Factors driving water law reforms

- Increasing pressures on quantity and quality of a finite resource:
  - Population growth
  - Economic development
  - Climate variability and change
  - Lack of access: over 783 million globally

- Insufficiency of “traditional” water legislation to respond to new and changing circumstances
  - Lack of adaptive capacity to respond to constant change
  - Need to support wider social and economic reforms (participation, right-based approaches)
  - Recognize need for maintaining ecological integrity of resource and quality management
  - Response to new and changing allocation priorities (e.g., from agriculture to industry)
  - Move towards formalizing rights within legislative framework to facilitate equitable access and protection of the resource – land based approaches insufficient
Principles Guiding Domestic Water Law

- Integrated management
- Sustainability: including avoidance of waste, harm, and over-consumption of resource; maintenance of ecosystem integrity
- Management at the basin level/subsidiarity
- User/Public participation
- Minimization of environmental harm
  - Impact assessment
- Maximizing beneficial use
- Water as a human right
- Adaptation/adaptive management - emerging
Key Elements of Water Law

- Guiding principles and key definitions

- Water Quantity Regulation
  - Allocation priorities
  - Defining rights and duties
  - Water demand management
  - Groundwater specific tools
  - Monitoring and information management
  - Enforcement

- Water Quality Regulation
  - Setting standards
  - Point and nonpoint source regulations
  - Monitoring and information management
  - Enforcement
Key Elements Continued

- Regulation of water services
- Water Governance
  - Institutional mandates and procedures
  - Management planning
  - Public/user participation
  - Incorporation of international obligations
  - Private sector participation (regulatory oversight)
  - Information generation, collection, and management
  - Compliance and enforcement, including mechanisms for adjudicating disputes
Water Rights Systems

From private to public rights:

- Riparian rights
- Prior allocation
- Government owns water (or holds in public trust), specifies priorities of use, and allocates water among competing users
- Market determines priority of use
- Combined systems (e.g., regulated riparianism)
Water as a Human Right

- UNCESCR General Comment 15 (2002): Everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

- Un Resolution 64/292 (2010) recognizes human right to water and sanitation as “essential for the full enjoyment of life and all human rights.”

- 41 countries have adopted the right to water within national constitutions or national legislation (including Mexico!)

- How to give force to this social and economic right?
Content of the right to water is subject to conditions of implementing country, but maintain minimum core of duties for state to respect, protect and fulfill the right:

- Expanding equitable access through *progressive realization* through policies, legislation and enforcement (role of courts)
- Guarantee against discrimination in policies and programs providing access;
- Protect against arbitrary disconnection from services or other interference with realization of the right (pollution, access);
- Provide an acceptable quantity of water (20 l pp/pd within one km of domicile) that is *safe, accessible and affordable*
- Prioritizing water as a social good while recognizing economic value of resource
- Implies sustainability of resource/maintenance of ecological integrity
Legal tools for implementing the right to water

- Water as a legal entitlement: Free basic water programs (S. Africa)
  - “Prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene” – Water Services Act (1997)

- Increasing block tariffs

- Appropriate level of funding allocation

- Quality improvement requirements

- Regulatory oversight of service providers (Hungary)

- Participatory, transparent, and accountable decision-making and institutional frameworks
  - Water courts

- Prioritization of most vulnerable populations (waterless)
Making the right enforceable: court cases

- *Grootboom* (South Africa, 2000)
  - Supreme Court establishes “reasonableness” test: has State devised a “comprehensive and reasonable plan to meet it’s obligations within available resources – including a national legislative framework, establishing mechanisms for intergovernmental cooperation and appropriate consideration of national budgetary allocation.”

- *Phiri* (South Africa, 2009)
  - Pre-paid meters used in poor community are meet reasonableness test for reducing water losses
  - Amount (25 l pp/pd) is NOT for court to determine – for legislature
  - Not discriminatory – tailored to specific community needs
  - Government required to provide additional supplies to combat fire

- Parana disconnection (Brazil, 2002)
  - Injunction against disconnection for nonpayment during legal proceedings

  - Municipality must guarantee proper functioning of public treatment facilities to ensure appropriate water quality and quantity of water is available