

Factors driving water law reforms

- Increasing pressures on quantity and quality of a finite resource:
 - Population growth
 - Economic development
 - Climate variability and change
 - Lack of access: over 783 million globally
- Insufficiency of “traditional” water legislation to respond to new and changing circumstances
 - Lack of adaptive capacity to respond to constant change
 - Need to support wider social and economic reforms (participation, right-based approaches)
 - Recognize need for maintaining ecological integrity of resource and quality management
 - Response to new and changing allocation priorities (e.g., from agriculture to industry)
 - Move towards formalizing rights within legislative framework to facilitate equitable access and protection of the resource – land based approaches insufficient

Principles Guiding Domestic Water Law

- Integrated management
- Sustainability: including avoidance of waste, harm, and over-consumption of resource; maintenance of ecosystem integrity
- Management at the basin level/subsidiarity
- User/Public participation
- Minimization of environmental harm
 - Impact assessment
- Maximizing beneficial use
- Water as a human right
- Adaptation/adaptive management -emerging

Key Elements of Water Law

- Guiding principles and key definitions
- Water Quantity Regulation
 - Allocation priorities
 - Defining rights and duties
 - Water demand management
 - Groundwater specific tools
 - Monitoring and information management
 - Enforcement
- Water Quality Regulation
 - Setting standards
 - Point and nonpoint source regulations
 - Monitoring and information management
 - Enforcement

Key Elements Continued

- Regulation of water services
- Water Governance
 - Institutional mandates and procedures
 - Management planning
 - Public/user participation
 - Incorporation of international obligations
 - Private sector participation (regulatory oversight)
 - Information generation, collection, and management
 - Compliance and enforcement, including mechanisms for adjudicating disputes

Water Rights Systems

From private to public rights:

- Riparian rights
- Prior allocation
- Government owns water (or holds in public trust), specifies priorities of use, and allocates water among competing users
- Market determines priority of use
- Combined systems (e.g., regulated riparianism)

Water as a Human Right

- UNCESCR General Comment 15 (2002):
Everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.
- Un Resolution 64/292 (2010) recognizes human right to water and sanitation as “essential for the full enjoyment of life and all human rights.”
- 41 countries have adopted the right to water within national constitutions or national legislation (including Mexico!)
- How to give force to this social and economic right?

Water as a Human Right, cont'd

- Content of the right to water is subject to conditions of implementing country, but maintain minimum core of duties for state to respect, protect and fulfill the right:
 - Expanding equitable access through **progressive realization** through policies, legislation and enforcement (role of courts)
 - Guarantee against discrimination in policies and programs providing access;
 - Protect against arbitrary disconnection from services or other interference with realization of the right (pollution, access);
 - Provide an acceptable quantity of water (20 l pp/pd within one km of domicile) that is **safe, accessible and affordable**
 - Prioritizing water as a social good while recognizing economic value of resource
 - Implies sustainability of resource/maintenance of ecological integrity

Legal tools for implementing the right to water

- Water as a legal entitlement: Free basic water programs (S. Africa)
 - “Prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene” – Water Services Act (1997)
 - Establishment of Basic Human Needs and Ecological Reserve (National Water Act, 1998)
- Increasing block tariffs
- Appropriate level of funding allocation
- Quality improvement requirements
- Regulatory oversight of service providers (Hungary)
- Participatory, transparent, and accountable decision-making and institutional frameworks
 - Water courts
- Prioritization of most vulnerable populations (waterless)

Making the right enforceable: court cases

- *Grootboom* (South Africa, 2000)
 - Supreme Court establishes “reasonableness” test: has State devised a “comprehensive and reasonable plan to meet it’s obligations within available resources – including a national legislative framework, establishing mechanisms for intergovernmental cooperation and appropriate consideration of national budgetary allocation.”
- *Phiri* (South Africa, 2009)
 - Pre-paid meters used in poor community are meet reasonableness test for reducing water losses
 - Amount (25 l pp/pd) is NOT for court to determine – for legislature
 - Not discriminatory – tailored to specific community needs
 - Government required to provide additional supplies to combat fire
- Parana disconnection (Brazil, 2002)
 - Injunction against disconnection for nonpayment during legal proceedings
- *CEDHA v. Municipality and Province of Cordoba* (Argentina, 2004)
 - Municipality must guarantee proper functioning of public treatment facilities to ensure appropriate water quality and quantity of water is available