



legal pluralism and implementing integrated water resources management in africa



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In Africa, the development and management of water resources, and resolution of water-related conflicts are shaped by plural legal systems. Plural legal systems refer to the formal laws set out in statute books, but also religious laws and customary laws. These alternative sources of law, that often predominate at the local level, are neglected in current water sector reforms implemented under the banner of Integrated Water Resources Management (IWRM). This omission may have severe consequences for the effectiveness of the new water management systems, and for the prosperity of marginalised communities who are often the least well served by formal water laws. This brochure introduces a research initiative that focuses on these issues, and explains how you can get involved.

implications of customary laws for implementing integrated water resources management

This collaborative research project is promoting the consideration of plural legal systems in water management policy and practice in southern Africa. Its aim is to enhance the capacity of water resource managers to consider and utilise 'living' customary laws in their work. The research team includes:

- Institute of Resource Assessment and Faculty of Law, University of Dar-es-Salaam, Tanzania
- International Water Management Institute (Africa Region), South Africa
- Centre for Applied Social Sciences, University of Zimbabwe
- Natural Resources Institute, United Kingdom

case studies across southern Africa

The research team is currently documenting examples of local water management practices in three southern African countries: Tanzania, South Africa and Zimbabwe. All these countries have developed, or are currently developing, new water laws and systems to manage water based upon IWRM principles. The case studies focus on the complementarities and tensions between statutory (or formal) and customary (or informal) laws in the processes of water resource development, addressing water management problems, and resolving conflicts. The case studies will lead to the development of guidelines for facilitating the implementation of IWRM that takes into account of plural legal systems. An associated programme of advocacy and training is also being developed. The project started in October 2003 and will run until September 2005.

guidelines

Based upon case-studies and consultations with water sector professionals, guidelines are being developed to facilitate the implementation of IWRM in countries with plural legal systems. The guidelines focus on how implementers of IWRM can leave appropriate 'space' for living customary laws. Given the limited capacity and budgets of many formal water management institutions, the guidelines aim to illustrate how customary water management arrangements can be effectively and efficiently combined with formal allocation and water management systems. The guidelines will be widely disseminated and used as the basis for a programme of regionally-focused training courses in the southern African region.

how can you get involved?

As well as welcoming collaboration with people and organisations with specific interests in the case studies in Tanzania, South Africa and Zimbabwe, the project will also help to organise capacity building events in which you can participate. These will include:

- **African Water Laws workshop: Plural Legislative Frameworks for Rural Water Management in Africa:** This international workshop, convened together with the the Global Water Partnership, the Comprehensive Assessment Water Management in Agriculture, IFPRI and other partners will bring together African and international expertise on law, institutions and local water management, in Johannesburg, South Africa from 26-28 January 2005. See www.nri.org/waterlaw/workshop for further details.
- **Training workshop in 'Plural legal systems and implementing IWRM':** In 2005 a first training course for professionals in southern Africa will focus on providing appropriate support for living customary laws in water management. See the project website for further information.

the Nyeregete irrigation scheme, Rufiji Basin, Tanzania



A good example of a 'traditional' irrigation system is the Nyeregete village canal, started in 1964 when a small group of villagers organised themselves to dig a canal to divert water from Kiyoga river to irrigate their farms. Although initiated by a few individuals the system has grown into a large system with a membership of over 300 and covering a distance of 20 miles. There was a lot of resentment when the Rufiji Basin Water Office tried to assert its authority over water allocation in Nyeregete. According to regulations, all such canals are supposed to apply for water rights, paying for the application form and then an annual fee. When the new system of water rights was imposed, conflicts over water increased, especially in 2003 which was a dry year. Some villagers believe that the Basin Water Office is more concerned with collection of rates than reconciling conflicts over access to scarce water resources.

Tanzania case study

Tanzania is at an advanced stage of drafting a new legal framework for water management. The framework is designed to attain the objectives of the National Water Policy of 2002 and to develop a comprehensive framework for promoting the optimal, sustainable and equitable development and use of water resources. Three separate pieces of legislation will result: addressing water resources management, rural water supply, and urban water supply and sewerage.

The legislation, however, does not make clear how the recently established Basin Water Boards and Basin Water Offices will manage water resources use in the future by traditional rights holders, and to what extent the proposed legislative dispensation will protect these rights. Authorities contend that the proposed legal framework, and efforts to fix property regimes and to formalise customary water management arrangements, constitute a vital step in the transformation of the informal economy and reduction of poverty. They may promote conservation of scarce water and encourage more efficient uses. Others have raised doubts about the viability and the desirability of blanket formalisation of property rights. Taking the Pangani and Rufiji river basins, the research explores the challenges involved in formalisation of water rights and its implications for equitable sharing of water resources in Tanzania. The case study focuses on the following themes:

- implications of formalisation of water rights for different groups of water users, especially potential losers
- constraints analysis of organisations and individuals involved in water resources management
- the roles, strengths, and weaknesses of different institutions in water resources management, and
- how to scale up successful institutional innovations.



South Africa case study

Formal water legislation in sub-Saharan Africa is typically rooted in the appropriation of land and related water resources that was initiated during the colonial period. Colonial and post-colonial governments ascribed, at best, secondary status to African customary water rules and practices, and this process was especially severe in South Africa under the apartheid regime. There still remains a danger that this tendency may be perpetuated under recent legal reforms. New requirements of registration for formal water rights and payment for abstraction of water resources typically suit the state and larger water-users, rather than rural small-scale water users.

The case study in South Africa explores the continuing 'secondary status' of African small-scale water users in the former Lebowa and KwaNdebele homelands compared to the former white-dominated areas in the Olifants Basin. The implementation of the Water Act of 1956 in the former white areas of the country is compared with implementation in the former homelands by (contested) customary tribal authorities. The National Water Act of 1998 potentially reproduces this secondary status of water rights in the former homelands by recognising 'existing lawful water use' as a basis for licensing. The study explores whether this provision and other parts of the Act are exacerbating the marginal status of small-scale water users or leading to improvements. In particular, it examines the impacts of water authorisation (including specific instruments such as licensing, Schedule one uses, the Reserve, general authorisations, and compulsory licensing), and the links between registration and payment for water resource management services and participation in emerging Catchment Management Agencies. Recommendations will be developed to better operationalise the overarching goals of legislation to redress inequities from the past.

Dande dam, Zimbabwe



The proposed Dande dam and irrigation scheme illustrates how statutory and customary forces can interact. Following recommendations by various technical experts, the catchment council approved the construction of the scheme. However, because the community did not perceive the impacts to be beneficial to a large section of the population in the area, spirit mediums representing the affected communities actively opposed it. Customary law and practice have been invoked to support their position, which is a reflection of the community's concern, and have delayed the implementation.

The research team would like to hear from water managers, policy makers, legal professionals, researchers and other people interested in the challenges and opportunities presented by plural legal systems for the implementation of integrated water resources management, both within the southern Africa region and further afield. Please contact us.

The research team will also regularly publish case studies, guidelines, research papers and other documents on the project website.

Zimbabwe case study

This case study focuses on the application of both customary and statutory laws to guide management of water resources in the context of a complex water sector reform programme. Since 1995, Zimbabwe has been decentralising responsibility for water management from central government to new institutions made up of water users: catchment councils, sub-catchment councils and water user boards/associations. The reform objectives included: redressing past injustices in access to water; promoting stakeholder participation and involvement in the decision-making process; promoting a more integrated approach to water resources development planning and management; removing inefficiencies in water use; and making the sector (financially) self-sustaining. These reforms included putting more emphasis on cost recovery of investments in the water sector, treating water as an economic good and introducing the user-pays principle. In 1998, a new Water Act was passed to govern and guide the new management regime.

Preliminary indications suggest that very little has changed at the local level as a result of the new legislation and institutions. Water use remains strongly influenced by informal systems. Customary laws and systems appear very resilient, not only in the area of water management, but in the governance of other natural resources as well, including forests, wild life, and fisheries. The dilemma faced by those engaged in water management has been how to reconcile the new arrangements (e.g. catchment councils) with existing formal (e.g. local government) and informal or traditional institutions at the difference governance levels. The case study will address the immense problems in achieving any sort of fit between the spatial dimensions of the resource, and these different institutions of resource governance and rural development, making recommendation for water resource policy and managers.

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Zimbabwe case study

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project website

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