

# Guiding Principles of International Environmental Regimes for Development and Cooperation in the Okavango Delta

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**Introduction.** Three international agreements- Ramsar Convention on Wetlands, Convention on Biological Diversity (CBD) and the Convention to Combat Desertification (CCD)- have particular relevance to the case of the Okavango as they establish a framework of guiding principles for the development and sustainable use of its resources. The three riparian states of Angola, Namibia and Botswana are Contracting Parties to all three of the conventions (with the sole exception that Angola has not yet signed the Ramsar Convention) and thus are bound by the legal commitments and obligations established by each.

The dominant theme of “sustainable development” and the “wise use” of natural resources resonates strongly throughout each of the three conventions. Other common general obligations found in the three treaties include: international cooperation and the establishment of innovative partnerships at all levels, identification and monitoring of the health of ecosystems, research and training, capacity building, participation of all stakeholders in decision-making processes, education and awareness. There are very few specific obligations contained in the three agreements, as treaty commitments remain vague. Nevertheless, the provisions offer significant potential as there are numerous areas of potential cooperation to be realized by the riparian states of the Okavango; commitments are left flexible enough to be developed and domesticated with regard to the specific conditions of the region, as well as of each particular nation. I will briefly outline provisions of each convention as it relates to the case of the Okavango Basin.

## **The Convention on Wetlands of International Importance especially as Waterfowl Habitat**

The RAMSAR Convention, more formally known as The Convention on Wetlands of International Importance Especially as Waterfowl Habitat, was established to promote the conservation and wise use of wetlands. The title reflects the Convention’s original emphasis on the conservation of wetlands for migratory waterfowl habitat. This emphasis originated with the realization that habitat requirements for migratory waterfowl are largely transboundary in nature and thus, the establishment of a network of protected wetland habitats was critical for the conservation of migratory species. Progressive for its time, the RAMSAR convention established an intimate link between conservation and development as the core principals of “wise use” and international cooperation are emphasized throughout the agreement as the only means through which sustainable development can effectively be achieved.

**History.** The RAMSAR Convention was signed on February 3, 1971 in the Iranian city of Ramsar, and remains a landmark international environmental treaty as it was the first agreement ever signed to promote the international conservation of natural resources on a global scale. Thus, the

RAMSAR Convention is the oldest international conservation agreement; as of August 2002, there are 133 Contracting Parties and 1180 sites designated as Wetlands of International Importance.

Initially, work on the treaty was promoted by the non-profit organization Wetlands International (previously known as the International Waterfowl Research Bureau (IWRB)) and the IUCN to conserve migratory waterfowl species (rather than wetland ecosystems) by establishing a network of waterfowl refuges. However, the focus was shifted in favor of wetland *habitat* protection by IWRB in 1965 in a document entitled "Proposed Subjects for an International Agreement or Convention on Wetlands".

Further, in a meeting in Noordwijk aan Zee in the Netherlands (1966), there was strong insistence by participants that the proposed Convention must lay down general positive principles rather than detailed restrictions. As evidenced by the 1950 Paris Convention on Bird Protection, such detailed negative restrictions have a strong tendency to render agreements ineffective due to lack of political support and implementability. Thus, international restrictions on land use policies of sovereign states were avoided; instead, the development of national plans for wetland conservation was strongly encouraged.

The second draft of the Ramsar Convention was circulated in 1968 and emphasized that the treaty would only commit parties to the general acceptance of responsibility for the conservation of wetlands and waterfowl. As a result of the adverse political climate at that time, it was believed that a stronger text would never have been adopted. At the very least, participants hoped that such a weak agreement would give government administrators and parliaments legal support for their actions in protecting wetland habitats (as was largely lacking at the time). Despite increasing interest by participants at the 1970 conference in Knokke, Belgium to strengthen the text of the convention, once again it was agreed that the continuing political climate at the time would never have allowed any stronger language to be widely accepted.

*The Montreux Record.* While there is a general avoidance of negative restrictions in the Ramsar Convention, some innovative efforts have been undertaken to pressure Contracting Parties to monitor and maintain the ecological health of their listed wetlands. The Montreux Record was established by Recommendation 4.8 of the COP (Montreux, Switzerland, 1990) and is a registry of wetland sites on the List of Wetlands of International Importance where "changes in ecological character have occurred, are occurring, or are likely to occur as a result of technological developments, pollution or other human interference". The working definition of ecological character was adopted at COP6 (1996) with Resolution VI.1:

**Ecological character:** The "ecological character" is the structure and inter-relationships between the biological, chemical, and physical components of the wetland. These derive from the interactions of individual processes, functions, attributes and values of the ecosystem(s).

**Change in ecological character:** "Change in ecological character" of a wetland is the impairment or imbalance in any of those processes and functions which maintain the wetland and its products, attributes and values.

Sites listed in the Montreux Record thus become priority sites for positive national and international conservation efforts.

The Ramsar Advisory Mission, a technical assistance mechanism, was established to assist Contracting Parties in the remediation, management and conservation of threatened sites. The Advisory Mission is mobilized only under request from the Contracting Party, and the terms of reference for the mission is developed cooperatively between both the Ramsar Bureau and the Contracting Party. Once mobilized, the advisory team performs a site visit, gives an analysis of threats to the wetland, and makes recommendations for future action.

Although the Montreux Record is an innovative mechanism to promote members to maintain the ecological health of their Wetlands of International Importance, significant criticism exists surrounding the mechanisms established for placing sites on the Montreux Record. The identification of wetlands which are threatened is based primarily upon details submitted by states in their National Reports. And even so, parties are not obligated to submit details of ecological changes in their wetlands in the national reports. Additionally, with the poor submission rate of such reports, many threatened sites are never reported. Further, listing of sites in the Montreux Record can only occur with the consent of the state where the wetland exists. After a site is listed, the international community can then only make recommendations to parties on remedial measures for the wetland, often only after the Contracting Party has requested it. This process enters into sensitive territory as it has significant potential to conflict with and interfere with state sovereignty.

### **Core Commitments of Ramsar Signatories**

1. ***List at least one Wetland of International Importance.*** This is the only specific obligation of Contracting Parties to the Ramsar Convention. Parties must designate at least one wetland of international importance based upon its significance in terms of its ecology, botany, limnology, zoology and/or hydrology. Although such designations are established unilaterally by the Contracting Party, the latest criteria as established at COP7 (1999) suggest such sites should either a) contain representative, rare or unique wetland types; or b) are internationally important for the conservation of biological diversity based upon specific criteria on species, ecological communities and/or ecosystem dynamics. Further, it is important to note that while the focus of activities in listed wetlands should be on conservation, the convention allows the continued “wise use” of all listed Wetlands of International Importance.
2. ***Commit to the “wise use” of all wetlands whether listed or not.*** The core provision of the Ramsar Convention is found in Article 3(1) which requires Contracting Parties to promote and integrate the concept of “wise use” of wetlands “as far as possible” throughout all development plans in their territories (see following section on wise use). To this end, the development of national wetland policies is encouraged. National wetland policies should address:
  - actions to improve institutional and organizational arrangements
  - actions to address legislation and government policies
  - actions to increase knowledge and awareness of wetlands and their values
  - actions to review the status of and identify priorities for all wetlands in a national context
  - actions to address problems at particular wetland sites

### **3. Cooperate internationally with regard to shared waterways and wildlife species.**

Contracting parties are strongly encouraged to coordinate policies and regulations pertaining to the conservation and “wise use” of transboundary wetlands as provided for in Article 5:

*“The Contracting Parties shall consult with each other about implementing obligations arising from the Convention especially in the case of a wetland extending over the territories of more than one Contracting Party or whether a water system is shared by Contracting Parties. They shall at the same time endeavor to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna.*”

Guidelines have been established to foster international cooperation and consultation under the Ramsar Convention and have been adopted as an annex to Resolution VII.19 (1999). The guidelines commit members to pursue:

- management of shared wetlands and river systems
- management of shared wetland-related species
- international cooperation of member states in areas which include (but are not restricted to): conservation, management, wise use of waterfowl (Article 2.6), planning and implementing wise use of resources (Article 3.1), encouraging research and exchange of data and publications (Article 4.3) and promoting training, management and wardening (Article 4.5).
- cooperation and partnership with international/regional environment conventions and agencies
- sharing of experiences and information
- assistance of the international community to assist and support the conservation and wise use of wetlands
- sustainable harvesting and international trade in wetland-derived plant and animal products
- regulation of foreign investment to ensure wetland conservation and wise use.

It is important to note that one of the key points derived from the guidelines on international cooperation is that the Convention applies to wetlands and river basins of member states which cross international borders **whether or not** they are listed as wetlands of international importance. This is important to take into consideration as Botswana has listed the Okavango as a Wetland of International Importance (1996) while Namibia has not.

**4. Report on progress in implementing Ramsar commitments.** Contracting parties are encouraged to submit triennial national reports to the Conference of the Parties.

### **Concept of Wise Use**

The concept of wise use is central to the Ramsar Convention; the term “wise use” was defined at COP3 (1987) as the “*sustainable utilization* for the benefit of humankind in a way compatible with the maintenance of the *natural properties* of the ecosystem.” The concepts of sustainable utilization and natural properties were also defined at the same conference:

*Sustainable utilization* was defined as the “human use of a wetland so that it may yield the greatest continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations”

*Natural properties* of the ecosystem are those “physical, biological or chemical components such as soil, water, plants, animals and nutrients and the interactions between them”.

Thus, an intimate link is established between conservation and development. Later, the Ramsar Strategic Plan 1997-2002 adopted at COP6 (1996) determined that the term “wise use” was to be considered synonymous with the concept of “sustainable use”. ***Based on these definitions, human use of wetlands on a sustainable basis is thus entirely compatible with the listing of a site as a Wetland of International Importance.***

## **Convention on Biological Diversity**

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The Convention on Biological Diversity (CBD) is a landmark in international law as it serves as the most comprehensive international regime ever signed on conservation and sustainable development. This historic set of agreements was signed at the UNCED in Rio de Janeiro, 1992. Unlike previous agreements which focus only on specific species and ecosystems, the CBD covers all species, habitats, ecosystems and genetic resources. The three primary objectives of the CBD are to establish guiding principles for:

- 1) the conservation of biological diversity
- 2) the sustainable use of its components; and
- 3) the fair and equitable sharing of benefits from the use of genetic resources

**History.** Momentum towards establishing the CBD developed with the 1972 United Nations Conference on the Human Environment (Stockholm) where numerous initiatives were established in an attempt to “slow the tide of destruction”. Governments signed a number of regional and international agreements to tackle specific issues such as the protection of wetlands, regulation of international trade in endangered species and the control of toxic chemicals and pollution. Efforts were aimed at addressing symptoms rather than root causes environmental degradation. A landmark report released in 1987 by the World Commission on Environment and Development (Brundtland Commission) entitled “Our Common Future” established the foundations for the philosophy of sustainable development. The report states that “humanity has the ability to make development sustainable – to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs”. To this end, the report called for “a new era of environmentally sound economic development”, an initiative which continues to resound strongly (albeit, the original intention is often obscured) as evidenced by the dominating focus of discussions at the 2002 World Summit on Sustainable Development (Johannesburg).

The growing international realization of the threats of development on biodiversity loss caused the UNEP to establish the Ad Hoc Working Group of Technical Legal Experts on Biological Diversity in 1989 to prepare an international legal instrument for the conservation and sustainable use of

biological diversity. In 1991, the Working Group decided that the text must expand its scope beyond the single issue of conservation and encompass the issues of sustainable use and benefit sharing. The text was instrumental in creating a comprehensive umbrella agreement which integrated many of the previously established environmental treaties that dealt only with single aspects of specific issues. This legal instrument becomes known as the CBD and is adopted in 1992 at the UNCED and establishes a new philosophy of development for the 21<sup>st</sup> century. The CBD also breaks new ground as it establishes a number of new principles into the realm of environmental law. Contracting Parties are obliged to accept the Precautionary Principle (preamble), ecosystem approach (COP decision II/8) and sustainable use/development as guiding principles in all efforts towards conservation and development.

***Core Commitments of CBD Signatories.*** Binding commitments are contained in Articles 6-20 of the CBD; however, few precise obligations exist. Rather, the treaty establishes guidelines to be developed, interpreted and integrated within national and regional policy frameworks. Since the adoption of CBD, the COP have largely focused efforts of member states on the implementation of Article 6 (General Measures for Conservation and Sustainable Use). Article 6 contains the key obligation of Contracting Parties and commits them to develop national biodiversity strategies and action plans and to integrate these into broader cross-sectoral national plans and policies.

Other key treaty commitments include (as listed on the homepage of the CBD):

- Identifying and monitoring important components of biological diversity that need to be conserved and used sustainably
- Establishing protected areas to conserve biological diversity and promoting environmentally sound development around these areas
- Rehabilitating and restoring degraded ecosystems and promoting the recovery of threatened species in collaboration with local residents
- Respecting, preserving and maintaining traditional knowledge of the sustainable use of biological diversity with the involvement of indigenous peoples and local communities
- Preventing the introduction of, controlling, and eradicating alien species that could threaten ecosystems, habitats or species
- Controlling risks posed by organisms modified by biotechnology
- Promoting public participation, particularly when it comes to assessing the environmental impacts of development projects that threaten biological diversity
- Educating people and raising awareness about the importance of biological diversity and the need to conserve it
- Reporting on how each country is meeting its biodiversity goals

***Areas of potential international cooperation.*** While the treaty commitments listed previously offer several potential areas of cooperation between member states, the CBD also establishes general guidelines for cooperation under Article 5. Contracting members are committed to cooperate “as far as possible, and as appropriate” with other Contracting Parties “in respect of areas beyond national jurisdiction and on other matters of mutual interest”. Article 14 (Impact

Assessment and Minimizing Adverse Impacts) obliges member states to undertake environmental impact assessments of all projects anticipated to have adverse impacts on biological diversity. In the case of the Okavango, it strongly suggested that countries harmonize impact assessment procedures with regard to assessment of projects pre-implementation as well as monitoring procedures to ensure that data and findings can be directly transferable between countries.

Sections c,d and e of Article 14 strongly encourages Parties to notify, consult, minimize/remediate and redress negative impacts of activities under the jurisdiction or control of a state in the territories of other states. Such potential negative impacts are suggested to be addressed through bilateral or multilateral arrangements. Further, parties must attempt to prevent or minimize potential damages and establish joint contingency plans in the case of an emergency. Article 14.2 establishes that the Conference of the Parties will examine potential liability and determine redress arrangements (i.e. restoration, compensation, etc.).

***Establishment of guiding principles.*** The CBD establishes several important principles in the arena of international environmental law. The precautionary principle, ecosystem approach and sustainable use are enshrined within the text of the CBD and is accepted as a general understanding among all Contracting Parties.

**The precautionary principle.** The precautionary principle stipulates that where there is a “threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat”. This principle has the potential to play a significant role in development efforts of the Okavango where the impacts of water abstraction on ecosystem function, biodiversity and threatened species (i.e. wattled crane, wild dog) are not yet fully understood. However, there continues to much uncertainty within the international community on the strength and role of the precautionary principle in international environmental law as evidenced even by current discussions at the World Summit on Sustainable Development, (Johannesburg, 2002). There is great resistance, especially by industrialized nations, due to fear that the precautionary principle will be resorted to for use as disguised protectionism. How multilateral environmental agreements play out in relation to WTO trade rules will largely determine the future of the precautionary principle in international law.

**Ecosystem approach.** COP Decision II/8 adopts that an ecosystem approach must be the main means of action with regards to conservation and development efforts. This is similar to the ideology of the Ramsar Convention which establishes that all goods and services provided by biological diversity must be considered. This is strongly associated with the strong emphasis the CBD gives to in-situ conservation of ecosystems and natural habitats, whereby the maintenance and recovery of viable populations of species are encouraged to occur in their natural surroundings. Development and conservation efforts must take into consideration impacts on all aspects of the ecosystem. Ecosystem is defined in the CBD as “a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit”.

**Sustainable use/sustainable development.** The theory of sustainable development, defined as use of resources and/or “development which meets the needs of the present without compromising the ability of future generations to meet their own needs” is enshrined in the CBD and sets the tone for development, management and use of natural resources. While the treaty acknowledges that the conservation of biological diversity requires substantial investments, it argues that with conservation

and sustainable development, biological diversity has the potential to offer significant environmental, economic and social benefits.

## **Convention to Combat Desertification**

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The Convention to Combat Desertification (CCD) is the second attempt by the international community to develop more effective means of addressing the growing severity and extent of degradation of lands in arid, semi-arid and dry sub-humid areas. While it is commonly known that desertification is caused primarily by a combination of human activities and climatic variations, the CCD, unlike the earlier attempt of the 1977 Plan of Action to Combat Desertification, focuses on addressing the underlying socio-economic causes of desertification. This new thrust of the CCD thus places strong emphasis on the complex dynamics between political, social, cultural, economic, physical and biological factors. As population growth rates accelerate and famine continues to plague regions of the world, pressures are increasing for the over-exploitation of vulnerable dryland ecosystems

The Convention to Combat Desertification (CCD) establishes a mutual understanding among all Contracting Parties in the preamble that:

- Desertification is caused by complex interactions between physical, biological, political, social, cultural and economic elements
- Economic growth social development and poverty eradication are priorities of developing countries and must be addressed in order to meet the objectives of sustainability. An integrated approach to addressing desertification is critical.

**History.** The issue of desertification has remained a highly political topic since the 1977 United Nations Conference on Desertification where the Plan of Action to combat desertification was drafted. There has been a general sense of disappointment with the failure of this original initiative to achieve any improvement in the occurrence of desertification in the world's most vulnerable regions. This failure has often been attributed to inadequate funding and too narrow and technical a focus in the Plan of Action. However, with the acknowledgement of the dynamic relationship between physical, biological, political, social, cultural and economic elements, there has been growing criticism that the initial effort had failed to address the socio-economic roots of the problem. Further, the initial effort also failed to involve local populations in the process. And so, impetus was renewed at the UN Conference on Environment and Development (UNCED) in Rio, 1992. The issue of desertification was acknowledged at this conference as just one factor necessary to promote the overarching principle of sustainable development as enshrined in Agenda 21. In light of the weaknesses of the first treaty, the General Assembly mandated that a new treaty be drafted by June 1994 (Resolution 42/188) which would address the socio-economic and political aspects of desertification.

### ***Core Commitments of CCD Signatories***

The overall objective of the CCD is to implement effective action at all levels through cooperation and partnership with the overarching goal of sustainable development. The key obligations of Contracting Parties to fulfilling this objective include:

- Use of a bottom-up approach, whereby the genuine participation of local communities and stakeholders in the decision-making and management process is critical for the development of an effective strategy to combat desertification.
- Development of an enabling environment to foster full, genuine and effective participation. This may require decentralization of power, reform of land/resource tenure systems, etc.
- Cooperation at the international level in research and development, and the transfer and development of appropriate technologies.
- Preparation and implementation of national and subregional action programs to address the underlying cause of desertification and the development of strategies to overcome them. These action plans must:
  - Take an integrated approach must be taken which simultaneously addresses biological and socio-economic aspects contributing to desertification
  - Establish strategies to eradicate poverty
  - Establish long term strategies and preventative measures for areas not yet degraded
  - Develop drought early warning and contingency plans

#### *Regional Implementation Annex for Southern Africa*

In order to address conditions specific to each of the world's regions, regional action plans have been developed. In the case of the Okavango, the action plan for the Southern African region applies. The regional implementation annex for Africa places a strong emphasis on the interrelationship between poverty and desertification and thus commits African Parties to fight desertification as a central strategy in the attempt to eradicate poverty. It is also important to note that again, there is mention of the need for Contracting Parties to sustain and strengthen reforms towards greater decentralization and resource tenure in order to increase the effectiveness of the requisite participatory process and ensuing implementation of the management plan.

National action plans for African Parties are required to address means of improving economic conditions in each respective state. The annex suggests measures such as developing markets for agricultural products, diversification in agricultural products, diversification in employment opportunities and the use of drought resistant crops.

Provisions for transboundary natural resource management plans must be given subregional action programs. Factors to be considered by riparian states in the Okavango include:

- Establishment of a mechanism to manage shared natural resources which will also handle transboundary problems associated with desertification and drought.
- Scientific and technological cooperation
- Development and establishment of early warning systems
- Development of joint planning policies in areas such as trade and tourism; development of common infrastructure.

## Conclusion

Other key issues to be examined include:

The theme of local participation of stakeholders and devolution of power to local entities resounds strongly throughout each of the three conventions. There is already movement towards this direction with the instance of Botswana and the assignment of wildlife offtake quotas to community based organizations. However, the overall objective of devolution of power with regards to the three conventions is to increase the power and incentive of local communities to become better stewards, whether it is in the name of biological diversity, conservation or eradication of desertification. The link between ownership and stewardship is assumed to be present; however, this may not generally be the case. One must look more closely at the structure and dynamics of decision-making bodies of community organizations and how to enhance this linkage if the overall objectives of stewardship and ownership is to be enhanced. Corruption in decision-making structure causes benefits to be concentrated in the realm of decision makers, rather than throughout the community. Research must be done to explore how to increase accountability of community based organizations, and in turn, why benefits are not being distributed equitably throughout the community. This is key in better establishing the assumed linkage between ownership and stewardship.

While there is movement to devolve power to communities and increase local participation in management schemes, one must examine whether the incentive for local community participation exists. For example, the DWNP of Botswana encourages local communities to contribute to monitoring wildlife numbers in respective concession areas. However, the DWNP does not use the data collected by communities in the decision making process when administering wildlife quotas for the year. The question then is, to what extent is power devolved to local decision making structures and what incentive linkages have been established to increase participation? And even more importantly, who is participating (gender and social biases)?

The Ramsar Convention, the Convention on Biological Diversity and the Convention to Combat Desertification all offer provisions for the management of a transboundary resource as the Okavango. There are several common themes (i.e. international cooperation and the establishment of innovative partnerships at all levels, identification and monitoring of the health of ecosystems, research and training, capacity building, participation of all stakeholders in decision-making processes, education and awareness) across the conventions which may offer potential areas of cooperation between the riparian states in meeting treaty obligations. Due to the nature of international environmental agreements in avoiding the establishment of negative restrictions, the conventions do not create areas of potential conflict for the riparian states of the Okavango. However, the provisions which do exist within these treaties only offer guidance in establishing a framework of action. One must look to various national and local policies and laws for more specificity on how the general principles may be interpreted and thus, where development and conservation options exist as well as areas of potential cooperation.

