



*“People and Wetlands: The Vital Link”*  
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## **Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands**

adopted by Resolution VII.7 (1999) of the Ramsar Convention

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### **§1.0 The purpose of a legal and institutional review**

1. The Conference of the Parties (COP) to the Ramsar Convention has adopted guidance on appropriate legal and institutional frameworks for wise use<sup>1</sup>, and this issue has also been included in the Ramsar Strategic Plan 1997-2002<sup>2</sup>. These instruments urge each Contracting Party to develop national wetland policies to support wise use and to address all problems and activities related to wetlands in a national context. Wetland policies may be separate or may form a clearly-identifiable component of other planning processes (e.g., national environmental action plans or national biodiversity strategies and action plans)<sup>3</sup>.

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<sup>1</sup> *Guidelines on the wise use of wetlands* (Recommendation 3.3); *Guidelines for the implementation of the wise use concept* (Recommendation 4.10); *Additional guidance for the implementation of the wise use concept* (Resolution 5.6).

<sup>2</sup> Adopted at the 6th Meeting of the COP, Brisbane 1996.

<sup>3</sup> See *Guidelines for developing and implementing National Wetland Policies* (Resolution VII.6).

2. As part of this long-term policy development process, the COP has specifically called on each Party to review its legal and institutional frameworks to ensure that these are generally compatible with the wise use obligation. The review should cover laws and institutions not only at the national level, but also at the sub-national and supra-national (i.e., regional economic integration organizations)<sup>4</sup> levels. These technical guidelines are intended to provide practical support for carrying out such a review.
3. The review process can help Parties to take stock of how existing laws and institutions contribute to or work against wetland conservation and wise use. This should contribute to a more rationalised approach to their achievement. The review has two main objectives:
  - to identify legal and institutional measures which constrain wetland conservation and wise use; and
  - to support the development of positive legal and institutional measures for wetland conservation and wise use.
4. The information collected for the review should provide useful data for national reports by Parties to the COP<sup>5</sup>. Wherever possible, the review should be repeated at regular intervals to ensure that laws and institutions remain compatible with the wise use obligation established under Article 3.1 of the Convention.
5. The review could have two basic phases carried out in a way appropriate to the circumstances of the Party concerned: (1) a preparatory phase (see Section 2.0) and (2) an implementation phase (see Section 3.0).

## §2.0 Preparing for the legal and institutional review

### §2.1 Establish political and institutional responsibility for the review

6. The COP has formally endorsed the use of legal and institutional reviews as an integral part of wise use planning. Consequently, Parties should give high-level political support to preparing, implementing and acting upon the review.
7. National Wetland Committees, inter-ministerial commissions or other coordinating bodies<sup>6</sup> for wetland issues are particularly well placed to take responsibility for and supervise the review, as well as for considering subsequent recommendations by the review team (see Section 2.2). Where such a body does not exist, Parties might consider establishing an inter-agency steering committee to ensure that all relevant governmental sectors are represented during the review.
8. In Parties with a federal or decentralised system of government, political responsibility for the review will depend on which tier of government has jurisdiction over wetlands and wetland resources (including migratory species). In several countries, jurisdiction is divided between national and sub-national authorities; in others, it is almost completely devolved

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<sup>4</sup> Operational Objective 2.1, Strategic Plan.

<sup>5</sup> Action 2.1.1 of the Ramsar Strategic Plan calls on Parties to indicate in their reports how the *Wise Use Guidelines* are applied.

<sup>6</sup> The establishment of such bodies is recommended in section I.1.2), *Additional guidance on wise use*.

to sub-national level; in others, local authorities have extensive powers over wetland management and decision-making.

9. In Parties where jurisdiction over wetlands is devolved to sub-national level, it may be appropriate for the competent administrative authorities at that level to conduct their own review. However, to ensure consistency with applicable national policies and laws, it would be useful to harmonise nationally the review procedures.

## §2.2 Establish the review team

10. The review team has operational responsibility for the review and reports to the institution designated under Section 2.1. An effective team is likely to be characterised by commitment, objectivity and broad representation and expertise.
11. Membership of the team will depend on each Party's particular circumstances and capacity. In some countries, an appropriate team may already have been established to develop a national wetland policy or be provided by an established cross-sectoral Ramsar/wetlands committee. While the team should include at least one person with legal expertise, other disciplines might be considered, including:
  - Planners and economists;
  - Technical representation from hydrologists, biologists, ecologists and other relevant disciplines; and
  - Representatives of the private sector and the general public, specifically including indigenous and local communities<sup>7</sup>.

Team members should have detailed knowledge of how the country's laws and institutions, including those which are customary, operate both in theory and in practice.

## §2.3 Define the review methodology

12. The review team is responsible for defining the methodology for the review, in other words, how each stage of the review will be undertaken and within what time-frame; for assigning specific responsibilities to team members; and for determining the scope of the review.
13. During this preparatory phase, it is important that members of the review team reach a common understanding for the purposes of the review of what is meant by "wetland" in the country concerned<sup>8</sup>.
14. Figure 1 gives one example of a possible methodology for carrying out the review. It depicts the review as an ongoing (cyclical) process with three basic stages: (1) establishing a knowledge base of relevant laws and institutions; (2) evaluating the knowledge base

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<sup>7</sup> C.f. para.12, *Guidelines for establishing and strengthening local communities' and indigenous people's participation in the management of wetlands* (Resolution VII.8).

<sup>8</sup> Some countries do not have an agreed legal definition of wetlands. The Convention's broad definition (Art.2.1) applies to inland and coastal wetlands: "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres".

established; and (3) recommending necessary legal and institutional changes to promote wetland conservation and wise use.

15. Parties may choose to begin the review at different stages within this cycle, depending upon their national situation. For example, some countries already have an established scientific, legal and institutional knowledge base from developing National Wetland Policies or implementing cross-sectoral planning obligations pursuant to the Convention on Biological Diversity (1992) or the Convention to Combat Desertification (1994). Other countries may recently have carried out a review for the purpose of codifying legislation or drafting modern environmental statutes.

### **§3.0 Carrying out the legal and institutional review**

16. Once the preparatory phase has been completed, the review team can carry out the legal and institutional review using its chosen methodology. The following sections describe the three stages of the review process in greater detail.

#### **§3.1 Establish a knowledge base of relevant legal and institutional measures**

17. A key responsibility of the review team is to create a comprehensive collection or knowledge base of the country's law and institutional measures which are relevant to wetlands. The content of the knowledge base will depend on national circumstances, and therefore each country's knowledge base will be unique.
18. Many different sources of law can contribute to creating the knowledge base. In general, these govern the procedures, decisions and actions of public bodies and the rights and duties of the private sector, communities and individuals (see Figure 2 for a non-exhaustive list of possible sources). At the more formal end of the spectrum, statutes and implementing regulations provide the legal basis for regulatory powers, planning rules, public expenditures, taxation and economic measures for projects or activities which may positively or negatively affect wetlands. At the other end of the spectrum, customary laws may be the main source of law governing the rights and duties of indigenous and local communities with regard to wetland resources.
19. Information to establish the knowledge base may be readily available to the review team or may need to be commissioned. Useful sources might include reports, studies, policy documents and inventories that have been developed as part of a national wetland or broader environmental policy-making process. Other useful information may have been produced at local level for the purpose of a wetland management plan.
20. When establishing a knowledge base, it may be useful conceptually to divide relevant sources of law into two categories: (1) "Wetland-related" legal and institutional measures (see Section 3.1.1) and (2) Sectoral legal and institutional measures which directly or indirectly affect wetlands (see Section 3.1.2).

##### **§3.1.1 Identify wetland-related legal and institutional measures**

21. Wetland-related legal and institutional measures are those which directly promote conservation and wise use of wetlands, including those directly supporting the implementation of the Ramsar Convention. All Parties have some form of environmental

legislation and administration which is or can be used to support wetland conservation and wise use, although relatively few have enacted special wetland laws. Depending on the country, conservation and wise use measures may be contained in national and sub-national laws and regulations on environmental protection, nature conservation, protected areas, environmental impact assessment and audits, land-use planning, coastal management, water resource management or pollution control. At the local level, customary laws and community-based institutions may be relevant.

22. For purposes of subsequent analysis, it may be helpful to organize this component of the knowledge base according to the four categories set out in the *Additional guidance on wise use*: (1) non-site-specific measures; (2) site-specific measures; (3) jurisdictional and institutional coordination; and (4) mechanisms for transboundary and international cooperation (see Figure 2). A non-exhaustive checklist of possible legal and institutional measures could include:
- a) the legal instrument adopted to incorporate Ramsar into domestic law;
  - b) non-site specific or generally-applicable legal and institutional measures which promote wetland conservation and wise use (regulatory and non-regulatory measures) and/or confer special protective status on wetlands;
  - c) legal and institutional measures, including site-specific customary laws which promote the conservation and wise use of wetlands, and customary institutions which support this;
  - d) legal and institutional measures for integrated management of river basins, catchments, watersheds or coastal areas; international agreements for shared wetlands, watercourses or wetland flora and fauna; and
  - e) relevant legal and institutional measures adopted pursuant to other treaties or supra-national instruments.
23. The review team should identify which institutions and agencies have functional responsibility for wetland conservation and wise use, including transboundary wetland-related issues. In Parties with a federal or decentralised system of government, the team should clarify how jurisdiction over wetlands and wetland products is divided between national and sub-national government and whether there is any mechanism for coordination between the different levels.

### §3.1.2 Identify sectoral legal and institutional measures which directly or indirectly affect wetlands

24. The key step to identifying sectoral legal and institutional measures which directly or indirectly affect wetlands is for the review team to determine which processes and categories of activities<sup>9</sup> contribute to the loss of wetland functions, values and benefits within the country. To do this, the review team can use existing scientific and policy reports, studies and inventories to determine the main threats to wetlands in the country concerned. Where these are not available the information may need to be commissioned.
25. Processes which modify the natural properties of wetlands may be broadly grouped into four categories:

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<sup>9</sup> Note that the Convention on Biological Diversity requires Parties to identify and regulate or manage processes and categories of activities which adversely affect biological diversity (Article 7).

- a) loss or degradation of wetland area and landscape;
- b) changes in the water regime (e.g., velocity, volume, seasonal flows, groundwater);
- c) changes in water quality (e.g., pollution, eutrophication, sedimentation); and
- d) over-exploitation or disturbance of wetlands and wetland products.

Processes of this kind are generated by human activities both inside and outside wetlands. Some types of human activity (e.g., drainage, pollution or urban encroachment) almost always generate processes damaging to wetlands, whether individually or on a cumulative basis. Other types of activity (e.g., fishing, agriculture or ecotourism) may be consistent with wise use within certain limits, but can generate damaging processes if they exceed the carrying capacity of the water system, coastal zone or wetland concerned.

26. For purposes of subsequent analysis of this component of the knowledge base, the main processes associated with the loss and degradation of public and private wetlands on national territory or beyond national boundaries could be listed. Then, under each heading, the sectors responsible for activities contributing to the particular process could be listed along with the activities themselves. Relevant sectors may include agriculture, forestry, fisheries, public health, territorial development, energy, industry, investment, mining, navigation, tourism, trade and transport (see Figure 2). The information collected will provide a technical foundation from which the team can then identify, correlate and subsequently evaluate the legal and institutional basis for the particular activity identified.

### §3.2 Evaluate the knowledge base

27. Once the review team has established a knowledge base (see Section 3.1), it can evaluate the legal and institutional measures identified in its two components. The key steps in the evaluation phase are to:
- a) assess the effectiveness of existing wetland-related legal and institutional measures in promoting wetland conservation and wise use; and
  - b) analyse how sectoral legal and institutional measures directly or indirectly affect wetlands.

The evaluation should help the team to determine the legal and institutional constraints on wetland conservation and wise use in the country. This determination is necessary before the team can develop recommendations for necessary legal or institutional changes (see Section 3.3 below).

28. The team may find it helpful to design a framework for the objective analysis of the legal and institutional measures identified. This could parallel and build upon the organizational frameworks suggested for the two components of the knowledge base in Sections 3.1.1 and 3.1.2.
29. While undertaking its evaluation, the review team needs to be mindful that laws and institutions have traditionally evolved in piecemeal fashion, with little cross-sectoral coordination and few references to wetlands. Therefore, it should be on the lookout for conflicts between wetland-related and sectoral legal and institutional measures which make it difficult to achieve wise use throughout a country, to implement cost-effective wetland

policies, to regulate or manage potentially damaging activities, or to build long-term partnerships with wetland owners, users, local communities and the private sector.

30. As part of its evaluation, the review team should also be on the lookout for other legal and institutional measures which constrain efforts in achieving wetland conservation and wise use. These could include:
- a) conflicting sectoral policies, laws, taxes and institutional priorities;
  - b) weak or incomplete laws applicable to wetlands (e.g., exclusion of coastal wetlands, no legal safeguards for water supply of appropriate quality and quantity);
  - c) land tenure and resource use regimes which undermine wise use;
  - d) poor design or operation of wetland administrative authorities;
  - e) jurisdictional constraints on ecosystem management of river basins and coastal areas;
  - f) absence of effective monitoring procedures, enforcement and remedies; and
  - g) lack of provisions for compensation for lost wetland habitats or functions.

Gaps, overlaps and inconsistencies are all relevant to the evaluation and they should be described in the review.

### **§3.2.1 Assess the effectiveness of existing wetland-related legal and institutional measures in promoting wetland conservation and wise use**

31. The review team needs to assess the effectiveness of existing wetland-related legal and institutional measures for promoting wetland conservation and wise use. Although conservation and wise use can be promoted in many ways, the Conference of the Parties has emphasized the fundamental importance of appropriate legal, policy, institutional and organizational measures for this purpose. The review team could use the *Wise Use Guidelines* as a starting point when evaluating the country's existing legal and institutional measures. It could also develop indicators of effectiveness adapted to national circumstances. A non-exhaustive list of issues for consideration is set out in paragraphs 32-35 below.
32. Possible considerations related to non-site specific measures could include:
- a) Is the legal definition of wetlands or the scope of wetland-related legal and institutional measures sufficiently broad to apply to all categories of wetland covered by the Ramsar Convention?
  - b) Is it possible under land-use planning legislation (national, provincial or local) to confer protective status on wetlands and to limit urban, industrial and recreational development which might adversely affect wetland functions, values and benefits, including in a transboundary context?
  - c) Do principles, standards and techniques applicable to socio-economic activities, including environmental impact assessment rules, support the maintenance of wetland functions, values and benefits and incorporate a precautionary approach?
  - d) Is there a legal basis to encourage positive conservation measures and stewardship by wetland owners, users and non-governmental organizations (e.g., contracts, conservation easements or tax provisions)?
  - e) Where development involves wetland loss or degradation, is there a legal requirement to make monetary or other compensation, consistent with the polluter pays principle?

- f) Are civil or administrative law remedies available to interested parties where wetlands are unlawfully destroyed or damaged?
  - g) Where wetland loss or degradation constitutes a criminal offence, are enforcement procedures adequate and are penalties set at a meaningful level?
33. Site-specific considerations could include:
- a) Is the legal status conferred on Ramsar sites and wetland nature reserves sufficient to ensure their conservation and wise use?
  - b) Is it possible legally and institutionally to designate and manage coastal protected wetlands, even though they may include terrestrial and marine areas?
  - c) Where wetlands are designated as protected areas, does legislation authorise continued access and use by indigenous and local communities where this is consistent with the conservation and wise use of the particular site?
  - d) Is legislation supportive of customary laws, practices, tenure systems and institutions of indigenous and local communities, which promote sustainable use of wetland resources?
  - e) Do wetland users, including indigenous and local communities and other stakeholders, have the right to information, representation and participation in site management?
  - f) Does legislation support the preparation and implementation of wetland management plans?
  - g) Is there a legal requirement for wetland management bodies to be consulted about potentially damaging external activities?
34. Considerations related to jurisdictional and institutional coordination could include:
- a) Do procedures exist for horizontal (cross-sectoral) coordination between wetland administrative authorities and relevant sectoral departments and agencies?
  - b) Do procedures exist for vertical coordination on conservation and wise use issues between different tiers of government, particularly in countries with federal or decentralised systems?
  - c) What, if any, steps have been taken to promote consistency between sectoral plans, policies and programmes and obligations related to wise (sustainable) use?
  - d) What legal and institutional measures have been taken to coordinate and integrate management of inland water systems (river basins, catchments, watersheds) and coastal areas?
  - e) Have legal and institutional measures been taken to involve stakeholders in wetland policy-making and wise use planning?
  - f) Do national or sub-national administrative authorities have adequate powers and human, technical and financial resources to implement wetland conservation and wise use programmes?
35. Possible transboundary and international cooperation considerations include:
- a) Is there a legal and institutional basis for coordinated management of shared wetlands, international watercourses or wetland flora and fauna with one or more neighbouring countries? If so, could institutional coordination and joint management programmes be made more effective or extended in the future?



- b) Have steps been taken under other international environmental agreements to develop bilateral or multilateral cooperation? If so, could these be used as a basis for strengthening coordinated international action on wetland and water resource issues?
- c) Are procedures in place to ensure that foreign and domestic investment and development cooperation/aid programmes do not support activities which could damage wetlands and are fully compatible with the wise use obligation?

### **§3.2.2 Analyse how sectoral legal and institutional measures directly or indirectly affect wetlands**

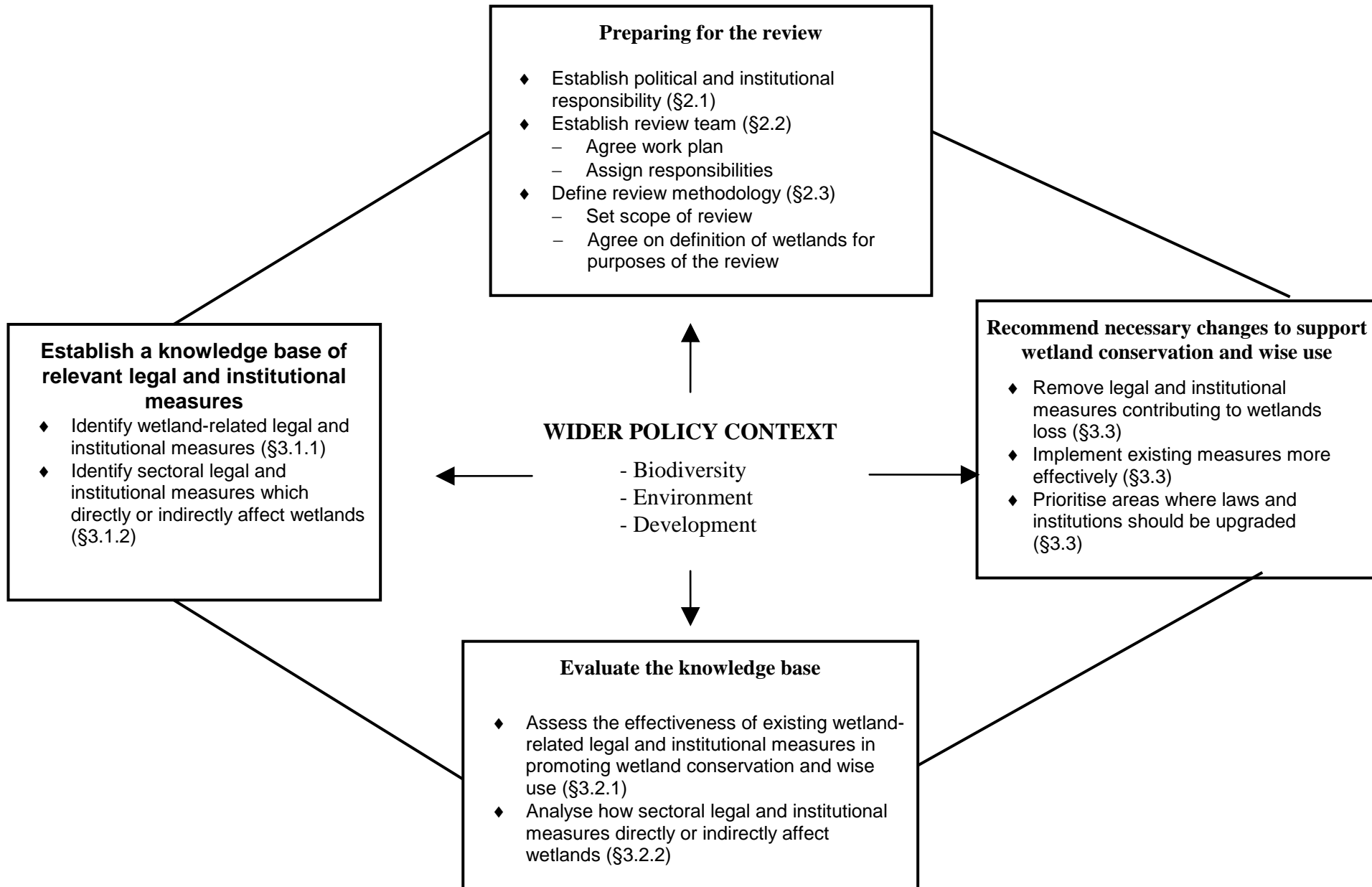
- 36. Sectoral legal and institutional measures that support processes and categories of activities identified under Section 3.1.2 will undermine effective implementation of the Ramsar obligations. After identifying the processes and categories of activities threatening the country's wetlands and their legal and institutional basis, the review team should identify how these encourage the loss of wetlands.
- 37. The review team could be guided by the following questions:
  - a) Which provisions work directly against wise use (e.g., mandatory wetland drainage or financial and tax incentives for conversion)?
  - b) Which measures indirectly support wetland loss and degradation including through "perverse incentives" such as subsidies to develop coastal belts or flood plains?
  - c) Are wetland users, developers, and polluters obliged to meet the costs of wetland loss or degradation or to make compensation?
  - d) Are activities which could directly or indirectly affect wetlands subject to environmental impact assessment and are wetland considerations factored into the assessment process?
  - e) Do laws and regulations (including those on EIA) exempt certain categories of activities which adversely affect wetlands and water systems?
  - f) Are effective monitoring procedures, enforcement and remedies available?

### **§3.3 Recommend legal and institutional changes necessary to support wetland conservation and wise use**

- 38. Once the review team has identified strengths and weaknesses of the country's legal and institutional framework, it may consider at least three types of recommendation as outputs of the review process.
- 39. First, and as a priority, the review team should recommend ways in which legal and institutional measures which contribute to the loss of wetlands can be better harmonised with conservation and wise use objectives. Or, if this is not possible, the review team should recommend the removal of these legal and institutional measures. Where this is impracticable in the short term, all possible steps should be taken to reduce progressively the impact of such measures.
- 40. Second, the review team should identify and recommend ways in which existing legal and institutional measures can be implemented more effectively without the need for new laws or regulations.

41. Third, the review team should identify and prioritise areas where laws and institutions should be upgraded or consolidated or where new legislative or economic instruments should be developed.

**Figure 1: Carrying out a legal and institutional review**





**Figure 2: Establishing a knowledge base of relevant legal and institutional measures**

