

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



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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
 - Common principles : Water Framework Directive (2000) & 'daughter' directives transposed into domestic legislation
- **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?

UNWC

- **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 related 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**