWI's are more likely to be strong and effective if backed up with already existing institutions and linkages (Jacobs et al 2009: 11). This suggests, once again, that it is not a legal framework that gives power, but political and human linkages between actors.

Peter Ashton suggests that mandates (as written or recorded statements of intent) easily become hazy, misunderstood and unclear unless they are continually reinforced with support and will from states. He suggests that the Okavango River Basin Commission (OKACOM,) formed in 1994, was criticized by various states and other actors, in its first few years, for failing to achieve its objectives. On closer analysis, however, it became clear that OKACOM was acting within its mandate. The criticism arose due to misunderstanding and interpretation of the mandate (Jacobs et al 2009: 12).

Also, mandates are about engaging in the subjective process of interpretation and re-interpretation. Interpretation is a political process in that it requires strategic choices about how one chooses to understand the wording and ambits of a given mandate. This is an inherently politicized process. Put simply, a 'higher' body such as a regional bloc may issue a mandate for the formation of SWI's which will be tasked to manage, protect and utilize the source. In issuing this mandate the regional bloc has a specific understanding in mind of what this mandate implies. An emergent SWI, however, then has the task of interpreting its given mandate. This interpretation will be dependent of many factors, for example: how much we are willing to do? How much we are resourced to achieve? Who are our members? What is our group or team dynamic? This ongoing process of interpretation and re-interpretation of mandates is a deeply subjective process which can potentially have huge impact on the aspirations and functioning of a given institution. The interpretive and interactive nature of mandate production and implementation implies that a mandate is not only a legal concept but also a deeply political one.

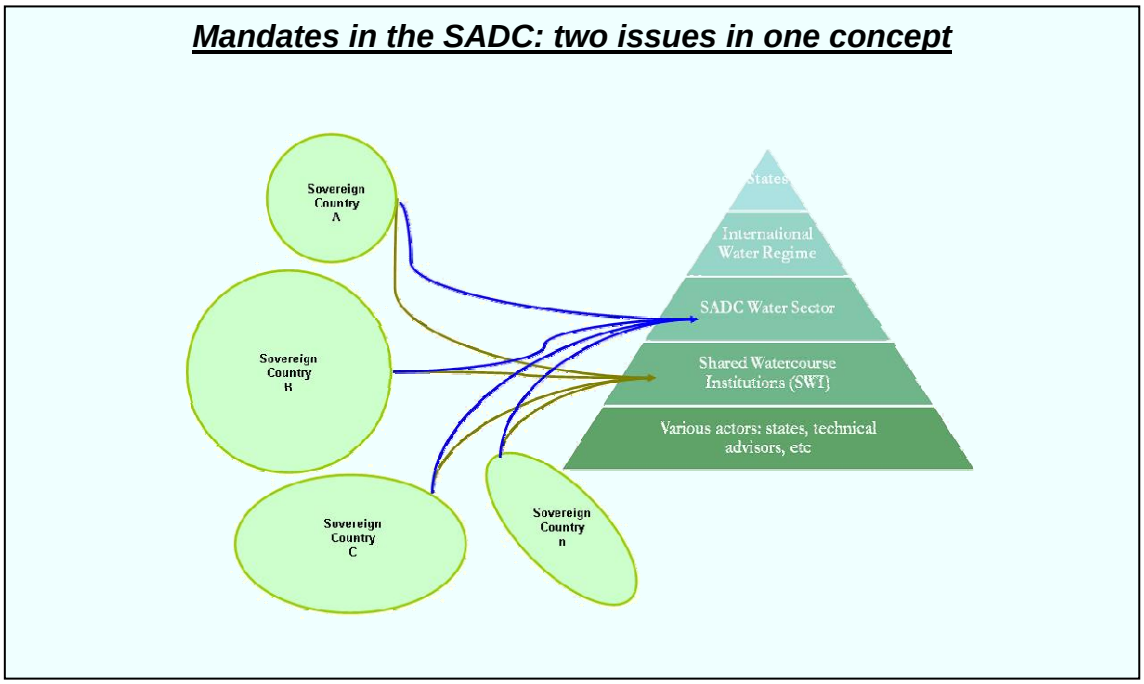
The legal and the political elements of mandate side by side

At this point the legal and political dimensions at play within the concept of a mandate have been considered. On the one hand it has been suggested that the legal-rational element of a mandate places emphasis on protocol, hierarchy and consistency feeding through from higher agreements or protocols through to lower level agreements. It is argued that getting this legal framework in place is critical to the functioning of a SWI as it provides clear parameters for action, lays out clear expectations and records an expression or commitment to work together.

On the other hand it has been suggested that the political nature of mandate emphasises the importance of power relations and dynamics between the states and actors that negotiate the mandates. Without states individually supporting institutions or initiatives these bodies are very unlikely to survive as the power, resources and cooperation of states are critical for institutions to do their work effectively. Thus, this part of a mandate is not so much hierarchical as it is iterative – mandates are continuously reviewed and recalculated as states juggle a multitude of changing demands and pressures.

This essentially leaves us with a definition of mandate that suggests that a mandate is a simultaneously legal and political concept. These two processes are equally important to the mandate process and at times rest side by side in a somewhat difficult and perhaps contradictory relationship. In light of the simultaneously legal and

political nature of mandates it is clear that the process of mandate production is simultaneously linear and iterative. It is this contradiction that needs to be recognised and understood when evaluating the effectiveness of mandates.



4. Strengthening mandates

A common critique levelled at mandates is that "they look good on paper" but do not manifest themselves practically. This can mean one (or a combination) of three things.

a. The mandate itself is not clearly addressing the needs and issues on the ground and as such does not make sense to pursue.
b. The mandate does not have enough autonomy to be able to function (i.e. states have not offered it sufficient support in terms of resources and political will for it to be manageable).
c. It can be attributed to various implementation challenges: there may not be sufficient expertise and experience to fully implement the mandate, not sufficient time has passed for the mandate to fully manifest itself, there may be support at a higher level for the mandate but there is not adequate local or operational buy-in for the SWI, resources may be limited, and so on.

Naturally if a mandate is perceived to be ineffective, it is critical to identify why it is not working. It can however be very difficult to know at what point a mandate should be thrown out all together; at what point it should be re-worked, and what point it simply needs more time to mature.

What is a strong mandate?

In order to address this challenge, an important starting point is to understand what constitutes a strong mandate. There is a common assumption that a strong mandate is likely to be a more effective one. Thus, it is less likely to be faced with the hindrances considered above.

Despite the popularity of the idea of a strong mandate, there is surprisingly little clarity surrounding this term. There are three clear reasons for this lack of clarity.

a. There is something inherently political about defining a term or concept. To define a term in one way means to exclude other stakeholders' definitions or beliefs about the matter. Not only does the process of defining potentially exclude other people's perceptions, it also causes an issue to be thought of in a particular way and paradigm. For example, Dudley Biggs (Jacobs et al 2009: 11) points out that once a mandate is articulated with a particular focus on water it is easy to begin to only think about water rather than including other related issues such as land tenure and so on. Thus, mandate definition is also political in that it narrows the parameters and lenses though which we view the world.
b. SWI's come in many 'shapes and sizes' or adopt many different business models (Granit et al 2009: 18). Also, various SWI's within a region will be in different 'evolutionary states' or places of growth at any one point in time (Workshop Proceeding 2007: 8). Thus it is very difficult to lay out a single set of criteria for what a strong SWI mandate is, given the diversity of SWI's that exist or may come to exist.
c. Turning immediately to a premeditated definition of a strong mandate and to judge a SWI by this definition is to totally discount the process (in other word the political interaction) that gave rise to the mandate. Understanding the context that gave rise to an agreement allows one to understand much about the end result. For example, one may be inclined to define a strong SWI mandate as being one where all riparian's and co-riparian's of a given basin choose to support the mandate. As such a mandate with less than full riparian support will be considered weaker. However, to make this assumption of weakness without clearly looking at why a given state chose not to support a mandate and without understanding what a feat it may have been to get the states that did choose to support the mandate to reach this point, is to make a shallow judgment of a mandate's strength.

Thus, by virtue of the fact that a mandate is produced by a process of consultation, it is not an objective, 'one-size-fits-all' phenomenon. A mandate is critically context bound, context specific and 'tailor-made'; fully dependent on the time, place and the actors involved in creating it. This implies that the notion of a good or strong mandate is simply a representation of a certain kind of mandate rather than the 'ideal-type' of mandate institutions should aspire to.

Recognising the challenges and risks involved in defining a strong mandate does not necessarily suggest that trying to conceptualize what a strong mandate is, is futile. It simply implies that any definition of the term should be viewed with the existing challenges in mind. As such, we will attempt to lay out some brief ideas about what a strong mandate may look like. It is important to note that these ideas are not in any way meant to form a formidable definition of a strong mandate or be the 'final say' on

the matter. Rather, we aim to lay out some pointers which may be useful to help one to think about, evaluate and consider existing and future mandates.

Given the reality that the term mandate contains both legal and political connotations, it is logical to assume that the characteristics of a strong mandate will include both legal and political dimensions.

The legal dimension of a mandate, is likely to place high value on issues such as:
- Explicitly and clearly laying out expectations and parameters for action
- Having realistic and attainable goals;

Politically speaking, a good and strong mandate is one where:
- The actors involved are willing to surrender an appropriate amount of power and authority to the institution to allow it to function in a relatively unimpeded manner;
- There is broad stakeholder support for the mandate;
- There is suitable precedent and support contained within the mandate that non-conformity will, at very least, be met with undesirable peer pressure.

How can I make a mandate stronger?

Having considered what a strong mandate may be, it is important to consider how mandates can be made stronger. Broadly speaking the term strengthening within the context of mandates can be understood in three ways. These three ways of strengthening mandates are directly related to the different actors or clusters of actors that can take responsibility for 'strengthening'.

Firstly, a mandate of a SWI can be strengthened by the states that bring it into being. Depending on the situation the way that the mandate is strengthened may differ. For example, states may choose to strengthen a mandate by:
- Encouraging more states to join a SWI (perhaps to ensure that all or more riparians and co-riparians are represented);
- Offering SWI's the power to form secretariats, govern their own budgets and so on;
- Giving SWI's greater autonomy in terms of the choices it makes regarding water management, their policy recommendations and so on. I.e. giving greater power to the advisory capacity of a SWI.

Secondly, a regional bloc or organization can play a role in strengthening a mandate. Once again, this can be done in different ways depending on the nature of the needs of a SWI. A regional organization may:
- Offer symbolic support to a SWI, by openly encouraging states to support their work, making formal note of the workings of the SWI by requesting regular feed back and so on.
- Choose to amend protocols to more formally legalize and attempt to institutionalize the existence and importance of SWI's. This may involve:
    - Amending existing protocols to more clearly define the roles of institutions,

States and SWI Strengthening

A good example of where states in the SADC have played a role in strengthening mandates of SWI's is to look at the fairly recent decision that the member states of ORASECOM and OKACOM have made to empower their SWI's with Secretariats. In both cases these SWIs play a technical-advisory role in relation to the relevant basin states (Treaty 2004; OKACOM 2009) and as such need the authorization and support of these states to form secretariats.

In 2004, the states of OKACOM "recognized the need to establish a Secretariat which would implement the decisions of the Commission and started the process of putting this in place…… in April 2007, the three contracting parties signed a new agreement of the "Organizational Structure for the Permanent Okavango River Basin Water Commission". This agreement establishes the Secretariat as an internal organ of OKACOM" (OKACOM 2009)

The decision to establish a permanent Secretariat for ORASECOM "was reached in July 2004. The Republic of South Africa signed an agreement to host the Secretariat signed in August 2006" (ORASECOM 2009)

  - Generally amending protocols to try to encourage a larger group of states to sign onto a water regime. It should be noted, however, that whilst a regional block often has the power to place treaty or protocol amendment on the agenda and as such can symbolically encourage treaty or protocol change, it is ultimately states who have to consent to these changes as they are the ones with the power to vote on and ratify such procedures. The advantage of having the protocols and treaties initiated in a regional setting is that they set precedents and start trends. Once a certain number of states in a region have signed a protocol, it becomes harder for other states to operate easily without signing onto the protocol.
- Have the capacity to offer financial support to a SWI. Even where this is not feasible, regional organizations tend to be well connected to a network of funding agencies and donors. Donors are likely to support initiatives that are commended and encouraged by a well established regional organization.

SADC and SWI Strengthening

The SADC shows evidence of attempting to support and strength SWI's in many of the ways discussed above.

"In considering what the SADC can do for the RBO's it is apparent that its strengths lie in advocacy to governments within which the RBO's can work towards common goals" (Workshop 2007: 18).

Thus, the 1st workshop for the strengthening of RBO's (2007: 17) suggests that whilst the 'SADC has no general supervisory role in the establishment or operation of the independent RBO's', it does play and important role in terms of 'coordination and facilitation'. The SADC can facilitate the establishment of SWI's (as it effectively did for example in the case of ZAMCOM), and the restructuring of SWI's in terms of creating a secretariat and supporting the accession of states to RBO's. Also, all the SADC states have agreed in the Protocol provide information to the SADC indicating the extent to which the RBO is achieving its responsibility of implementing the protocol (Workshop 2007: 17)

Thirdly, the SWI itself may need to strengthen from within, in terms of more effectively fulfilling its mandate. What a SWI has to do to achieve this will depend on individual circumstances and could include many things:

- Strengthening human capacity in terms of providing 'individual skills and competencies to the commissioners and staff including technical aspects such as IWRM and training in international laws and protocols for transboundary river management and soft aspects such as negotiation skills' (Workshop 2007: 16).
- Strengthening internal business processes 'including financing mechanisms and outreach programmes' (Workshop 2007: 16).
- Strengthening the environment in which the SWI operates 'including availability of information and partnerships with other regional institutions.' (Workshop 2007: 16).

Internal SWI Strengthening

There are numerous ways in which internal SWI strengthening can and is pursued in SADC SWIs; whether this be through internally organized project meetings and training of new staff or whether this be in terms of developing websites for the SWI's, and so on.

This document, for example, forms part of basket of tools and approaches that is a GTZ funded project. These tools aim to enhance transboundary governance systems (of which SWI's form a part). By empowering SWI's to engage consciously in business processes, explore alternative business models, evaluate basin benefits and incorporate culturally embedded practises into their daily business, it is our hope that more internally empowered SWI's may emerge.

Similarly, the ORASECOM website recently developed by Hatfield consultants and funded by GTZ is another example of a process of internal SWI empowerment.

Internally empowering SWIs is important in order to engrain the capacity of the institutions to perform according to their stipulated mandates.

In a perfect world, all three of these actors would play a strengthening role in a SWI. This is rarely, however, realistic or possible. States may be unwilling to make different concessions, regional blocs may be not have great enough influence to affect change, local institutions may lack critical will and expertise.

5. Conclusion: Working with mandates

At this point a number of issues have been explored. Mandates have been defined as simultaneously legal and political concepts and the related characteristics and process linked to this definition have been discussed. Also, the notion of what a strong mandate is and how to strengthen a mandate has been considered. All along, efforts have been made to relate these ideas to the SADC context.

What remains to be said is that the mandates of SWI's in the SADC remain important parameters and concepts to:

- the SADC Water sector;

- the states participating in SWIs;
- the individuals working in SWIs;
- the funders investing in SWIs; and
- the communities impacted by SWIs.

How then does this conceptualization of mandates help in the ongoing business of interpreting and judging mandates?

We have a number of suggestions in this regard:

a. There is no ‘magic solution’ or ‘silver bullet’ to the complex issue of defining, strengthening and implementing mandates of SWI’s. Mandates are clearly complex phenomena to work with and are in many ways imperfect tools for helping to define the scope of action within an SWI. However one chooses to approach issues pertaining to mandate there is likely to be a haze of uncertainty, jumbled interpretation and limitations to contend with.
b. When attempting to evaluate and judge a mandate it is critical to look beyond the legal persona (usually the easily accessible and documented version) of the mandate. Analysing mandates on these grounds may enable one to establish, superficially, whether a SWI is conforming to outlined parameters and will give a sense of whether or not a SWI, broadly, is fulfilling its role. One needs, however, to look to the political elements of the mandate to glean a more nuanced understating of the issues at play.
c. Delving into the political elements of mandate require asking the question “What are you willing to work together on (and why)?” Asking this question opens up the conversation space to understand how the words (or legal element) of the mandate have been interpreted by the actors of the day. It also creates space for the context which gave rise the interpretation of the mandate to be explained. It is only by understating the context of tension and cooperation between actors that one can truly begin to grasp and respond to the, at times, hidden complexities at play in mandates.
d. Ascertaining the strength of a mandate is about asking the question “In what ways are you most disempowered in your daily work?” This question helps both to gauge where a SWI is most constrained and where the support needs to come from. If the vulnerability is about internal capacity and effectiveness, the individuals of the SWI need to be targeted. If the vulnerability is around administrative support and finances then the states that fund and authorise SWI action need to be targeted. If the challenge is around state-SWI relations or region-SWI challenges then the SADC may need to step in to support.

In light of these recommendations it is clear that the only way to deal with mandates is to recognise their dualistic nature and analyse the dynamics at play within the process of mandate production. This demands a process of active iteration by all actors impacted and interested in the mandates of SWI’s. Mandates (or specifically the understating and interpretation of them) is a dynamic process that requires careful and ongoing interpretation and understanding.

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