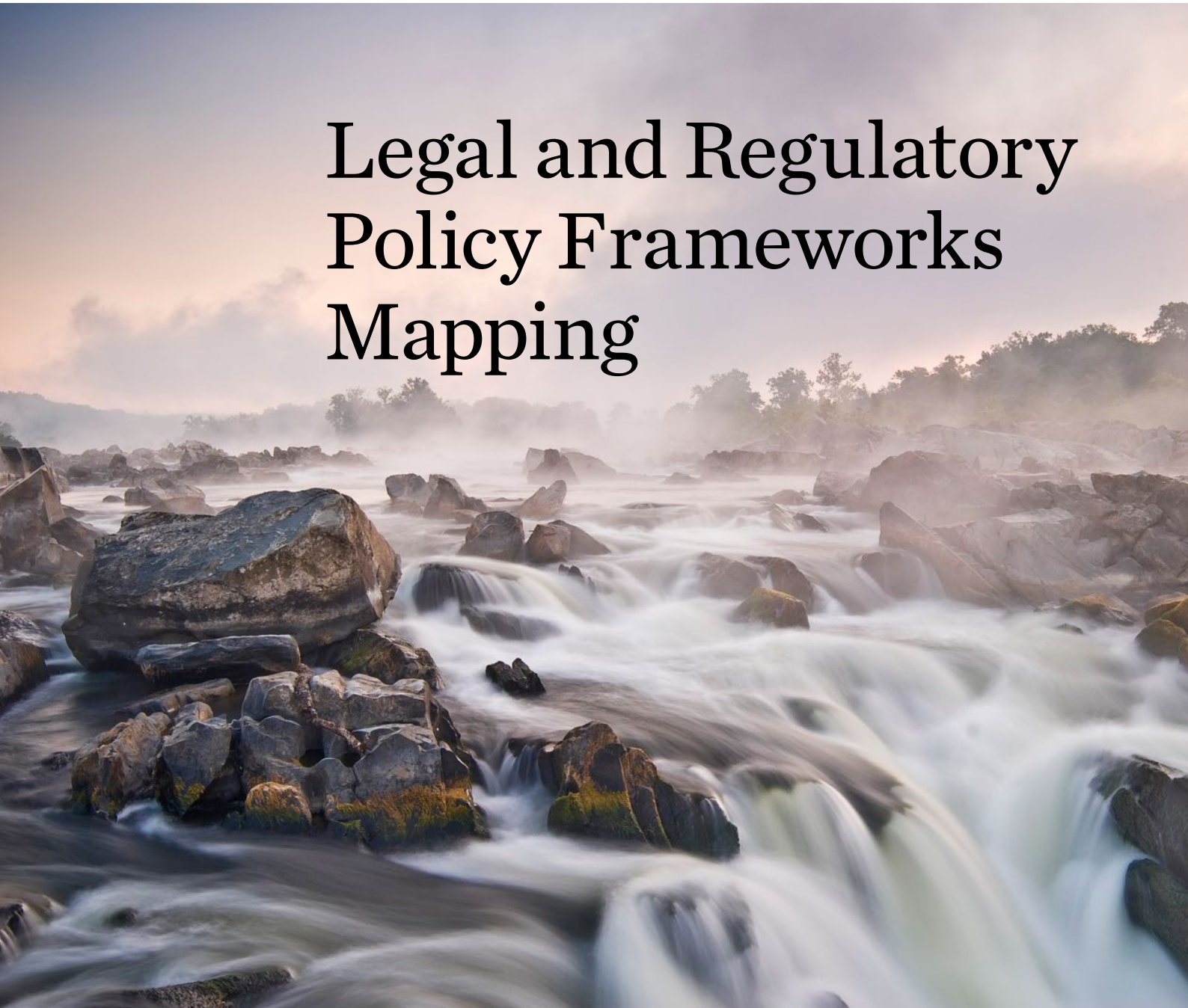# Legal and Regulatory Policy Frameworks Mapping

DEEP DIVE

NOTE: This document is an accompanying resource to the Watershed Investment Program How-To Guide. Readers are strongly encouraged to review the guidance in its entirety before delving into any accompanying subject-matter "Deep Dives," including this document.

Understanding whether existing legal and regulatory frameworks are conducive to NbS adoption and scale up is important when determining the institutional barriers feasibility of your Watershed Investment Program (WIP). These will not determine whether the WIP is feasible, but rather shed light on what needs to be overcome or addressed to achieve it (e.g., energy, champions, resources). This will all depend on the context in which you set your WIP. The key to this process is understanding who has the mandate to implement the WIP. Once this question is answered, you can assess whether the WIP is supported by:

a. *An enabling environment* (policy)

b. *Knowledge* (benefits of ecological infrastructure)

c. Practice (supportive stakeholders who won't get in your way)

Though these elements work best when aligned, fragmentations, particularly in relation to policy, are bound to occur. This is because the NbS space has multiple environmental, water, infrastructure, municipal, land, and catchment dimensions. The overlapping mandates from these different spaces, and the multiple actors involved, makes fragmentation inevitable. Understanding why the fragmentations are complex and where the access points are to overcoming them is possible through a legal and regulatory mapping process. Often, linkages with stakeholders will serve to overcome these fragmentations. Consequently, this legal and regulatory policy evaluation process is best done once you have identified your NbS portfolio and have mapped and analysed your stakeholders (Stakeholder Mapping Deep Dive), particularly government institutions.

This recommended process has 5 steps. They are defined below.

STEP 1: IDENTIFY the policies and legislation relevant to your portfolio of interventions and downstream beneficiaries

When identifying the policies and legislation relevant to your WIP, it is important to remember that contextual mapping is key. Identify those water sector policies relevant to your portfolio of interventions and/or geographical landscape, rather than the whole water sector. This latter method will not be time efficient, and your results will not be focused. You also need to consider policies and legislation that might help/hinder downstream beneficiaries from supporting the WIP.

First, begin by undertaking desk research to identify policies and other legal instruments (e.g., law, policy, strategy) at the national, regional, local and municipal level (see Figure 1). Key legislative and regulatory aspects that represent enabling conditions for WIPs are policies with functions focused on NbS, water supply, water supply management, catchment management, land use management, and land access.

ITEM	TYPE OF LEGAL INSTRUMENT	IS IT LEGALLY BINDING?	WHAT LEVEL OF GOVERNMENT DOES IT AFFECT?	KEY FUNCTION	OVERVIEW
Name of legal instrument	e.g., law, policy, strategy	Yes or no	e.g., National, regional, local, municipal	e.g., Water supply, water supply/ resources management, catchment management, land use, land access	Brief description of the item and what it does

FIGURE 1. Policy and legislation identification method

STEP 2: ASSESS and MAP the policies and legislation relevant to your portfolio of interventions

Analyse your policy and intervention data to see which are most conducive to your portfolio of interventions. For example, if there are policies with the same functionality at different government levels, assess which would be most impactful to your intervention. Moreover, if certain instruments are not legally binding (e.g., a strategy), question how this could hinder the implementation of your project. Plot this data on a map to better visualise your analysis (Figure 2).
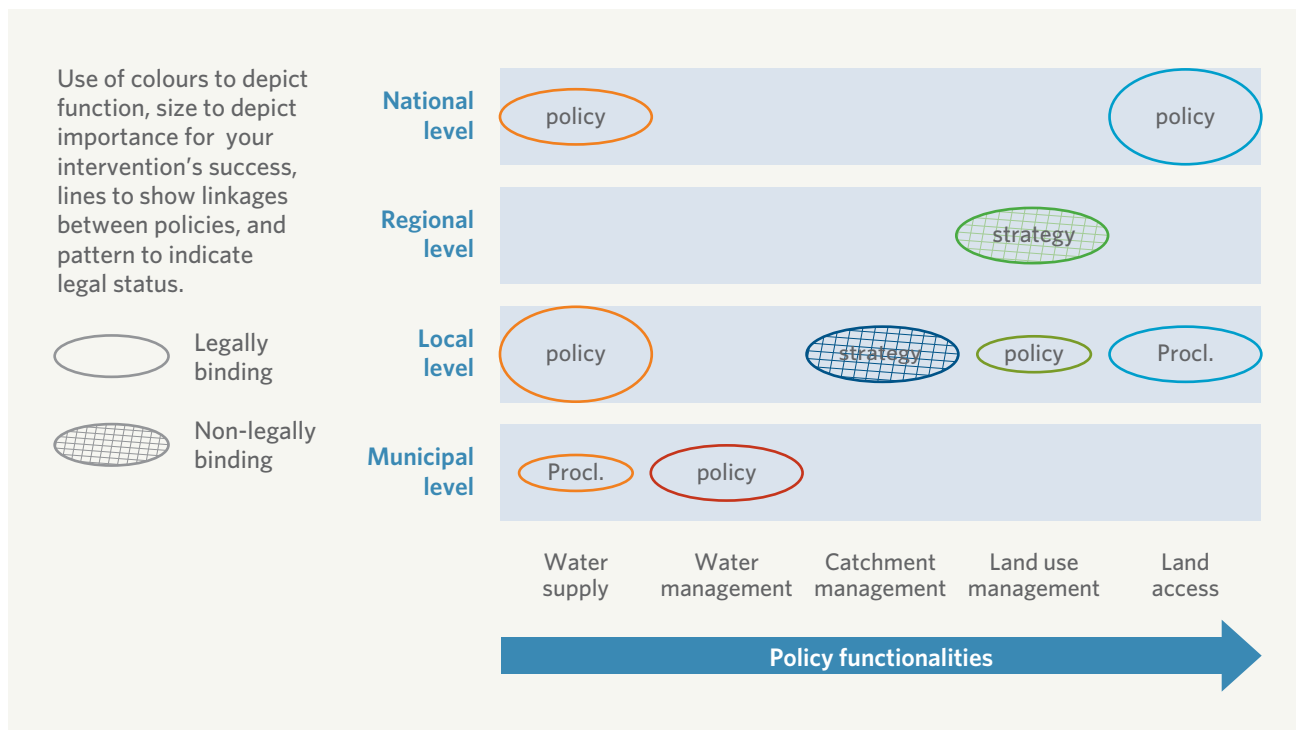

FIGURE 2. Policy and regulatory landscape

STEP 3: CONDUCT a capacity needs analysis

Having identified the relevant regulatory frameworks for your portfolio of NbS interventions, the next step is to conduct a capacity needs analysis to discern which institutions are responsible for carrying out these policies, and whether they have the capacity to do so. In other words, what responsibilities and mandates do institutions have in a desired situation (de jure) versus those they have in the existing situation (de facto). Be sure to consider institutions within the catchment, upstream actor and downstream beneficiary framework from the Stakeholder Mapping process (see Figure 3 in Stakeholder Mapping Deep Dive).

Identify which active government institutions in your affected water basin have the mandate to carry out and enforce the policy functions. Identify what, in theory, their key activities linked to this are, and what, in practice, they can do. For example, in the water basin landscape for Cape Town (Figure 3), Catchment Management Authorities have the mandate to manage and restore catchments using funds raised from water tariffs. In practice however, they do not have adequate resources and capacity to do this, and consequently these activities are not undertaken by government institutions.
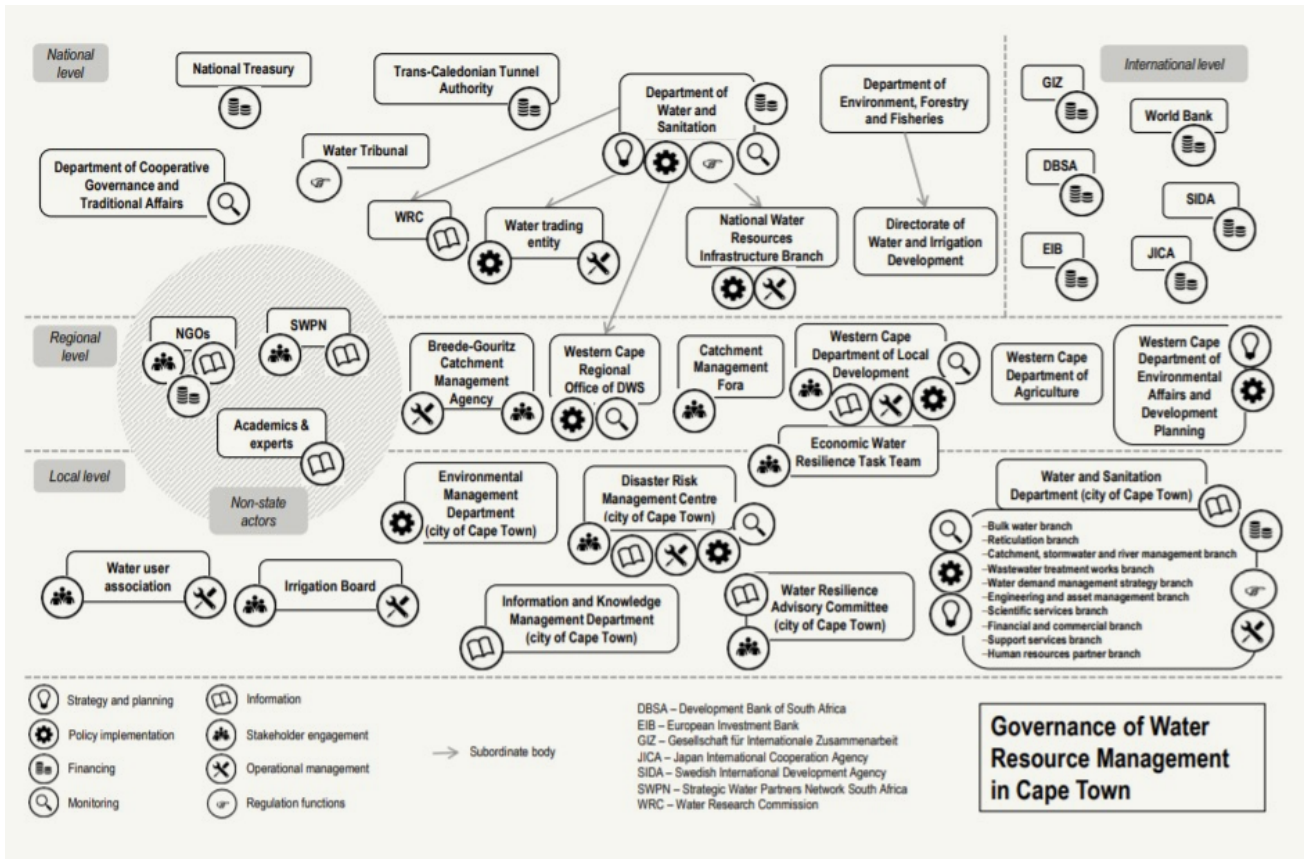
FIGURE 3. Example: Governance of Water Resources Management in Cape Town[1]

Tabulate your results (Figure 4).[2] If there are multiple stakeholders with the same mandate, assess which has executive authority.

ITEM	FUNCTION	WHAT LEVEL OF GOVERNMENT DOES IT AFFECT?	MANDATED CUSTODIAN	KEY ACTIVITIES (DE JURE)	KEY ACTIVITIES (DE FACTO)
Name of legal instrument	e.g., water supply, catchment management, etc.	e.g., National, regional, local, municipal	Government institution with the mandate to implement law/policy/strategy	Activity undertaken in theory by institution, e.g., licensing, water allocation, operation and maintenance	Activity undertaken in practice by institution, e.g., operation but limited maintenance

FIGURE 4. Capacity needs analysis of relevant government institutions

STEP 4: ANALYSE your enabling environment

Using your tabulated data (Figure 4), analyse which institutions have the motivation and capacity to implement your WIP. Compare institutions' mandates and capacities and rank your identified institutions by who you believe most critical to the success of your interventions.

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1 OECD (2021). Water governance in Cape Town, South Africa. OECD Studies on Water, Paris.

2 For a full list of active institutions at the national and basin level, FAO's AQASTAT database may provide useful. This is a global information system on water and agriculture. http://www.fao.org/aquastat/en/institutions-database/?country=238&type=-1&activity=-1&keywords&submitBtn=Search.

ITEM	FUNCTION	WHAT LEVEL OF GOVERNMENT DOES IT AFFECT?	MANDATED CUSTODIAN	KEY ACTIVITIES (DE JURE)	KEY ACTIVITIES (DE FACTO)	LEVEL OF IMPORTANCE TO YOUR WIP (H/M/L)
Name of legal instrument	e.g., water supply, catchment manage-ment, etc.	e.g., National, regional, local, municipal	Government institution with the mandate to implement law/policy/ strategy	Activity undertaken in theory by institution, e.g., licensing, water allocation, operation and maintenance	Activity undertaken in practice by institution, e.g., operation but limited maintenance	Level of importance (High/ medium/ low) this institution has for the success of your WIP (mandate vs. capacity)

FIGURE 5. Ranking the results of your capacity needs analysis

To balance the likely institutional fragmentation of your WIP, narrow your selection down to the 1–3 essential actors to the delivery of your WIP. Consider the following questions to help you with this:

- Are there any watershed functions necessary for your portfolio of interventions (e.g., catchment management, land access) not being addressed by government institutions?
- Are there any institutions sharing a mandate whose relationship isn't working?
- Are there any relationships that you may need to bypass or build to achieve your goal?
- Are there any legal conflicts or tensions preventing you from intervening?
- Are downstream beneficiaries, upstream actors and implementors of your WIP represented in the institutions identified?

The aim here is to overcome policy and institutional fragmentation by assessing who will help you drive your NbS solution. Most watershed landscapes will suffer from policy and institutional fragmentation, and issues of capacity and multi-level coordination. However, this is not to be seen as a red flag. If your program has technical data to illustrate the benefits of ecological infrastructure, and stakeholders willing to drive, coordinate and support the process, then policy and institutional barriers can be overcome.