

Reforming Water Rights: Dynamics, Discourses and Risks

From STEPS Working Paper 21:
The Dynamics and Discourses of
Water Allocation Reform in South Africa

STEPS briefing 21

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This briefing was written by Synne Movik and edited by Julia Day.

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Contact us

STEPS Centre, Institute of Development Studies, University of Sussex,
Brighton BN1 9RE, UK
Tel: +44 (0)1273 915673
Email: steps-centre@ids.ac.uk
Web: www.steps-centre.org

The increasing recognition of water as a vital substance for which demand is spiralling has resulted in scarcity scenarios and tales of a 'looming water crisis' becoming staple fare for newspaper headlines and international conferences alike.

Widespread perceptions of water scarcity have prompted many countries to reform their water legislation and systems of water use rights. Such reforms are influenced by the dominant discourse of Integrated Water Resources Management (IWRM), as well as by the prevailing political arguments. IWRM



Growing vegetables near the Driekoppies dam, Lomati river / Synne Movik

promotes the devolution of decision-making power to the lowest possible level (the principle of subsidiarity). It argues the case for market-oriented solutions to allocating water resources, whilst simultaneously advocating holistic and integrated management, which necessitates greater bureaucracy and centralisation.

As a consequence, water resources have increasingly been brought under the influence of the State through the imposition of administrative water use rights, variously called licences, grants, permits or concessions. The rationale for instituting such formal administrative rights is often to facilitate more efficient allocation, though nobler motives, such as ensuring a more equal distribution of resources, may act as the guiding principle. But how do such reform efforts play out in practice? How are use rights and allocation mechanisms conceptualised at policy level? How do different understandings of sustainability manifest themselves? And what role is played by science and technology in facilitating reform?

The trend of institutionalising administrative use rights, such as licences, signals a shift away from conventional legal doctrines - like riparianism or prior appropriation - towards greater State authority over water resources. This raises new challenges in terms of how use rights are conceptualised and allocated. Policies are not value-neutral. Water policy reform is not simply a tabulated, neutralised exercise of applying certain given principles, but a protracted struggle for meaning - policy discourse itself actively shapes use rights. Vesting the State with more authority implies that it has greater discretionary powers in terms of determining who should have access to water resources, and for what reasons. This gives rise to particular narratives, or 'allocation discourses' around merit, equity and sustainability that profoundly affect how use rights are defined and allocated.

Even if seemingly objective criteria are deployed to aid decision-making, these are liable to be deeply affected by the prevailing political conjunctures. Over time, this influence tends to become camouflaged in technical or legal language that mask inherently political decisions as purely technical or bureaucratic ones. Awareness of how policy processes can contribute to obscuring power relationships in narratives about rights and rights holders is therefore essential.

“Finding ways to deal with uncertainty would provide a more fruitful pathway to managing water resources”

Fashioning a system of administrative use rights requires greater accuracy in determining the nature and content of such rights. The deployment of sophisticated technologies, such as remote sensing techniques and models, is required. In the case of many developing countries, this may be an almost insurmountable task and a questionable use of government resources. Even in developed country settings, the process of attempting to accurately quantify the portion of a resource to which a user holds rights is fraught with problems. The tendency towards rigid determination of use rights is undermined by the presence of uncertainty, further rendering the task of backing legal claims with reference to scientific quantification moot. The difficulties in terms of quantifying and legally backing up State-authorized use rights, then, seriously call their merit into question. Finding ways to deal with uncertainty would likely provide a more fruitful pathway to managing water resources than sticking with the current pattern of attempting accurate quantifications.

These observations open up broader questions about State-citizen relations. Implementing IWRM and institutionalising use rights ultimately concerns issues of State



Maguga/Lake Matsamo dam, Swaziland, controlling outflows in the Komati river system / Werner Comrie

“Attempts to implement permit or licensing systems need to be explicit about the political nature of reform efforts”

versus citizen authority over resources, and how that authority is negotiated. Attempts to implement permit or licensing systems need to be explicit about the political nature of reform efforts, rather than treat them as purely technical or management exercises. There is a need to raise awareness of the ways in which discourses arise; how language at the policy level contributes to fashioning property

relations; and to make sure the inherently political nature of defining and allocating use rights does not become obscured.

Case 1: South Africa passed the National Water Act in 1998, which had as its overarching objective the redress of past inequities in water access. However, this aim was qualified by an emerging narrative that served to entrench the use rights of existing users. This, combined with the difficulty in accurately determining such uses, narrowed down the room for manoeuvre in terms of reform.