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Community-Based Water Law and Water Resource Management Reform in Developing Countries

Edited by B. van Koppen, M. Giordano, and J. Butterworth. Wallingford: CAB International, 2008. xvii + 280 pp. € 120.00. ISBN 978-1-8459-33-265.

This book contains 15 contributions around the broad theme of community water law and water resource management in the developing world, and is part of the Comprehensive Assessment of Water Management in Agriculture series (see http://www.iwmi.cgiar.org/Assessment/ for more information on this project as a whole). Some 70% of global freshwater abstractions are used for agricultural irrigation, and with the world's population growing and water resources under increasing and multiple pressures, better management of the agriculture sector is essential. There are distinctions to be drawn between large-scale commercial production and small-scale subsistence use; the latter is critical to the health and well-being of substantial parts of the populations of the world's poorest countries. One mechanism for better management of water resources is law reform, and this book provides a critical perspective on this process in different developing countries.

Some of the chapters provide valuable insights into the way that local communities in different places have traditionally managed their access to water, particularly irrigation water, including the analysis of management of spate irrigation in three countries by Mehari et al, Dixon and Wood on wetland management in Ethiopia, and Endossa et al on conflict resolution in Ethiopia. Others suggest practical ways forward in the context of ongoing law reform. For example, Lankford and Mwaruvanda suggest that there should be different ways of managing water in the wet and dry seasons—essentially, that in the wet season a permit-based, volumetric approach is workable, but in the dry season, allocation should be proportional and rooted in community-based rules.

Some authors, such as Albert Mumma, in his survey of Kenya's new water law, analyze effectively the problems that can be caused by inappropriate law reform, where the effect may be to grant new statutory rights to large and powerful landowners and farmers, further disadvantaging the rural poor. This will be especially true where new laws are not widely disseminated at the policy-making stage, and thus where the necessity to obtain a permit is not known to traditional users. Another frequent problem is in cases where some formal land tenure is a condition of obtaining a permit, but land tenure reforms (colonial or postcolonial) make it difficult for such users to establish such tenure. The last chapter, by Derman et al on Zimbabwe's new water law, identifies similar problems but also suggest one possible way forward, through the concept of "primary water," which is broader than a drinking water entitlement. This, they suggest, could include the needs of subsistence farmers, even where some produce is sold to meet other basic needs of the family unit (such as healthcare or education).

No one would deny the validity of the criticisms made of specific law reform processes where these fail to address either the customary structures in place or the historic inequalities and discriminations in relation to the rural poor. Such concerns should be at the forefront of the minds of all who design new water resources laws. However, some of these essays go further and develop an analysis that is inimical to the transposition of a modern water law. The essence of the argument presented by Barbara van Koppen in her central chapter is that effectively all colonial powers, at least back to the Roman Empire, have used water law (presumably, among other laws) to dispossess and control their subjugated conquests. This formula continued throughout the colonization of the southern hemisphere and continues today insofar as modern water laws involve the grant of rights to water to large-scale users. Similar arguments are presented by Rutgerd Boelens et al in their chapter on legal pluralism. They recognize (as do other authors herein) that customary systems can also entrench discriminatory practices and hierarchies, and they make clear that they are identifying problems rather than manifesting solutions. Indeed, even the chapters in this book that specifically focus on gender, such as that by Onyango et al, do not provide solutions to the inherent discrimination in some traditional societies. Nonetheless, the argument presented by van Koppen, Boelens, and others, taken to its logical conclusion, moves rapidly beyond the scope of a text on "water law" to a much broader and more complex social analysis of the distribution of political and economic power. Meantime, Shah suggests that, in the countries he examines, if law reform is socially unacceptable (to those groups currently benefiting from the prior rules), it will simply be ignored.

As a lawyer, this reviewer would be the first to agree that law is not a panacea: law reform must be contextualized and seek to recognize existing social norms, especially regarding resource management, and failure to do so will mean either failure of the reform process or further marginalization of those who are already suffering most from political and global environmental change. However, a good and effective process of law reform should seek to give a voice to, and empower, the landless poor, women, minority ethnic groups, and all those who are most disadvantaged. That disadvantage can be perpetuated by unfair laws, which do not give opportunities to those who need them, but can also

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be perpetuated by entrenched customary systems. Even where those systems have historically managed to protect the resource itself, this functionality may be under threat due to population pressure, changes in land use patterns, pressure from global economic institutions, or global environmental change. If a customary system is no longer protecting the resource or those who traditionally had access to it, it is hard to see how it can be reformed without some external lawmaking force. One particular argument that van Koppen advances, that water permits in developing countries should establish only obligations rather than rights, seems to overlook the very nature of a permit—by its essence it permits or enables an act, albeit hedged with appropriate constraints.

There is much valuable material in this book, and much depth of analysis. However, we are all operating in times of critical global change. Response to that change requires that policy-makers, social analysts, and lawyers work together to find the best solutions for people and planet. There are a number of opportunities identified in this text for further work, which might usefully include more input from lawyers, to find more effective ways of developing legal frameworks, which are likely to be an inevitable part of state development, to better meet the needs of the communities that directly or indirectly depend on the increasingly scarce resource of freshwater.

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