
International workshop on '*African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa*', 26-28 January 2005, Johannesburg, South Africa

Objectives, definitions and issues

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This paper aims to present objectives of the workshop and review key definitions and issues based upon a rapid overview of all the submitted papers.

Workshop African Water Laws

Objectives, Definitions and Issues

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Workshop Working Hypothesis

- Water development and management by Africa's majority is governed by customary institutional arrangements
- These arrangements work well in many, but not all, respects
- Yet, state policy, law, and administration tends to ignore, if not disrupt customary arrangements
- Ongoing reform offers opportunities to tap the strengths of customary arrangements, avoiding its weaknesses

Objectives of the workshop - 1

This workshop aims at:

1. Better understanding the **existence** and **effectiveness** of customary water arrangements for rural livelihoods

Objectives of the workshop – 2

2. Identifying the range of options for statutory arrangements to better **recognize** customary arrangements for effectively contributing to rural livelihoods

Objectives of the workshop - 3

3. Formulating conclusions and **recommendations** for
 - policy dialogue
 - implementation (e.g. training)
 - further research/publication and curriculum development

Customary arrangements Existence and effectiveness - 1

- rural communities, cultural identity, worldviews, legitimacy, traditional leadership, sense of ethnicity, oral
- holistic management of natural resources including water, self-help and reciprocity
- effective enforcement and civilized conflict resolution at lowest possible level

Customary arrangements Existence and effectiveness - 2

- flexible, adaptive to shocks and changes, locally appropriate
- areas of jurisdiction often localized (yet: migration, transhumance, upstream-downstream)
- hierarchies/accountability, gender, age

Customary arrangements Existence and effectiveness - 3

- context: predominance in rural Africa, globally least formalized (water) economy
- evolution, impacts urbanization, literacy, religion, etc ?
- local government: negotiated co-existence re-emergence, contest/ overlap, dwindling?

Customary arrangements Existence and effectiveness: water-1

- integrating uses, users, and sources, within cosmology
- livelihood-oriented water development with incentives to invest
- life-oriented sharing of god-given common resource
- water authorities, committees, functional groupings

Customary arrangements Existence and effectiveness: water-2

- hierarchies, e.g. gender
- increased pressure on available water resources
- limited access to technologies, mid-term credits, range of other factors for enterprise development
- limited awareness of upstream-downstream

Formal

state

statutory policies, law, administration
custodian of the nation's water resources

two roles

- investor in hydraulic mission: increasing the pie
- regulator: sharing a limited pie (workshop less focus on quality issues)

Formal – hydraulic mission

Investor in infrastructure development

- colonial era: colonial minority
- independence: majority, esp. domestic uses
- IWRM: 'nation-wide, year-round water scarcity', so stifling water development for productive uses; ongoing domestic water development

Formal - regulator

Water use authorization

- colonial era: expropriation by minority
- independence: state property - dormant
- IWRM: revival property issue to expand to rural areas through registration-cum-authorization-cum-taxation; basin institutions

Formal – to redress inequities

Exception South Africa

- hydraulic mission: domestic and productive water development for 'Historically Disadvantaged Individuals'
- regulator in stressed areas
 - taking water from the haves to allocate to the have-nots through compulsory licensing
 - taxation for self-financing, cross-subsidization
- 19 basin institutions: state-steered participatory democracy

Formal recognition - generic

- systematic design and implementation of complementary roles at nested levels
- principles (e.g. CDD World Bank)
 - priorities of rural communities and their local governments as basis
 - integration e.g. multiple use water, other factors
 - subsidiarity: self-planning and implementation
 - financing stream downwards, fiscal strength
 - simplification bureaucracies
 - staff incentive structures to improve accountability downwards, etc.

Formal recognition - hydraulic mission -

Role government at local level

- support (technical, financial, institutional, empowerment of marginalized) for storage and abstraction technologies

Role government at basin level

- informing and ensuring (?) access to basin/aquifer water resources

Formal recognition - regulator at local level - 1

Examples role government in local conflict management (dry season):

- 'nested arbiter' at highest customary tier and lowest formal tier
- codification into formal law/bye-laws (stifling? removing safety nets for poorest?)
- bottom-up participatory water management
- formalizing proportional shares of dry season flows over river stretches

Formal recognition - regulator at local level - 2

Impact of formal permits ?

Administration

- "cadastre disaster" of registering many scattered, remote, illiterate users
- transition, forever, phased ?
- only existing collectivities?

Formal recognition - regulator at local level - 3

Impact of formal permits - ctd ?

Effectiveness

- inadequacy permit information (sites, volumes in annual averages, if available)
- enforcement of upper ceiling impossible
- corruption-prone

Formal recognition - regulator at local level - 4

Impact of formal permits - ctd ?

Effectiveness

- criminalizes (!) all non-registered users
- distorts customary arrangements
 - ownership contested
 - confusion, forum shopping
 - 'I paid, so I can use'

Formal recognition - regulator at local level - 5

Impact of formal permits - ctd ?

Effectiveness

- compatibility with role as nested arbiter ?
- discourages investment in storage

Formal recognition - regulator at basin level - 1

Impacts of permits: aggregate local problems ?

Water resources planning

- information value of registration
- unpacking 'water scarcity' by area and season 'problemsheds'

Formal recognition - regulator at basin level - 2

If stress and zero-sum allocation: government's political choice

- Recognizing customary and/or small-scale uses for compensation, if taken away or sold
- Prioritization by sector / people
- Allocating future water development

Formal recognition - regulator at basin level - 3

Implementation alternatives to permits

- Blanket prioritization or authorization
 - to areas/groups
 - below thresholds
 - colonial legacy of 'allocating' to the colonial labor power to survive ? Human rights? Democratic equal rights for all ?
- Other measures: legal aid, strategic links, effective devolution

Formal recognition - regulator at basin level - 4

Basin institutions

- line agencies restructuring lower tiers for productive uses
- limited role for local government
- more limited for customary arrangements
- separating regulation and hydraulic mission, marginalizing itself ?

Formal recognition - regulator at basin level - 5

Fee payment

- Logistics of collecting fees among many small users gives net losses
- Large users willing to pay, independently from permits
- Compatibility financing streams upwards to basin level and downwards and fiscal autonomy ?

Conclusions

Customary arrangements are majority issue and quite effective for livelihoods

Formal recognition through complementary roles as:

- Investor in unfinished rural hydraulic mission
- Regulator at local level
- Regulator at basin regulation where needed
- Distinguish registration from authorization from fee payment

**Thank You
and
Wishing You Fruitful Debates**