Legal pluralism in South Africa:
What is ‘existing lawful water use’ in the former homelands?

11 November 2005
International Water Management Institute and Ninham Shand, South Africa

Background

In most developing countries, 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 co-existence of formal state laws set out in statute books and customary laws, religious laws, international laws, project laws, etc. In Sub-Saharan Africa, these alternative sources of law often predominate at the local level, and are well recognised in, for example, land tenure. However, they tend to be neglected in current water sector reforms, implemented under the banner of Integrated Water Resources Management (IWRM). This omission has potentially severe consequences for the effectiveness of new water management systems, and for the prosperity of marginalised communities who are often the least well served by formal water laws.

In order to address this issue, DFID is supporting a comparative study, policy dialogue, and training in Tanzania, Zimbabwe, and South Africa: Implications of customary law for implementing IWRM (project number R8323). This project conducts case studies, provides training, and was responsible for co-organising the international workshop on ‘African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa’ 26-28 January 2005 (Project website www.nri.org/waterlaw). As a follow on from this international workshop, this national workshop serves as a synthesis and policy dialogue for how these issues are developing within the South African context.

Workshop Objectives

The objective of the workshop is to identify solutions and, to that end, provide clarity on:

- Key features of the legal legacy of past water use in former white and black areas
- The range of options provided by the National Water Act to redress this gross inequity. This may include comparing potential roles of local government, newly created Water User Associations, Land Committees for the Tenure Reform, or continuation of the state as trustee for all water in former homelands.
- The role of Schedule One/General Authorizations as an option for redress.

The workshop will explore the legacy of past territorial and institutional segregation and the question: ‘what is existing lawful water use in the former homelands?’ This question is important because current measures within the NWA that build upon the past may, unintendedly, reproduce past inequities, rather than redress inequities. For example, very few historically disadvantaged individuals, particularly women, have written proof of past water use. To assist in addressing inequities in water use the protection of existing lawful use, as defined under the NWA, should consider water use under customary laws, in particular in former homeland areas.

The ongoing debates on Schedule One Uses and the role of General Authorisations to support the Water Allocation Reform process have approached some of these issues from another angle. Future recommendations from these debates will concern existing water uses in the former homelands, and are likely to entail ways to redress the inequities of the past. These recommendations will benefit from a better understanding of the legal

1 For a concise overview of the legal aspects, see Hubert Thompson, forthcoming.
legacy and on the screening of all alternative solutions for redress under the National Water Act, and for which international experience could be tapped upon.

**Participants**

The workshop is open to all. Legal and water management experts are explicitly being invited to highlight their views and recommendations.

**Date and timing**

Friday 11 November 2005, from 10 hrs till 15.30 hrs.
A finger lunch will be provided.

**Venue**

International Water Management Institute, ARC Campus (see map)

**Further contacts**

Barbara van Koppen: 082 8286750
Aileen Anderson: 021 481 2481
Road Map to IWMI-South Africa
We are located in the Campus of ARC-Institute for Agricultural Engineering (ARC-ILI)
141 Cresswell Road, Silverton 0127, Pretoria
Tel. (012) 845 9100; Fax: (012) 845 9110; Email: IWMI-Africa@cgiar.org