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 different 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.

Dande dam, Zimbabwe

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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.
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 IWRM principles

This collaborative research project is being promoted in the form of a consortium of researchers based in Tanzania, South Africa and Zimbabwe. The project is aimed at encouraging 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

The research team is currently documenting examples of local water management practices in three southern African countries: Tanzania, South Africa and Zimbabwe. These case studies focus on the complementarities and tensions between statutory (or formal) and customary (or informal) laws in the processes of water resource management. 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 Global Water Partnership, the Comprehensive Assessment Water Management in Agriculture, IFRM, and other partners will bring together African and International experts on law, institutions and local water management, in Johannesburgh, South Africa from 26-28 January 2005. See www.internationalwaterlawnworkshop.org 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 constraints analysis of organisations and individuals involved in water resources management. The course will be widely disseminated and used as the basis for a programme of regionally-focused training courses in the southern African region.

how will 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:

- Implications of formalisation of water rights for different groups of water users, especially potential losers
- Implications of statutory laws and customary laws for different groups of water users
- Implications of customary laws for implementing IWRM principles
- How to scale up successful institutional innovations.

Tanzania case study

Tanzania is at an advanced stage of drafting a new legal framework for water management. The legislation is intended to attain the objectives of the National Water Policy of 2002 and to develop a comprehensive framework for protecting the optimal, sustainable and equitable management and utilisation of water resources. The separate projects of basin management and river basin management will 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 efficiently and effectively 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.

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 management frameworks based on IWRM principles. The case studies focus on the complementaries and tensions between statutory (or formal) and customary (or informal) laws in the processes of water resource development, addressing water management arrangements and Intergrated Water. 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.

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 prescribed, at least in principle, adherence to statutory water rules and practices, and this process was especially severe in South Africa under the apartheid regime. Tanzania was a dry year. Some villagers believe that the Basin Water Office is more concerned with collection of rates than reconciling conflicts over scarce water resources. 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 water rights. There is a wide consensus that blanket formalisation of water rights can increase the vulnerability of projected and existing customary water users. The legislation, however, does not make clear how the recently established Basin Water Boards and (contested) customary tribal authorities. The National Water Act of 1998 potentially reproduces this colonial and post-colonial constraint analysis of organisations and individuals involved in water resources management.

South Africa case study

A good example of a ‘traditional’ irrigation system is the Nyeregete village canal, started in 1904 when a small group of villagers organised themselves to dig a canal to divert water from Nyeregete river to their farms. Although abandoned by the rice cultivators, the water 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 measurement 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 forms and then an annual fee. When the new system of paying for the application forms and then an annual fee. When the new system of water authorisation (including specific instruments such as collection of rates) was imposed, conflicts over water increased, especially in 2003 which was a dry year. Some villagers believe that the Basin Water Office Water Office is more concerned with collection of rates than reconciling conflicts over access to scarce water resources.
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, University of Oxford, 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 on the basis of 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 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 groups 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:

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- 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 training for living customary laws in water management laws. See the project website for further information.

Tanzania case study

Tanzania is at an advanced stage of drafting a new legal framework for water management. The legislation 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. These separate pieces of legislation are expected to improve 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 their Water Offices will manage water resources in the future. They are expected to fit into property regimes and to formulate customary water management arrangements, constitute a vital step in the transformation of the informal economy and redress of prior injustice. They will promote the management of more efficient uses. Others have raised doubts about the viability and the desirability of blanket formalisation of property rights. This research project will examine 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 initiatives:

- implications of formalisation of water rights for different groups of water users, especially potential losers
- constraints and opportunities for 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 recognised, at least in principle, two statutory water rules and procedures, and this process was usually severe in South Africa under the apartheid regime. There still remain a number of problems with respect to formal water rights in South Africa. New requirements of registration for formal water rights and payment for abstraction of water resources typically suit the state and large users, rather than rural small-scale water users. This case study focuses on two traditional irrigation systems in Southern Africa, 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.

The Nyeregete irrigation scheme, Rutifi 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.

The Rutifi Irrigation Scheme is a broad cross-section of African small-scale water users in the former Lebowa and Kwedza-Bulala homelands compared to the former white-dominated areas in the Olifants Basin. The implementation of the Water Act of 1998 in the former underlines the significance of water rights for shaping the historical and contemporary development of the region. In particular, it examines the impacts of water authorisation (including specific instruments such as licensing, Schedule one uses, reserves, generic 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 overriding goal of legislation to address injustices from the past.

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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

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The research team is currently documenting examples of local water management practices 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: Peak Legislative Frameworks for Water Resource Management in Africa: This international workshop, convened together with the Global Water Partnership, the Comprehensive Assessment Water Management in Agriculture, IPRF and other partners will bring together African and international experts in law, institutions and local water management, in Johannesburg, South Africa from 26-28 January 2005. See www.iwr.org/waterlaw/workshop for further details.
- Training workshop in Tanzania: In 2005 a first training course for professionals in southern Africa will focus on providing appropriate guidelines for living customary laws in water management. See the project website for further information.

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Tanzania case study

Tanzania is at an advanced stage of drafting a new legal framework for water management. The legislation 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 use, development and management of water resources, including the systematic approach to increasing 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 River Water Offices will manage water resources 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 is intended to fit its property regimes and to formulate customary water management arrangements, constitute a vital step in the transformation of the informal economy and reduction of poverty. They hope the new framework will encourage more efficient uses. Others have raised doubts about the viability and the desirability of blanket formalisation of property rights. It is clear that the legislation 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 and winners
- Constraints and solutions to scaling up successful institutional innovations
- Constraints and solutions to scaling up successful institutional innovations
- 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 imposed, at least selectively, statutes and African customary water rules and practices, and this process was especially severe in South Africa under the apartheid regime. There will inevitably be a challenge to how these formal rules and practices understand the nature of water resources management, and the impacts of formalisation.

New requirements of registration for formal water rights and payment for abstraction of water resources typically suit the state and larger users, rather than rural small-scale water users. The South Africa case study in South Africa is based on the study of small-scale water users in the former Lebowa and KwaNdbele homelands, as well as in the white areas of the country is compared with implementation in the former homelands by the former white-dominated areas in the Olifants Basin. The implementation of the Water Act of 1956 in the former Lebowa and KwaNdbele homelands (contested) customary tribal authorities. The National Water Act of 1998 potentially reproduces this situation, because it also gives the state the right to manage water resources as a basis for licensing. The study explores whether this provision and other parts of the Act are contributing to the fact that small-scale users are facing difficulties in accessing water resources.

In particular, it examines the impacts of water authorisation (including specific instruments such as licensing, scheduling, charging and fines) on the development of small-scale water users and the constraints and solutions to scaling up successful institutional innovations.

The case study is part of a collection of case studies in Africa and southern Africa and will be released in 2005. For further details, see the project website www.nri.org/waterlaw/workshop.
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, wildlife, 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 different 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.

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.

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**South Africa case study**

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**Zimbabwe case study**

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**project website**

[www.nri.org/waterlaw](http://www.nri.org/waterlaw)

This research initiative is supported by the UK Department for International Development (Project R8323 – ‘Implications of customary laws for implementing Integrated Water Resources Management’) and the Water Research Fund for Southern Africa.

Photo credits: John Butterworth, M.Miskin (IDRC), R.Grossman (IFAD), K.Mokgope (AWARD), and FAO

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**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.

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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 different 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.

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.

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