APPENDIX B-1

Work Package 3 - Stakeholder Participation

Outline of the suggested communication strategy for the River Nura Basin in Kazakhstan *(discussion document)*

Objective

To develop an effective approach to stakeholder participation in the management of river basin authorities that will lead to the sustainable management of water resources in Central Asia, taking into account the competing needs of the growing commercial industrial economy, increased domestic demand, agriculture and the need to safeguard the biodiversity of the aquatic and wetland environment.

Background

It is recognised that throughout the World there is increasing unsustainable demand on water resources resulting from competing pressures for a finite supply. If our water supply is to remain sustainable it is essential that an effective and equitable mechanism for sustainably managing the resources is developed. It is generally accepted that the only way of sustainably managing the water resources is an effective semi-autonomous River Basin Authority (RBO) that is located within the Ministry of the Environment. The responsibilities and powers needed for them to achieve their difficult job effectively should be enshrined in the law. For a RBO to be effective it has to have an effective dialog with the major stakeholders, i.e. all major water users, including environmental interest groups, local and regional governmental organisations and NGOs. RBOs need to develop long term plans that will lead to the equitable and sustainable sharing of the limited water resource and that are socially and politically acceptable.

Approach

To work as a partner with the RBO in identifying and developing an effective approach for identifying issues and constraints that limit the sustainable management of the water resources and finding effective mechanisms that will enable those constraints to be overcome. To achieve

this it will be essential that all the stakeholders take an active part in developing the relevant parts of the plan.

The key tool for discussing the issues with the stakeholders will be a computer based water resources management tool that is easy to use and easy to understand and that is readily available to all interested parties. This model will be built under a separate work package. Unlike the existing JacobsGibb package it will not be a data base style package but will be a purpose built package with high grade visual input output screens in order to allow the practical implications of different management options to be investigated. The nature of the input and output streams will be developed in cooperation with the stakeholders.

Traditions and practices of water management in the States of the former USSR were Soviet in style and were designed as part of a "grand vision" which was often unrealistic and which was incompatible with the needs of the environment and the riparian users. It is therefore a big jump in management style to rapidly change to an integrated water resources management programme that is still only just being introduced in much of Europe. This work package is designed to establish an approach for implementing the type of river basin management plan envisaged in the EU Water Framework Directive, identifying what aspects of it are applicable and practical to the sustainable management of the water resources of Central Asia, and specifically the river Nura, and what the most realistic approach is to trying to implement such a plan.

Draft Work Programme for Discussion

1) Person from the UK to come and talk to AIPET team on how the EU Water Framework Directive theoretically anticipates public participation in the development of RBOs.
2) Discussion with the RBO on what we are trying to do and how we can work effectively together. Discuss with them the major issues and establish with the RBO the known position of all the major stakeholders.
3) Visit major stakeholders and find out about their concerns, problems and issues, including the Kurgaldzhino management project.
4) From these discussions produce an issues paper with the Southampton team to form the basis of a seminar with all stakeholders so that the conflicting interests will be apparent to everybody. This position paper will be issued to everybody at the start of the seminar. A Metaplan system will be used for running the seminar following training of seminar coordinators. (Note: the Metaplan system ensures that all participants play a significant role in a seminar and everybody has equal say. It ensures that the overall views of the seminar are accurately reflected in the seminar report).

5) The first version of the water resources model will be used at this seminar to establish what information they want to get out of it.
6) Following the seminar, work with the RBO on developing further their strategy for achieving their objectives.
7) With the RBO produce a draft approach for a mechanism for establishing stakeholder participation in the development and implementation of river basin management.
8) Second seminar.

Note that this is not a fixed plan but a first draft for discussion with all informed parties, including the RBO.

APPENDIX B-2

Work Package 3 - Stakeholder Participation

Field Report on visit to Kazakhstan and Stakeholder Workshop

Introduction

The following is a brief account of the visit to Kazakhstan during 1 and 8 October 2005. The following people were part of the field trip:

- Ilse Steyl (GeoData Institute, University of Southampton)
- Andrew Allan (GeoData Associate, International Water Law Research Institute)
- Alan Ingham (Department of Economics, School of Social Sciences, University of Southampton)

The aim of the visit was to test whether the levers of participation agreed upon by the team in July 2005 will offer potential incentives for key stakeholders to participate in catchment management through the RBC. These levers are:

- Economic;
- Legal;
- Information;
- Participation in decision-making

During the visit a workshop was held to discuss key strategic areas of interest relevant to all stakeholders. The key objective of the workshop was to identify RBO / stakeholders responses to the suggestions and more importantly, identify directly what incentives might make key stakeholders choose to participate in the river management process.

Workshop

On Tuesday 4th October the workshop, organised by AIPET was held at the offices of the Department of Natural Resources in Karaganda.

Fifteen people attended the workshop (see Appendix 1 for a description of who attended the meeting). Unfortunately only one industry representative attended the workshop, which prevented the group from being adequately represented. However, the team did manage to get individual meetings with KazRosEnergo and Mittal Steel Temirtau for the following day, at which time the reasons for them not attending the workshop were clarified (see discussion below).

Bakhytnasyr Danbaev, who is the head of the Nura-Sarysu Basin Water Management Authority, opened the workshop. Valiakhmet Mukhamedjanov (Director of the Kazakh Research Institute of Water Economy) delivered a paper on the TWINBAS project within the Nura catchment and preliminary results were discussed.

After tea, Ilse Steyl introduced the team working on the strategic stakeholder participatory part of the TWINBAS project in the U.K. Then the workshop participants were asked the questions in Table 1. The table was translated in Russian and displayed on the wall.

Table 1: Discussion on water usage for River Nura

1) Which ONE of the following describes your opinion the best?	
There is not enough water in the River Nura basin for all the water use activities.	1.1
There are no real problems in the current access and use of water for stakeholders	1.2
When used efficiently, the water in the Nura basin is sufficient for all stakeholders.	1.3
2) The main restriction to your operations	
No restrictions	2.1
During most years there is not enough water in the basin	2.2
Licensing / cost of using water from the Nura basin (maintenance)	2.3
Meeting licensing requirements	2.4
Gaining full volume at the right time, once licensed	2.5
Unreliability of supply	2.6
Water quality is influenced by upstream users	2.7
Water access is restricted to key strategic users	2.8
Little water is set aside for agriculture	2.9
The legal access to water through licensing is complex and difficult	2.10

Each participant anonymously wrote down the number he / she chose from the list on a piece of paper, which was then collected. The two questions were done separately. For Q1, the majority (85%) of the participants chose the third option – which was expected. Two people (15%) chose the first option. The results were discussed in the group and the following significant issues were raised:

- All reservoirs in the system need major repairs to prevent water leakage. More investment is needed for this to happen, but none is forthcoming. There are between 32 and 35 reservoirs in the system.
- The Samarkand reservoir in Temirtau, is one of the largest of these reservoirs. The storage capacity of the Samarkand reservoir is 254 million m^3. The reservoir is utilised by four big industrial plants, i.e:
    - Mittal Steel Temirtau;
    - KazRosEnergo;

  - Alash; and
  - A chemical-metallurgical plant (name not known).
- KazRosEnergo owns the infrastructure of Samarkand reservoir, and is therefore responsible for its maintenance. However, the company is bankrupt and do not have any assets.
- It was stated that the four main users (industry) of the reservoir have signed an agreement setting out the volume of water each party is allowed to use. They then pay for the maintenance of the reservoir accordingly (see below, however, with respect to the meetings with stakeholders, where the contents of this agreement were clarified).
- The state has proposed to take over (not buy) the infrastructure of the reservoir in an effort to improve the management. The industrial water users have welcomed this.
- On issues of future water demand – all seem to agree that the Irtysh-Karaganda canal can meet future water demand (Figure 1). When asked about the water demand of Astana and the possible consequences to the wetlands, everyone agreed that the minimum water demand for the wetlands would be sufficient to maintain it. Therefore, it is said, the wetland will never be without water. However, the calculations for the minimum water demand of the wetlands have not been finalised. The impact on the diversity, etc. was also not really a topic for discussion.
- Agriculture is currently not a major water user and there is no foreseeable need for increased water provision for agriculture.
- Regarding water use of Karaganda, possible diversion of water from Russia was discussed, in case the water use from China (from the Irtysh River) becomes a significant problem. This, however, is unlikely due to excessive costs involved. At the workshop people seemed to have thought otherwise, though. This is possibly due to remnants of Soviet-style attitudes

Figure 1: Nura Catchment

For Q2, most (39%) people chose 2.3. The rest chose 2.7 (23%); 2.2 (23%) & 2.6 (15%). Numbers 2.2 and 2.6 is very similar though, so one could say that the access to water supply is a major issue. The issues raised during the discussion were:

- More investment needs to be put into changing technologies to use water more efficiently. Currently, however, there does not seem to be any incentive for water users to do so. This might have to do with the fact that wastage of water as a result of poor maintenance of infrastructure should be a priority. Companies would like to see that government are also prepared to invest in water management, before they are prepared to change their habits regarding water use. Also, water is not that expensive as of yet. Increasing the price of water might well lead to investment in water saving techniques.
- The issue regarding the River Basin Council (RBC) was raised. Most of the delegates present were part of this council, or their organisations were represented on it. The UNDP has run two major workshops already in which the responsibilities of the RBC have been discussed. The actual content of these workshops, and how they were run, was not talked about, though.
- The impact of the Water Code on the basin authority was briefly mentioned and Danbaev talked at length about what the Code says and how the water resource will be managed as a result. The view from the workshop then was that the Water Code will have a positive impact on the water management of the Nura basin in future, due to its emphasis on integrated water management, even though it does not have a significant impact currently. The implementation of the Code needs to be managed properly and the RBO will need to have more powers in this regard for this positive impact to be realised.
- After this, the discussion digressed a bit, so it was decided to bring an end to this part of the debate.

Alan Ingham then delivered a paper on the water issues related to the wetlands and asked a few questions on that. Generally the delegates seemed a bit confused about the presentation. The main reasons for this were that the presentation was very technical in nature, which made it difficult for them to engage in any discussion.

At this time it was decided that the workshop will need to take a new direction, since the perception was that people might feel they are wasting their time. The team felt that it would be better to allow the participants to interact with each other rather than listening to presentations. Hence, during lunch we developed a fictional scenario-based planning problem that required the delegates to be split into three groups, where each had to develop a water resources plan to be submitted to the regulatory authority for approval in the context of a new water resources management law. The three groups were: agriculture, industry and the regulator. All groups were provided with information relating to existing usage, along with the principles underlying the new management regime. The regulator had to use the information to develop criteria, to be used in applying the principles. An effort was made to get the industry and research delegates to represent the regulator, those representing environmental concerns to represent industry, and the RBO representatives to represent agriculture.

This exercise was first not well understood, but eventually people did manage to get to grips with the concept. They were given 30 minutes to come up with a rough plan and then a member of the groups had to present their proposals. This was then discussed.

In the discussions all three groups opted to focus on water demand management, i.e. forcing those activities that are either not needed, but are using too much water, to be replaced by other activities less wasteful. As a result of the discussion on improved technology to manage water use, this also came up in the discussions. However, social and environmental analysis were not included in these plans. During the plenary discussion, this was raised by the project team, but is accepted that these issues are of less concern to the members at present.

After tea, Andrew Allan discussed the importance of having a good legal framework in place if IWRM and stakeholder participation is to be achieved and talked about the role that law plays in establishing the credibility of the water rights regime. He raised issues related to the 2003 Water Code and sought to identify through group discussion those differences between what the Code says and what actually happens on the ground. He also tried to get as much additional information as possible from the participants with respect to the practicalities of obtaining licences. Among the issues discussed were the following:

- Which agency actually issues licences and permits: the provisions of the Water Code state that these should be issued by the RBO or the CWR. It appeared, however, that the Ministry for Natural Resources would actually issue such licences.
- Does the licence give a right to a particular quantity of water of a particular quality? It appears that the right is only for a specified quantity for a specified time.
- How much does it cost to get a licence? The general feeling was that the cost was too high.
- What can users do if they are aggrieved by another's usage? It was felt that the RBO had sufficient powers to put a stop to such actions and those rights could be protected by the RBO.
- The role of Kazhydromet was clarified. It is the Kazakhstan Hydro Meteorological Service, with its Head Office in Almaty. They provide information for licensing purposes.

During this discussion the issue of the informal agreement made between the users of Samarkand reservoir was raised and Danbaev said that such agreements are not recognised by the Code and therefore any RBA. He therefore regarded the agreement as non-enforceable and worthless. No comment on this was made by the industry representative from one of the parties to the agreement.

The water use licensing process was discussed and it seems to be fairly cumbersome, since the information needed to assess the feasibility of the license has to be obtained from a number of different organisations. For example, with respect to surface water, information must be obtained from Kazhydromet and authorisations obtained from the Ministry for Natural Resources and the Environment and from the Department for Sanitary and Epidemiological

Protection. Different rules apply with respect to groundwater.

Monitoring of water quality was said to be conducted on a scheduled basis and the water user is informed one month before the inspection will take place. The quality and quantity of wastewater discharge from each industrial plant is used as criteria for inspection in monitoring.

Participants said that licenses obtained under the 1993 Water Code were valid until they expired, after which time holders would need to reapply for a new license under the new Water Code. The position with respect to the monitoring of the expiry of old licences was not clear.

In general it was rather difficult to get an accurate impression of the difficulties associated with implementing the Water Code. This, it was felt, was due to the presence of the RBO Director compounded by the absence of the principal industrial water users (see below for reasons of ab, such that the weaknesses in the legislation and the institutional arrangement were not dwelt upon.

Other meetings

UNDP (3 October 2005):

All the members of the field trip met up with Til Dietrich (Chief Technical Adviser) in Astana. He works on the GEF Wetlands Project funded by UNDP Kazakhstan. The site in Kazakhstan is the Tengiz-Korgalzhyn lake system, which is crossed by two main flyways of migratory birds. The project started at the beginning of 2004 and runs until 2011. The objective of the project is to introduce new ways of managing globally important wetland resources in a sustainable manner, including participation of stakeholders. The intended outputs of the project are that:

- A national wetland biodiversity conservation policy, as well as a regulatory and institutional framework should be approved and adopted;
- Well planned and effective protected area management should be in place;
- Awareness of wetland biodiversity values among stakeholders should be established;
- Sustainable use and conservation of wetland biodiversity should be achieved; and
- Sustainable financing for wetland conservation must be in place

These objectives are very non-specific, but it must be added that they are the overall project objectives and not the objectives tailored for each specific country site.

Kanysh Satpaev Canal (5 October 2005):

On the Wednesday the main water engineer of the Kanysh Satpaev Canal (formerly the Irtysh-Karaganda Canal), Alexander Fedoseevich Shponko, joined us for the morning. He informed us about the management of the canal on our way to the 22nd pumping station, where we were shown around. Although the main water engineer was clearly very proud of the achievement of building the canal and its pumping stations, one realises that the project was wholly

unsustainable. The pumping station visited was not working (apparently due to routine maintenance), but it was clear that funding to maintain the vast infrastructure of the canal is wholly inadequate. Therefore, although participants at the workshop insisted that the canal is essential for water supply to the region, the current state of affairs will not meet this demand.

KazRosEnergo (5 October 2005):

The representative of KazRosEnergo (Director - Vladimir Ramazanov Yakovlevich) stated that they controlled the Samarkand reservoir and were responsible for the maintenance of the reservoir along with discharges from it, although they did not receive any funding from the other users (who instead paid the State). Their main task, they said, was to maintain the level of the reservoir – other users needed water to be maintained at particular levels. They complained about both the reliability and the cost of receiving data from Kazhydromet especially with respect to flooding – they were held responsible by downstream users in the event of floods if they failed to take necessary measures, but the cost of data prohibited them from having it in advance. Control of the reservoir is due to be transferred to the government, but no deadline has been set.

The KazRosEnergo representatives also stated that the agreement between the users related to the recovery of maintenance costs, not to volumes extracted. Their view was that allocation was controlled by the RBO, but not the agreement. New users of the reservoir would, however, be expected to obtain the approval of KazRosEnergo as well as that of the RBO.

The view was taken that the amount of water that was allowed to be abstracted under licences would normally be significantly lower than the amount actually used. Due to the fact that the RBO relies on self-monitoring, there was no incentive for the organisation to use less water. They currently hold a licence from the Ministry of Natural Resources, but also indicated that the Department for Sanitary and Epidemiological Protection, which was responsible for water quality, might appear at any time to check compliance.

There were also complaints about perceived fluctuations in the rates paid by different users – they felt that Mittal Steel Temirtau paid only one hundredth of the amount paid by KazRosEnergo.

Mittal Steel Temirtau (5 October 2005):

The company is one of a number of steel-making facilities owned by the Mittal Steel International. The Temirtau facility is one of the largest single-site integrated steel plants in the world with a steel making capacity of 5.5 million tons per annum. The team met with the main power engineer specialist, Aleksandr Bedeneev Aleksandrovich. This integrated steel mill takes water from three sources: the Samarkand reservoir (under a licence from the Ministry of Natural Resources); the Irtysh-Karaganda canal (through a contract with the operator) and from groundwater (under a licence from the Department of Geology). They also supply much of the

city of Temirtau with both central heating and with water. Their licence from the Ministry of Natural Resources is reviewed by the Ministry annually.

With respect to the Samarkand reservoir agreement, it was stated that they paid 65% of the maintenance costs. They are the only users who pay the maintenance charges (to KazRosEnergo, not the State). However, they now control the improvements that they recently paid for. The water balance for the reservoir is agreed between the users annually.

The steel mill, it was stated, has sealed water meters on both the Irtysh-Karaganda canal and on the Samarkand reservoir. This could not be corroborated by us.

Their view was that the RBO would be able to protect their rights in the event that another user adversely affected them through its use. They expressed a general willingness to become involved in the basin management, but had waited to see if the RBC was actually a body worth dealing with.

The general message received from both meetings was that the impact of the River Basin Authority and the River Basin Council will be more if they receive more power from central government. KazRosEnergo is not interested in attending any stakeholder workshop or meeting until this is the case.

UNDP (7 October 2005):

Ilse Steyl and Andrew Allan arranged a meeting with Tim Hannan, who is the Water Resource Management Advisor for the UNDP/GWP project on "National IWRM and Water Efficiency Plan for Kazakhstan". We had a general discussion on the possible linkages between their project and ours and talked about their work within the Nura-Sarysu catchment. Two preliminary meetings of the RBC have already been held and the first formal meeting of the Nura-Sarysu RBC will take place on 10 December 2005.

We will keep in touch with him and his colleagues (Maria Genina and Zhanat Alyahasov) who are specifically tasked to manage the stakeholder participation and RBC management of the project.

General observations

Villages in rural areas receive water supply through self-dug wells inside their houses. Water is extracted using electrical pumps. Heating during winter is done using coal. Previously (during Soviet era) water supply was through standpipes, which are still working in some villages.

Numerous trucks transporting sand to-and-from the River Nura to Astana were observed on the road going north to Astana. Companies extracting sand need a license to do so, but it seems no monitoring is taking place on the volume of sand taken from one place and the method of extraction.

Conclusions

The workshop generated a great deal of discussion and it is felt that the participants are all aware of the problems inherent in the management of the Nura catchment. However, it was clear that any participatory council would not necessarily have any impact on the management of the system. True integrated water resource management is far in the future and the current Water Code is not currently effective enough to change attitudes in how water is used.

The team gained knowledge on the local and regional water resource management as well as economic and social issues relevant to the area. The discussions held during the workshop and other meetings throughout the week both clarified and confirmed many questions and opinions held by the study team. These will all be used in the final report that will be prepared in 2006.

The general position of stakeholders are that, unless the RBO get more power to enforce and implement the Water Code, water management as it is at present will not change.

The information gained through the workshop was not necessarily all that comprehensive, however this was expected from the start. It is thought that, if the team had more say in the organisation of the event, better results would have been obtained.

Meeting the two major industry stakeholders outside the workshop was of great value and it is thought that not as much information would have been obtained from them if they did actually attend the workshop.

Appendix 1

	Name	Organisation	Appointment
1.	Danbaev Bakhyt Zekenaevich	Nura-Sarysu RBO	Head of RBO
2.	Algabaeva Sholpan	Nura-Sarysu RBO	Head of licensing of water using department
3.	Makashova Dariga	UNDP Project "Integrated Conservation of Priority Globally Significant Migratory Bird Wetland Habitat"	National water resources manager
4.	Koshkina Olga	UNDP Project "Integrated Conservation of Priority Globally Significant Migratory Bird Wetland Habitat"	Manager on biodiversity
5.	Stratienko Valeriy Makarovich	Affiliated state enterprise «Karaganda Center of Hydrometeorology»	Director
6.	Monovitski Aleksader Nicolaevich	TOO «Alash NT»	Director
7.	Korotkova Marina Aleksandrovna	TOO «Alash NT»	Head of department of nature conservation
8.	Talasbekov Jumart	Karaganda oblast Akimat	The deputy of Akim of agriculture
9.	Terekhov Dmitry	Karaganda oblast Akimat	Main specialist of agriculture
10.	Shapatov Talgat Shadenovich	Canal named after Kanysh Satpaev	Engineer of section of projection
11.	Kontarbekova Bachit J.	Regional management of natural resources and regulations of wildlife management	Head of section of water protection
12.	Salikova Zinaida Michailovna	Karaganda territorial management of preservation of the environment	Head of department conservation of mineral resources, water and groundwater
13.	Sidorova Tatiana Witalievna	Kurgaldzhino State Nature Reserve	The deputy director of science
14.	Makimov Marat	Kurgaldzhino State Nature Reserve	Head of science department
15.	Mukhamejanov	AIPET	Team leader of

	Kh.W.		«TWINBAS» project
16.	Mukhamejanov W.N	AIPET	Responsible of WP3 of «TWINBAS» project
17.	Kusmenko L.	AIPET	Translator
18.	Stepanov V.	AIPET	Driver

APPENDIX B-3

Work Package 3 - Stakeholder Participation

Paper in review for publication in the Natural Resources Journal:

Encouraging Stakeholder Participation in River Basin Management: A case study from the Nura River in Kazakhstan

Andrew Allan[*] and Ilse Steyl[**]

Abstract

The purpose of this paper is to examine some of the steps that have been taken in Kazakhstan to ensure effective stakeholder participation in basin management, focusing on the establishment of representative River Basin Councils and on the availability of information. The paper will use as a case study the Nura river, management of which faces stark choices in balancing upstream industrial use against world-class wetlands and ambitious urbanisation, all in the context of crumbling institutional and physical infrastructure. These difficulties are exacerbated by problematic legislation, inadequate information and institutional inertia in getting

[*] Lecturer, Centre for Water Law, Policy and Science, University of Dundee (www.dundee.ac.uk/water) – a.a.allan@dundee.ac.uk

[**] Research Scientist, GeoData Institute, University of Southampton (www.geodata.soton.ac.uk) – is@geodata.soton.ac.uk.

The authors are grateful to Dr. Craig Hutton and Susanne Ullrich, both at the University of Southampton, for their assistance and helpful comments on previous drafts of this paper. They also wish to acknowledge their gratitude to Prof. Khamit Mukhamejanov, Dr. Valiakhmet Mukhamedjanov and the staff of AIPET in Almaty for facilitating their trip to Karaganda in 2005. Finally, Rinat Begaliyev of Denton Wilde Sapte, and Asset Abdualiyev of the University of Dundee provided invaluable advice on Kazakh legislation. Any errors remaining in the text, however, are the authors' own.

stakeholders involved. The authors find that the introduction of River Basin Councils is a step forward in achieving stakeholder involvement in decision-making, but this in itself will not be the panacaea that some anticipate without additional measures.

1. Introduction

Kazakhstan is one of a significant number of states that have recently re-formulated their policy and legal frameworks relating to water.[1] The country suffers from serious water problems mainly due to the costly legacy of the extensive industrial and agricultural works undertaken during the Soviet era. Although water resources are not scarce,[2] they are generally not used efficiently,[3] and the country is now on the cusp of a major water crisis. Kazakhstan has been identified by the United Nations Development Programme as a country facing severe water management problems, which may be detrimental to its long-term economic growth. [4]

This paper is concerned with the Nura river basin in central Kazakhstan, which

---

[1] Including, for example, South Africa, Georgia and Kyrgyzstan.

[2] It has an estimated population of just over 15 million (see CIA World Fact book at https://www.cia.gov/cia/publications/factbook/geos/kz.html, which suggests that the population in July 2006 was 15,233,244. See also World Bank Kazakhstan Data Profile, available in the Data and Research section of the World Bank website at www.worldbank.org, which suggests a population of 15.1 million in 2005). Dmitriev states that per capita water use varies between 1,700-2,800m^3 per year (see Dimitriev, Leonid, Kazakhstan entry of *IWRM Principles Implementation in the Countries of Central Asia and Caucasus*, GWP CACENA, (Tashkent, Uzbekistan, 2004), 61.

[3] See, for example, Hannan, T., "*The Process of Preparing a National IWRM and Water Efficiency Plan for Kazakhstan*", UNDP Water Governance Facility at SIWI, February 2006 (available from the Water Governance Facility website at www.watergovernance.org), 2.

[4] The eighth National Human Development Report for Kazakhstan was concerned with the problems of water as a key factor in human development. It provided a review of the countries' water resources from an economic, environmental and social perspective (available at http://www.undp.kz/library_of_publications/files/1484-13883.pdf).

terminates in the Kurgaldzhino wetlands west of Astana.[5] The particular difficulties faced on the Nura are peculiar to it alone,[6] but the broader aspects of stakeholder participation that this paper seeks to address, apply equally to the Nura and to other rivers in Kazakhstan. Stakeholder participation is a novel concept in the country, and water users are more accustomed to centralised decision-making and the paternalism of the Soviet system.

The purpose of this paper is to examine some of the steps that have been taken in Kazakhstan to ensure effective stakeholder participation within the water policy framework, focusing in particular on the establishment of representative River Basin Councils and on the availability of information. These were the two issues repeatedly raised as the outstanding areas of concern by stakeholders in interviews conducted by the authors. It will suggest ways of improving these measures in the light of international practice in the fields of governance and integrated water resources management. The governance arrangements will be assessed to determine whether the objectives of the water policy can be successfully achieved by the legal and institutional frameworks that exist to implement them.

Before setting out the measures taken to establish representative basin organisations, it will be instructive to provide a brief hydro-political history of the Nura River. We will then detail some of the legislative context governing water use currently, and identify ambiguities and gaps in the legislative and institutional environments. Areas of specific concern to stakeholders will also be highlighted, before examining the problems associated with information availability. The River Basin Councils cannot be viewed in isolation of the broader regulatory framework: inadequacies and

---

5. Aside from the Irtysh-Karaganda canal – please see para.2.2 below for further details. For a useful detailed description of the Nura River, please see Tanton, T.W.; Ilyushchenko, M.A. and Heaven, S, "*Some Water resources Issues of Central Kazakhstan*", Proceedings of the Institution of Civil Engineers. Water & Maritime Engineering. Vol. 148 (4), December 2001, 227–233.

5 See discussion below for further details, and see especially Tanton *et al*, *supra* note 5, for a more detailed discussion of the problems faced on the Nura.

problems with the institutions it is intended to "shadow" will have an impact on the way that the representative body functions, and this may have corresponding effects on the success of efforts to encourage stakeholder involvement. Examples from other nations' experience with representative stakeholder bodies will be briefly outlined in part 4, in order to assess whether lessons can be learned from these models by Kazakhstan or not.

2. Historical and Physical Environment

2.1 Historic Development of Water Management in Kazakhstan

Vast areas of Central Asia, including Kazakhstan, were annexed by Russia during the second half of the 19th century.[7] During this time, engineers and agricultural specialists were sent to assess the agricultural potential of these newly acquired lands. It was clear, from the remains of ancient irrigation canals, that irrigation in the central Asian region was feasible.[8] Expansion of irrigated territories was intensified after the 1890s.[9] During the period from 1908 to 1915, a number of water transfer and irrigation schemes were conceived in the region, mainly with a view to supporting cotton production in an attempt to end Russia's dependence on American cotton.[10] However, since the Tsarist government could not afford to fund these vast projects, the actual expansion in the area for irrigation was fairly modest.[11]

In the 1920s, the Soviet Union took control of the Central Asian countries[12] and under their rule, using central funds to cover costs, large irrigation schemes were constructed. As a result water demand increased dramatically, especially following the advent of

---

[7] See Hosking, Geoffrey, RUSSIA: PEOPLE AND EMPIRE 1552-1917 (Harper Collins, London, 1997), 38-39.

[8] See generally O' Hara, S.L "*Lessons from the past*: *watermanagement in Central Asia"* (2000), 374.

[9] See for example Saiko, A.S. & Zonn, I.S.:"*Irrigated expansion and dynamics of desertification in the Circum-Aral region of Central Asia*".Applied GeographyVol. 20, 2000, pp. 349 – 367, 351.

[10] O' Hara (2000:374). See also Hosking, *supra* note 7, 38 and 389, on the impact of the American Civil War on cotton production plans and the later moves towards greater irrigation of the region promoted by Stolypin.

[11] O'Hara, *supra* note 8,,374.

Krushchev's Virgin Lands scheme from 1954 onwards. The intention of this startling plan was to plough up several million hectares of fallow land in Kazakhstan, Siberia, the Urals and in the northern Caucasus.[13] This resulted in the over exploitation of the region's water resources.[14]

During the Soviet era, water management was completely centralised and regional water management strategies were designed to meet centrally determined production targets. [15]The break-up of the Soviet Union resulted in a severing of the link between the centrally located managing authority in Moscow and the vast network of irrigation schemes on which agricultural production and funding was based. Although the physical structures still existed, many of the region's rivers became international watercourses overnight, and the five newly independent states (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) each became responsible for the maintenance of water infrastructure in their own territories. Unfortunately, the cost of maintaining these systems has proven to be immensely expensive and the number of people working within the water management sector has been markedly reduced.[16] The institutions that now exist to manage water at the national level are largely relics of the Soviet past and share a focus on agriculture, with associated assumptions regarding the role of the state in funding irrigation projects.[17]

---

[12] *Id*.

[13] See Durgin Jr, FA (1962), "*The Virgin Lands Programme 1954 – 1960"*.Soviet Studies, Vol. 13(3), 280
The devastating environmental, social and economic repercussions of this are well documented, but see for example: O' Hara, S. *supra* note 8; "*The Aral Sea:Diagnostic study for the development of an action plan for the conservation of the Aral Sea"*, UNEP, (Nairobi, 1992); and Micklin, P.P., "*Desiccation of the Aral Sea: A water management disaster in the Soviet Union*".Science.Vol. 241, pp. 1170 – 1176.

[15] See O' Hara, S.L *supra* note 8,, 375) for an interesting discussion on how the centrally managed irrigation system worked during the Soviet era.

[16] The UNDP suggests that staffing levels should be around ten times higher than they are currently, having fallen from these levels since independence - see "*Kazakhstan National Integrated Water Resources Management and Water Efficiency Plan – Draft, November 2005*", Hannan, T., *et al*, (UNDP, Almaty, 2005), para.8.2 (on file with author).

[17] See for example *Asian Development Bank: Institutional Strengthening of the Committee for Water Resources – Draft Final Report*, Schwaiger, F., *et al*, (Astana, November 2005), para.2.2.1 for a detailed outline of the

2.2 The River Nura:

The Nura River is a highly regulated closed system in central Kazakhstan. It is unusual in Kazakhstan insofar as it is not a transboundary water, its only connection with international waters being the Irtysh-Karaganda canal[18] that connects its upstream reaches with the Irtysh River before the latter flows into Russia. It is characterised by generally low flow levels, with flooding in the early spring.[19] At 978km in length, the Nura rises in the Karkaralinsk mountains, flowing west through the Karaganda region and past the new capital city Astana, until finally discharging into the Kurgaldzhino wetlands and Lake Tengiz, one of the most important wetland sites in Central Asia.[20]

Principally as a result of significant pollution discharges from the highly industrialised city of Temirtau, reaches of the river downstream of this point are heavily

historic development of water management agencies.On file with authors.

[18] Also known as the Satpaev Canal.

[19] United Nations Economic Commission for Europe Environmental Performance Review of Kazakhstan, (Geneva, 2000), 97, available at http://www.unece.org/env/epr/studies/kazakhstan/.

[20] See in general Tanton *et al*, *supra* note 5. Kazakhstan is not currently a signatory of the RAMSAR Convention on Wetlands, but further information on the wetlands and their international designation

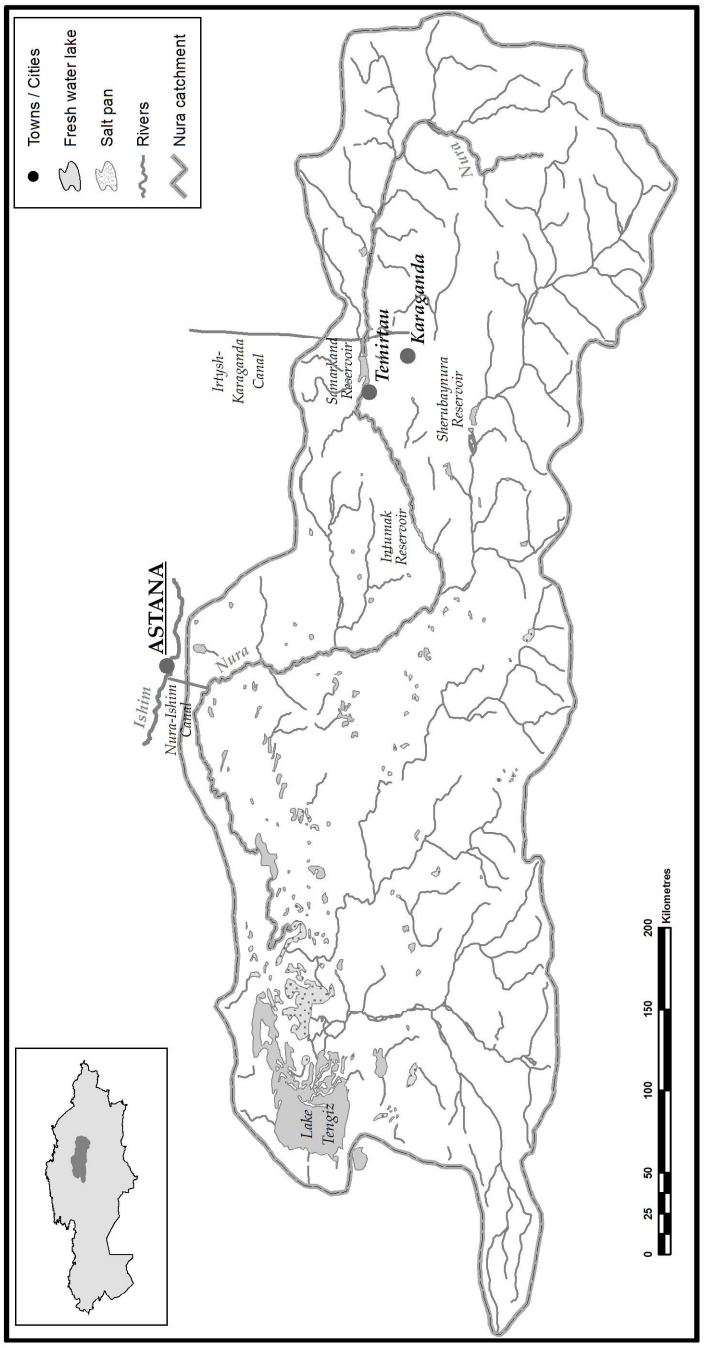

Figure 1: The Nura catchment in central Kazakhstan

contaminated with mercury.[21] The Samarkand reservoir at Temirtau (with an approximate capacity of 254 million m^3)[22] is the main reservoir in the catchment, and is connected to the 458 km long Irtysh-Karaganda canal that stretches from the Pavlodar area to Karaganda. Although the canal was originally intended to satisfy demand from irrigators, the general absence of significant agricultural activity on the Nura River now means that its largest water users are industrial concerns.[23] Four such concerns are linked directly to the Samarkand reservoir.

The two largest industrial plants utilising most of the water from the Samarkand reservoir are a vast steel plant and a thermoelectric plant. The infrastructure of the reservoir is apparently owned by the power plant, which is therefore responsible for the maintenance of the reservoir. However, this company is bankrupt and has no significant assets. As a result of the consequent failure to maintain the infrastructure, the State has proposed that it take over the ownership, and therefore responsibility for maintenance, of the infrastructure, a suggestion that has been broadly welcomed by the users.[24]

The other potentially major consumer of water from the Nura is the new capital city of

---

[21] Tanton *et al* state that 240 tonnes of mercury lie in riverbed and floodplain of the river in the 75km below the source at the AO Karbide plant in Temirtau (see Tanton *et al* , *supra* note 5, 232). The earlier work of the UNECE suggested that this figure was nearer 50 tonnes – see UNECE Environmental Performance Review, *supra* note 18, 103. The World Bank is currently engaged in a project to clean up this pollution – see www.worldbank.org for further information on this project. The presence of mercury in the water is one of the main reasons why the Nura-Ishim canal has not been used to transfer drinking water to the burgeoning new city of Astana. The ironic result of this is that the Kurgaldzhino wetlands and Lake Tengiz currently receive adequate water, but this supply would be threatened in the event that the water becomes sufficiently safe to be used for human consumption.

[22] Tanton *et al*, *supra*, note 5, 228.

[23] For further information regarding the role, or lack of one, of the Irtysh-Karaganda canal on the management of the Nura River and the potential for it to play a crucial role in the provision of water to Astana, see Sievers, E.W., "*Transboundary Jurisdiction and Watercourse Law: China, Kazakhstan, and the Irtysh*", 37 Tex. Int'l L.J. 4 (2002), 4.

[24] Interviews by the authors and others with users of the Samarkand Reservoir, Temirtau, October 2005.

Kazakhstan, Astana. Although it lies on the Ishim River rather than the Nura, the two rivers share a flood plain, and a canal exists between them.[25] Astana's population is growing very rapidly[26] and pressure not only to use the water from the Nura, but to protect the city from flooding, will grow commensurately.[27] However, major withdrawals of water at this point in the river may have devastating effects on the wetlands downstream. The Nura then, is a river that must be carefully managed if its three major sectoral users are to be balanced in a sustainable way.

3. Existing water management structure in Kazakhstan

The Kazakh government regards improvements in its water management as being bound to its future economic success,[28] and has therefore taken a number of steps aimed at implementing integrated water resources management (IWRM). In addition to committing itself to a number of international conventions and obligations,[29] this process has resulted in the recent formulation of a new comprehensive Water Code,[30] which is intended to form the foundation of these efforts. In addition, a new Environment Code is scheduled to be introduced at the end of 2006, to replace the

---

25 See map, *supra* 5.

26 Some sources suggest that the population of Astana will rise from around 600,000 currently to 1.2 million by 2030 – see Holley, D., "*Building Kazakhstan's Bridge to the 21st Century*", Los Angeles Times, 16 March 2005.

27 See Tanton *et al*, *supra* note 5, 232.

28 See the speech by the Deputy Chairman of the Committee for Water Resources, A.K. Kenshimov, made during the 2006 Stockholm Water Week, "*Water Resources Management in Kazakhstan: IWRM Plan and Water Code Introduction through Water Resources Management Improvement and Capacity Building Strengthening at National and River Basin Levels*", 2, available on the CAREWIB site at http://www.cawater-info.net/index_e.htm. See also UNDP National Human Development Report, *supra*, note 4.

29 For a comprehensive list of the commitments made by the Kazakh government, including signing up to the Johannesburg plan of implementation, see Hannan, *et al*, *supra* note 15, para.1.7 (on file with author). See also paras.3.4 and 5.3 below on the implementation of the Århus Convention.

30 Water Code of the Republic of Kazakhstan, no.481-11 of July 9th 2003. Further modifications have been made to the Water Code three times since its promulgation.

existing Law on the Protection of the Environment of 1997.[31] The Government is cognisant of the importance of the role played by stakeholders in improving water management,[32] and the Code includes amongst its guiding principles those of attracting community interest, and of open availability of information on the subject.[33]

The institutional context that the Water Code must operate within, however, has inherited much of the Soviet legacy, and this has been less than helpful to the overall pursuit of IWRM and to the open availability and accessibility of accurate information.

3.1 Water Use Licensing

Water management in Kazakhstan is governed by a number of different pieces of legislation and a variety of regulatory bodies. The principal law on the issue is the 2003 Water Code, and a plethora of regulations sit beneath this. The code seeks to set up a water management regime that will "*achieve and maintain environmentally friendly and economically optimal levels of use and protection of the water fund for conservation and improvement of living conditions for population and environment*"[34] through implementation of the following principles:

- State regulation of water use and protection;[35]

---

31 See Hannan, T., *et al*, *supra* note 15, 1.7.

32 See Ryabtsev, A.D., "*On Public Participation in Water Resources Management*", in IMPLEMENTING INTEGRATED WATER RESOURCES MANAGEMENT IN CENTRAL ASIA, Wouters, P., Dukhovny, V.A., Allan, A., eds. (Springer / NATO, Netherlands – *forthcoming, spring 2007*). Mr. Ryabtsev is the incumbent Chair of the Committee for Water Resources.

33 Water Code, art.9.

34 Water Code 2003, art.3(1).

35 The State also owns all water – Water Code, *supra* note 30, art.8, and see also the Constitution of the Republic of Kazakhstan, art.6(3):

"*The land and underground resources, waters, flora and fauna, other natural resources shall be owned by the state. The land may also be privately owned on terms, conditions and within the limits established by legislation*."

- Sustainable water use through rational use and water resource protection;
- establishing optimal conditions for water use, environmental sustainability and the sanitary and epidemiological protection of the population;
- Basin-based administration; and
- Combining decision-making regarding the use and control of water resources with economic considerations. [36]

The Kazakh water use regime takes as its basic premise the idea that all waters may be used by the population, but it places restrictions on the use of certain water bodies, and on the types of use to which water may be put. Fundamentally, water uses are split into those that are allowed through the exercise of inalienable rights and those that require authorisation through licences or permits, so-called special uses.[37] Water bodies[38] are broadly categorised according to the uses that may be made of them.[39]

Special uses may not be undertaken without some form of administrative approval from the licensing bodies in the form of a licence or permit.[40] Generally, licences are only required for the abstraction of more than 50m^3 per day from surface waters for the

---

Available in Russian and Kazakh versions at http://www.president.kz/.

36 Water Code, *supra* note 30, art.34.

37 See *infra* for further details.

38 The definition of "water bodies" does not appear to specifically include irrigation canals (Water Code, art.5)– this is consistent with the distinction between primary and secondary users set out below, but may be seen as not being conducive to effective IWRM.

39 There are five types – Common, Joint, Isolated, Wildlife sanctuaries, and bodies of Special State importance (Water Code, *supra*, note 30, art.11(3). They are also divided into four further varieties, based on their physical characteristics: surface; sub-surface; sea; and transboundary (Water Code, *supra* note 30, art 11(2)). Detailed definitions of each are provided for in arts.12-15, respectively.

40 Broadly, these uses include abstraction of water from water bodies for the purposes of irrigation (Regulations for Licensing the Activities for Special Water Use, para.1(2) and Water Code, art.95(4)); industry, energy (Water Code, art.103) and domestic supply (Water Code, art.66(5)); and for fisheries (only in limited circumstances: Water Code, art. 66); waste discharge (Water Code, art.66(4)); impoundment for irrigation (Water Code, art.95(3)); and in some cases navigation (Water Code, art.105(1)).

purposes of agriculture, industry, energy production, fish-breeding and transport.[41] Further distinctions are in practice observed between surface and ground water use approval: the authors encountered stakeholders who had obtained permits for the use of groundwater from the Committee for Geology and Use of Underground Resources.[42]

Licences and permits may not however, be authorised unless the licensee has obtained the approval of the relevant local executive agencies responsible for the environment and for the sanitary and epidemiological welfare of the local populations.[43] Prospective licensees must also demonstrate that they have the use of the engineering or infrastructure equipment necessary for the carrying out of the licensable activity, and that the responsible personnel are suitably qualified.[44] The documentary requirements for the licensing of activities involving abstraction of water and use in relation to hydropower are more onerous,[45] although the regulations do nothing more than demand "information" regarding, for example, fish protection.[46] The actual information requirements are not set out in greater depth. Beyond this, the criteria for the allocation of licences are vague, and allocation therefore appears to be governed simply by the principles that underlie the legislation. It should also be noted that the authors were told by all stakeholders that they had their surface water use licence issued to them by the Ministry of Natural Resources and the Environment.

---

41 Regulations for Licensing the Activities for Special Water Use, *supra* note 40, para. 1(1). Note that there is some confusion in these Regulations and in the Water Code regarding the use of Permits or Licences, and a lack of clarity over the distinction between the two.

42 See *infra*.

43 Regulations for Licensing the Activities for Special Water Use, *supra* note 40, para.5(1) and (2). Where the use demands it, licensees must also obtain the approval of veterinary bodies and fish protection bodies (*id*., sub-para.(5)). See also para.8, which details the documentation required for the approval of licences.

44 Regulations for Licensing the Activities for Special Water Use, *supra* note 40, paras.6 and 7, and para.8(7).

45 *Id*., paras.9-11.

46 *Id*., para.10(3).

Uses may be allowed indefinitely[47] or for limited periods, but may not last more than forty nine years.[48] Licences may be suspended in the event of the licensee breaching the provisions of relevant, though unspecified, legislation,[49] but permits may be suspended if legislative provisions relating to water and to the environment are not complied with.[50] Both types of use may only be made in the light of available resources and the ecological condition of the water body,[51] although it is unclear if this means that authorisations may be suspended or revoked if ecological quality or availability diminishes.

Additionally, special use rights may be terminated if the relevant water body simply dries up, whether through natural or artificial means.[52] Use rights can be actively terminated by the issuing body, if the terms of use are not being adhered to or where the rights have not been used for three years.[53] They may also be administratively terminated if the state determines that the resources are necessary for its own use.[54] Other restrictions over water uses can be imposed in certain circumstances, but the methodology detailing the application of these criteria, and the factors involved in such procedures, is non-existent[55].

---

47 For example, general uses are permanent – Water Code, *supra* note 30,, art.75(6).

48 *Id*., art. 22. Short term rights are issued for periods of less than five years (short term - *id*., art.22(3)) or between five and forty nine years (long term - *id*.).

49 Regulations for Licensing the Activities for Special Water Use, *supra* note 40, para.13.

50 Regulations for Issuing Permits for Special Water Use, para.11.

51 Water Code , *supra* note 30, art.70(5).

52 *Id*., art.75(1)(5). The difference between "natural" and "artificial" is not elaborated upon. Under para.75(1), the automatic termination of rights may also occur where the term of the authorisation has expired, or the holder of the right expires (whether by death of a natural person or the liquidation of other legal entities.

53 *Id*., art.75(2). If rights to resources used for drinking water are not used for one year, termination will also be triggered (*id*., sub-para.2). Given the need for self-monitoring by users, rather than by the RBO, it seems improbable that many rights atrophy in this way.

54 Appeal is available against such a decision, though details relating to compensation payable and the circumstances in which such action might be justifiable are absent.

Finally, a distinction is made between primary users of water and secondary users. Primary users are those that use water for their own purposes directly from the water body,[56] and secondary users receive their water from primary users under contractual arrangements.[57] This distinction between primary and secondary users is important, as it is this that effectively governs the licensing of water uses by the RBO. For instance, in the example of a major irrigation project: the water is taken from the natural water body by the irrigation infrastructure manager / owner. This is the primary user, and it is this organisation that is licensed by the RBO. The irrigation provider then provides water to farmers, who are deemed secondary users. They are not licensed by the RBO, but their water use will be governed by contracts in place with the irrigation provider (or water user cooperative, if one exists).[58]

---

55 See in particular Water Code, *supra* note 30, arts.74-5.

56 *Id*., art.69.

57 *Id*.

58 It is possible that individual farmers can be primary users, and therefore licensable, if they take water from the body directly, but the normal position would be that farmers would be secondary. Industrial concerns would normally be primary water users, though this would depend upon the source of the water – a factory, such as the steel mill at Temirtau, that withdraws water from the Irtysh-Karaganda canal would be bound by a contract with the canal operator rather than by a licence from the river basin authority. The variety of sources used by the mill means that it is bound both by contract and by licences relating to each source.

3.2 Institutional structure

The Kazakh institutional structure for the management of water operates at a number of geographic and political levels: the national, oblast, basin and rayon. The national executive agencies, including the RBOs, are also represented at the oblast and rayon levels, and it would normally be these local level bodies that were involved in the day to day management of waters.

The body responsible for authorising special uses varies depending to some degree on the nature of both the use and the prospective user, but the primary licensing body is the River Basin Organisation.[59] Article 49 of the Water Code identifies the following additional bodies that are involved in water management (aside from irrigation management bodies):

- Central executive body for environment protection;
- Authorized body for subsoil use and protection (the Committee for Geology and Use of Underground Resources, Ministry of Energy and Mineral Resources)
- Authorized state body for sanitary and epidemiological safety of population (in the Ministry of Health);
- Authorized state veterinary body;
- State body in charge of phytosanitary supervision;
- Local executive bodies – the *Akimats*.

In addition to this list, the following should be added:

---

[59] Regulations for Licensing the Activities for Special Water Use, *supra* note 40, para.4 with respect to licences and para.5 with regard to permits.

In addition, the Committee for Water Resources, the national water administration body, is solely responsible for issuing licences and permits relating to the use of water from those water bodies of special state importance (Regulations for Licensing the Activities for Special Water Use, *supra* note 40, para.3 with respect to licences; and Regulations for Issuing Permits for Special Water Use, *supra* note 50, para.4 for permits), but is also the only body that may authorise water use by foreign entities (Regulations for Licensing the Activities for Special Water Use, *supra* note 40, para.3(2); and Regulations for Issuing Permits for Special Water Use, *supra* note 50, para.4(2)).

- Ministry of Agriculture
- Kazgidromet (reporting to the Ministry of Environment Protection)[60]
- Agency for Land Resources Management
- Ministry of Industry and Trade
- Ministry of Emergency Planning
- Ministry of Economics and Budget Planning and Ministry of Finance
- Ministry of Justice[61]
- Local representative bodies – the *maslikhats*

Aside from their licensing functions, the CWR and the RBOs principally have a coordinating role only, rather than having active management responsibilities, and the RBO to some degree views its role as being the administration of water use limits set by the CWR. The CWR, however, is a department of the Ministry of Agriculture, a situation which must result in an almost automatic conflict of interest if the CWR is to be seen to be an impartial coordinator of all water uses. Anecdotal evidence suggests that there is often friction between basin organizations and local Akims, the heads of the local executive bodies, who report directly to the President's office.[62] The functions of the RBO and the Akims are closely related with respect to the administration of waters, but the Akims have the advantage in terms of sheer power, and the latter in fact has more direct powers of watercourse management.[63] In the view of the UNDP, the RBOs are under-funded, and suffer greatly from the fact that the CWR does not have ministerial status.[64] Internationally, it is not unusual to have decisions impacting on water resource management made by a number of bodies, but the crucial requirement in such contexts is the quality of the coordination. Anecdotal evidence

---

60 See *Guidelines on Handling Public Requests for Environmental Information*, Ministry of Environment Protection of the Republic of Kazakhstan and Organisation for Security and Cooperation in Europe, Almaty, 25, available at http://www.osce.org/documents/cia/2004/11/3787_en.pdf.

61 See Hannan *et al*, *supra* note 15, ch.6.

62 Act on Local Administration, art.29(4).

63 See for example, Water Code, *supra* note 30, arts.39 and 112-120.

64 See Hannan *et al*, *supra* note 15, ch.6 for an outline of suggested improvements to the status of the CWR.

presented to the authors suggests that coordination is neither extensive nor formalized. In addition, the RBOs are largely crippled by lack of both financial and human resources:this renders enforcement of decisions difficult, and compounds the views of some industrial concerns that the RBO is toothlessly impotent.

3.3 River Basin Council

Among the functions of the RBOs are the preparation of basin agreements for the rehabilitation and protection of water bodies.[65] These agreements, which must be concluded by the relevant RBOs, local executive bodies and "other subjects" within the basin, are intended to aid in the coordination of the water management roles played by the signatories,[66] and, according to art. 43(1) of the Water Code, also to create River Basin Councils ("RBCs").[67] These plans are drawn up on the basis of existing strategies and data outlining water use capacities, but the expected effects of the agreement are not set out, and preparation of these agreements appears to lie with River Basin Councils. The River Basin Councils have principally an advisory function[68] with respect to the parties to the agreement[69] and have the power to make suggestions and recommendations alone.[70] They are essentially intended to develop cooperation between members[71] and to advise on issues concerning the use and protection of water

---

65 Model Draft By-laws of the River Basin Management Organisation of the Ministry of Agriculture of the Republic of Kazakhstan, para.3.2(4).

66 Water Code, art.42(1).

67 Water Code, art.43(1). However, see Order# 71-П of the Committee for Water Resources of the Ministry of Agriculture, Republic of Kazakhstan dated 21 April 2004, which obliges the RBOs to create the RBCs and to arrange for the preparation of the basin agreements. Reprinted in *Methodological Guidelines: Establishment of River Basin Councils in Kazakhstan*, United Nations Development Programme (Almaty, 2005), 27, available at www.voda.kz.

68 Water Code, *supra*, note 30, art.43(1).

69 *Id*., art.43(3).

70 *Id*.

71 Standard Regulations for River Basin Councils (attached to Order# 71-П of the Committee for Water Resources, *supra*, note 67), para.3.

resources.[72] Membership consists of the heads of the RBO (chair),[73] local executive and representative bodies,[74] along with local users including representatives of other oblast-level executive agencies responsible for water management,[75] NGOs and water user associations.[76] There is no indication as to how voting rights, if any, are split in the inevitable instances where basins overlap oblast boundaries, and the maximum number of members is not set. It should be noted, however, that the initial composition of the RBC will be determined by the director of the relevant RBO.[77] Other individuals and representatives of other bodies may participate in meetings of the RBC, but only if specifically invited.[78]

The RBCs are specifically charged with considering and advising upon the following documents:

- River basin scheme proposals, with respect to the comprehensive use and protection of water resource;
- Plans produced by local executive bodies for the rational use of basin water

---

72 *Id*., para.4.

73 *Id*., para.10.

74 Making up no more than 20% of the total – *id*., para.9.

75 The exact composition of this group is left unspecified, but it may be that it links directly back to those organisations referred to in Water Code, *supra* note 30, art.49. Again, the 20% limit applies – Standard Regulations for River Basin Councils, *supra* note 71, para.9.

76 *Id*., para.6 and Water Code, , *supra* note 30, art.43(2). Users, including NGOs and WUAs can make up no more than 20% of the total membership (Standard Regulations for River Basin Councils, , *supra* note 71, para.9). It is not clear which groups should make up the remaining 40% of the composition of the Council.

77 Standard Regulations for River Basin Councils, , *supra* note 71, para.7. The RBO is also responsible for covering the costs of running the respective RBC, but only from funds allocated to it from central government (*id*., para.27).

78 *Id*., para.8. The Nura-Sarysu Basin Council has twenty nine members, drawn from local Akimats (ten members in total, including only one from any of the maslikhats, thereby comprising more than 30% of Council membership), local executive bodies (eight members), industry (eight again), the Korgalzhyn reserve body and an NGO (one member each). NGO membership therefore falls far short of the 20% maximum. Full details of all members can be found at http://www.voda.kz/new/en/doc_bc_nura.php.

bodies;

- Draft agreements on the rehabilitation and protection of the basin water bodies; and
- Other relevant documents requiring integrated decision-making[79]

While the RBC has the power to advise and produce recommendations, the corresponding obligation on the part of the RBO or local executive bodies to take the views of the RBC into account, is very limited. The RBC may make its views known, but there is largely no obligation on the part of the receiving authorities to listen. The exception to this appears to be with respect to the Basin Schemes of "waters' complex use and protection". These schemes are required under art. 46 of the Water Code, and this obligation is developed in greater detail in the Regulation for the development and approval of general and basin schemes for comprehensive use and protection of water resources and water balances of 2004. Art. 17 provides that the basin scheme that is submitted by the RBO to the CWR must "*reflect the recommendation of the participants of the*" RBC and "*people*". "Reflect" is potentially a very strong word, and it is not clear if the intention is to make the RBOs bound by the views of the RBCs, or merely to ensure that the scheme is broadly reflective of the RBC's views. Either way however, it provides a *potentially* potent means of imposing the views of users and those bodies involved in management of waters at the basin level on the basin scheme, although there is unfortunately no mechanism for the communication of the draft scheme to the RBC in the first place. This omission is especially noteworthy given the other detailed procedures outlined in the regulations for the development of the scheme and its passage through other relevant organisations.[80] It is also important to recognise that it is the basin agreement, rather than the basin scheme, that is the instrument designed to coordinate the work of all agencies that are involved with managing water resources at the basin, oblast and rayon levels. The RBC therefore has some power in relation to one management document, but not with respect to the one instrument that is intended

---

79 Standard Regulations for River Basin Councils, , *supra* note 71, para.5.

80 Regulations for development and approval of General and Basin schemes for comprehensive use and protection of water resources, paras.14-19.

to reflect the integrative character of the RBC's own composition. Moreover, a UNDP document suggests that it may be possible to have more than one basin agreement in place, as they need not be multilateral.[81]

In October 2005, the authors attended a meeting of many of the prospective members of the Nura-Sarysu RBC in Karaganda. The aim of the meeting was primarily to identify any incentives that might make key stakeholders choose to participate in the river management process. Missing from that meeting, however, were a number of major industrial users, who had also been absent from a preliminary meeting of the RBC members earlier in the year. Following the October meeting, the authors visited these industrial concerns to gauge their views on the RBC. While the information received from them was occasionally at odds with each other and with what we had heard at the main meeting, their reasons for doubting the usefulness of the RBC were illuminating. Both parties were broadly of the view that without proper powers, the RBC would be little more than a discussion forum, and that there was therefore little point in being involved. There was also a feeling from one of the parties that even if the RBC were able to materially influence the decisions of the RBO, this would be of little consequence, because the RBO was perceived to be unable to exert control over the water use of industry in any case.[82] This is important, as it provides a concrete example of one of the reasons why stakeholder participation fails to work in some cases: because stakeholders lack rights that they can effectively enforce, and because the law appears to be applied inconsistently.[83]

3.4 Information Management

---

[81] See *Methodological Guidelines: Establishment of River Basin Councils in Kazakhstan*, *supra*, note 71, 8.

[82] For example, the requirement that users monitor their own water use means that there is little incentive for them to provide accurate data, and the RBOs currently lack the capacity to enforce use limits effectively. See *infra* for further details regarding self-monitoring.

[83] See for example note 109 below on the experience of Sweden.

Along with a number of other provisions within the Criminal and Civil Codes,[84] the Water Code sets out a number of provisions designed to fulfill open information goals. Firstly, one of the functions of the RBO is explicitly stated to be the dissemination of information on measures taken to protect waters and improve their condition,[85] and they must provide public access to the state water cadastre.[86] Secondly, water users have the right to obtain information regarding the conditions of water bodies with respect to using them for economic activity.[87] In addition, one of the principles underlying the Water Code is the availability of information on the status of waters in Kazakhstan.[88] On the broader matter of availability of information, the Law on Environmental Protection of 1997[89] provides that there is a general right to reliable information with regard to the health of the environment,[90] and Kazakhstan is bound by the terms of the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.[91] Art. 4 of the Convention obliges parties to ensure that:

"…in response to a request for environmental information,[to] *make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:*
(a) Without an interest having to be stated;
(b) In the form requested…"

---

84 See *Guidelines on Handling Public Requests for Environmental Information*, *supra*, note 60, 19-21.

85 Water Code, *supra* note 30, art.40(2)(19).

86 *Id*,, art.59(6).

87 *Id*,, art.71(5).

88 *Id*,, art.9(10). See also *id*., art.71(5).

89 Law on Environmental Protection, Law No. 160 - 1 of 1997. An unofficial Russian version can be found at http://faolex.fao.org/faolex/.

90 Law on Environmental Protection, 1997, art.5.

91 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed at Århus June 25, 1998, UN-ECE-CEP-43 (1998) (entered into force October 30, 2001) (the "Århus Convention). Kazakhstan ratified the Convention on 11 Jan 2001, and it

The Kazakh Constitution supports this to some extent, in art. 18:

"3. State bodies, public associations, officials, and the mass media must provide every citizen with the possibility to obtain access to documents, decisions and other sources of information concerning his rights and interests. "

The RBOs rely on the quality of the information being provided to them by the monitoring agencies. In addition to receiving information from water users themselves under their obligations for self-monitoring,[92] the principal source of this data is Kazhydromet,[93] the main monitoring organisation of the Ministry of Environmental Protection. Unfortunately, this body relies on being able to sell its recent data in order to continue surviving.[94] During the meetings the authors attended in Karaganda, it became clear that the reputation of this agency was low: the quality of the data provided by it was not highly regarded[95] and the prices demanded for such information were so exorbitant that even the RBO did not wish to purchase it. The role of Kazhydromet therefore produces some problems in relation to the provisions set out above on the availability of monitoring data and environmental information. Furthermore, the state water cadastre (established by and referred to throughout the Water Code,[96]) has little additional legislative support, so the mechanisms for generating and maintaining such a database are sparse.[97]

---

came into force on 30 October 2001. See http://www.unece.org/env/pp/treatytext.htm for full text.

92 See Water Code, *supra* note 30, art. 61(5) and art.72 – water users must pro. See also Regulations on state monitoring of waters, para.9(1)). Users must also ensure that measuring devices are in place (*id*, sub-para.(2)),

93 With respect to surface waters only. Information on groundwaters is the responsibility of the Committee for Geology and Underground Resources. See *Guidelines on Handling Public Requests for Environmental Information*, *supra*, note […], 22.

94 See *Guidelines on Handling Public Requests for Environmental Information*, *supra*, note 60, 26 – older data are available freely, but current information is provided only in the context of a contract.

95 *Id.*, 26 for further details of the monitoring infrastructure managed by Kazhydromet.

96 See especially Water Code, *supra*, note 30], ch.11.

Further problems have been encountered by the Kazakh government in relation to the implementation of the Århus Convention:Kazakhstan has been found to be in breach of its obligations by the Convention's Compliance Committee.[98] The Committee's last recommendations on the issue, which were approved by the Parties to the Convention in June of 2005, specifically requested that the Kazakh government produce a strategy for implementing the Convention by the end of that year.[99] While Guidelines on the implementation exist, these were not regarded as sufficient by the Parties,[100] and as yet, no transposition of the terms of the Convention into Kazakh law has taken place.

---

97 See Hannan *et al*, *supra* note 15, para.13.7.

98 See United Nations Economic Commission for Europe: Report of the Second Meeting of the Parties, 13 June 2005, ECE/MP.PP/2005/2/Add.7, Decision II/5a, available at http://www.unece.org/env/pp/compliance.htm.

99 See UNECE: Decision II/5a, *supra*, note 98, para.5. Such a strategy was submitted by Kazakhstan in time for the Eleventh Meeting of the Compliance Committee at the end of March 2006, and negotiations appear to be ongoing: see United Nations Economic Commission for Europe: see Report of the Eleventh Meeting of the Compliance Committee, 10 May 2006, ECE/MP.PP/C.1/2006/2*, especially para.29, available at http://www.unece.org/env/pp/compliance.htm. The matter was not included in the reports from the two subsequent meetings, and it must therefore be assumed that it was not discussed.

100 UNECE: Decision II/5a, *supra*, note 98, 2.

4. International practice

International practice with respect to representative basin committees is varied. The European Union Water Framework Directive ("WFD") [101] for example, contains no specific provision on their establishment, but demands that "*member states encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans*".[102] Member states may implement this as they wish within the overall framework of River Basin Districts: France, for example, has an established system of sophisticated Basin Committees, England will have advisory liaison panels,[103] and Scotland will have River Basin District Advisory Groups.[104] As one of the states that have recently joined the European Union, Poland has created a system of Regional Boards of Water Management.[105]

Outside the EU conversely, South Africa has set up Catchment Management Agencies (CMAs), which are statutory bodies with jurisdiction in defined Water Management Areas.[106] These CMAs have the duty to promote community participation in water resource management. Stakeholder participation occurs through the extensive inclusion of stakeholder involvement in the water management process and through strict governance controls over the activities of management agencies and their

---

[101] Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, *O.J. L.327 , 22/12/2000 P.0001 – 0073.* Available at the Eur-lex website at http://europa.eu.int/eur-lex/en/index.html.

[102] *Id*., art. 14(1).

[103] Department for Food, Environment and Rural Affairs, *River Basin Planning Guidance*, (DEFRA, London, August 2006), paras.11.4-10. Available at http://www.defra.gov.uk/environment/water/wfd/pdf/riverbasinguidance.pdf.

[104] Water Environment and Water Services (Scotland) Act 2003 asp 3, s.17. Available at the website of the UK Office of Public Sector Information at www.opsi.gov.uk.

[105] Blomquist, W; Tonderski, A; Dinar, A "*Institutional and Policy Analysis of River Basin Management. The Warta River Basin, Poland.*" (2005).World Bank Policy Research Working Paper 3528.

[106] See *infra* para 4.1 for further details.

directors.[107] In Brazil, the new water legislation enacted in 1997, allows for the establishment of River Basin Committees. These committees act as the instrument through which stakeholders within the basin can participate in water management decision-making.[108]

Generally speaking, stakeholder participation works best when stakeholders feel that they can make a tangible difference through their interventions.[109] This will only be effective, however, if the rights of the stakeholders are enforceable.

4.1 South Africa

As mentioned above, the National Water Act only states that the CMA should promote public participation and it makes no direct provision for representative bodies to act as advisory bodies at the catchment level. However, it should be noted that the National Water Resources Strategy states that it is the intention of the relevant ministry to create representative bodies in each Water Management Area[110] for the purposes of consultation exercises,[111] with a view to reducing the likelihood of consultation fatigue. In the absence of such bodies currently, the National Water Act, the principal water management legislation in the country, seeks to include the public as a whole in decision-making rather than identifying sectoral users and targeting these as stakeholder representatives.[112]

---

107 See for example, National Water Act, no.36 of 1998, s.81(1). Available at www.dwaf.gov.za.

108 Garrido, R "*Water Resources National Policy in Brazil*" (2000), 9.

109 By way of example, see *Common Implementation Strategy for the Water Framework Directive 2000/60EC: Public Participation in relation to the Water Framework Directive*, Office for Official Publications of the European Communities, (Luxembourg 2003), 186, for relevant experience in Sweden.

110 There are nineteen such areas, based on catchments. See Establishment of the water management areas and their boundaries as a component of the national water resource strategy in terms of section 5(1) of the National Water Act, Government Notice No 1160, 1 October 1999. Available at www.dwaf.gov.za.

111 Department of Water Affairs and Forestry, First Edition of the National Water Resources Strategy, (September 2004), para.4.3.1. Available at www.dwaf.gov.za.

112 See, for instance, National Water Act, *supra* note 107, ss.8-10, on the creation of Catchment

In addition to this, however, the National Water Act sets up stringent requirements as regards the constitution of the board governing the CMAs. Appointees to the boards are made by the Minister, and the final membership must be consistent "*with the object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups*".[113] Schedule 4 of the National Water Act then sets out the rules applicable to Governing Boards, which includes mechanisms for the recovery of improperly-obtained profits and details of reporting requirements. The criteria that are to be taken into account when water use licences are issued are clearly set out, in the interests of both transparency and predictability.[114] Finally, CMAs are obliged to "*strive towards achieving co-operation and consensus in managing the water resources under [their] control*".[115]

4.2 Poland

Poland had already begun to conform to a catchment-based water management system at the beginning of the 1990s, when they created a system of Regional Boards of Water Management (RWMAs) with the purpose of improving water quality, protecting drinking water sources, and aiding water users and water user organizations in developing and implementing rational water management. This is a departure from the previous centralised water management system operated during the Soviet-dominated era, where, as was the case in Kazakhstan, technical planning and large engineering projects were prevalent, focusing mainly on supporting industrial and agricultural development.[116] Although water supply, sanitation and waste disposal were decentralised to the local level before the 1990s, the quality of planning and

---

Management Strategies and the consultation exercises that must be followed by Catchment Management Agencies.

113 National Water Act, *supra* note 107, s.81(1). Although appointments are made by the minister, he must do this in conjunction with an advisory board set up for the purpose (*id*., s.81(3)).

114 *Id*., s.27.

115 *Id*., s.79(4).

116 See generally Blomquist, *et al*, *supra* note 105.,.

management of the water resource was poor, especially in more rural areas.[117] There was therefore no history of managing the water resource in a holistic catchment based manner. The level of participation by stakeholders using the resource was also very limited.[118]

Possibly because of this historical context, public participation within the RWMAs was never really well developed. Also, many of the boards never really consisted of more than a single individual who acted as a director charged by the Ministry of Environment with management of the basin. This naturally hampered consistent and effective water management.[119]

Poland enacted a new water law in 2001.[120] The basic principles of the water law are based on sustainable and rational resource use[121] and are governed ultimately by the requirements of the WFD, Poland having recently acceded to the European Union. Although the institutional changes that took place since the reforms started in 1990 are very significant (for instance there is a rational system of water tariffs in place, along with wastewater discharge controls and water resource planning processes), the power of the RWMAs have been limited, because they had no revenue source of their own as strategic and fundamental financial means are still controlled by central government. In addition, there is no mechanism for catchment level stakeholder participation. Organisational responsibilities and relationships are less integrated than the actual water law and policy, hampering IWRM.[122] In the case of Poland, therefore, the important principle of ensuring that policy informs planning and vice versa is not

---

117 *Id., 24*

118 *Id. 12*

119 *Id. 12*

120 Pravo Wodne, Journal of Laws 2001 No. 115 Pos. 1229. Links are vailable at the FAOlex website at http://faolex.fao.org/faolex/ (in Polish only).

121 *Id*. See also Blomquist *et al*, *supra* note 105, 16-7; and Tonderski, A., "*Warta River Basin Case Study, Poland - Background Pape*r" (2004).World Bank Research Working Paper, 20.

122 .Tonderski, *supra* note 129, 21.

happening.[123]

4.3 France

Being an EU state, France is of course bound by the Water Framework Directive. However, it had a system of basin management in place prior to the advent of the WFD: the country is split into seven basins (which are managed as six),[124] each of which has its own Basin Committee along with an executive implementation arm, the Water Agency.[125] The Board of Directors of the Water Agency contains representatives of the Basin Committee, and the Agency must consult the Committees in relation to certain subjects, including the setting of the tariffs levied for water withdrawals and pollution discharges, and on the priorities to be followed in the 5 year programmes utilised by the Agencies.[126]

Each Basin Committee is charged by the Prefect of the Basin to prepare the Master Development and Water Management Plan (the "SDAGE"), and to finally approve it.[127] This plan sets out "the basic guidelines for the balanced management of water resources",[128] and Basin Committees must seek the participation of relevant state and government bodies.[129] If comments are not forthcoming within four months, approval

---

123 Note also that submissions have been made to the Compliance Committee of the Århus Convention on two occasions, claiming non-compliance by Poland in respect of its obligations under the Convention, but both have been ruled inadmissible by the Committee – see documents ACCC/C/2004/7 and 2005/14 on the Århus Convention website at http://www.unece.org/env/pp/pubcom.htm.

124 These basins are as follows: Adour-Garonne, Artois-Picardy, Loire-Brittany, Rhine-Meuse, Rhone-Mediterranean (and Corsica), and Seine-Normandy.

125 For a useful outline of the French system, see the website of the Office International de l'Eau at http://oieau.fr/index.htm.

126 See http://semide.oieau.fr/EN/topics/part_a.htm.

127 Law No. 92-3 of January 3, 1992, On Water, (Journal official, Jan. 4, 1992, 187), art.3. English translation available at http://oieau.fr/index.htm.

128 *Id*.

129 *Id*.

is assumed.[130]

Membership of these Basin Committees comes from three principal sectors: the state (including representatives from relevant ministries); users (including environmental uses); and relevant regional and local councils.[131] These are substantial bodies, each comprising around one hundred members, and these in turn are represented at national level in the 77 member Comité National de l'Eau.[132]

With respect to information availability, the Århus Convention has been implemented directly in France through Law No. 2002-285 of 28/2/02.[133] There have been no approaches made by the public to the Compliance Committee regarding possible transgressions by France in the implementation of this Law, which may indicate either that the public is unaware that such a procedure is possible or that the law is working well.

4.4 Scotland

Although Scotland is another EU nation governed by the Water Framework Directive, the approach taken here has been less formalised than that adopted in France. The

---

130 *Id*.

131 See for example the Rhine-Meuse basin committee, at http://www.eau-rhin-meuse.fr/index.htm. See also the OIEAU website at http://oieau.fr/anglais/gest_eau/part_a.htm for a breakdown of the membership of all basin committees. The tendency appears to be that representatives of users, communities and "socio-professionals" together make up around half of each committee, in contrast to the position in Kazakhstan.

132 Scottish Parliament Information Centre SPICe Briefing 02/96, *Water Environment and Water Services Bill: River Basin Planning*, August 2002, 4-5 – available at http://www.scottish.parliament.uk/business/research/pdf_res_brief/sb02-96.pdf.

133 The Århus Convention was transposed into European Community law through Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC *Official Journal L 041, 14/02/2003 P. 0026 – 0032*. See also the declarations made by the EC and a number of its members, including France, on signature, approval or ratification of the Århus Convention at http://www.unece.org/env/pp/ctreaty.htm.

approach in Scotland is to establish so-called River Basin District Advisory Groups ("RBDAGs"), which were created under the Water Framework Directive transposition legislation, the Water Environment and Water Services (Scotland) Act 2003.[134] Despite the fact that Scotland has only one principal River Basin District covering the vast majority of the country,[135] there are ten RBDAGs, eight of them in the Scotland RBD.[136] In addition, there is a National Stakeholder Forum in existence, which has no legislative basis, and is representative of the major water users and NGOs in Scotland.[137] The water regulator, SEPA, which is responsible for establishing the remit of the RBDAGs, takes the view that the fundamental function of the groups is to prepare sub-basin plans for their respective areas.[138]

Membership of these RBDAGs will be heavily influenced by local priorities and issues, but SEPA say it will be representative of public authorities, major water users and local stakeholders.[139] It is envisioned that the RBDAGs themselves will set up broader forums in their respective areas to allow wider membership beyond that of the groups represented on the advisory groups.[140]

Like France, Scotland, as a part of the United Kingdom, is bound by the Århus

---

134 See in particular s.17 of the Water Environment and Water Services (Scotland) Act 2003, *supra* note 104, available at www.opsi.gov.uk.

135 See www.sepa.gov.uk for further information regarding the RBDs in Scotland.

136 *Id*.

137 The most recent minutes available from meetings of this group date back to November 2004, and can be viewed at http://www.scotland.gov.uk/Topics/Environment/Water/17316/NSFNovember2004.

138 See *River Basin Planning Strategy for the Scotland River Basin District*, SEPA, (Scotland, 2005), ch.2, 14. Available at www.sepa.org.uk. Such sub-basin plans are intended to cover the following:

- Identify key priorities for environmental improvement and protection within the area;
- Identify actions and measures to deliver environmental improvement and protection;
- Provide advice on the use of alternative objectives (see section 1.4);
- Identify improvements in the coordination and integration of different plans and policies for the area that will help to better protect the water environment and promote its sustainable use;
- Coordinate relevant consultation and participation activities within the area; and
- Consider the need for, and use of, further detailed plans and programmes. (*id*., 14).

139 *Id*.

Convention as implemented through Directive 2003/4/EC on public access to environmental information. This has been transposed into Scots law by the Environmental Information (Scotland) Regulations 2004.[141]

5. Conclusions

It would appear from the approaches taken elsewhere in the world that representative basin bodies are increasingly being used by States anxious to improve the level of public participation in water management. The success, or otherwise, of these efforts is less certain, however. If there is general acceptance of the value of such bodies in principle, assessing the success of their implementation is more difficult, given that most are recent, or planned, innovations. In the Kazakh context, and on the Nura in particular, the problems of implementation, while almost universal, are specific to that region. They result from a number of broad factors, chief among these including the following:

- Uncertainty caused by vague, contradictory or missing legislative provisions;
- Institutional issues (caused by a mismatch between the powers endowed by legislation and the functions of the institution), or capacity problems;
- Inadequacy and paucity of available information;
- A focus on the RBC as the fundamental means for achieving stakeholder participation;
- Slow acceptance on the part of institutions and stakeholders regarding the involvement of the latter in decision-making

Of these, merely improving the legal regime would be an inappropriate tool to properly address issues relating to physical institutional capacity problems. The

---

[140] *Id.*, 18.

[141] The Environmental Information (Scotland) Regulations 2004 no.520. Available at www.opsi.gov.uk. See also the Freedom of Information (Scotland) Act 2002 asp 13 (available at www.opsi.gov.uk), which provides a general right, with some exceptions, to the information held by public authorities in Scotland (s.1), and establishes the post of Scottish Information Commissioner (s.42) to oversee compliance with both the Act and the Environmental Information (Scotland) Regulations.

others, however, are all capable of being affected by an improved regulatory system, although it is clear that making the legal framework more effective is not the only mechanism that might be utilized.

It must be borne in mind that the governance framework within which the water management regime operates, must establish the credibility and legitimacy of the bodies involved. Without these elements, the respect that will be engendered by organizations will fail rapidly. Credibility and legitimacy must be built upon good governance. It has been argued that four principles underlie this latter:

- Accountability
- Participation
- Predictability
- Transparency[142]

These, then, are the "ingredients" of good governance,[143] and must be in place if policies are to be successfully implemented. In this case, the policy goal is IWRM. The authors of this paper would suggest that if these four "ingredients" of good governance are to be satisfied, the following elements must be in place in the regulatory framework:

- Clear standards of behaviour / performance;
- Clearly set out functions and responsibilities;
- Enforcement capacity, commensurate with rights and responsibilities;
- Rigorous compliance monitoring;
- Clearly laid out procedures;
- Open availability of information;
- Comprehensive / unambiguous criteria to be applied in decision-making; and
- Protection of 'silent' interests (for example, ecosystems, gender balance, disadvantaged social groups).

---

[142] "*Governance – Sound Development Management*" – Asian Development Bank, (Manila, 1999), 3-12. Available at http://www.adb.org/Documents/Policies/Governance/govpolicy.pdf.

[143] ADB, *supra*, note 150, 4.

This paper is concerned principally with stakeholder participation, but it is important to note that the above four factors cannot be achieved independently of one another.[144]

Consequently, participation must be seen in the wider context of good governance if effective participation is the aim. This links well with the principles of IWRM, one of which emphasises the importance of a participatory approach.[145] It also means that River Basin Councils, for example, cannot be seen in isolation from the governance framework within which they have to work.

5.1 Uncertainty caused by vague, contradictory or missing legislative provisions

A number of significant problems have been identified above, all of which would have a potential effect on the extent to which stakeholders become involved in decision-making. The licensing of water use is tainted by factors such as the fact that licensing is not governed by clear, unambiguous criteria, as is the case for example in South Africa. Ambiguity swathes the procedures for suspension and termination of water use rights, and these problems combine to increase the possibility that the law is perceived as being inconsistently applied.

This is not helped by the uncertainty relating to basin agreements. In addition to the lack of clarity regarding their aims and objectives, there is nothing in the Water Code to refute the idea that basin agreements might be bilateral. The implication, then, is

---

144 See also Rogers, P., Hall, A., *Effective Water Governance*, GWP TEC Background Paper no.7 (Stockholm, 2003), 28.

> "*Participation crucially depends on all levels of government following an inclusive approach when developing and implementing policies. Broad participation is built on social mobilisation and freedom of association and speech, as well as capacities to participate constructively. Transparency and accountability are built on the free flow of information. Governance institutions and systems need to communicate among the actors and stakeholders in very direct ways. Correctly done, this will lead civil society to be socialised into governance over a wide range of issues*" .

145 Dublin Statement on Water and Sustainable Development 1992, available for example at http://www.wmo.ch/web/homs/documents/english/icwedece.html.

that it may be possible for a single basin to be associated with a number of basin agreements between different users and different regulatory authorities, with no strict requirements as to signatories or priority. Serious questions then arise with respect to the way in which RBCs would interact with each basin agreement grouping, and how a variety of possibly bilateral agreements might best serve the cause of IWRM on any particular basin.

The distinction between primary and secondary users may also be of great importance when identifying stakeholders: are farmers or industrial users who take water from commercially-run canals to be counted as stakeholders for the purposes of River Basin Council membership, even though they are not connected to the licensing authority in any direct way? If not, stakeholder involvement has the potential to be under-representative, as only commercial users of water, as primary users, would generally be represented. There appear to be no binding rules regulating the balance of members in RBCs, and it appears that the guidelines rules that do exist have been flouted in the context of the Nura. This does nothing to embolden NGOs or individuals to get involved with RBCs, especially as they are unable to participate in the RBC meetings unless expressly invited.[146]

5.2 Institutional issues (caused by mismatches between the powers endowed by legislation and the functions of institutions), or capacity

Institutional problems in the water management field have been extensively documented by the ADB and UNDP projects in Kazakhstan.[147] Ultimately, too many bodies are involved with the management of Kazakhstan's waters, but none has ultimate managerial responsibility. Ground and surface waters are also not managed in an integrated manner as different organizations have varying responsibilities over each. There are perennial problems with the lack of capacity of the RBO, both in the form of a lack of financial resources and through the absence of staff who are able to

[146] See Standard Regulations for River Basin Councils, para.8, *supra* note 71.

[147] See ADB *Institutional Strengthening of the Committee for Water Resources*, *supra*, note 150 and Hannan *et*

monitor and enforce decisions. Consequently, the RBO must rely on the users themselves for the information it needs to monitor compliance, and this leads directly to allegations and suspicions of institutional impotence by users. Its credibility is damaged by both this and the fact that the Committee for Water Resources cannot be regarded as wholly impartial and cannot hope to compete with local executive bodies unless it becomes a ministry in its own right.

With respect to the River Basin Council more specifically, its general inability to produce binding recommendations, other than potentially for the basin scheme, must be regarded as being detrimental to its effectiveness. It is true, as the UNDP points out, that the body at this stage is not fully formed, and that it will develop as users become more confident in their ability and desire to get involved,[148] the assumption being presumably that as the stakeholders' voices get louder, the more powers they will be able to assume. However, this will need a robust base in the regulatory framework, with detailed provisions setting out mechanisms for its involvement, something that is currently missing. Its membership should be clearly defined, although without identifying the individual organizations to be represented, such that the appropriate balances between interested parties are set and adhered to. The Scottish system, which will identify stakeholders in the context of each water body would seem useful in that regard, although the non-binding recommendations regarding balancing members that exists in Kazakhstan already would be far more useful if implemented. It raises the more general question of the role of the RBO in running the RBC – he or she controls membership to a very large degree, and the RBC is dependent upon the RBO for its financing.

5.3 Inadequacy and paucity of available information

As has been indicated, the RBOs rely on Kazhydromet for data on surface waters, but suffer from the latter's inclination to produce inaccurate information for exorbitant sums. This must hamper the ability of the RBO to be able to fulfill even the limited

---

al, *supra*, note 15.

functions it currently deals with, and thereby lessens still further its standing among stakeholders. This must then necessitate an increase in financing for Kazhydromet, to enable it to upgrade its monitoring network and produce more realistically priced data. It may be that the culture of the organization needs to change if this is to happen. The question must also be raised as to whether the RBOs should continue to rely on Kazhydromet for data at all if the latter remains at least semi-commercial in character. Strengthening of the RBO's monitoring capacity would address this to some degree.

More generally, the Kazakh government must adhere to its obligations under the Århus Convention. The Decision of the Compliance Committee found Kazakhstan specifically in breach of arts. 3, 4 and 9 of the Convention, with respect to the availability of environmental information and access to justice,[149] and para. 6 in relation to public participation.[150] Although Kazakhstan has had Communications critical of its implementation of the Convention submitted to the Compliance Committee four times, more than any other Party, only two of these have formed the basis of further action.[151] The second meeting of the Parties took place in Almaty, and the next is due within two years of the last one, unless the parties agree otherwise.[152] Interestingly, the rationale behind the Decision of the Parties appears to lie in the practicalities of implementing the existing provisions in Kazakh law that purport to transpose the Århus obligations, and are based on communications passed to the Committee by Kazakh NGOs.[153] It therefore seems that the provisions that exist in Kazakh legislation are going in the right direction, but will rely on further education, and possibly financing, at relevant institutions and courts. It may also be that Kazakhstan would be well advised to implement the Convention in a single cross-cutting instrument, as has been the practice in the European Union, instead of relying on individual provisions attempting to

---

148 Hannan *et al*,, *supra*, note 15, para.9.1.

149 See UNECE ECE/MP.PP/2005/2/Add.7, Decision II/5a, *supra*, note 98, para,1,

150 *Id*., para.3.

151 *Id*.

152 Århus Convention, *supra* note 91, art.10(1).

153 See http://www.unece.org/env/pp/pubcom.htm for all related documents.

safeguard access to information being added to legislation on a case by case basis.[154]

5.4 Slow acceptance on the part of institutions and stakeholders regarding the involvement of the latter in decision-making

As one of the specific complaints raised by the Århus Convention Compliance Committee, it is hoped that this would be addressed as above, principally through educational means. A process such as this will take time, and will rely on the stakeholders establishing sufficient trust in the system and in the relevant institutions that their legitimacy becomes entrenched. It is the view of the authors that only by making changes in the regulatory framework, such that good governance is clearly in place, will such a process take place.

5.5 A focus on the RBC as the fundamental means for achieving stakeholder participation

Given that the River Basin Council system is to some degree novel, more effort might be made by Kazakhstan to ensure that other methods are adopted to ensure stakeholder participation than concentrating so much on establishing RBCs. The South African system outlined above, seeks to control the directors of management authorities as well as trying to ensure that stakeholder participation occurs at the implementation level. This approach should be adopted by Kazakhstan as well – this will encourage transparency, and therefore accountability, and lead to an increase in the quality of the governance. By seeking to improve governance, the standing and value of the RBC can only increase.

It appears then from the above conclusions that the Republic of Kazakhstan is driving its policies and regulatory framework in the right direction to improve its water management, but progress is being hampered by a number of factors. The solution to overcoming these problems lies partly in institutional reorganisation and improvements to relevant legislation to ensure that Kazakhstan's waters are managed

[154] Within the context of the Århus Convention, it should be pointed out that questions have been raised regarding the potential for obstruction to justice for those bringing cases under environmental protection legislation. See for example "*Modernizing Environmental Protection in Kazakhstan*",

effectively and sustainably by institutions with appropriate powers and commensurate enforcement capacity. It also demands that stakeholder views are incorporated into decision-making as demanded by Kazakhstan's international obligations. The introduction of River Basin Councils is a step forward in achieving the latter objective, but this in itself will not be the panacaea that some anticipate: it must be accompanied by other enhancements to the governance regime if these organisations are to fulfil their full potential. Institutional inertia and an unwillingness on the part of some stakeholders to accept their new roles will doubtless slow the process down, but the authors would suggest that the above recommendations would go some way to making sure that the basin councils provide a forceful voice for stakeholders in the context of properly integrated water resource management in Kazakhstan.

Mitrofanskaya, Y., and Bideldinov, D., 12 Geo. Int'l Envtl. L. Rev. 177 (1999-2000), 205.