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Research Report

The devil is in the detail: administrative and fiscal challenges in implementing River Basin Management in Mongolia

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The Devil Is in the Detail: Administrative and Fiscal Challenges in Implementing River Basin Management in Mongolia

Summary

The concept of river basin management calls for managing water resources at the river basin level in order to promote the sustainable use of water resources. Often this goes along with the introduction of river basin organisations (RBOs) as special purpose organisations. However, particularly in developing countries, RBOs often suffer from insufficient funds. Fiscal decentralisation involves shifting certain fiscal responsibilities to lower levels of government. Decentralisation could thus provide a source of funding for RBOs, depending on how tasks and funds are allocated among RBOs and general-purpose jurisdictions. This briefing paper examines administrative and fiscal aspects of river basin management and analyses whether fiscal decentralisation supports or counteracts the funding of river basin management. We present the example of Mongolia, where in recent years the processes of RBO institutionalisation and fiscal decentralisation have occurred in parallel. More specifically, we analyse i) how competencies for various water governance functions between RBOs and other bodies at the sub-national level are formally allocated, ii) which de jure and de facto funding arrangements are in place, and iii) what this implies for the coordination and sustainability of water resource use.

We find that despite a broad division of labour among administrative units, a high level of overlap exists, for

instance in the areas of data management, water law enforcement and implementation of water protection measures.

In terms of financing water governance, River Basin Authorities (RBAs) are primarily financed through the national budget and *aimag* (province-level) environmental authorities (AEAs) through sub-national province budgets. However, uncertainties exist regarding the allocation of water-use fees. In practice, funds available to RBAs only cover fixed costs. AEAs have somewhat higher budgets, but do not necessarily use these funds for water-related projects nor do they earmark water-use fees. Inconsistent legal provisions on water-use fees have led to competition between AEAs and RBAs, but also to initial collaborative arrangements. We conclude that in Mongolia, fiscal decentralisation and river basin management are, so far, hardly mutually supportive and we recommend a number of legal and financial adjustments. In particular, we recommend that

- responsibilities be distributed more clearly to reduce overlap and uncertainty;
- legal inconsistencies regarding water-use fees be clarified;
- funding be arranged according to tasks; and
- funding for RBAs be increased and minimum state-funding be provided to river basin councils (RBCs), so they can fulfil their mandates.

Background

In recent years, Mongolia has institutionalised River Basin Organisations (RBOs) in order to promote sustainable water use at the river basin level. This has happened in parallel with the country's ongoing process of fiscal decentralisation. However, underfunding of Mongolian RBOs remains a serious issue (Rodríguez de Francisco et al., 2017). This raises the questions of what tasks and funds are allocated to RBOs in Mongolia and whether fiscal decentralisation supports or counteracts the funding of river basin management in Mongolia. We therefore analyse i) how competencies for various water governance functions between RBOs and other bodies at the sub-national level are formally allocated, ii) which de jure and de facto funding arrangements are in place, and iii) what this implies for the coordination and sustainability of water resource use.

This briefing paper is based on a discussion paper (Dombrowsky et al., 2018) that was prepared as part of the inter- and transdisciplinary research projects "Integrated Water Resources Management in Central Asia – Model Region Mongolia" (MoMo) (grant no. 033W016CN) and "Increasing Good Governance to Achieve Integrated Water Management" (STEER) (grant no. 02WGR1425C), both of which are funded by the German Federal Ministry of Education and Research (BMBF). The analysis builds upon a review of pertinent legal documents and interviews conducted with the Ministry of Environment and Tourism (MET) and relevant organisations in Mongolia's Kharaa River Basin. We gratefully acknowledge comments from the MET on an earlier version.

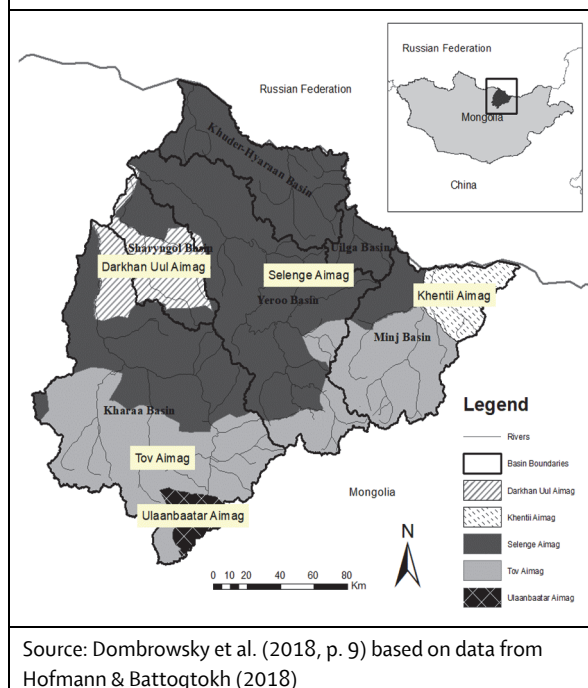
De jure allocation of water governance functions

At the sub-national level, according to Mongolian legislation, a high number of actors are involved in water governance, including river basin authorities (RBAs), river basin councils (RBCs), *aimag* (province-level) environmental agencies (AEAs), and governors and assemblies at the levels of *aimags*, districts (*soums*) and communities (*baghs*), as well as state inspectors and environmental rangers. Figure 1 illustrates how several *aimags* and sub-basins comprise the Kharaa-Yeroo River Basin.

Some water governance functions are clearly delineated by administrative entity, others are shared with relative ease and still others are allocated to more than one administrative entity with no legal clarification on how to handle the overlaps.

A clear division of labour exists with respect to licensing water abstraction and wastewater discharge. According to the Water Law, Mongolia's primary piece of water-related legislation, the MET is responsible for decisions about water uses that require over 100 m³ per day, while the RBA decides on uses between 50 and 100 m³ per day and the AEA decides on uses below 50 m³ per day. The formal issuing of the license is conducted by the respective lower-level organisation, with *soum* governors taking care of licenses for uses of below 50m³ per day.

Figure 1: *Aimags* and sub-basins within the Kharaa-Yeroo River Basin area



Source: Dombrowsky et al. (2018, p. 9) based on data from Hofmann & Battogtokh (2018)

RBAs and AEAs explicitly share the tasks of preparing an annual water inventory, that is, the stocktaking of all bodies of water, and reporting the findings to the MET. However, the law provides no guidance on what sharing these responsibilities and costs precisely entails.

A high level of overlap exists in terms of data management, monitoring water use and law implementation, and law enforcement. For instance, RBAs, RBCs, governors, inspectors and rangers can all play a role in revoking licenses. Finally, according to the Water Law, *aimag* governors are responsible for organising the implementation of water-related measures, while RBAs are responsible for coordinating the implementation of River Basin Management Plans (RBMPs). We understand that de facto, the AEA implements measures on behalf of the governor, but this is not mentioned in the Water Law. At the same time, the roles of RBAs and RBCs in implementing water-related measures remain blurred.

Overlapping functions contradict the idea of a strict separation of powers between different state levels and administrative units (i.e., the principle of disentanglement). However, we recognise that overlapping functions can also increase a system's resilience to shocks (e.g., staff changes, fiscal deficits and climate change). Still, when detailed provisions for coordination are not in place and when agencies are partly underfunded (see below), we consider the overlap to be problematic, as some tasks might be fulfilled in duplication, while others may not be fulfilled at all.

Formal funding arrangements for RBAs, RBCs and AEAs

In Mongolia, RBAs are financed through the national budget and AEAs are funded through local budgets. RBCs

as stakeholder fora do not receive regular government funding. However, we have found that due to legal uncertainties RBAs, RBCs and AEAs all expect to receive water-use fees as one source of funding.

While the Budget Law and the Environmental Protection Law define water-use fee revenues as *aimag* revenue, other laws and regulations suggest that 35 per cent of water-use fees should be earmarked for environmental protection and that this portion should flow into the Fund for Environment and Climate Change, which belongs to national budgets (Table 1). If this were the case, water-use fees could also be used by RBAs, and possibly RBCs. However, as the Budget Law is the base law regulating state and local budget relations in Mongolia, it supersedes the other laws. We understand that there are ongoing discussions in the National Parliament on this issue and a suggestion has been made to allocate the earmarked portion of 35 per cent of natural resource fees to the Fund for Environmental and Climate Change, and hence the national budget. If this legal change were to be implemented, the MET could indeed allocate parts of the fees to RBAs, and possibly RBCs. However, this would also require changing the Budget Law and it is not known what that would entail.

Source	Provisions on water-use fees
Budget Law and Environmental Protection Law	Water resource-use fees are <i>aimag</i> revenue sources (earmarking is not mentioned)
Natural Resource Use Fee Law	A minimum of 35% of water resource-use fee revenues shall be spent on water protection and restoration activities
Government Special Fund Law	The earmarked portion of natural resource-use fee proceeds are a revenue source for the Fund for Environment and Climate Change
Decree 43	The earmarked portion of water resource-use fee revenues shall inter alia be spent on RBMP implementation and supporting RBA operations
Resolution A/57 (2018)	Water resource-use fees are a possible funding source of RBC operations

In addition to water-use fees, a potential source of funding for water management measures are water pollution fees, according to the 2012 Water Pollution Fee Law. It is foreseen that water pollution fees will be a revenue source for the Fund for Environment and Climate Change. However, water pollution fees have not yet been implemented in Mongolia and national legislators are still discussing amendments to the Water Pollution Fee Law. We understand that there is a suggestion that at least 50 per cent of the water pollution fees should be earmarked to support the operation of wastewater treatment plants. Hence, the Water Pollution Fee Law would probably not directly support RBOs.

De facto funding of RBAs, AEAs and RBCs

The Kharaa RBA was established in 2013, then in 2015, it merged with the RBA of the Yeroo basin to become the Kharaa-Yeroo RBA. In practice, available funds to the Kharaa-Yeroo RBA mainly cover fixed costs (see Dombrowsky et al., 2018). Thus, the RBA is largely assigned unfunded mandates for planning, monitoring and implementing water protection. This limits their effectiveness considerably.

Overall, AEAs have somewhat higher budgets for environmental protection (see Dombrowsky et al., 2018). However, in 2016, the AEA in charge of the Darkhan-Uul Province did not allocate any funds for water-related projects and did not earmark 35 per cent of water-use fees for environmental protection. We understand that this is a wider issue in Mongolia, and that the MET has asked the National Auditing Authority to investigate the issue.

Our interviews indicate that problems of underfunding could exacerbate problems of overlapping responsibilities. The inconsistent legal provisions on water-use fees have led to competition between AEAs and RBAs, which undermines trust between the agencies and makes it difficult to perform the shared or overlapping tasks. In 2017, the Kharaa-Yeroo RBA and the Darkhan-Uul AEA sought to clarify their responsibilities in a Memorandum of Understanding. While this is a step forward, such a memorandum alone will hardly solve the problem of underfunding.

De facto tasks performed

For the various actors involved in water management, several deviations exist between de jure and de facto tasks performed. The following illustrates this issue for the case of RBAs, however, a more comprehensive analysis would be warranted. The Kharaa-Yeroo RBA performs some, but not all functions foreseen in the Water Law. It carries out its functions in water and wastewater discharge licensing according to the Water Law. Jointly with other responsible bodies, it is also active in inspection activities and in preparing water inventories.

However, so far, the RBA has not taken the lead, and has in fact hardly been involved in developing a draft RBMP, which is one of its key functions. Instead, in 2015, the MET recruited a consulting team for that purpose. In 2017, the MET decided that it was not satisfied with the draft plan and asked the MoMo project to fund a different consultant. As of late 2017, a new consultant has been preparing a draft RBMP with financial support from the MoMo project, which the MET adopted in May 2018.

The Kharaa-Yeroo RBA also postponed the establishment of an RBC for four years because of insufficient funds. In October 2017, the constitutional meeting of the Kharaa-Yeroo RBC was financed by the MoMo project, and the RBC was confirmed by the MET in December 2017. However, it is still unclear how RBC meetings will be financed once the MoMo project ends in September 2018.

Conclusions

Overall, we find that in the Mongolian governance framework for river basin management, certain overlaps in functions, a lack of funding for RBCs, insufficient funding for RBAs and competition over funds between RBOs and sub-national jurisdictions exist. We do, however, also find initial arrangements for collaboration. RBOs are not currently participating in Mongolia's ongoing process of decentralisation, hence, so far, RBM and fiscal decentralisation have not been mutually supportive. Due to the problems identified, RBAs and RBCs are hardly in a position to demonstrate the benefits of a river basin management approach that seeks to reconcile upstream and downstream as well as different sectoral interests at the scale of the river basin in order to ensure sustainable water use for the benefit of the economy, society and the environment.

Recommendations

Given the apparent danger that water issues could be neglected in the absence of RBOs, we recommend to the MET to lead the following legal adjustments and the financial empowerment of RBAs and RBCs. In particular, we recommend the following:

- Distribute responsibilities more clearly to reduce overlap and uncertainty, both horizontally across different sub-national governance entities and vertically across government levels.
- For tasks that are delineated as shared, introduce clear regulations for what sharing entails in terms of committing human and financial resources.

- Empower RBAs to take the lead in preparing the RBMP, updating it on a regular basis and coordinating its implementation.
- Arrange funding according to tasks.
- Irrespectively of legal adjustments, increase funding for RBAs so that they can fulfil their mandate. RBAs should clearly state their funding needs in their draft budget proposals to the MET.
- Solve the problem of limited budgets for RBCs. A first step could be to provide RBAs with enough budgeting to convene and finance RBC meetings. However, this would not yet allow RBCs to operate independently and could limit their control function vis-à-vis RBAs.
- Enforce the earmarking of water-use fees and consider increasing the portion that is earmarked for water protection measures.
- Clarify legal inconsistencies and/or uncertainties regarding water-use fees.
- Swiftly adopt and implement the amended Water Pollution Fee Law that is currently under discussion in the National Parliament. Make sure that infrastructure is in place to detect breaches of the Water Pollution Fee Law.

In addition to legal revisions, or as long as legal revisions are not feasible, the respective agencies should clarify the division of labour to the extent possible in Memorandums of Understanding. These should be as specific as possible and, ideally, match tasks to available funds.

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