Overview: how can national law support international water law implementation?
Implementation of international law

Global Conventions

Regional legal instruments

River basin/aquifer agreements

National legal frameworks *(harmonized)*

National Institutions
National legal framework

• Constitution => fundamental law
• Laws
• Subsidiary legislation
• Norms, standards, etc.

Legal framework for specific subjects often informed by national policy
EVOLUTION OF THE LAW WITHIN NATIONAL CONTEXTS

• Europe
  – Fragmented provisions
  – Consolidation

• Africa
  – Influences
    • Customary law
    • Islamic law
    • Civil law
    • Common law
    • Mixed systems
  – Fragmentation
  – Consolidation

• Present: IWRM
  – Legal & institutional frameworks: national, basin/aquifer/regional
What will the drafter of domestic legislation include in the relevant texts to facilitate the implementation of international water law?
• Equitable and reasonable utilisation
  – Determined based on a non-exhaustive list of factors
• Duty not to cause significant harm
• General obligation to cooperate
  – Procedural rules
PROVISIONS IN SUPPORT OF THE REGULATION OF WATER USE & DEVELOPMENT

• May need to intervene on the legal status of water: shift from ‘private ownership’ to regulation
• Right of authorities to regulate water use => only water use rights
• Thus, permit system (authorisations, concessions, permits, licences), except for specified de minimis uses
  – also covers relate activities with possible adverse effects
• Need to consider situation of existing water use rights (incl. customary)
• Registration of water use rights (declarations, permits, existing rights) => knowledge of existing water uses
  – Facilitates planning
  – Facilitates protection of water right holders
PROVISIONS IN SUPPORT OF WATER QUALITY CONTROL & PROTECTION

– Wastewater discharge permits (permit system)
  • Conditions: among other, treatment of effluents
– Water quality objectives, criteria & standards
– Application of BAT, if possible
– Reuse of wastewater
  • Subject to permit
– Protection of wells & water supply sources
– Identification of substances to be prohibited, limited, controlled, etc.
THE PERMIT SYSTEM

• Characteristics of permits
  – Personal
  – Limited duration, but renewable
  – Subject to conditions
  – May be suspended, modified or revoked
  – Subject to the payment of charges

• Procedures for the issuance of permits (detailed in regulations)
  – Application
  – EIA for specified activities
  – (Inspection)
  – Publication of the application
  – Oppositions (within specified deadline)
  – Advice by other concerned agencies
  – Evaluation of application
  – Approval or rejection
  – Possibility to appeal
PROVISIONS IN SUPPORT OF THE ENHANCEMENT OF THE KNOWLEDGE BASE

• Knowledge of water uses, wastewater discharges & activities subject to permit may be derived from register of permits

• Knowledge of WR
  – *Programmes* for WR monitoring & assessment
    • By basin/aquifer
    • Coordinated
  – Data bases (basin or aquifer)
  – Data custodianship: exchange & sharing
PROVISIONS IN SUPPORT OF WATER RESOURCES PLANNING

• Types of plans (development/management)
• Basin or sub/basin plans
• Aquifer plans
• National planning
  – Among other, for inter-basin water transfers
• Stakeholder participation: mechanisms
  – Entails access to information
CONTENT OF BASIN PLANS

• Among other:
  – Inventory of water resources, water bodies and existing uses
  – Measures to meet water demands (& relevant criteria)
  – Order of priorities
    • among utilisations
    • among zones (for the implementation of measures)
  – Water quality control & measures for protection against pollution
  – Protected areas, incl. GW recharge areas
  – Measures for protection against floods
  – Monitoring networks
  – Water reserve (minimum flow requirements)
  – Institutional arrangements for plan implementation
  – Allocation of financial resources
INSTITUTIONAL ASPECTS

• Present situation (in general):
  – Fragmentation (even in the presence of a water agency)
  – Water resources institutions are often at the same time water users

• Trends:
  – Designation of an agency responsible for WR
    • National level
    • Basin level
    • (recent trend): aquifer level
  – Decentralisation to the level closer to users
  – Participation of stakeholders in WR management: River Basin Councils, Committees, WUAs, etc.
  – Coordination mechanisms