Legal Frameworks for Ecosystem-based Governance

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Governance?

- Multi-level interactions (i.e., local, national, international/global) among, but not limited to, three main actors, i.e., state, market, and civil society, which interact with one another, whether in formal and informal ways; in formulating and implementing policies in response to environment-related demands and inputs from the society; (…) for the purpose of attaining environmentally-sustainable development (UNEP 2010)

- Governance capacity reflects a society’s level of competence to implement effective arrangements through policies, laws, institutions, regulations, and compliance mechanisms

- Legal and Institutional Preparedness
1. Policy

• Public Policy Instruments more flexible than laws (however they lack legal certainty)
  – Complementary (within a governance framework)

• Political will to Include Ecosystem-based Adaptation in National Plans and Strategies
  – El Salvador – National Adaptation Plan calls for the reinforcement of socioeconomic and ecological systems through economic diversification and sustainable use of natural resources for building resilience

• Negotiation and implementation in good faith
2. Institutions

• Climate Change coordination mechanisms
  – Role of Flexible Institutions in Managing uncertainty

• Climate Change governed at the highest governance level
  – Comision Intersecretarial de Cambio Climatico - Mexico

• Institutional Architecture which articulates from the highest political-administrative to the local levels
  – Implementation of the decentralization principle

• Financial means (budget) to operate
3. International Legal Context

Same priority as mitigation

Challenge for all parties
(Cancun Adaptation Framework)

Web of responsibilities, approaches and mechanisms under UNFCCC

**IPCC**: adjustment to practices, processes or structures that can moderate or offset the potential for damage or take advantages of opportunities created by a given change in the climate

Bottom-up approach (UNCCD)

Ecosystem approach
Traditional knowledge
Benefit-sharing
CBD

Adaptive management

livelihoods
Adaptation can take the form of a broad range of responses. These may range from those geared towards specific, predicted (or existing) climate impacts and managing risk, to responses that are aimed at reducing vulnerability, and building adaptive capacity and resilience to face unknown and often unpredictable threats.

Strategies for Responding to Climate Change and Uncertainty
- Ignoring uncertainty
- Complete contracts approach
- Reducing the effects of climate change uncertainty
- Open-ended approach

Developing Governance Structures to Implement Cooperative Mechanisms
- Institutional structure and authority
- Institutional flexibility and agility
- Stakeholder participation in institutional mechanisms
- Political level of implementation
- Formality of the agreement
- Financial and other support for institutional mechanisms

Institutional flexibility and agility
To meet the challenges of climate change and function efficiently, institutional mechanisms require a flexible mandate that allows them to adapt their operations, planning, and implementation activities to changing conditions.

Governance Challenges Associated with Climate Change
- Governing under uncertainty
- Multi-level governance for climate adaptation
- Effective public and stakeholder engagement
- Increasing resilience through the ecosystem approach

Principles of International Environmental Law and their Contribution to Adaptive Governance
- Sustainability
- Precautionary principle
- Ecosystem approach
6. National Legal Frameworks

Legal tools for mitigation and adaptation plus an institutional framework multidisciplinary composed also by the private sector.

Procedural Obligations (Arhus Convention) – Good Governance
• 1. Access to Information,  2. Access to Justice 3. Right to be consulted

Substantive Obligations
Obligations to Governments that have to be taken into account for setting up their environmental protection standards. For example, no discrimination, no regression, protection of most vulnerable and implementation

• Financial mechanisms and financial stability for investment (Rules have to create those conditions) – Rule of Law / Corruption
Law – Legal System

• Legal Tools – Conservation and Sustainable Law
  – Protected Areas and Connectivity
  – Land Use Planning – Spatial Planning and Zoning
  – Ridges to Reefs Approach – Coastal Management
  – IWRM

• Development Control Law
  – Environmental Impact Assessment
  – Permitting
  – Strategic Environmental Assessment

• Fiscal Laws
  – Incentives and Disincentives
Climate Litigation

• The Urgenda Case (Civil Society vs the Government of the Netherlands

  – Some +900 plaintiffs organised by the NGO Urgenda accused the Dutch government of negligence for ‘knowingly contributing to a breach of the $2^{\circ}$C maximum target for global warming
  – The Hague – 24 June 2015 – the Government is now required to take more effective climate action to reduce the Netherlands ‘considerable share’ in global emissions
  – First time that a judge has legally required a State to take precautions against climate Change

• Future of Climate Litigation?
  – Pakistan (Leghari) Case