

# DP IB Environmental Systems & Societies (ESS): HL



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## 9.2 Legal Frameworks & Governance

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## Environmental Constitutionalism

# Environmental Constitutionalism

- Environmental constitutionalism refers to the inclusion of environmental **principles, rights** and **responsibilities** in a nation's constitution
  - This means that the constitution recognises the importance of **protecting the environment** and ensures that citizens have the right to a **healthy environment**

## Growth of environmental constitutionalism

- Internationally, there is a **growing trend** of nations incorporating environmental rights and duties into their constitutions
  - More countries are addressing environmental issues via their constitutions, especially concerning climate change
- Some examples include:
  - The Indian Constitution includes provisions for environmental protection, recognising the duty of citizens to protect and improve the natural environment
  - The Ecuadorian Constitution, adopted in 2008, was one of the first in the world to recognise the **rights of nature**, granting **legal rights to ecosystems** to exist, regenerate, and evolve. This innovative approach has influenced environmental discourse globally
  - The Constitution of the Republic of South Africa, adopted in 1996, recognises the right to a healthy environment as a basic human right and places a fundamental duty on the state to protect and preserve the environment

### CASE STUDY



#### Article 24 – Right to a Healthy Environment

- Enshrined within the Constitution of the Republic of South Africa is Article 24, which guarantees citizens the right to an environment that is not harmful to their **health** and **well-being**
  - This demonstrates the country's commitment to environmental protection and sustainability

#### State obligations and legislative measures:

- In addition to safeguarding individual rights, the constitution imposes a duty on the state to take reasonable legislative measures to protect and improve the environment

- This includes forming and implementing comprehensive environmental **policies** and **regulations** aimed at mitigating environmental degradation and promoting sustainable development

**Impact on environmental governance:**

- The recognition of environmental rights by the constitution has had a significant impact on environmental governance in South Africa
  - It has facilitated the development of **strong environmental laws** and policies addressing various aspects of environmental protection, including air and water quality, biodiversity conservation, waste management, and land use planning

**Challenges:**

- Lack of clarity in defining "sufficient water" has led to uncertainty and challenges in establishing clear standards for **water allocation**
- Inadequate enforcement mechanisms result in violations of the right to water, especially in **rural** and **marginalised communities**
  - These challenges can hinder the provision of water and sanitation services to these citizens



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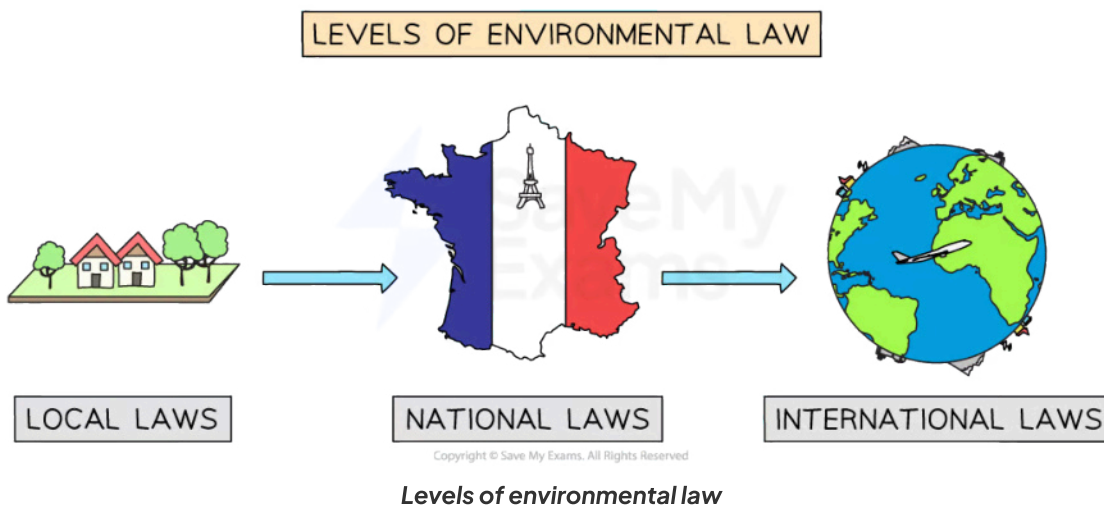


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## Levels of Environmental Law

# Levels of Environmental Law

- Environmental laws can be established at different levels: local, national, and international
  - Each level of environmental lawmaking has its own jurisdiction and **scope**, addressing environmental issues **within its geographical or political boundaries**



## Differences between local, national and international laws

- Local environmental laws:**
  - Governed by local councils or municipalities
  - Address specific environmental issues relevant to the **local community**, such as recycling programmes, waste disposal, and land use planning
    - E.g. local laws protecting urban green spaces - these laws might designate certain areas in towns and cities as conservation zones or green belts, prohibiting development or construction activities to preserve natural habitats, wildlife corridors, or environmentally sensitive areas
- National environmental laws:**
  - Enacted by national governments to address **broader environmental concerns**
  - Cover a wide range of issues, including air and water quality standards, conservation of natural resources, and environmental protection



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- E.g. the Clean Air Act in the United States, regulating air pollution emissions from industrial facilities and vehicles
- **International environmental laws:**
  - Agreements established between multiple countries or regions to address **transboundary environmental issues** (i.e. problems that cross international borders and affect multiple countries)
  - Govern matters such as pollution control, conservation of biodiversity, and management of shared resources
    - E.g. the Paris Agreement (2015) - a global treaty aimed at combating climate change by limiting global warming and reducing greenhouse gas emissions

#### **Strengths and Weaknesses of Environmental Laws**

Level	Strengths	Weaknesses
<b>Local environmental laws</b>	<p>Address specific community needs</p> <p>Allow for relevant, tailored solutions to local environmental problems</p> <p>Promote local engagement (can engage the public and different age-groups)</p>	<p>Limited scope</p> <p>Lack of consistency across regions</p> <p>Challenges in enforcement and implementation (may not have the financial resources to implement successfully)</p>
<b>National environmental laws</b>	<p>Comprehensive coverage</p> <p>Consistent standards across the country</p> <p>Stronger enforcement mechanisms</p>	<p>May not address transboundary issues (or can even aggravate disputes)</p> <p>Variations in implementation and enforcement between regions</p> <p>Potential conflicts between national and local laws</p>
<b>International environmental laws</b>	<p>Address global environmental challenges</p> <p>Promote cooperation and collaboration among nations</p> <p>Provide frameworks for resolving conflicts</p>	<p>Limited or ineffective enforcement mechanisms</p> <p>Challenges in achieving consensus among nations</p> <p>Potential conflicts with national sovereignty</p>



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## CASE STUDY



### International and National Agreements on Water Sources: The Nile River

#### International law:

- For many years, the Nile River Basin countries, including Egypt, Ethiopia, and Sudan, have been engaged in **disputes** and **negotiations** regarding the **shared waters** of the Nile River
- One of the most contentious issues has been Ethiopia's construction of the Grand Ethiopian Renaissance Dam (GERD) on the Nile River, which has raised concerns about **water availability** and **water security** downstream, particularly in Egypt
- In 2015, amidst escalating tensions, the three countries signed the Declaration of Principles, aimed at establishing **cooperative principles** for managing the GERD and ensuring **equitable sharing** of Nile waters
- This agreement represents a significant milestone in international water governance, providing a framework for resolving conflicts and promoting cooperation between countries that share major rivers

#### National Law:

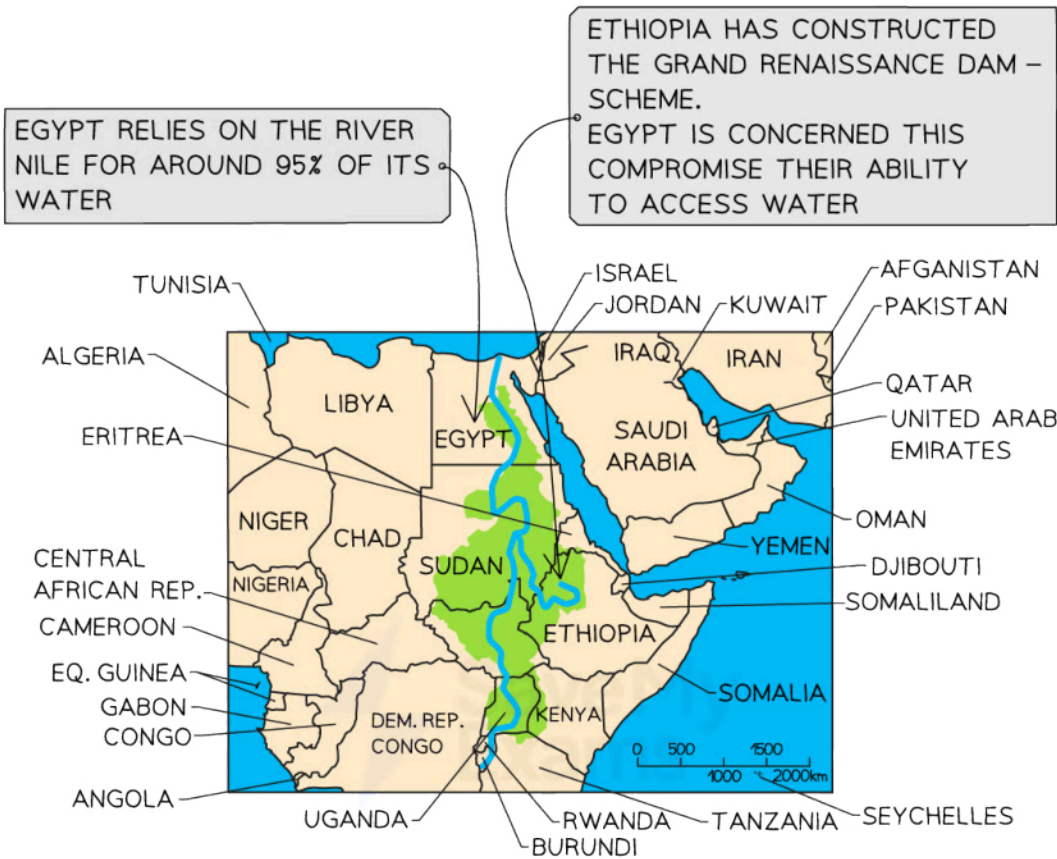
- In response to growing water security concerns caused by factors such as population growth and climate change, Egypt has implemented its own national laws to manage its water resources **more sustainably**
- Notably, the Egyptian parliament passed the Egyptian Water Resources and Irrigation Law (Law No. 147 of 2021) to govern the sustainable and equitable management of the country's water resources
  - This law addresses various aspects of water management, including surface water, groundwater, and Nile water, and aims to **reduce inefficient water use** (e.g. through improved irrigation practices)
  - One key provision of the law requires all new buildings and residential complexes to incorporate **water-saving devices**, such as low-flow taps, shower-heads, and toilets, to decrease water consumption and promote water conservation at the domestic level

The Nile River case study demonstrates the complex interplay between international agreements and national legislation in addressing transboundary water issues.

International and national legal frameworks need to work together in order to ensure effective governance and equitable use of shared water resources. An **integrated approach** to environmental issues, such as water management, is required.



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THERE ARE 11 STATES IN THE NILE'S BASIN – THE POPULATION OF THE REGION IS EXPECTED TO DOUBLE IN THE NEXT 40 YEARS

THERE HAVE BEEN SEVERAL WATER AGREEMENTS OVER THE YEARS

THE NILE WATERS AGREEMENT WAS MADE IN 1959 BUT THIS WAS DISPUTED BY COUNTRIES OUTSIDE EGYPT AND SUDAN

THE NILE BASIN INITIATIVE BEGAN IN 1999 AND HAS HAD SOME SUCCESS IN UNITING THE GOALS OF RIPARIAN STATES

THESE COUNTRIES (ESPECIALLY EGYPT) WILL NEED TO DIVERSIFY THEIR WATER SUPPLIES AND IMPROVE MANAGEMENT OF CURRENT SUPPLIES; THIS WILL REQUIRE GREATER COOPERATION FROM THE DIFFERENT USERS TO AVOID CONFLICTS

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**International water conflict around the Nile River basin**



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## International Law & Cooperation

### Importance of International Law

- International law refers to the **rules** and **principles** governing relations between nation states (i.e. countries) and other international entities, such as intergovernmental organisations (IGOs), non-governmental organisations (NGOs), and multinational corporations (MNCs)
  - It provides a framework for **cooperation**, **negotiation**, and **resolution of disputes** on a global scale

### Addressing transboundary issues

- International environmental law plays a crucial role in addressing transboundary environmental issues, such as pollution and resource management, which extend beyond national borders
  - It provides mechanisms for countries to **work together** to tackle shared challenges and protect the global environment

### Agreements on transboundary pollution

#### Example – ASEAN Agreement on Transboundary Haze Pollution:

- This Association of Southeast Asian Nations (ASEAN) Agreement aims to address the issue of transboundary haze pollution caused by **land and forest fires**
- Participating countries commit to preventing and mitigating haze pollution through cooperation, sharing of information, and coordinated response measures
  - For example, when haze pollution from forest fires occurs in one country, such as Indonesia, neighbouring countries like Singapore, Malaysia, and Thailand may be affected by the resulting air pollution
  - In response, these countries cooperate by sharing information about the **location** and **extent** of the fires, as well as **weather patterns** that may affect the **spread** of haze
  - They may also coordinate efforts to combat the fires, such as deploying **firefighting resources** and aiding affected communities
  - Additionally, participating countries commit to developing and implementing strategies to prevent forest fires and haze pollution, such as sustainable land management practices and fire prevention measures (e.g. fire-breaks)

### Agreements on transboundary resource management

#### Example: FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing:





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- The Food and Agriculture Organisation (FAO) initiative seeks to combat **illegal, unreported, and unregulated (IUU) fishing activities**, which pose threats to marine ecosystems and sustainable fisheries
- Countries collaborate to strengthen **monitoring, control, and surveillance** of fishing activities, **promote responsible fishing practices**, and combat IUU fishing through international cooperation and coordination
  - For example, this involves sharing information and intelligence on suspicious fishing activities, implementing measures to prevent IUU-caught fish from entering global markets, and conducting joint patrols and surveillance operations in high-risk areas
  - This can involve:
    - Monitoring fishing vessels operating in shared waters
    - Enforcing regulations on **fishing quotas** and **gear restrictions** (e.g. net hole size)
- By coordinating their efforts and resources, countries can effectively combat IUU fishing, protect marine biodiversity, and ensure the long-term viability of fisheries resources for present and future generations

## UN Conferences & Agreements

- The United Nations (UN) is an international organisation founded in 1945, after World War II, to promote peace, security, cooperation, and development among nations worldwide
  - It serves as a forum for member states to discuss and address **global issues** such as conflict resolution, human rights, environmental protection, and humanitarian aid
- UN conferences bring together **representatives** from countries worldwide to **address** these global challenges
  - They aim to create international **conventions** (agreements) and **protocols** to tackle shared challenges

## Types of agreements

- **International Conventions (Agreements):**
  - These are legally binding treaties agreed upon by UN conferences
  - All signatory countries must adhere to the rules and obligations outlined in these agreements
  - Example: United Nations Framework Convention on Climate Change (UNFCCC)
- **Protocols:**
  - Protocols are supplementary agreements that may become legally binding if they are ratified

- They often focus on specific measures or commitments related to particular issues
- Example: Kyoto Protocol, an extension of the UNFCCC, sets targets for reducing greenhouse gas emissions



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## Challenges in developing agreements

- International agreements and protocols can be challenging and slow to develop

### Examples of Challenges in Developing Agreements

Challenge	Description
Complexity	Agreements can be complex and challenging to negotiate due to the involvement of various <b>stakeholders</b> and <b>intricate details</b>
Scientific Knowledge	<b>Rapid advancements</b> in science require constant <b>updates</b> and <b>revisions</b> to agreements
Stakeholder Pressures	Individual governments face <b>pressures</b> from stakeholders with diverse interests, leading to <b>prolonged negotiations</b>
Differentiated Responsibilities	Disagreements arise between countries over the <b>allocation of responsibilities</b> (e.g. regarding greenhouse gas emissions reductions)
Financial Commitments	High-income countries may struggle to meet <b>financing commitments</b> towards low-income countries for climate adaptation and mitigation efforts
Geopolitical Conflicts	General <b>geopolitical tensions</b> can slow progress in negotiations
Economic Impact	Concerns about the <b>economic repercussions</b> of agreements make it harder to reach a consensus

## Examples of protocols and agreements

### 1. Montreal Protocol (1987):

- **Full name:** Montreal Protocol on Substances that Deplete the Ozone Layer
- **Aim:** to protect the Earth's ozone layer by phasing out the production and consumption of substances that deplete it, such as chlorofluorocarbons (CFCs) and other ozone-depleting substances (ODS)
- **Relative success:** highly successful in addressing ozone depletion as emissions of ODSs have rapidly fallen



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- **Amendments and developments:** continual amendments and adjustments have been made to strengthen the protocol over time, including accelerating phase-out schedules and expanding the list of controlled substances

## 2. Kyoto Protocol (1997):

- **Full name:** Kyoto Protocol to the United Nations Framework Convention on Climate Change
- **Aim:** an international treaty building on the UN Framework Convention on Climate Change (UNFCCC) that committed state parties to reduce greenhouse gas emissions
- **Relative success:** amongst other achievements, this protocol successfully set binding targets for greenhouse gas emissions for developed countries
- **Amendments and developments:** despite challenges, the protocol led to increased awareness of climate change issues
  - However, it faced criticism for not imposing emissions reductions on major developing countries
  - The protocol was later succeeded by the Paris Agreement

## 3. Paris Agreement (2015):

- **Full name:** Paris Agreement under the United Nations Framework Convention on Climate Change
- **Aim:** to hold the increase in global average temperature to below 2 °C above pre-industrial levels
- **Relative success:** represents a landmark agreement with nearly all countries committing to climate action, as agreed by 195 parties at **COP21**
- **Amendments and developments:** the agreement encourages countries to regularly update their emissions reduction targets and submit long-term low greenhouse gas emission development strategies
  - It also includes provisions for climate finance and technology transfer to support developing countries in their climate efforts
  - However, challenges remain in achieving widespread implementation and financing commitments

# International Agreements & Institutions

- International agreements are treaties or conventions signed by multiple countries to address **shared challenges or objectives**
  - They aim to foster cooperation, establish rules, and promote collective action on issues of global significance
  - They often focus on environmental issues

## Role of institutions



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- **Implementation support:** international agreements often create **institutions** or **organisations** to aid in the implementation of the agreement and monitoring of progress
- **Coordination:** these institutions serve as **platforms for coordinating efforts**, sharing information, and promoting collaboration among member countries
- **Capacity building:** institutions may also provide support and resources to help countries develop the necessary capacity and expertise to meet their obligations under the agreements (i.e. the actions they have agreed to take)

## Examples of conventions and organisations

### 1. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

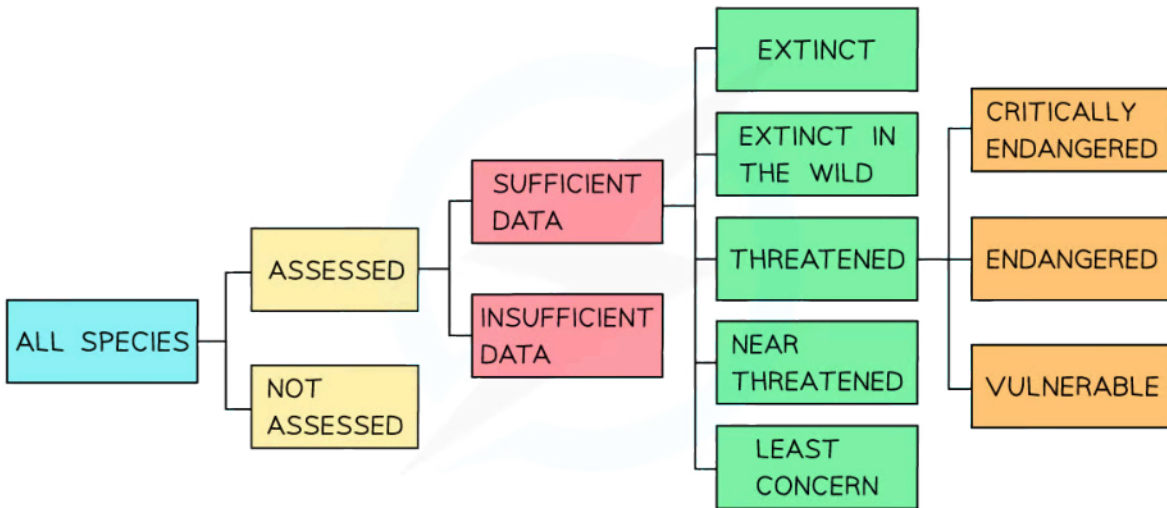
- Regulates international trade in endangered species to ensure their survival
  - For example, CITES regulates the trade of elephant ivory to protect elephant populations from illegal poaching and trafficking
- Assists member countries in implementing and enforcing the convention
- Collaborates with **customs authorities** and **wildlife agencies** to monitor and enforce trade regulations



### 2. International Union for Conservation of Nature (IUCN):

- Aims to conserve biodiversity and promote sustainable use of natural resources
  - For example, IUCN's **Red List** of Threatened Species assesses the conservation status of species worldwide
- Develops global forums and initiatives to address pressing conservation challenges, such as habitat loss and climate change

- Provides scientific expertise, policy guidance, and networking opportunities for member countries



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*The IUCN classification system of species – Scientists are continually updating and reviewing the conservation status of species*

### 3. Convention on Biological Diversity (CBD):

- It aims to conserve biodiversity, promote sustainable use of its components, and ensure fair and **equitable sharing of benefits** (e.g. newly discovered medical benefits from tropical plant species)
  - For example, the CBD's **Aichi Biodiversity Targets** set strategic goals for biodiversity conservation, such as protecting habitats and preventing extinctions
- The CBD supports member countries in implementing biodiversity conservation strategies, monitoring, and reporting on progress



## Convention on Biological Diversity

### 4. Ramsar Convention on Wetlands:



- Aims to protect wetlands of international importance and promote their **sustainable use**
  - For example, Lake Natron in Tanzania is designated as a Ramsar site to conserve its unique ecosystem and support **migratory bird populations**
- Facilitates cooperation among member countries in designating and managing Ramsar sites



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#### 5. United Nations Environment Programme (UNEP):

- Coordinates environmental activities, assists countries in implementing environmental policies, and promotes sustainable development
  - For example, UNEP's **Global Environment Outlook** reports (typically published every five years) assess the state of the environment and provide policy recommendations for sustainable development
- Provides scientific assessments, capacity-building programmes, and policy advice to member countries
- Collaborates with governments, NGOs, and other stakeholders to address pressing environmental issues like climate change and pollution



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