

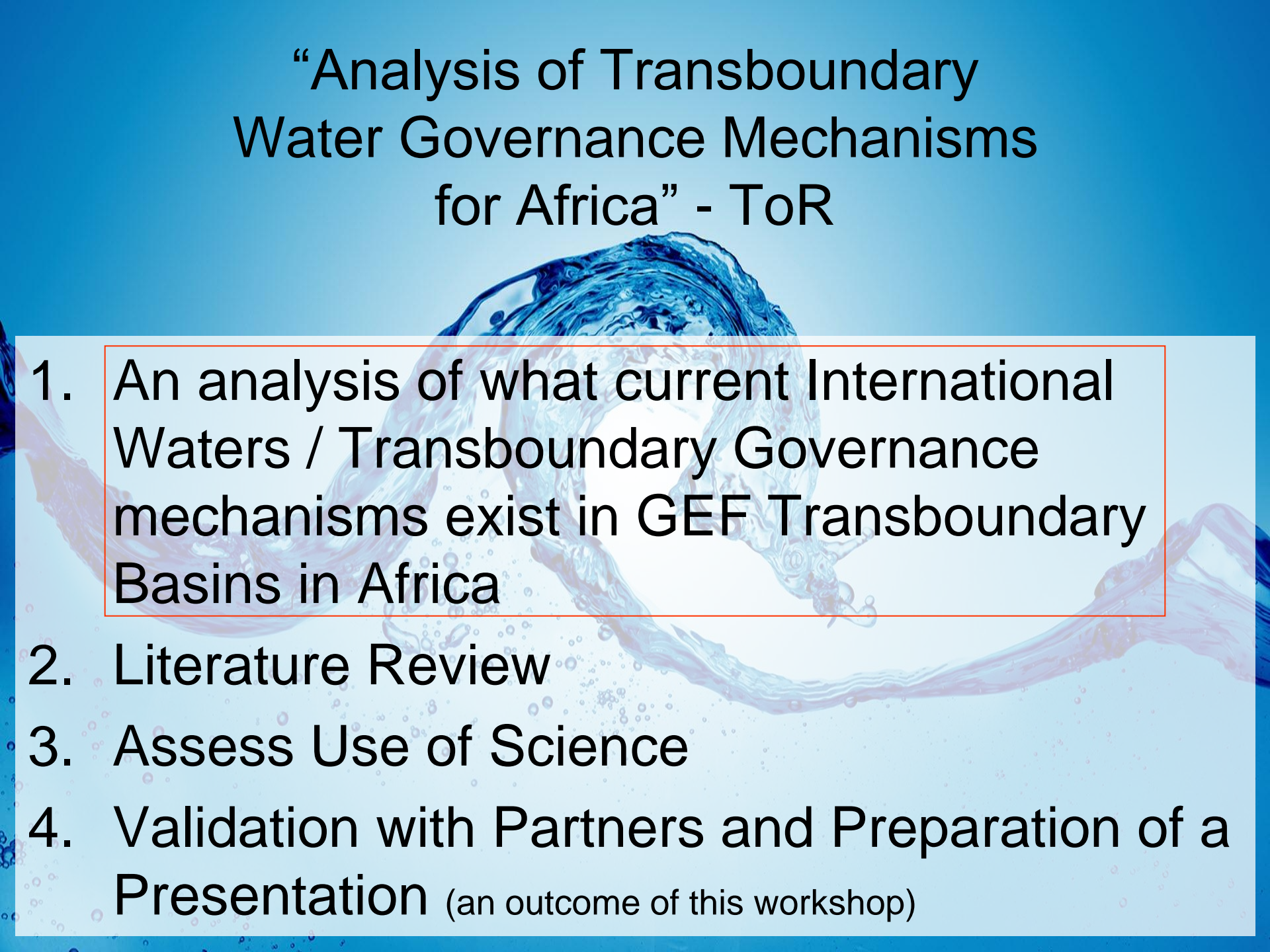
# Update on Current Legal Frameworks applicable to International Waters Management in Africa



Preliminary Experiences from within  
the GEF Portfolio

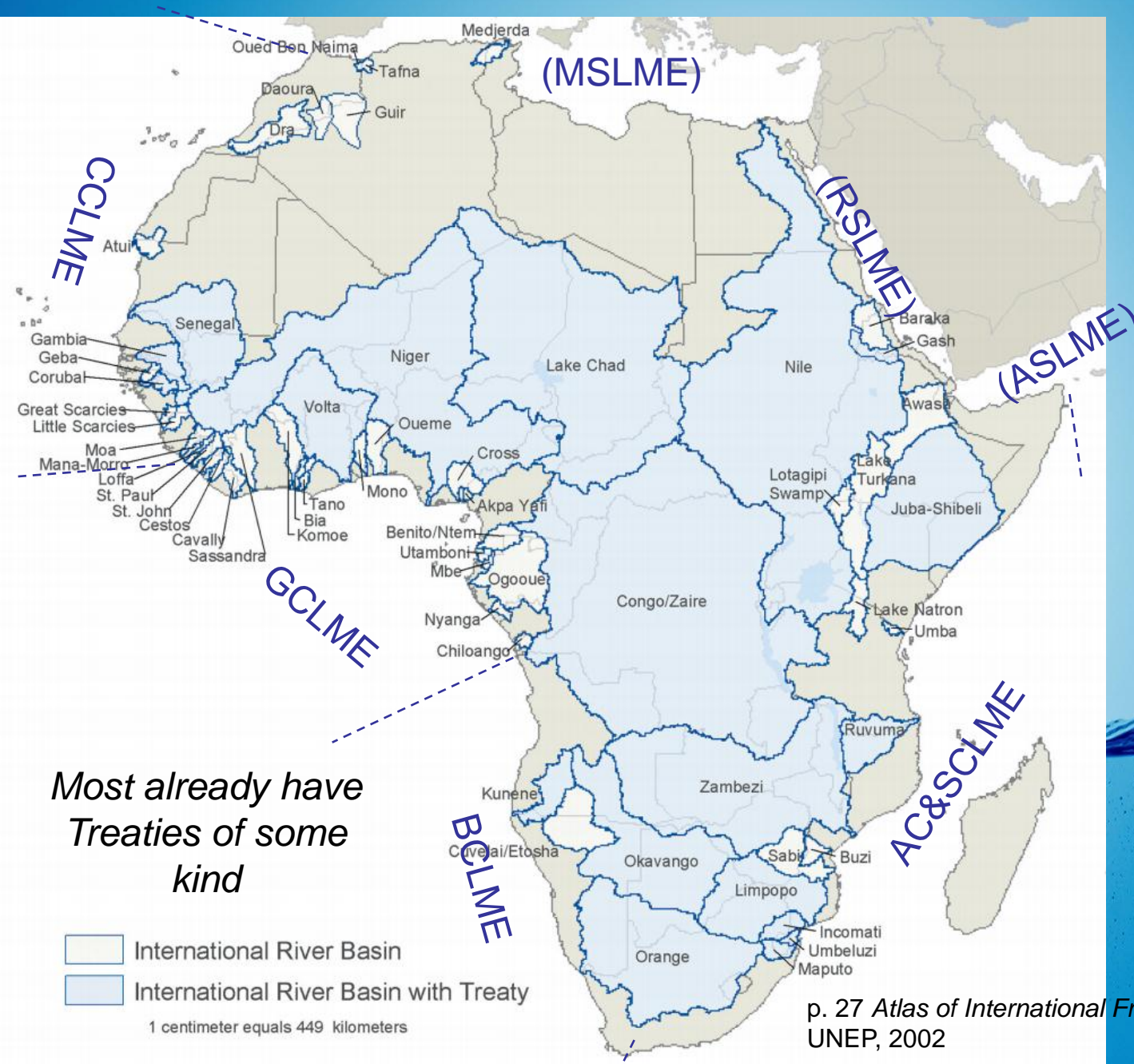
James Stapley

# “Analysis of Transboundary Water Governance Mechanisms for Africa” - ToR

- 
1. An analysis of what current International Waters / Transboundary Governance mechanisms exist in GEF Transboundary Basins in Africa
  2. Literature Review
  3. Assess Use of Science
  4. Validation with Partners and Preparation of a Presentation (an outcome of this workshop)



# International Basins in Africa & LMEs



GEF has supported ~50 projects concerning water in Africa to date, at least 36 of which are regional – A rich portfolio of experience on which to draw

# Global / Regional Level Frameworks

- At the global and regional level, a large number of Treaties, Conventions and Protocols govern the legal environment under which International Waters policy and management must take place
- Transboundary IW Management generally takes the form of a Commission or Authority, normally through the ratification of a specific instrument (Commission, Convention or Protocol) by the parties
- Regional Economic Conventions, Regional Fisheries Management Organisations and continental-scale organisations (e.g. AU) represent additional frameworks with a role to play



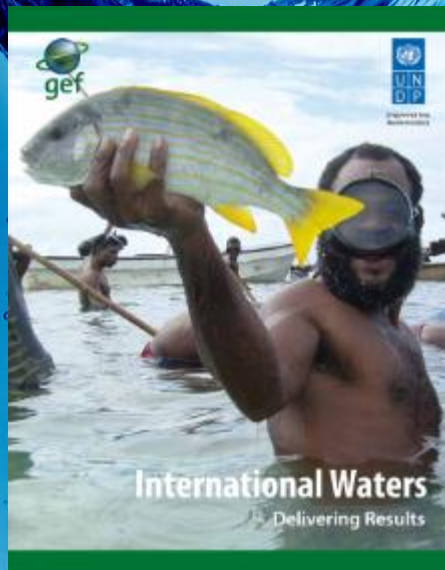
# National Level

- Each nation has a unique set of laws which should ultimately harmonise with international law and support regional transboundary water management efforts, as appropriate
- National laws may be further modified by local by-laws at state/province or even municipal levels
  - In some areas, customary/traditional laws could be considered (either formally, or as an effective local enforcement mechanism)
- The provisions of a particular nation's Constitution may also need to be considered in the (re)drafting of legislation

It is observed that often, adequate legislation exists – the challenge is in *implementation / enforcement*

# The more interesting question:

- How are these implemented “on the ground”?
- What can we learn from exiting / past experiences?
- What issues still remain?
  - And how can we address them?





# GEF Experiences: Lakes

*Tanganyika, Victoria*

- Commission / Convention structure creates Commission / Authority

Experience:

- LVBC specifically notes Gender, often not explicitly noted as a requirement in IW bodies
- Cooperation between LVBC and LVFO is noted as a requirement
- SAPs are agreed and endorsed

# GEF Experiences: Rivers

*Niger, Nile, Okavango, Orange/Senqu, Senegal, Volta*

- Authorities / Commissions created for all

Experience:

- Projects should be closely aligned with RBO (e.g. Volta wasn't)
  - large changes may require re-design / delay
- Multilingual content can be a challenge
- Dual Implementation / Executing agencies causes issues
- Strong cooperation may lead to unusual (but effective) outcomes like pooled development grant funding towards RBO activities supporting development
- ORASECOM has an excellent electronic “river awareness kit” and the “river in a box” initiative brings RBO knowledge into schools



# GEF Experiences: LMEs

*Agulhas, Benguela, Canary, Guinea and Somali Current LMEs*

- Benguela and Guinea\* current have Commissions, with significant work supported by GEF
- A&SCLME do not have a Commission structure, nor has a governance/legal structure yet been defined in the SAP; the intention is to strengthen existing institutions and specifically NOT to create an overarching Commission; WIO-LaB through Nairobi Convention.
- CC does not seem to have yet developed a framework either.

## Experience:

- Partnering with strong, existing national/regional initiatives (e.g. BENEFIT, ACEP) is a considerable benefit
- ASCLME region has seen more fragmented TDA/SAP development through 3 foundational TDA/SAP development projects (ASCLME, SWIOFP, WIO-LaB) implemented by multiple agencies in different host countries and at different times
- PCU must be adequately staffed and budgeted
- LME Projects typically have strong (natural) science-based focus

# Some non-GEF experiences...

- 1. There are daunting challenges at the macro-level (political economy) as well as at the institutional mandate and of capacity at transboundary level .
- 2. At the same time, there are significant drivers towards increased cooperation ranging from RECs, donors and international finance institutions (IFIs).
- 3. Making change at national level is difficult and lengthy, particularly if it requires new legislation (it will impact across the whole country).



# Some non-GEF experiences...

- 4. However, if instead we seek appropriate solution to a challenge facing people at the local level, it is somewhat easier to agree and manage such a process, with national level institutions providing technical support and backstopping.
  - Not to underrate the amount of work that will still need to be done in order to find the real issues and propose robust, technically sound solutions with participation of local stakeholders, but the opportunity lies in the relative ease with which agreed solutions can be implemented
- 5. It will be impossible for commissions to be set up for each shared basin.
  - A more versatile and expedient means would be to find how to make use of existing institutions, as demonstrated in the River Lwakhakha case where institutions on Ugandan and Kenyan side were brought on board to manage a critical catchment improvement project.

# Some “factors for success”

- ensure these are both in projects and long term frameworks

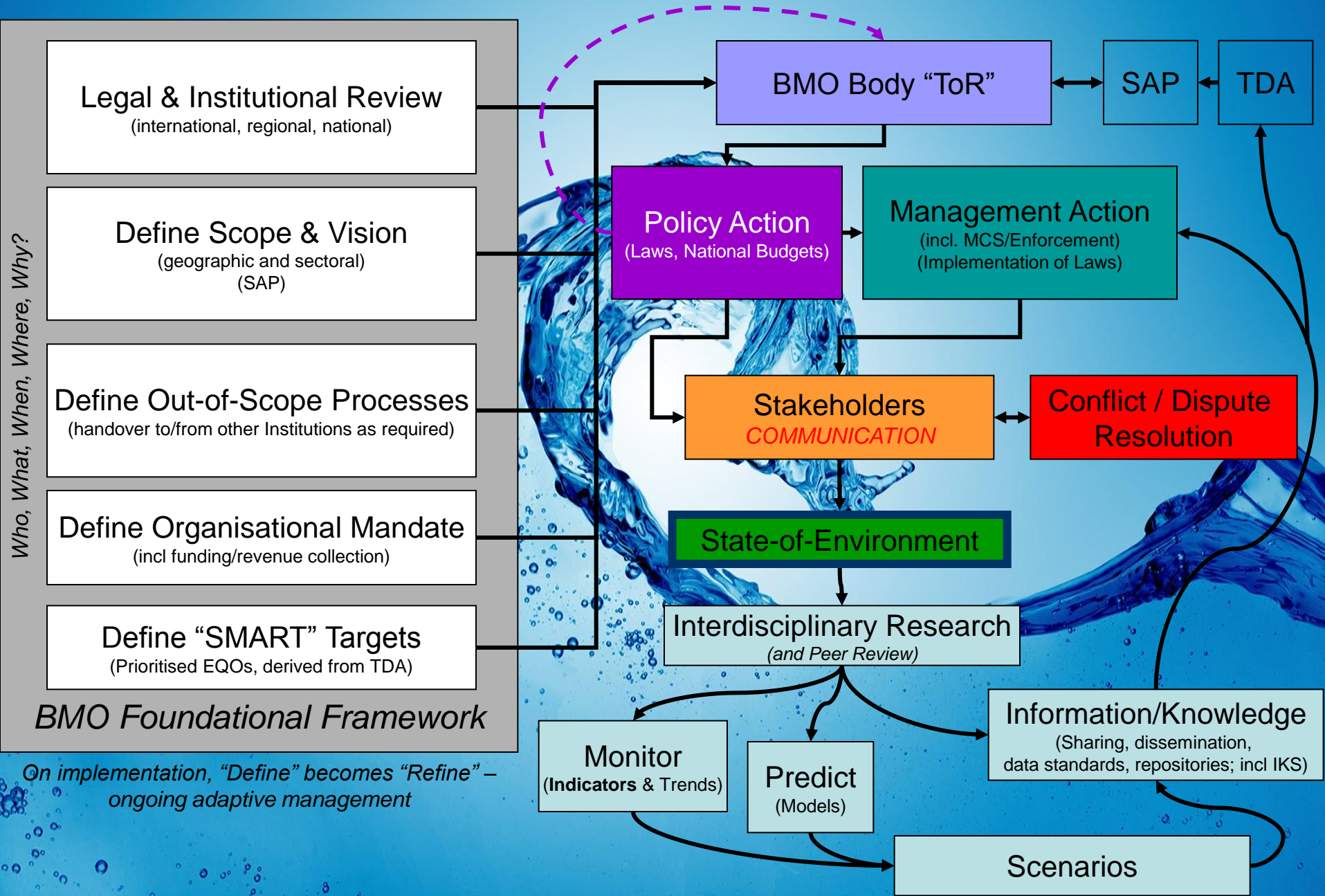
- Integration of international and local knowledge and teams with shared responsibility, understanding, respect
  - clearly defined roles and boundaries
- Rigorous peer review initially and throughout the project
- Involvement of multidisciplinary natural sciences as well as social, economic, and political sciences
  - Scenario – based policy / management advice, not advocacy
- Early, sustained and respectful engagement of stakeholders that includes key industry (e.g., local farmer groups), government (at various levels), NGOs, and the public – incl. language issues
- Development of a shared vision & enjoyment of shared benefits
- A commitment to local capacity building (not just individuals)
- Dispute resolution mechanisms



# Some “factors for success” (ctd)

- A commitment to public engagement, training and education
- An early, targeted and transparent communication strategy
- Identification of clear, simple scientifically based environmental indicators that inform the decision making processes - SMART
- A commitment to long term project performance and environmental monitoring (senior political & stakeholders)
- A commitment to long term funding / support from national budgets
  - Or other sustainable (non-Donor) revenues
- Development of partnerships to sustain project outcomes
- Supportive legislative environment / frameworks

# (Draft) Structure for Effective Legal/ Governance Frameworks





# Your input...

- Your on-the-ground experiences from your country / basin / organisation
- Assessment of successes / challenges
  - Particularly challenges
- Sharing of “lessons learned”, “best practices” and unique tools / mechanisms
- Comments on experiences shared by presenters
  - Scientific papers and Project Evaluations have limitations
- “peer review” of upcoming reports & conference outputs

# Thank You



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# Legal Frameworks

- In order to harmonise policy options, it is vital to also understand the international (global and regional) legal frameworks which define roles and responsibilities
- It is also imperative to understand local (national and municipal) laws and by-laws to most effectively address challenges and ensure actions effectively meet (or exceed) the requirements set forth – or where they are lacking or do not appropriately incorporate international law, are updated to do so



# Global Level

- In the context of International Waters, two international instruments probably provide the most comprehensive legal underpinnings:
  - UNCLOS (Marine) [in force]
  - 1997 Law of Non-Navigational Uses of International Watercourses(Freshwater) [not yet in force]
    - A Law of transboundary Aquifers is also being developed
- Many other instruments exist (notably Conventions), but tend to be focussed on more narrow, typically environmental or sectoral, lines.

# Regional Level

- Regions often have supplementary international agreements, often in the form of (sub)Regional Economic Commissions (e.g. SADC, COMESA), RFMOs (e.g. SWIOFC, IOTC) and transboundary water management Conventions (Nairobi, Abidjan) and continental scale organisations such as the AU.
- Colonial era laws/treaties sometimes pose significant challenges (e.g. in the Nile basin)



# Suggested Actions 1/3

- Consider whether your basin has undertaken a thorough review of which International, Regional and National laws apply
  - If so, further consider whether National laws adequately reflect both regional and international laws and processes such as SAP implementation and/or supportive bodies (Commissions etc)
  - If not, urgently do so
  - Don't forget “old” laws formulated during colonial era
- Such reviews (at least at the “discovery” stage) should be undertaken by a competent authority on international law, particularly if the findings will inform a transboundary water body management arrangement
- Note that existing publications may greatly increase the speed and reduce the cost of doing so, but do not negate the need to conduct a basin-by-basin-by-country approach

# Suggested Actions 2/3

- Such considerations stress the need that the management area be formally documented and agreed upon to ensure all of the applicable legal instruments (and potentially overlapping IW bodies) are properly considered
- Not doing so may invite future conflict (between nations) or legal challenges (by non-country stakeholders)
- Conflict resolution mechanisms should be included in relevant regional and national legal instruments, as appropriate



# Suggested Actions 3/3

- The greatest challenge is probably not the creation of new bodies and legislative instruments. For the most part, these exist (and there may even be too many of them).
  - The challenge is ultimately to effectively *integrate* and *harmonise* the disparate sectorally-determined legislation and organisations into a cohesive regional framework that effectively addresses the multiplicity of challenges facing international waters basins
- Equally important is defining the interchange (of knowledge, data and benefits) at the boundaries of these basins
- Just as we find “gaps” in knowledge, we need to find what “gaps” exist in the legal framework at different scales (global, regional, national)