OVERVIEW OF PAST WORK AND CURRENT STATUS OF INSTITUTIONAL PROCESSES AND ARRANGEMENTS AT ALL LEVELS
FORMAL AND INFORMAL

SIO-MALABA-MALAKISI SUB BASIN.
Schematic diagram of existing arrangements & initiatives

NBI-EAC Institutional Linkages

- Economic Community of the Great Lakes Countries (CEPGL)
- Nile Basin Initiative
- ENSAP
- ENTRO
- Nile COM
- Nile TAC
- Nile SEC
- ICCON
- NELCOM
- NEL-TAC
- NELSAP Coordination Unit
- L Victoria Basin Commission (LVBC)
- Sectoral Council
- Coordination Committees
- Sectoral Committees
- Secretariat
- EAC Council
- EAC Secretariat
- Arusha
- Kisumu
- Kigali
- Projects
  - Kagora TIWRI&D Project (B,R,T,U)
  - Sio-Malaba-Malakisi TIWRI&D Project (K,U)
  - Mara TIWRI&D Project (K,T)
  - Bugesera TWMP (B, R)
  - LEAF (U, DRC)
  - Regional Agric Trade & Productivity Project
  - Rusoma Falls HE & multi-purpose dev’t Project

Institution
Programme/project
SMM INSTITUTIONAL SET UP

- The Nile Equatorial Lakes Council of Water Ministers
- The Nile Equatorial Lakes Technical Advisory Committee
- The Regional Project Steering Committee
- The Nile Equatorial Lakes Subsidiary Action Program Coordination Unit
- The Project Management Unit
Council of Ministers (NELCOM)

- Policy and political decisions concerning the NELSAP Program
- Recommendations to the riparian governments concerning policy issues that require decisions;
- Strategic direction for the preparation and implementation of the NELSAP programme
- Approving Project Implementation Manuals and grant proposals for financing;
- Approving annual work plans and budgets, and programs and projects
- Ensuring the smooth operation of NELSAP activities
- Mobilisation of member country cash contributions and contributions from external support agencies (Development Partners) and NGOs
- Providing linkage of programme elements with other line ministries in the member countries and regional programmes like the EAC, CEPGL, NEPAD, IGAD, COMESA and other regional bodies;
- Facilitating joint agreements, policies and data sharing protocols;
- Reporting to the respective governments of the basin countries.
NEL TECHNICAL ADVISORY COMMITTEE (NELTAC)

- Technical advice to NELCOM members to enable them take informed decisions.
- Providing strategic guidance, oversight, monitoring and supervision, on behalf of NELCOM,
- Guidance and advice to NELSAP-CU and the SMM PMU on policy and technical matters
- Assisting NELSAP-CU and the SMM PMU in prioritization of major programs.
- Linking NELCOM to the NELSAP-CU and the SMM PMU, Development Partners.
- Follow-up on the implementation of NELCOM decisions and directives, and monitoring and providing regular feedback.
- Briefing NELCOM on strategic issues on the NEL Region, outcomes of engagements and strategic dialogue with development partners
- Coordinating, facilitating and supervising NELSAP programmes
- Identification and preparation of NELSAP projects; and
- Facilitating joint agreements, policies and data sharing protocols.
Regional Project Steering Committee

- Guiding, supervising, monitoring and ensuring that the activities undertaken by the SMM PMU meet NELSAP Program and SMM Project objectives.
- Carrying out critical review of the performance of the SMM Project and offering guidance to enable it deliver expected outputs.
- Monitoring the implementation by Kenya and Uganda of their obligations to the SMM Project and NELSAP Program;
- Facilitating cooperative decision making by Member states on integrated management and development of the shared water resources of the SMM;
- Facilitating and promoting the resolution of issues raised by either State Party with a view to preventing disputes;
- Reviewing and approving program work plans and budgets, progress reports, financial reports and project technical and administrative reports;
- Reporting to NELTAC on the activities of the SMM Project; and
- Other functions as the State Parties (Kenya and Uganda), in consultation with the NELSAP may mandate it to undertake.
NELSAP CU

- Recruiting SMM PMU staff in line with the NELSAP Human Resources Policy and Procedures Manual (2009);
- Making external communications on the NELSAP Program and Projects;
- Procuring and contracting consultants and other service providers for the NELSAP Projects;
- Monitoring and evaluation of the NELSAP Program and Projects; joint annual supervision missions and mid-term and end of project evaluations;
- Liaising with development partners and management of program trust funds;
- Preparing and overseeing the application of good practice guides in a wide range of areas related to the activities of NELSAP projects.
- Capacity building for NELSAP Project staff and government officials;
- Discharging such other functions related to the implementation of the SMM Project as assigned by NELTAC and NELCOM.
Project Management Unit

- Preparing annual and quarterly project work plans and budgets
- Implementing the work plans and budgets to ensure timely delivery of expected outputs
- Carrying out financial control and ensuring proper management of project funds
- Procurement of goods, works and services; preparing terms of reference and tender documents for hire of consultants and contractors under the project;
- Facilitating and supervising the activities of consultants and contractors procured
- Arranging for, and facilitating project steering committee meeting
- Establishing, maintaining and managing data and information systems on the SMM Project;
- Facilitating data and information sharing and exchange on the SMM - NBI Information Sharing and Exchange Procedures and Guidelines.
National Liaison Officer

- Link between the SMM Project, central and local governments, and local stakeholders;
- Guidance on national policies and procedures that are applicable to the project;
- Guidance to local stakeholders/beneficiaries on disbursement and accountability procedures of the project;
- Disseminating information on the project to stakeholders at national and local levels;
- Assist in implementation of micro projects; identifying relevant stakeholders (county/district and local levels; NGOs, CBOs, politicians, media);
- Participating in project steering committee meetings;
- Participating in monitoring and evaluation of the project;
Efforts to develop a permanent legal and institutional framework – SMM Sub Basin

- Maintaining the status quo (i.e. the project management framework described above);
- Creating a bilateral framework between Kenya and Uganda for management of the SMM sub-basin;
- Create a framework under the NBI; or
- Create a framework under EAC
Institutional arrangement-legal options for RBMs

- BURUNDI
- KENYA
- RWANDA
- TANZANIA
- UGANDA
- DR CONGO
- EAC TREATY
- NILE BASIN CFA
- LV PROTOCOL
- NEL-PROTOCOL
- LVBC
- NEL-SAP
- RBMs SIO, MARA, KAGERA, etc

Key:
- **Possible now**
- Potential under CFA
- Project/Programmes
- Necessary Link, CFA
- Possible now with intermediate step
Options under Pillar Institutions

OPTIONS FOR RBOS UNDER THE PILLAR INSTITUTIONS OF EAC/NBI

- **OP1**: status quo for SMM, Mara & Kagera under NELSAP/NBI framework may till CFA is resolved
- **OP2**: Subsidiary agreements under NBI framework. Waiting for NBI CFA plus fresh negotiations for each RBOs individually
- **OP3**: under MoU between NBI & EAC develop CFAs for SMM, Mara & Kagera (doubtful)
  - Actions by Member states with support from NBI

- **Op1**: A desk office for SMM, Mara and Kagera at LVBC offices OR in the river basin, approved by Sectoral Council of ministers OR council of Ministers.
- **OP2**: Subsidiary Agreements for SMM, Mara and Kagera by Council of Ministers OR EALA spelling out Scopes and institutional arrangements with linkages to LVBC
  - Possible MoU with NBI
  - Actions by member states with support from EAC/NBI

What future of NELSAP in NBI & EAC frameworks:
- **OP1**: NELSAP as subsidiary organ of NBI, will need a subsidiary agreement with concerned member states, articles 32...of CFA, and provide for subsidiary RBOs such as SMM, Mara & Kagera and others to come. May take long
- **OP2**: Form NELSAP Protocol under EAC through EALA and provides to have RBOS under it. Challenge is inclusion of DRC and rationalize roles with LVBC but will have focus on WATER
  - NELSAP protocol under EAC OR NBI, no need for separate agreements for RBOs
  - Actions by member States with support from NELSAP

- Countries agree to cooperate
  - Identify Ministerial OR technical level representation
  - Minutes of meetings agree on actions areas and basis of recommendations to member states
  - Actions by member states
### Institutional options for the future management of the SMM Sub-basin

<table>
<thead>
<tr>
<th>Option</th>
<th>Key features</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OPTION 1: Maintain the status quo.</strong></td>
<td>In this option, the two riparian states would maintain the existing water resources management arrangements in the catchments with no new formal institutional arrangement between the two states. Each state takes its own administrative and legal measures to manage the basin and when necessary, on ad hoc basis, the two states can meet to resolve any outstanding and emergent transboundary issues. This was the option that the countries eventually settled on.</td>
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<tr>
<td><strong>OPTION 2: Bilateral arrangement between Kenya and Uganda.</strong></td>
<td>Under this option, the two States enter into a specific agreement for co-operation in the integrated management and development of the SMM waters. This would be a purely bilateral arrangement outside existing legal and institutional frameworks of the EAC/LVBC and Nile Basin. This option appeared attractive to the countries but was not prioritized.</td>
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</table>
### OPTION 3: An Arrangement under NBI.

Under this option, the countries make an arrangement (sign protocols) for the management of the SMM under the Nile Basin Initiative within the context of draft Nile Basin Cooperative Framework as a subsidiarity institution.

However, the proposed Nile Basin Cooperative Framework has not been finalized and was only signed by six countries (Burundi, Rwanda, Kenya, Ethiopia, Tanzania and Uganda). Even when the Cooperative framework is adopted by the states, it must necessarily go through a lengthy ratification process (already ratified by Ethiopia, Rwanda and Tanzania) before coming into effect. Only after conclusion of this process will Kenya and Uganda be in position to enter into a new treaty bringing the SMM institutional arrangement under the Nile Cooperative Framework.

For the above reasons, and fear of losing benefits already demonstrated under NELSAP by opening up to all NBI countries, this option was not recommended.

### OPTION 4: An Arrangement under East African Community

Under this option, Kenya and Uganda will need to reach an agreement under the EAC Treaty to cooperate on the management of the SMM sub-basin.

The SMM sub-basin comprises of two main river systems: the Sio River system that drains into Lake Victoria, and the Lwakhakha-Malakisi-Malaba River system that drains into Lake Kyoga in Uganda.

The two river systems may have to be managed separately (with the Sio managed under the LVBC protocol while a new protocol is reached for the Lwakhakha-Malakisi-Malaba River system) or managed together (which is the preference of the countries), by extending the LVBC protocol to cover the Lwakhakha-Malakisi-Malaba Catchment.

To commence cooperation on the SMM under the EAC: (a) through a directive of the Council of Ministers, which would enable the SMM to be managed without a separate legal framework; and (b) through a community law prepared by the East African Legislative Assembly (EALA), which would have greater moral authority than the Council of Ministers’ directive. Under the latter modality, a specific legal instrument will be required to create an enabling law that creates a specific institutional framework to implement SMM in a specific geographical and social context.

This option was the recommended framework under the institutional framework studies, but was not adopted by the countries.
<table>
<thead>
<tr>
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<th>KENYA</th>
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<tr>
<td>Ministry of Water and Environment</td>
<td>Ministry of Water and Irrigation</td>
</tr>
<tr>
<td>Directorate of Water Resource Management</td>
<td>Water Resources Management Authority-National</td>
</tr>
<tr>
<td>Lake Kyoga Water Management Zone - Mobile</td>
<td>Lake Victoria North Catchment Area – Kakamega region</td>
</tr>
<tr>
<td>Mpologoma Catchment Management Organization</td>
<td>Elgon-Cherenganyi Catchment - Kitale sub-region</td>
</tr>
<tr>
<td>District Local Government of Busia/ Sub County Local Governments</td>
<td>County Government of Busia</td>
</tr>
<tr>
<td>Middle Malaba Sub-catchment Management Organization</td>
<td>Komiriai WRUA and Adungosi WRUA</td>
</tr>
<tr>
<td>Osukuru, Mella and Kwapa Micro-catchment management organisations</td>
<td>Water and Environmental CBOs</td>
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</tbody>
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## Institutional Framework in WRM-Lower Sio sub-catchment

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</tr>
<tr>
<td>Directorate of Water Recourses Management</td>
<td>Water Resources Management Authority</td>
</tr>
<tr>
<td>Victoria Water Management Zone – Mbarare office</td>
<td>Lake Victoria North Catchment Area – WRMA Kakamega Regional office</td>
</tr>
<tr>
<td>Sio Catchment Management Organization</td>
<td>Sio Sub-Catchment - WRMA Siaya Sub-regional office</td>
</tr>
<tr>
<td>District Local Government of Busia/Sub County Local Governments</td>
<td>County Government of Busia</td>
</tr>
<tr>
<td>Buda, Bumasi, and Luma Water Resources and Environment Groups</td>
<td>Wakhungu WRUA ,Nanguba and Bumasa WRUA</td>
</tr>
<tr>
<td>(Micro-catchment management organizations)</td>
<td></td>
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</tbody>
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SMM INSTITUTIONAL FRAMEWORK

KENYA

Ministry for Environment Water, Water and Natural Resources

WRMA/LNNCA

BUSIA County

Lower Sio Sub-Catchment Management Committee - Kenya

Nanguba WRUA

Wahungu WRUA

BUMASA WRUA

Communities

UGANDA

Ministry of Water and Environment

DWRM/LVWMZ

BUSIA District

Lower Sio Sub-catchment Management Committee-Uganda

BUDA WR&EMG

BUMASI WR&EMG

LUMA WR&EMG

Communities