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UNZA INTEGRATED WATER RESOURCES MANAGEMENT CENTRE
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**Relationship between the Convention and Regional
Agreements: the relationship between the SADC
Revised Protocol on Shared Watercourses and the
UN Global Water Conventions (12 mins)**

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Acknowledgements

We would like to acknowledge –

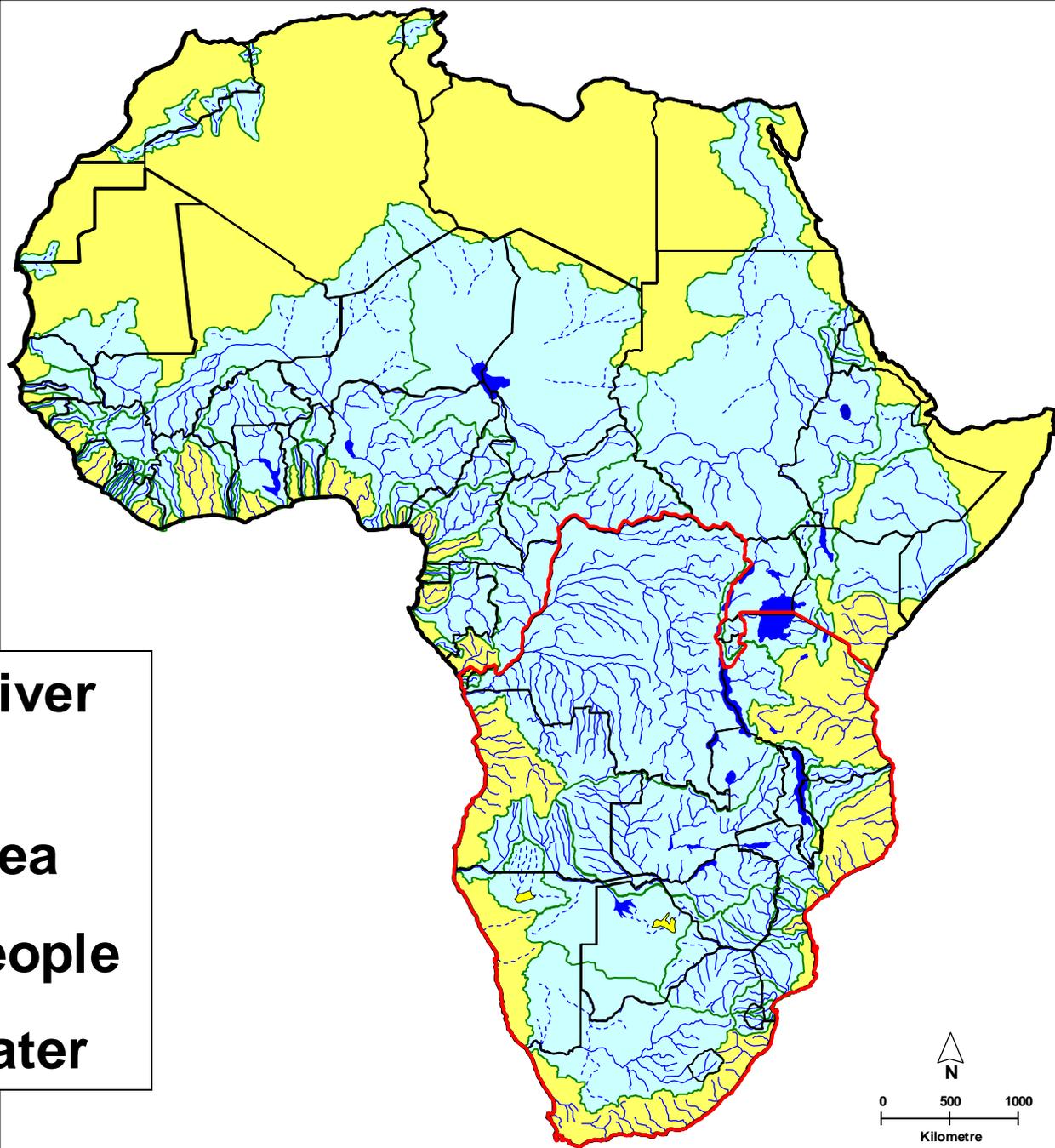
*All here (Ministry of Water, Departments, Agencies,
Sponsors, etc)*

**1. OUR GEOGRAPHIC
REALITY AND
WATER AVAILABILITY**

Shared River Basins

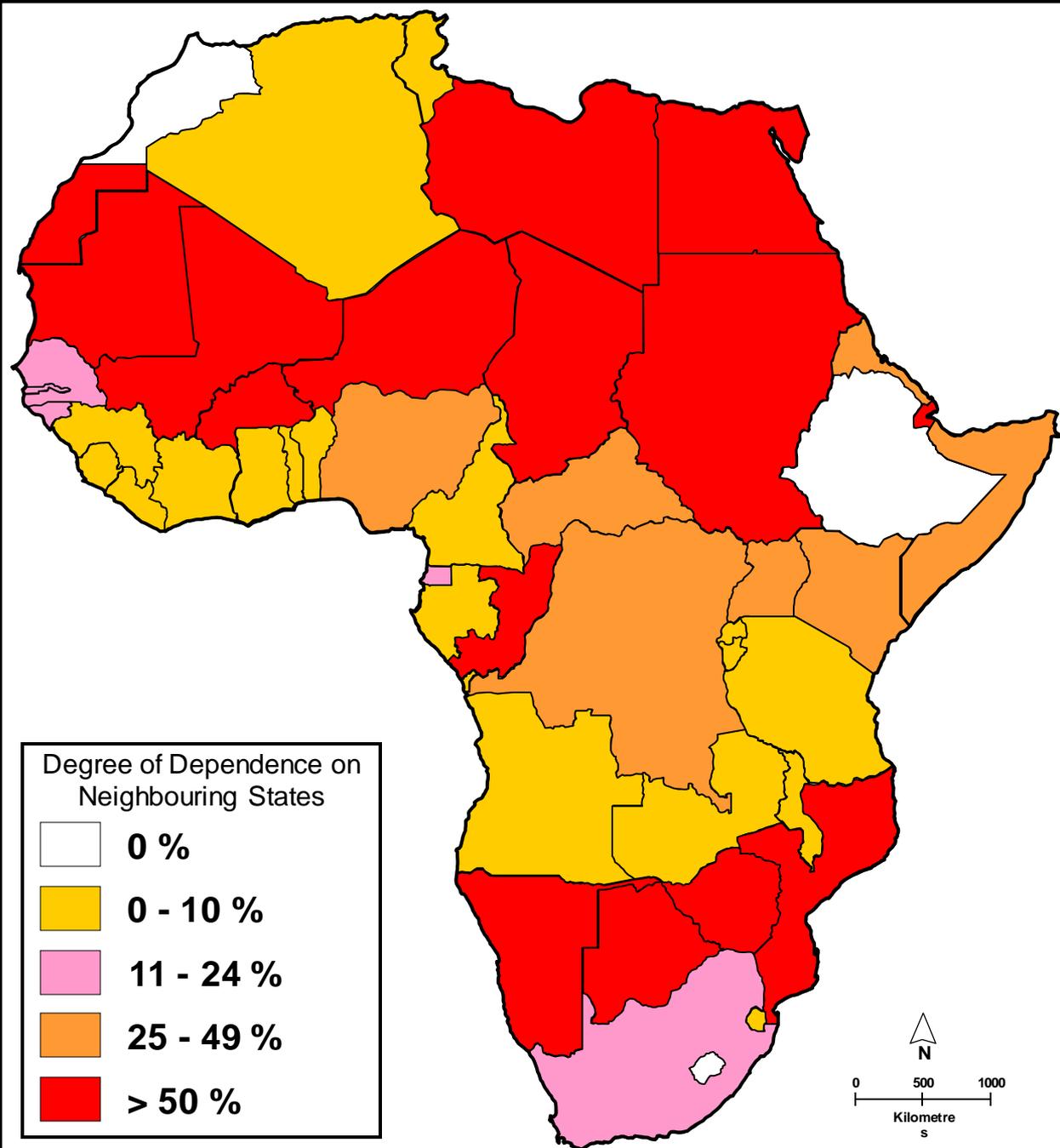
**Africa's shared river
basins contain:**

- **61 % of the area**
- **77 % of the people**
- **93 % of the water**



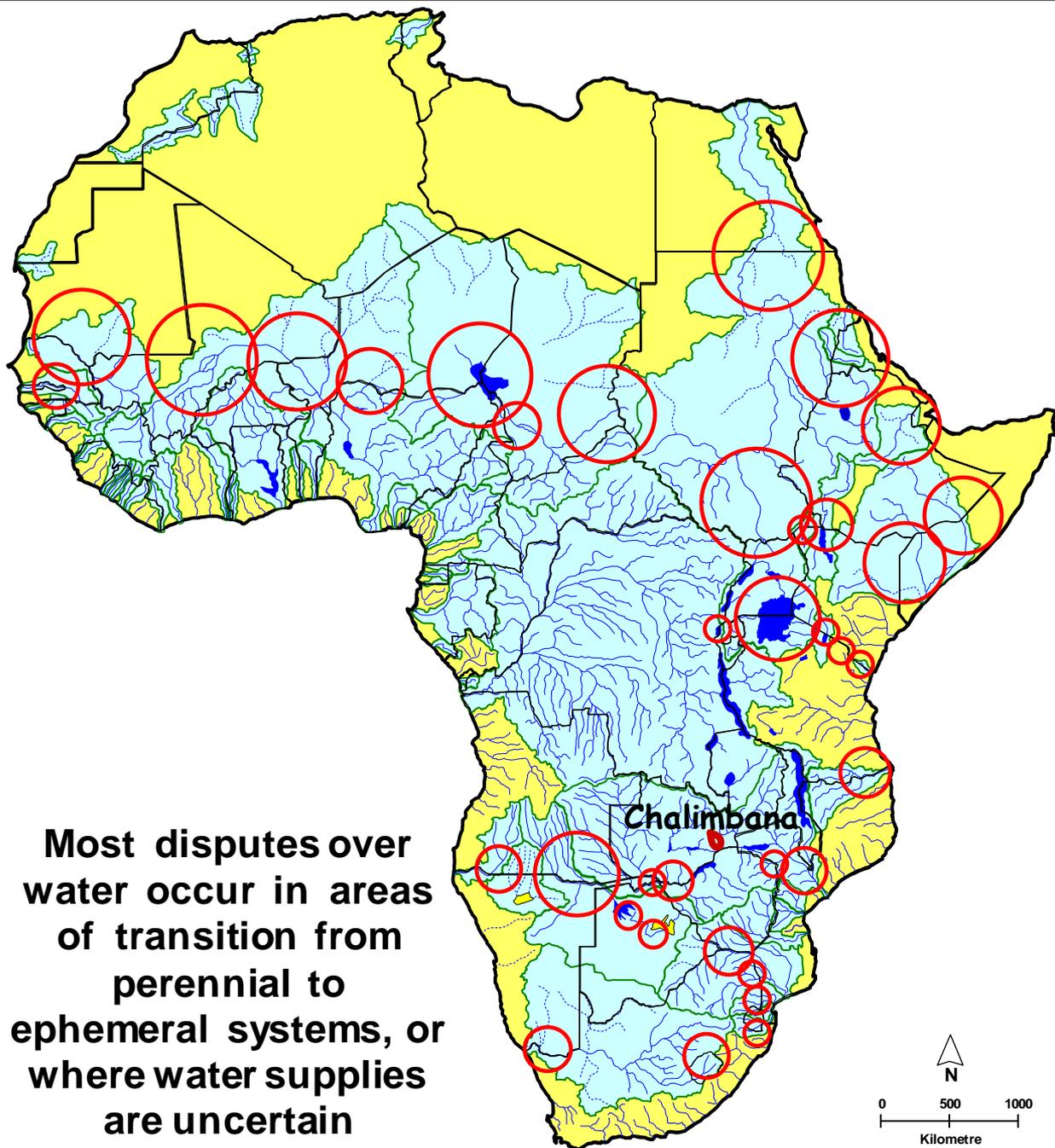
Dependence on Neighbouring States for River Inflows / Water Transfers

Except for
Ethiopia,
Lesotho,
Western
Sahara ?



**Conflict
prevention
/ resolution
(To all
Sectors)**

**Sites of
Disputes
Linked to
Water**



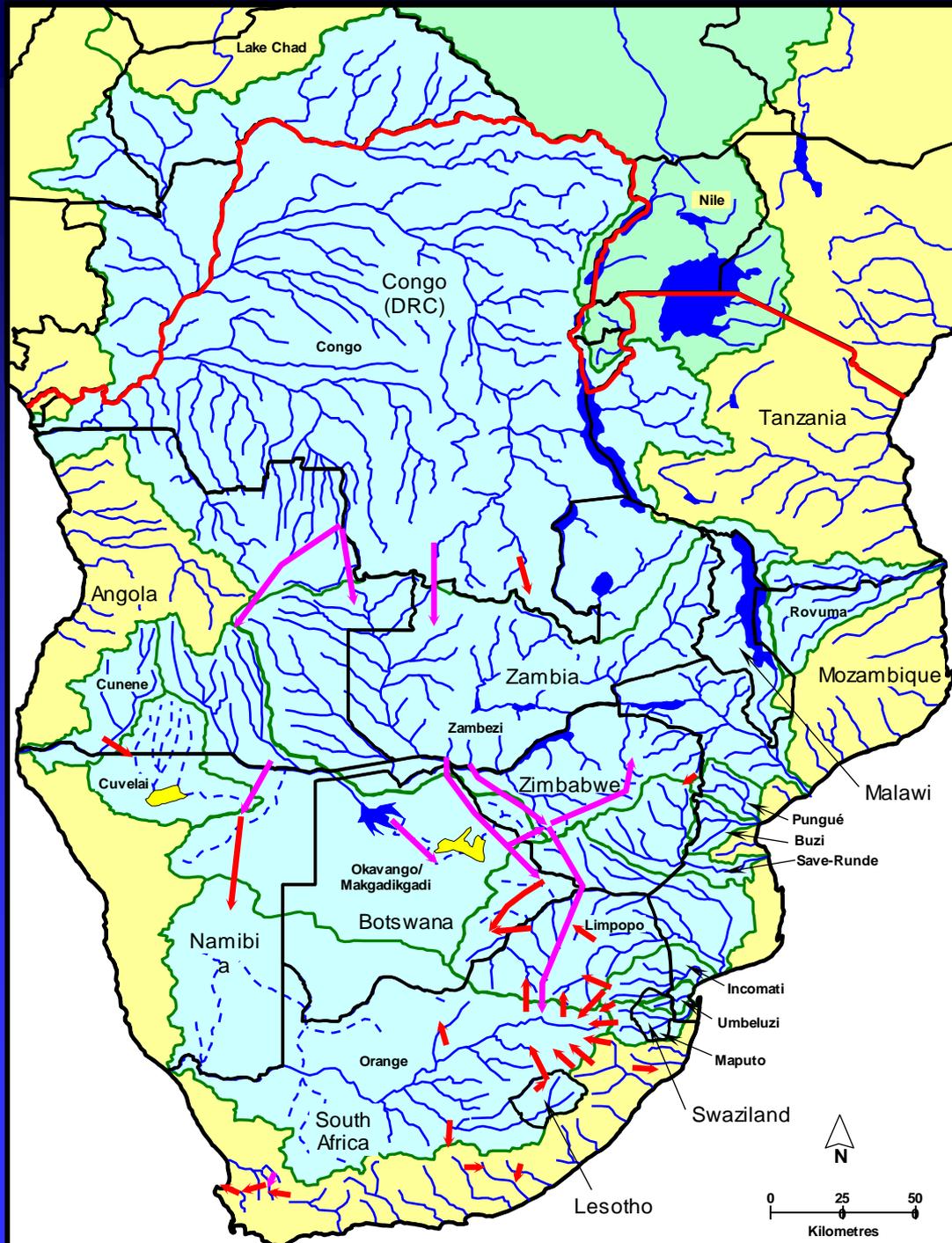
Most disputes over water occur in areas of transition from perennial to ephemeral systems, or where water supplies are uncertain

Redress disparities in service delivery (to all sectors) – Allocate water equitable according to need and availability

Water Transfer Schemes in Southern Africa

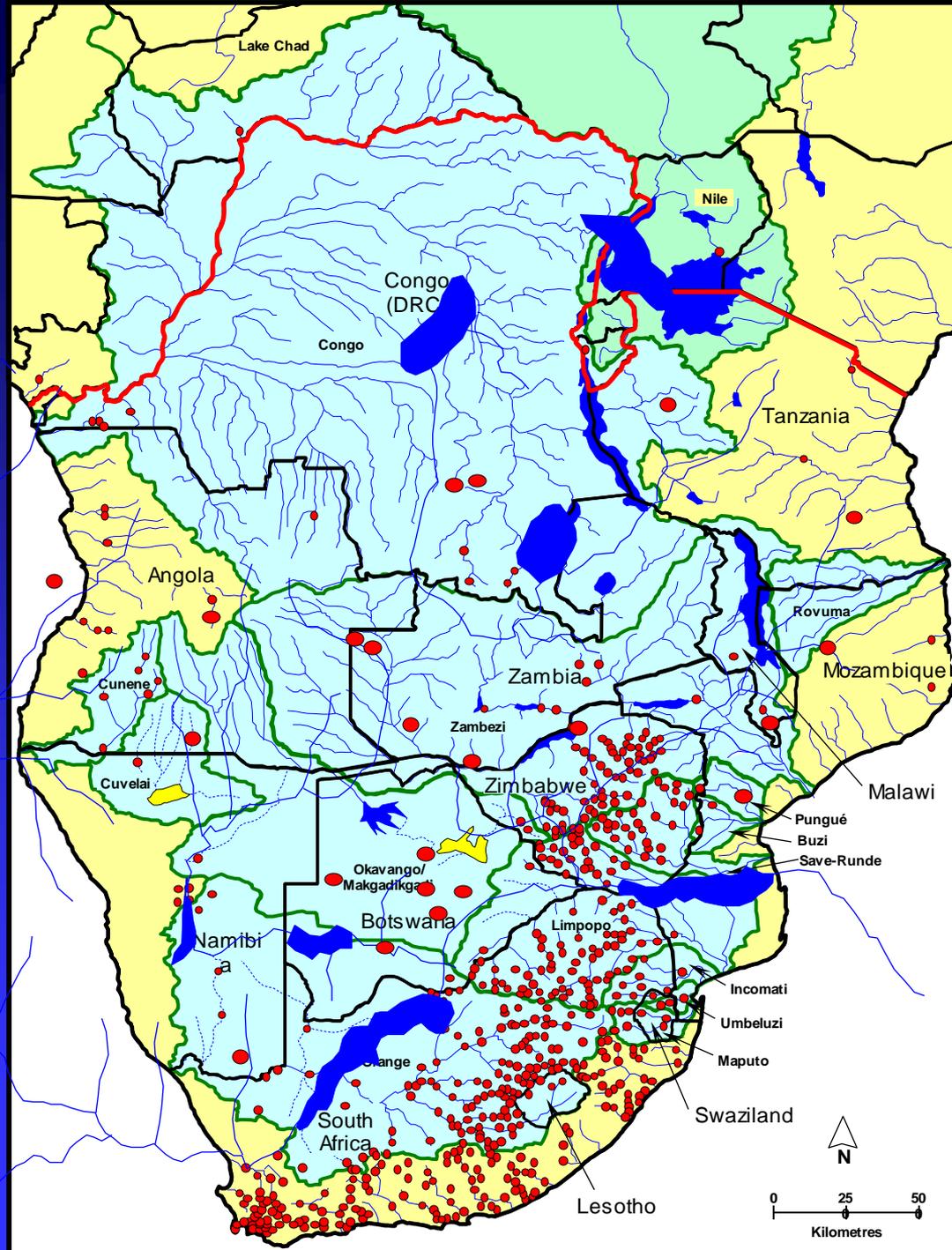
 Existing water transfer scheme

 Proposed new water transfer scheme

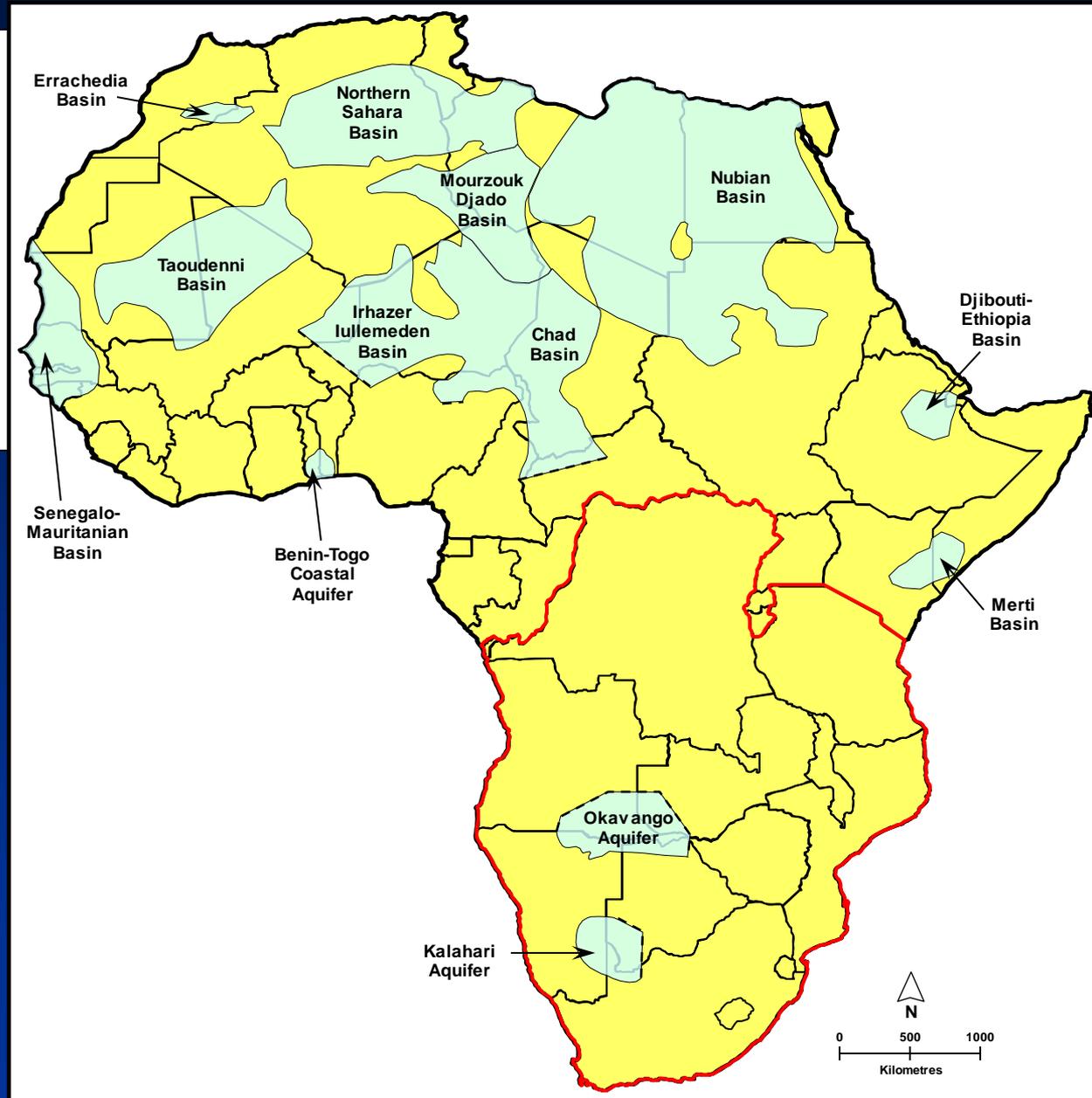


Large Dams Built for Water Supply in Southern Africa

South Africa and
Zimbabwe are listed
amongst the top
twenty countries in
the world in terms
of the numbers of
dams built (WCD
2000)

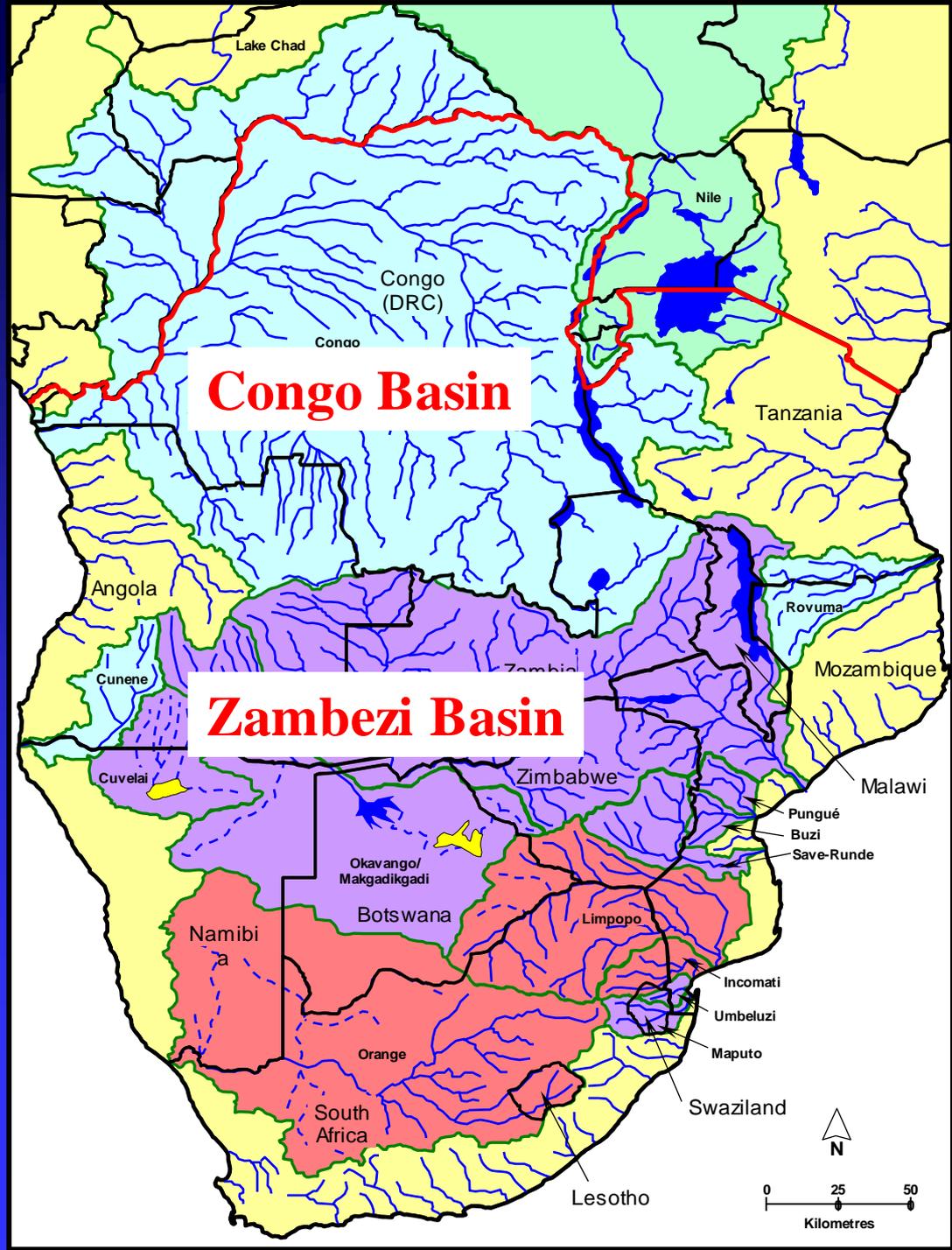


Shared Aquifer Systems (P. Ashton)



With Zambia in the Stressed Utilized Water Resources in Southern Africa

-  Water resources approaching “closure” – very little left to allocate for off-channel uses
-  Water resources under increased pressure – need to ensure closer co-operation with neighbouring states





Water for Industry & from Underground Dewatering



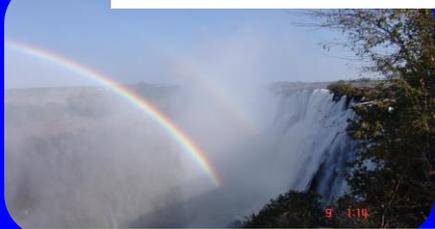
Water for Agriculture



Water for Wildlife



ALL THESE USES AND THAT WE ARE UPSTREAM NEED TO COOPERATE WITH OUR NEIGHBOURS



Water for Tourism – Victoria Falls



Water for Energy – Itezhi-Tezhi Dam



Water for Transport



Water for Fisheries



Water for Domestic & Livestock Watering



2. the SADC Revised Protocol on Shared Watercourses and the UN Global Water Conventions

Overall objective 'to foster closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance the SADC agenda of regional integration and poverty alleviation'.

'Watercourse' is defined as 'a system of surface and ground waters consisting by virtue of their physical relationship a unitary whole normally flowing into a common terminus such as the sea, lake or aquifer.

UNECE Water Convention



the UN Global Water Conventions

the SADC Revised Protocol on Shared Watercourses

Angola; Botswana; Democratic Rep. of Congo; Lesotho; Madagascar; Malawi; Mauritius; Mozambique; Namibia; Seychelles; South Africa; Swaziland; Tanzania; Zambia; Zimbabwe.

Development and status of the SADC Revised Protocol

On a regional scale, the SADC Revised Protocol on Shared Watercourses is the main transboundary freshwater agreement in the Southern Africa region. Adopted in 2000.

Revision was undertaken to account for developments in international water law as reflected in the UN Convention on the Non-Navigational Uses of International Watercourses ('UN Watercourses Convention') adopted in 1997 which was the first global framework treaty on transboundary freshwater resources, specifically rivers.

On 7 August 2000, all but one (Zimbabwe) of the 14 members of the SADC signed the revised protocol on shared watercourses whereby this remains the current status.

3. Comparing the SADC Revised Protocol and the UNECE Water Convention

A. Significant similarities and differences between provisions of both instruments

Protocol replicates many of the provisions of the UN Watercourses Convention, thereby mirroring some of the key similarities and differences between the latter Convention and the UNECE Water Convention.

A. Significant similarities and differences (cont)

a) The duty to cause no significant harm

#	SADC Protocol	UN Convention	Comments
1	States to take action to avoid causing significant harm is incorporated into the duty to do no harm, and the level of harm is also classified as 'significant	defines transboundary impact in Art 1(2) as 'any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity'.	SADC Protocol defines in Art 1(1), Significant harm as meaning 'non-trivial harm capable of being established by objective evidence without necessarily rising to the level of being substantial'. Convention does NOT. This is a critical distinction between the two instruments which bears on the ability to scientifically prove and legally establish in a court of law the level of harm caused.

A. Significant similarities and differences (cont)

a) The duty to cause no significant harm

#	SADC Protocol	UN Convention	Comments
2	Not explicit therefore only when matter is presented for dispute resolution by State parties to these agreements that tests and discerns a legally binding outcome for these potential interpretative discrepancies	Reasonable utilisation refers explicitly to 'taking into particular account [...] activities which cause or are likely to cause transboundary impact' ⁴⁹ .	Notably, the Protocol provisions on no significant harm do not directly refer to the principle of equitable and reasonable utilisation, nor in determining what uses of a shared watercourse are equitable and reasonable in Arts 3(8)(a) and (b).

A. Significant similarities and differences (cont)

b) Water quality standards and pollutions prevention, control and reduction

#	SADC Protocol	UN Convention	Comments
1	Protocol does, specifically in Art 4(2)(b) regarding prevention, reduction and control of pollution. It maintains more of a balance with prioritising socio-economic development of member States and regional integration via the reasonable and equitable utilisation of shared watercourses – SADC may wish to strength this	much more stringent on water quality standards provisions along with measures to prevent, control and reduce transboundary water pollution.	Convention elaborates much more on aims, obligations, and duties regarding maintaining water quality standards and concurrent prevention, reduction and control of pollution (see Chapter 15). Stringent obligations contained in Part II of the Convention. This significant distinction between the two instruments is reflected in the title of the UNECE Convention regarding ‘protection

A. Significant similarities and differences (cont)

c) Development of water agreements and joint institutions under both instruments

#	SADC Protocol	UN Convention	Comments
1	Protocol provides no explicit obligation for member States to enter into water agreements with co-riparians over whole or parts of any shared watercourses; rather, it is simply encouraged.	UNECE Water Convention where the development of water agreements and their harmonisation with the Convention is not only supported but obliged.	- Where agreements already exist, provisions harmonisation with the SADC Protocol is promoted instead of being obligated.
2	The Protocol (Article 5) focuses more broadly on the 'Institutional Framework For Implementation' by establishing 'SADC Water Sector Organs' within the SADC secretariat and their sub-branches'	Art 9(2) of the Convention stipulates that any agreements or arrangements developed by member states must 'provide for the establishment of joint bodies'.	Convention goes on to set out a detailed list of key tasks that such bodies are obliged to undertake.

A. Significant similarities and differences (cont)

c) Development of water agreements and joint institutions under both instruments - Continued

#	SADC Protocol	UN Convention	Comments
3	Formation of institutions between co-riparians, Art 5(3)(a) provides that 'Watercourse States undertake to establish appropriate institutions such as watercourse commissions, water authorities or boards as may be determined – Leaves more scope in form and function	UNECE Water Convention leaves NOT much scope to the Institutions., leaving much greater scope for differentiation under the Protocol in form and function.	Responsibilities of such institutions is determined by nature of their objectives in conformity with the principles set out in SADC Protocol', no other key tasks are set out for these institutions

A. Significant similarities and differences (cont)

c) Development of water agreements and joint institutions under both instruments - continued

#	Comments
<p data-bbox="79 311 459 362">SADC Protocol</p> <p data-bbox="79 391 629 1319">e.g. Art 2 of the LIMCOM Agreement provides that 'without prejudice to the notification provisions' nothing in the Agreement affects the rights of the Contracting Parties to enter into agreements regarding any part of the Limpopo River, as long as 'such agreements are not inconsistent with this Agreement'.</p>	<p data-bbox="658 386 1846 772">Protocol Secretariat is relatively small and sits within overall SADC Secretariat, Gaborone, Botswana – operates in silos, hence bureaucratic hampering any integrated approaches to implementation, monitoring and enforcement of regional water laws and watercourse agreements.</p> <p data-bbox="658 858 1870 1379">Mandate of the SADC Water Sector Organs is to monitor the application of the SADC Protocol and facilitate harmonisation of water law and policies between SADC Member States' BUT not DONE as it is Member States whose laws must ensure that obligations from international agreements such as the SADC Protocol or basin-wide water management agreements are being met'.</p>

A. Significant similarities and differences (cont)

c) Development of water agreements and joint institutions under both instruments - Continued

#	SADC Protocol	UN Convention	Comments
3	With these differences in SADC Protocol	The UNECE Secretariat and the UNECE Water Convention's sub-bodies are relatively very well resourced and considerably experienced in implementing the Convention and it's suite of binding and non-binding measures	LIMCOM or ZAMCOM could learn considerable experience of the UNECE Secretariat, the sub-bodies of the UNECE Water Convention and joint institutions in order to 'strengthen water management institutions at all levels, particularly Shared Watercourse Institutions as best placed to develop management solutions for transboundary rivers'.

A. Significant similarities and differences (cont)

c) Development of water agreements and joint institutions under both instruments - Continued

#	SADC Protocol	UN Convention	Comments
3	With these differences in SADC Protocol	In transboundary waters, the UNECE Water Convention laid the foundations for the European Union's Water Framework Directive building on the experience and knowledge acquired through this treaty implementation.	Procedurally and substantive standpoint, SADC could benefit from best practices and knowledge transfer in terms of the already well-developed agencies and working sub-groups of the UNECE Secretariat implementing the Convention, pilot project activities and policy measures e.g. Comprehensive 'Guide to Implementing the Water Convention'.

A. Significant similarities and differences (cont)

d) Settlement of Disputes

#	SADC Protocol	UN Convention	Comments
1	Stipulates (Art 7) that conflicts arising between member States that are unable to be resolved amicably in accordance with principles set out in Art 4 must be submitted to the SADC Tribunal for an advisory opinion which will form a binding and final verdict.	In Contrast with the applicable UNECE Water Convention procedures set out in Art 22 leave resolution pathways open for States to determine whereby the 'they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute'.	Protocol provides no guidance on how to resolve disputes other than if not resolved, submit to its governing SADC Secretariat for an advisory ruling;

A. Significant similarities and differences (cont)

d) Settlement of Disputes - Continued

#	SADC Protocol	UN Convention	Comments
1	Conflict Resolution continued	Subsequent methods allowed for by States are arbitration (with procedures set out in Annex IV) and, if agreed to by the State parties to the dispute, submission to the International Court of Justice (ICJ).	UNECE Convention provides for arbitration via specified processes or submission to the ICJ, where either method is agreed to by the respective State parties.

5. CONCLUSION: Can the UNECE Water Convention complement the SADC Revised Protocol?

Elements exist which would be mutually complementary from the outset in coordinating and implementing both agreements.

1. UNECE Water Convention provisions can enhance the basic provisions of the Protocol regarding no significant harm and transboundary impacts, especially water quality standard and the prevention, control and reduction of pollution.

SADC member States may wish to strengthen the applicable provisions by drawing upon the Water Convention's extensive and detailed provisions would certainly complement those of the Protocol.

5. Can the UNECE Water Convention complement the SADC Revised Protocol? (cont.)

2. Both Protocol and UNECE Water Convention allow for formation of specific basin agreements and their associated institutions for purposes of improving governance and effective transboundary water management.
3. Both Protocol and Convention promote harmonisation of existing/new basin agreements with their respective principles and substantive rules which could aid regional coordination with non-SADC member States, providing greater legal clarity and improving regionally integrated water management.

As stated above, Protocol and UNECE Water Convention set out separate dispute resolution provisions but together they may be seen as mutually supportive in a regional context.

5. Can the UNECE Water Convention complement the SADC Revised Protocol? (cont.)

4. The similarities and distinctions would need to be examined in greater detail and potentially resolved prior to seeking to develop certain synergies and inter-linkages, along with the related institutional arrangements.
5. Such coordination will also need to take account of the entry into force of the UN Watercourses Convention.
6. Overall, there appears to be significant legal scope for utilising Protocol's substantive and procedural inter-linkages and synergies with UNECE Water Convention within a regional institutional framework in Southern Africa to enhance effective implementation of international watercourse laws.



Despite our differences and similarities
Please visit Zambia's Tourist sites

Victoria Falls, Zambia

THE END