

A Legal Approach to Assessing the Effectiveness of Governance Regimes

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Aim

Methodology developed for EU FP6 Projects
“**BRAHMATWINN**” and “**STRIVER**”.

Establish a methodology to assess governance framework (in context of mapping vulnerability of communities to cope with events caused by climate change)

Assess the extent to which key elements of *good* governance are reflected in the law and implemented in practice (within transboundary IWRM context)

Conceptual approach

- Defining terms
 - “Good” “Governance”
 - “IWRM” (focus on equity and sustainability)
 - “Governance Indicators”
- Recognition that success/failure of IWRM largely contingent on (broader) governance arrangement
- Focus on enforceable rights, obligations and powers



What is (water) governance?

- Range of political, social, economic and administrative systems that are in place to development and manage water resources, and the delivery of water services, at different levels of society (GWP, 2003)
- “looks at the way **legislation, institutions and policies** are being established, enforced and implemented” (UNDP, 2006)
- “clarifies the **roles and responsibilities of all involved stakeholders** - local and national government, private sector, civil society – regarding ownership, administration and management of water resources (UNDP, 2006)



Governance

Definition adopted:

The way a society organises itself to make and implement decisions ...

Comprises of:

- Mechanisms and processes for citizens and groups to articulate their interests, mediate their differences and exercise their legal rights and obligations.
- Rules, institutions and practices that set limits and provide incentives for individuals, organisations and firms.

Operates at every level of human enterprise - household, village, municipality, nation, region or globe

(UNDP)

What is “Good” Governance?

Sources suggest many elements, including:

- Public sector management (WB)
- Accountability (WB; ADB)
- Legal framework for development (WB)
- Rule of law (UNDP)
- Predictability (ADB)
- Transparency and information (ADB; UNDP)
- Participation (ADB; UNDP)
- Responsiveness (UNDP)
- Consensus orientation (UNDP)
- Equity (UNDP)
- Efficiency / effectiveness (UNDP)
- Strategic vision (UNDP)

What is *good* governance?

Key elements:

- **Accountability**
 - Ability to hold decision-makers to account for their actions.
- **Transparency**
 - Availability of information to the general public and clarity in creation and application of rules, regulations and decisions.
- **Participation**
 - Provide all with a voice in decision-making either directly or through legitimate intermediate representatives

Consider importance of law in establishing good governance

Use of indicators



- Profusion of indicators designed to assess the quality of governance in place within a particular countries.
- Vast majority focus on broad issues, e.g. human rights, democracy, and corruption.
- “...more needs to be known about ... the type of governance that is favourable to improved water resources management and water services provision” (UNDP, 2006)
- Inputs, Processes, Outputs

Key Indicators developed - Accountability:

1. Civil society access to redress and remedy

- Are the states party to any international agreements related to civil society access to redress and remedy
- Is a right of broad civil society access to redress and remedy incorporated into the national law?
- How effective is broad civil society access to redress and remedy?

Key Indicators developed - Transparency:

2. Enforceable and adequate rights and obligations relating to the access of information (including information related to IWRM).
 - Are the states party to any international agreements related to public access to information?
 - Are states obliged to notify and consult each other of planned measures?
 - Are states obliged to exchange data and information?
 - Are enforceable and adequate rights and obligations related to public access to information (including IWRM related information) in place?
 - In practice, to what extent do public authorities make IWRM related information available to the public where requested, including actual copies of the documentation containing or comprising such information?

Key Indicators developed – Participation:

3. Rights and obligations pertaining to stakeholder participation (including civil society organisations, and disadvantaged or underrepresented groups) in decision-making established and maintained?
 - Are the states party to any international agreements related to stakeholder participation in decision making procedures?
 - Are laws in place to establish and maintain the rights of stakeholders, including civil society organisations, and disadvantaged or underrepresented groups to participate in decision-making?
 - To what extent are the rights of stakeholders, including for example disadvantaged and underrepresented groups, to participate in decision making established and maintained?

Key Indicators developed – IWRM Outputs:

4. Water management conducted in the accordance with the principles of equity and sustainability.

- Are the states party to the main international and regional conventions relevant to water resources and the environment?
- Have suitable watercourse agreements been adopted at the basin or bilateral level in order to promote equity and sustainability?
- Are suitable institutional arrangements in place at the basin/bilateral level?
- Does the law require water and related natural resource management to be conducted in accordance with IWRM?
- To what extent is water management consistent with IWRM?
- Does the law provide for the appropriate institutional arrangements to support IWRM at the national and provincial levels?
- How effective are the existing institutional arrangements in supporting IWRM at the national and provincial levels?

Working Method for application of indicators:

- “Desktop” study to collect all relevant information – mostly on commitments
- Primary and secondary sources
 - International
 - Regional
 - Basin and bilateral
 - National and sub-national legislation / legally binding instruments
- Interviews
 - Government officials, regulators, local authorities, academics, international orgs, private lawyers, users, representative groups



Role of Policy / Planning Priorities:

- Policy not considered in context of governance indicators (unenforceable)
- But can be assessed in comparison with stakeholder views of problems with existing policy commitments



Future Issues to be addressed:

- Role of “informal” governance systems – e.g. Religion, customary legal systems
- Correlation between socio-economic factors and governance – cause and effect?
- Good governance – a culturally chauvinistic approach?
- Indicator-based approach – seeing the trees but not the wood?
- Scoring systems – best approach|
- Formalising interview process and institutional structure outline
- Road map for addressing areas of concern – for short, medium and long terms