International Journal of Agricultural Economics and Management.
ISSN 2277-3215 Volume 6, Number 1 (2016), pp. 1-4

http://www.ripublication.com

Recognizing Water Rights

Dr. Swaminathan Narasimhan

Asst. Professor, Dept. of Agrl. Economics
Pandit Jawaharlal Nehru College of Agriculture and Research Institute
Karaikal 609603, India.
E. Mail:swaminathan2105@gmail. com

ABSTRACT

The time when water could be freely used without being subject to legal rights and obligations is past. Because of population growth, industrial and agricultural development, and new water technologies, water has become increasingly scarce. As competition has become more acute, the tendency to appropriate water and exclude others from using it has increased. This has created pressures on the regulation and appropriation of water resources and rights for different purpose, such as drinking, agriculture, industry, and hydropower. It has also made the need for new regulation more urgent. Moreover, technical measures-such as building an irrigation system, dam, or river lining-may affect existing rights to water and create new rights without explicit Iegislation. In the near future, competition over water will only increase and the need for regulation will be more acute than ever.

Keywords: water rights, water resource management, property rights, efficiency.

INTRODUCTION

Control over and use of water has been regulated in diverse ways that involve bundles of rights. These bundles assign legitimate authority and the obligations to control water and determine the priority of water use. They lay down who has the right to appropriate water, whether or not water can be transferred, and the relation between water rights and land rights. Such bundles of rights range from the most exclusive forms of individual ownership, to communal lights at the local-community level, to public regulation at the national or state level, to agreements at the international level, or a combination of these. Usually, any set of regulations regarding a particular water resource involves both private and public rights and obligations. The specific character of water resources requires forms of organization that often transcend or cut

across the ordinary administrative boundaries of local community, district, and state. A command area of an irrigation system may lie in more than one village a river basin may run through several countries.

MATERIALS AND METHODS

STATE AND CUSTOMARY LAW

In Many countries, the state claims sovereignty and ownership over all its water resources. However, especially in developing countries. state law is not the only source of regulation. Local regulations or "customary" law and religious regulations often assign rights and obligations that differ from and sometimes contradict stare law. By definition, customary legal orders are based on different notions of who may control, regulate, and have access to water. The state does not always recognize non-state legal orders and their ideas about water rights as valid. Nevertheless. They continue to exist and exert their influence on water-resource management practices.

Recognition of customary and religious law has been a political issue since colonial times and recently has acquired new impetus with debates about efficient and equitable use of water. The debates lead to such questions as:

- Are some types of rights more conducive to efficient or sustainable use of water than others?
- What are the criteria for equitable distribution?
- Are state regulations more efficient and equitable than customary legal forms?

These issues have been subject to misunderstandings that result from untenable assumptions concerning the character and function of the various kinds of water rights. In dealing with these questions, policy must not only devise new sets of water rights and obligations based on realistic assumptions but also accommodate complex existing legal constellations in the filed of water resources management.

RESULTS AND DISCUSSION

In assessing the nature and function of customary legal rights, policymakers often make three mistakes. First, many assume that all norms and regulations that do not emanate from state institutions are customary and long established. In fact, many rules and regulations emerge locally as new responses to outside intervention by the state or other institutions. Second, policymakers assume that everybody acts according to these rules because they are deeply ingrained in local society. However. human behavior never fully corresponds to norms and regulations. Every property regime allows for variations in behavior, and each local community adapts its legal system and the structure of rights to changing social and economic conditions. Third, policymakers assume that all customary property is communal property. In fact, no property regime is fully communal: it is always a combination of communal and individual elements, and of public and private elements.

The focus of interest shifted from economic development to sustainable development in the late 1960s in the debate about appropriate management of "the commons. "

Communal property rights were blamed at that time for unsustainable resource use. More recently, the argument has been reversing. Communities, Community based rights, and communities' customary law are now being promoted as inherently conducive to sustainable resource use. The arguments are particularly powerful in relation to natural resources, such as water, forests, fisheries, and natural reserves. However, here again experience has shown that overexploitation and resource degradation can occur under state, individual, or communal ownership. The extent to which resources are managed sustainably depends on the ways in which wealth is distributed and on whether the users have alternative economic possibilities.

Customary law is also often considered to be more equitable than other legal regimes. However, there is little consensus on how equity is defined. Customary legal systems may show considerable inequalities based on class, gender, age and caste. One important reason is the unequal distribution of land. Rights to water are usually closely connected to land rights. Springs are often owned by whoever owns the land on which the spring originates. People living along a river are entitled to draw water from the river. In cases of irrigation, the rights to irrigation water are usually distributed among those having land in the command area; or they belong to those who participate in building the system, again usually people that own the land to be irrigated. Where land is unequally distributed, water is also usually unequally distributed. Poor people tend to have land at a disadvantaged position within irrigation systems or even outside the command area of irrigation systems.

Water is also distributed unequally by gender. For their water rights, women often depend on men: fathers or brothers while unmarried, husbands after marriage. Thus, women are excluded from the right to make decisions in public arenas. Interests that tend to be more specific to women, such as accessibility to household and drinking water. are often disregarded. This is not so much a result of a conscious exclusion from water rights as such, but of more general gender differences that do not allow women to participate in the public domain, or that do not allow women to inherit or acquire property independently.

State water regulations may also show inequalities, Present state policies to create water markets, meant to increase efficiency, will certainly increase inequality unless very serious measures are taken to ensure that the poor have access to this market.

POLICY IMPLICATIONS

There may be very good reasons for wanting to change customary water rights, for example, to bring about more efficiency, sustainability, and gender equality, or to alleviate poverty. In addition, major changes in the scope of water redistribution cannot be achieved at the relatively small political and geographical scale on which customary legal systems operate. Change should build upon a realistic and careful assessment of existing rights to water and other natural resources in all their complexity. Because rights to water are intimately linked to a wider set of social relationships, successful change requires a full analysis of existing inequalities within a society.

Any policy that simply ignores existing rights-whether defined in state law, in local legal systems, or in religious law-is bound to fail and to create more. rather than less, insecure rights. This is potentially harmful for the people that policymakers intend to protect. Policies based on false assumptions about the social working of law inevitably lead to disappointment. Replacing customary water rights with a new property regime designed from scratch is bound to meet with strong opposition from those threatened with loss of their existing rights. Changing water rights alone may only marginally redress inequity in access to water. Making changes in inheritance regulations or land redistribution may also be required.

CONCLUSION

Devising a new set of categories of rights to water will not suffice unless attention is also given to the actual distribution of water through these rights. This involves deciding on the distribution of available water resources among different uses and setting priorities. It also involves distribution decisions between different segments of the population within sectoral uses, and the legally valid means through which such redistribution is to be effected.

The legal complexity of this issue and its potential for social and political tension also demand a policy style that is open to hearing and negotiating with those holding rights to water under multiple legal orders. Perfect legal regulation is likely to be an illusion, and compromises will have to be made.

Finally, local and customary rights vary considerably in content and function from region to region. Policymakers are well advised not to cover them under uniform legislation that does not take these variations into account. New legislation should lay down a general framework and leave room for the elaboration of local variations in specific cultural, legal, and hydrological conditions.

REFERENCES

(1) Boelens, R. and Davis, G., 1998, Searching for Equity: Conceptions of Justice and Equity in Peasant lrrigation, Assen: Van Gorcum.

(2) Bruns, B. R.. and Meinzen-Dick, R. S., 2000, Negotiating Water Rights, Vistaar Publications, New Delhi.

(3) Pradhan, R., F. von Benda-Beckmann, K. von Benda-Beckmann, H. J. L., 1997. Water Rights, Conflict, and Policy, IIMI, Colombo.