

XVI IWRA WORLD WATER CONGRESS

“Bridging science and policy”

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THE FUTURE OF DOMESTIC WATER LAW

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SCOPE AND STRUCTURE OF PRESENTATION

- SALIENT FEATURES AND TRENDS IN COMPARATIVE DOMESTIC WATER LEGISLATION (REVISITED)
- AGENDA FOR THE FUTURE

WATER AS A PUBLIC GOOD

- ATTRACTION OF WATER RESOURCES IN THE PUBLIC DOMAIN/TRUST OF THE STATE CONFIRMED
- POCKETS PERSIST WHERE GROUNDWATER REGARDED AS PRIVATE (notably Texas, India)
- WATER "AN ASSET SHARED BY ALL HUMAN BEINGS" (Japan)

GOVERNMENT'S ALLOCATIVE AUTHORITY RESTRAINED

GOVERNMENT'S ALLOCATIVE DISCRETION QUALIFIED BY -

- EIA requirements of water projects
- water resources plans and relevant determinations
- minimum ecological flow requirements of watercourses
- the "reserve" of water volumes or flows for basic human needs and the environment

HUMAN RIGHT TO WATER (AT SOURCE)

ACCESS TO WATER AT SOURCE CAST
AS A HUMAN RIGHT MATTER

OPERATIONALIZATION LAGS BEHIND:

- obligation of government to “guarantee” access (Peru)
- right actionable within set quantitative boundaries & subject to conditionalities (Ecuador)

ALLOCATIVE EFFICIENCY

EFFICIENCY OF ALLOCATION (AND RE-ALLOCATION) PURSUED BY

- controlled trading of abstraction (and wastewater discharge) rights – however trading also impeded (Zambia) or banned (Ecuador, Peru, Namibia)
- charging for abstraction and for wastewater disposal
- economic and other rewards to efficient user (Peru)
- rates of charges based on efficiency of use (Ecuador)

“GREENING” OF WATER LAWS

THE PROFILE OF THE ENVIRONMENT IN THE WATER ALLOCATION PROCESS IS ON THE RISE, AS REFLECTED IN –

- EIA of proposed water abstractions/discharges
- minimum ecological flow of watercourses
- priority ranking of ecological allocations
- reserve for ecosystem conservation

“GREENING” OF WATER LAWS

- zoning & curtailment of abstraction rights for the protection of water-dependent ecosystems & habitats
- environmental “water entitlements” held by Environmental Water Holder (Australia)
- capping groundwater withdrawals for ecosystem-support purposes
- personification of Mother Earth (Ecuador) or watercourses (New Zealand, India) as holders of water conservation rights

BRIDGING THE LAND/WATER DIVIDE

THE GAP TRADITIONALLY SEPARATING WATER AND LAND USE REGULATION IS NARROWING AT SELECTED INTERACTION POINTS –

- flood risk management: linking water development regulation and town & country planning regulation
- “diffuse”-source pollution: zoning and regulation of land uses

BRIDGING THE LAND/WATER DIVIDE

- influence of human activities – on and under ground – on natural groundwater recharge & discharge processes:
 - regulation of paddy cultivation to conserve groundwater (Indian States)
 - linking/coordinating water resources planning with town & country planning
 - zoning of aquifers at risk from land-based human activities

ACCOUNTING FOR CUSTOMARY WATER RIGHTS & PRACTICES

GROWING ATTENTION TO CUSTOMARY WATER RIGHTS & PRACTICES AND ARTICULATION OF STATUTORY RESPONSES

- blanket recognition (Bangladesh, Tanzania)
- priority status, inalienability, immunity to forfeiture, obligation of State not to affect native communities' rights (Peru)
- must be accounted for in the process of granting formal water rights (Bhutan, Namibia, Zambia, Ecuador)

FACILITATING ACCESS TO JUSTICE

RECOURSE TO ALTERNATIVE
DISPUTE RESOLUTION
MECHANISMS ENCOURAGED

(Bhutan, Ecuador, Namibia,
Zambia)

POINTERS FOR THE FUTURE (OF WATER LAW REFORM)

- RECONCILING SECURITY OF WATER RIGHTS TENURE WITH RISK AND UNCERTAINTY
- PURSUING EFFICIENCY WITHOUT NEGLECTING EQUITY & THE ENVIRONMENT
- RECONCILING THE ENVIRONMENT-SUPPORT AND THE DEVELOPMENT-SUPPORT FUNCTIONS OF WATER RESOURCES
- ENSURING ACCESS TO WATER (AT SOURCE) AS A MATTER OF (HUMAN) RIGHT

POINTERS FOR THE FUTURE (OF WATER LAW REFORM)

- RECOUPING THE CONNECTION BETWEEN WATER RESOURCES REGULATION & ADMINISTRATION AND LAND USE REGULATION & ADMINISTRATION
- DE-FUSING THE POTENTIAL FOR COLLISION & CONFLICT BETWEEN CUSTOMARY AND STATUTORY (FORMAL) WATER RIGHTS
- FACILITATING ACCESS TO JUSTICE IN WATER DISPUTES THROUGH ADR

THANK YOU!

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