



Legal Frameworks



Summary

The challenges facing water resources require governments to take necessary financial, institutional, and legal measures to ensure sustainable access to water. Without appropriate regulatory frameworks, governmental bodies forfeit their ability to manage water allocation and protect relevant water rights. This sub-section encompasses for Tools related to water rights and allocation, international water law, the integration of legal frameworks, the Rights of Rivers, the human rights-based approach.

The Role of Water Legislation

Legal frameworks play an important role in the management of water resources at a range of scales – from local and national legislation covering domestic use, to international treaties that govern waters shared by sovereign states. The importance of water legislation has been first recognised during the Mar del Plata United Nations Water Conference in 1977, laying the foundation for global framework to utilization, development, conservation, management, and protection of water resources (Salman and Bradlow, 2006).

Among the overall purposes, water law performs the following key functions (Rieu-Clarke, 2012):

- It defines and identifies the legal rights and obligations of public and private water users tied to water use (broadly defined) and provides the prescriptive parameters for resource development and management to promote the public interest;
- It provides tools for ensuring the continuous integrity of the regime – that is, through governance structures, mechanisms for monitoring, evaluating, and facilitating compliance, and dispute prevention, and settlement; and

- It allows for modifications of the existing regime, to be able to adapt to changing needs and circumstances.

Key Considerations Related to Water Law

The following are few key considerations and reminders while approaching legal frameworks pertaining to water resources management:

- Legal frameworks (national and international) are an important and integral part of effective integrated water resources management (IWRM).
- Legal frameworks shall take into account basin approach as fundamental for IWRM, dealing with the entire water body all a country's or basin's water resources, whether it is surface or ground water. Thus, legal regimes should be devised at a range of scales – from international (where the watercourse is shared by more than one State), regional (where regional legal regimes apply, such as, for example, within the European Union); and national (i.e., within nation States, where domestic legislation applies).
- Legal frameworks should be transparent, flexible, and capable of evolving to meet changing circumstances. Water laws should recognise the access to water as a human right (UN General Assembly, 2010) and water to be a finite and vulnerable resource, an economic good, and a natural resource having cultural, social, and environmental values.
- Law making is a political and socio-economic activity and should be concerned with both efficiency and equity. Legal frameworks thus need to consider customary law and find ways to reconcile customary practices and statutory rights and obligations if they want to be effective and equitable.
- Implementation and enforcement mechanisms should be foreseen to accommodate differences in national circumstance, recognising the complexity of water management, and be aimed at facilitating compliance. Dispute avoidance and settlement mechanisms are part of the implementation/enforcement spectrum.

Sub-Section Overview

The Tools within this sub-section provide an overview of approaches that are reflected in legal frameworks for water resource management as well as current developments in water law. In particular, those Tools are:

- Water Rights (A2.01);
- International Water Law (A2.02);
- Water Allocation Regimes (A2.03);
- The Rights of Rivers (A2.04);
- Human Rights-Based Approach (A2.05)

The A2 Tools examine legislation in various jurisdiction, highlighting key elements which are needed for an effective legal framework for natural resource management. While reviewing the Tools in this sub-section, it is important to consider the cross-referenced Tools in Regulation and Compliance (Tools B1) and Coordination and Facilitation (Tools B3) that will correspond to the legal framework within the water governance system that will be developed. Additionally, given the broad range of sectors that deal with water resources management, it is important to have a cross-sectoral overview of all laws that apply to avoid conflicting rules.

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