

Unit 11 Introduction to National Water & Environmental Institutions

This unit will outline a number of key principles, concepts and standards that are used by national lawmakers and policymakers to address environmental problems.

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11.1 Learning objectives of this unit

- Define and understand terms such as the multi-layered nature of water institutions
- Have an understanding of key elements of domestic law and institutions
- Understand, analyse and assess the present families of water institutions
- Understand, analyse and assess the Overlapping and contradictory water institutions
- Be able to integrate the different information and form judgements about how national water governance can be improved.

11.2 Principles of environmental law and policy

A number of principles are being used in national environmental law and policies:

- Sustainable development
- Precautionary principle
- 'The right to pollute'
- No discharge without a permit
- Polluter Pays Principle
- Best Available Technology (not entailing excessive costs)
- Environmental Impact Assessment
- Prevention principle
- Liability

These principles can contradict each other! E.g. prevention principle versus polluter pays principle.

11.3 Environmental concepts in water law

Some important concepts of environmental water uses are:

- ➔ Water Pollution: ‘Human made or human induced alteration of the physical, chemical, biological, and radiological integrity of water resources’
- ➔ Non-transformational uses: E.g. recreational, aesthetic and ecological uses of water bodies.
- ➔ Climate change’s impacts on water systems

Concepts of water law

- Riparian use
- Absolute ownership
- Correlative rights
- Minimum flow
- Reasonable use
- Prior appropriation
- Public trust
- Priority of use
- Human right to water

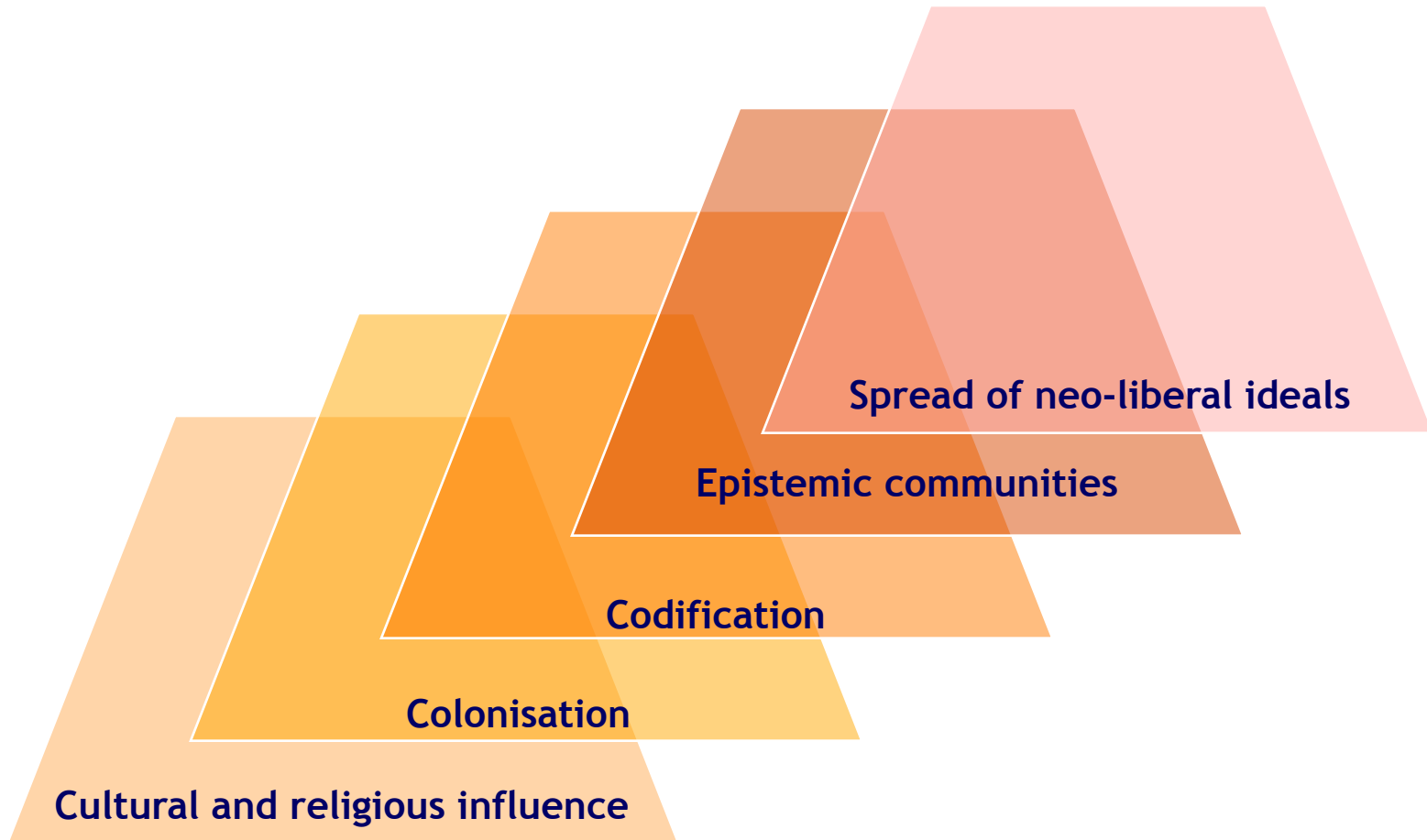
Types of water

- Surface
- Ground
- Waste water

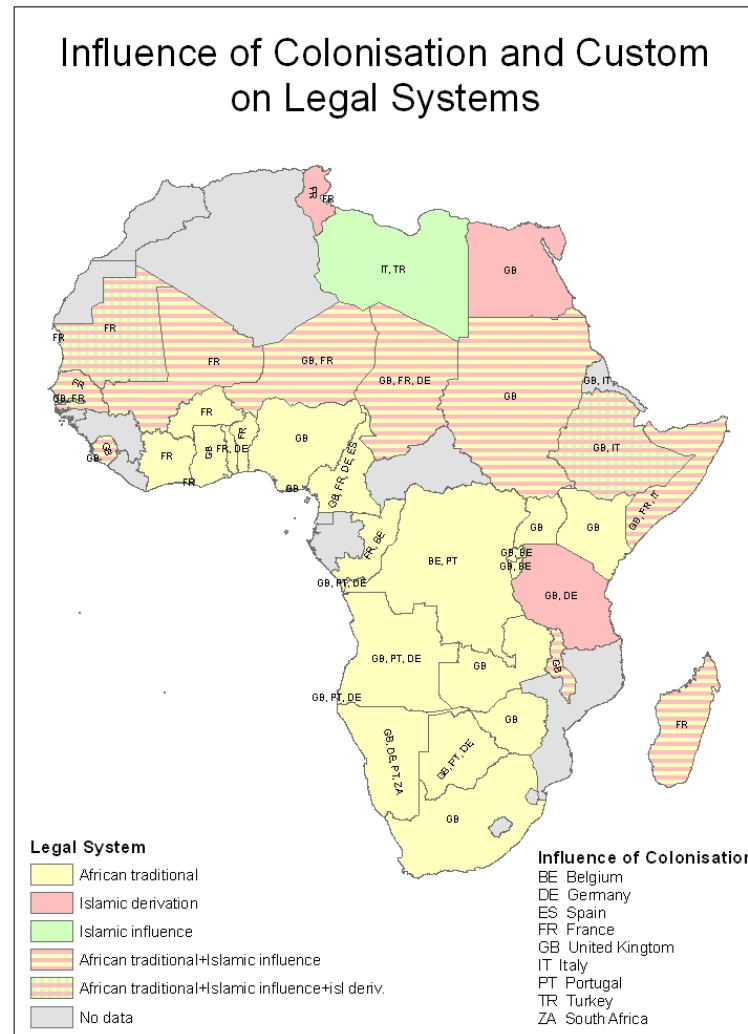
Systems of water rights

- Tradeable water rights
- Proportional water rights
- Property rights
- Towards IWRM

But, water governance is pluralist



Legal pluralism



GWSP, 2006-01-18

Source: Gupta & Leendertse, 2007

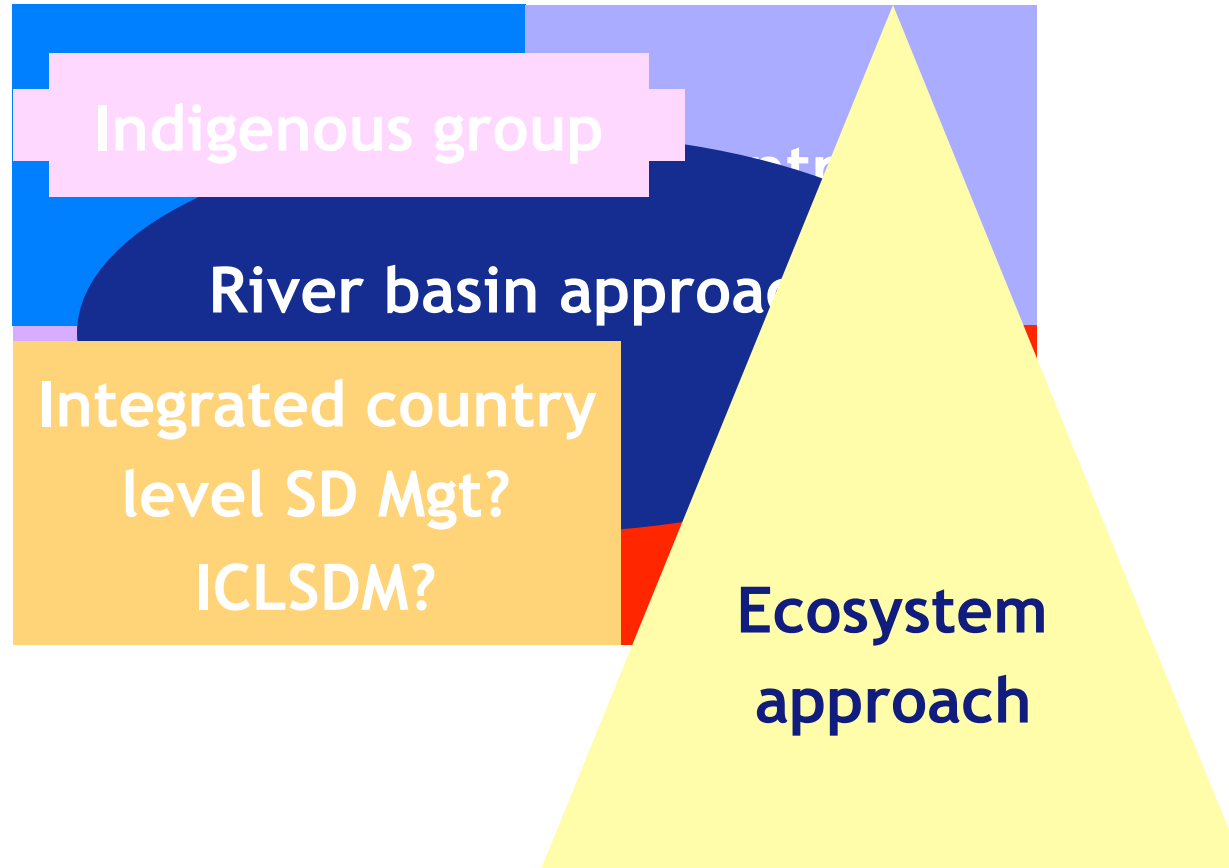
Rights of the people vs rights of the state

	Rights of the people	The rights of the State
Rivers and streams	Customary, riparian or other rights recognized by courts and Easement Act	Absolute rights under Irrigation and other laws
Canals	No rights. Permission to use on payment of fees under Warabandi, Osrabandi and other schemes under Irrigation Laws	Absolute rights of ownership and for sale (on fees)
Tanks, Lakes (artificial)	Individual rights of land owners. Customary usufructuary rights of the people.	No rights if tank on private land. Power of the government to regulate use of private tanks in some states. Rights vested in the panchayats or municipality is tank on public land.
Tank/Lakes (natural)	Customary rights of the people recognized by the courts, and under easement act	Absolute rights of ownership and use
Wells (private)	Absolute rights of the land owners	No rights
Wells (public)	Customary rights of groups, castes or communities; but rights for all under the Constitution, and the Civil Liberties Act	Rights to regulate
Tube wells (private)	Unlimited right to draw water from tube-wells on private land	No right to own or regulate except in one state (Gujarat), so far
Tube wells (public)	Usufructuary rights granted by the state	Rights to regulate

Structure of lecture

- ➔ History of water governance
- ➔ Current global challenges
- ➔ Global water governance
- ➔ Regional water governance
- ➔ National water governance
- ➔ **Issues and questions**

Concepts leading to conflict



Privatisation and water access



RELATED FEATURES

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THE STORY

Synopsis of "Leasing the Rain"

"LEASING THE RAIN"
by William Finnegan

WHAT'S IN YOUR WATER
BOTTLE?
An Interactive

Timeline: Cochabamba Water Revolt

September 1998

IMF Loan to Bolivia Requires Privatization

The International Monetary Fund (IMF) approves a \$138 million loan for Bolivia to help the country control inflation and bolster economic growth. In compliance with IMF-drafted "structural reforms" for the nation, Bolivia agrees to sell off "all remaining public enterprises," including national oil refineries and Cochabamba's local water agency, SEMAPA.

[Lucio Morales \(click to see copy of water bill\):](#)

Review questions

- ➔ Why are water laws similar and/or different in different parts of the world?
- ➔ What are the key principles regarding boundaries made by rivers?
- ➔ What are the key principles of water ownership?
- ➔ What are the key principles of water management?
- ➔ What are the major elements of the UN Watercourses Convention? Why are countries reluctant to ratify it?

Review questions

- ➔ What are the options for dispute settlement in the Watercourses Convention?
- ➔ What is the status of the human right to water?
- ➔ Why is there need for global water governance?
- ➔ Who are the major actors in global water governance?
- ➔ What are the differences between legal approaches and conferences?
- ➔ What are the potential options for the development of global water governance?

Conclusion

- We have many principles on international water law
- No real international water treaty in force
- Multiple water agreements all over the world.

11.4 Standards

Standards attempt to lay down acceptable levels of pollution. Different type of standards exist:

- Performance standards
- New source performance standards
- Water quality related standards
- Bans
- Design standards
- Behavioural standards
- Information standards

11.5 Environment Impact Assessments

Environment Impact Assessments (EIA) can be quite complicated, in general the following questions should be raised:

1. What is the **threshold** for being required to prepare an EIA?
2. What is the scope of the assessment
3. How do we prevent segmentation of assessments of related (sub)projects? (e.g. by programme impact assessments)
4. How do we ensure the EIA is adequate (accurate and in accordance with certain principles)?
5. Which procedures are necessary to ensure the above outlined substantive issues are properly addressed?