



# Legal Frameworks for Public and Stakeholder Involvement

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*Regional Workshop on Public Participation in International  
Waters Management in Latin America and the Caribbean*  
Montevideo, Uruguay 6-9 December 2006

Why is the legal  
framework important  
for public participation?

# Overview

- Legal framework (within which projects operate)
  - Public participation in international law
  - Public participation requirements of international institutions
  - Public participation in water-related agreements
  - National laws
- Public participation in the development of international (waters) agreements and national laws and regulations
- Development of legal frameworks within a project

# Public Participation in International Law

- Principle 10 of the **Rio Declaration** (generally considered to reflect customary international law)
- 2000 Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development (**ISP**) (non-binding)
- 1998 UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (**Aarhus Convention**) (binding)
  - Espoo Convention (Transboundary EIA)
  - SEA Protocol
- Similar regional and sub-regional initiatives in Africa and Asia

# Public Participation Requirements of International Institutions

- Environmental and Social Safeguard Policies of the World Bank Group (especially for EIA)
- Similar safeguards from regional development banks
- GEF requirements

# Public Participation in Water-Related Agreements

- International Law Association Rules
- 1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes
  - 1999 Protocol on Water and Health
- EU Water Framework Directive (IWRM in EU Member States)
  - Art. 14: requires States to encourage involvement of all interested parties in the production, review, and updating of river basin management plans

# Public Participation in Water-Related Agreements (2)

- 1909 International Boundary Waters Treaty and 1978 Great Lakes Water Quality Agreement
  - Public consultation in development and implementation of integrated Lakewide Management Plans
- Danube, Lake Ohrid, Lake Tanganyika

# National Laws

- Constitutional provisions
- Environmental impact assessment (EIA)
- Freedom of (Environmental) Information laws
- Strategic environmental assessment (for plans, programs, and policies)
- [In federal systems, state or provincial laws are also important.]
- Issues:
  - “Implementation gap”
  - Transboundary application
  - Language



# Public Participation in Law Development

- In development of international waters agreements
  - E.g., in development of the Lake Tanganyika Convention, UN/ECE Water and Health Protocol to the Espoo Convention, the 1978 Great Lakes Water Quality Agreement, and the EU Water Framework Directive
- In development of national laws and regulations
  - Private bills
  - Notice-and-comment rulemaking

# Development of Legal Frameworks within a Project

- Basin agreement/instrument
- Assistance in developing national or municipal laws and regulations

# Development of Legal Frameworks within a Project (2)

- Goals:
  - Institutionalize public participation beyond the end of the project (sustainability)
  - Provide details [often a weakness in existing legal regimes]
  - Facilitate development of a common set of minimum standards and procedures in a basin

# Development of Legal Frameworks within a Project (3)

- 1998 Convention on Cooperation for the Protection and Sustainable Use of the Danube River
  - States required to “ensure that their competent authorities are required to make available information concerning the state or the quality of riverine environment in the Danube Basin to any natural or legal person, with payment of reasonable charges, in response to any reasonable request, without that person having to prove an interest, as soon as possible.”
  - Provided in written, visual, oral, or other data-based form
  - Narrow exemptions
  - Providing for “observer” status for stakeholders in ICPDR meetings
    - Be informed of all activities
    - Free access to all documents
    - Participate in meetings
    - Take part in programs

# Development of Legal Frameworks within a Project (4)

- 2004 Agreement for the Protection and Sustainable Development of Lake Ohrid
  - Watershed Committee that includes a civil society representative from each country
    - Drafting environmental standards
    - Completing the necessary legal framework
    - Developing and implementing strategic action plans
    - Required to “increase public, NGOs, and other stakeholders’ participation”
  - Supported by a technical Secretariat, with duties for outreach and public awareness

# Development of Legal Frameworks within a Project (5)

- Convention on the Sustainable Management of Lake Tanganyika
  - Legal framework for implementing the SAP
  - Emphasis on access to info, public participation, and access to justice – requires all Basin countries to adopt and implement legal and other measures.
    - Art. 16: Environmental Education
    - Art. 17: Public Participation – right to participate (esp. through EIA processes) and right of appeal
    - Art. 19: Public Access to Information – state of Lake Basin; planned development activities; measures taken or planned to be taken to prevent, control, and reduce adverse impacts; and effectiveness of those measures. Access is free of charge (“reasonable” charge for copies).
  - Allows more stronger measures, so long as they are compatible with the Convention.

# Questions for Discussion

- What are the most significant gaps in existing legal frameworks governing public participation in management of transboundary waters?
- How can those gaps be addressed?
- What are lessons learned in:
  - Developing international agreements with provisions for public participation
  - Assisting in developing national or sub-national legislation or regulations