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DOMESTIC WATER LAWS FOR EFFECTIVE GOVERNANCE AND FOR COMPLIANCE WITH INTERNATIONAL COMMITMENTS

An articulate, comprehensive and effective domestic legal framework for water resources is critical to the effectiveness and stability of water governance domestically. It will also set the stage for States to negotiate with confidence and to make commitments internationally, and to honour such commitments. Comparative analysis and experience from other countries indicate that domestic legal frameworks for water have (a) consistently transitioned water resources from the landowner's (and the polluter's) exclusive availability to the State's allocative control and protection and, as a direct consequence, (b) regulated water abstraction, and point-sources of pollution. More advanced contemporary legal frameworks for water tend also to address (c) the environment-support function of water in the regulation of allocation and uses; (d) the impact that uses of the land (notably, for cultivation and animal rearing) and of the subsurface space (notably, for mining and underground storages) have on water resources and, in particular, on the natural recharge& discharge processes of groundwater, and on groundwater quality; (e) linkages occurring in nature, or artificially through managed aquifer recharge, between groundwater and surface water, with a view to managing surface water and groundwater conjunctively; (f) the role of water users helping offset the limitations inherent in the reach of the State's regulatory authority and powers; and (g) the informal rights and practices of traditional communities out in the rural areas, with a view to defusing the potential for conflict between the formal and the informal legal systems in relation to water. Insofar as they make the difference between domestic water regulation being operational and complied with, or remaining dead letter, implementation and enforcement are a critical facet of an effective legal framework for water.