



Water law reform to improve water security for vulnerable people in Africa: A hybrid water law



Story of change: Key findings & emerging impacts

Summary

- Permit systems used for water authorisation in many African countries were introduced in the colonial era to protect water entitlements of settlers, disregarding customary water tenure and local needs
- Permit systems require users of water above a defined threshold to apply for permits offering formal legal water rights. Households that use water below the threshold are disadvantaged because without a permit their water rights have weaker legal status. Meanwhile, many small-scale water users that should have a permit do not, risking criminal prosecution.
- REACH supported a science-practitioner partnership to assess water permit systems in Malawi, Kenya, South Africa, Uganda, and Zimbabwe.
- Recommendations from the partnership include full review and reform of water resource management systems to reduce inefficiencies in government billing systems and put customary law on an equal footing with formal permit systems. Focusing on the regulation of the relatively few large-scale, high-impact water users and ceasing to bill very small-scale water users could improve the cost/revenue ratio of permit systems.
- The findings have been presented at key international forums and gained significant media attention, influencing policy discussions on water governance reform to better support inclusive rural development and farmer-led irrigation

Photo by FAO Matthias Mugisha



Introduction

In many parts of Africa, small-scale water users' livelihoods are formally constrained as a result of the existing permit systems whereby everyone abstracting and using water above certain thresholds involving domestic or micro-scale water use, is obliged to apply for a permit. REACH funded research conducted in Kenya, Malawi, South Africa, Uganda and South Africa by Pegasys Institute (PI) and the International Water Management Institute (IWMI). A science-practitioner partnership consisting of high-level decision-makers in charge of implementing water law in Malawi, Kenya, South Africa, Uganda, and Zimbabwe, as well as senior researchers, identified two key challenges of the current water rights system:

Colonial legacy of permit systems – The permit systems used for water authorisation in many African countries are of colonial origin and are not appropriate in the African context. They were introduced to protect the water entitlements of the smaller group of settlers, overriding African customary water tenure and local needs, especially for the poor and most vulnerable. After independence, the state became the public trustee, but the legal tools were not effectively adjusted to the local context, and existing and new users above a defined threshold were suddenly required to apply for a permit. The systems are administratively burdensome, costly and generally the state lacks the capacity to effectively manage them. Although micro water users are exempted from having to apply for a permit, the unintended effect has been to leave the vast majority of small scale farmers and livestock keepers disadvantaged because without a permit their water rights have weaker legal status. Customary water tenure remained ignored or threatened.

Inefficient water resource management billing systems – The second issue is the inefficiency of the billing systems for the newly introduced water resource management fees that permit holders had to pay. Initial research indicates that the State is generating little or no revenue through billing small scale water uses and, indeed, may be losing money in the process, as the collection costs outweigh the small amounts paid by small scale water users. This undermines users' contribution to the financing of governments and catchment management agencies to do their job.

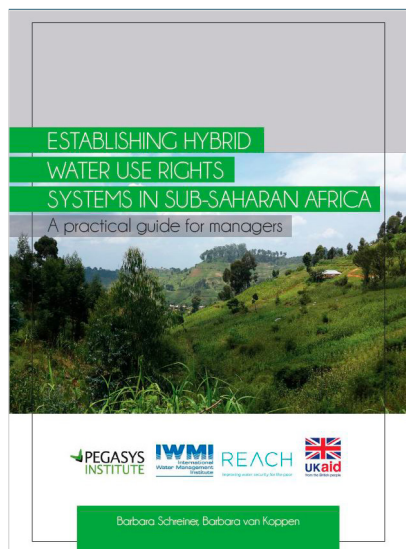
Key findings

In the five countries studied, there are an estimated total of 959,775 formally unlawful users who ought to have a water permit and over 14 million households using water below the threshold so exempted and therefore marginalized.

To improve water security for these small-scale irrigators and pastoralists, there is a need to develop more appropriate and implementable water rights systems in Africa. A "hybrid" approach is recommended whereby the permitting would focus sharply on regulation of the relatively few large-scale, high-impact water users, while local customary water law is put on an equal legal footing with formal permit systems. Various tools are possible within such a system, such as collective permits, general authorisations, or prioritisation of small-scale water uses for livelihoods and gender and racial equity.

A change in approach in the billing system in all five countries, moving away from billing very small-scale users, could significantly improve the cost/revenue ratio. It is strongly recommended that national water resources authorities conduct an evaluation of the actual costs and revenue relating to small-scale water users, and do not bill water users that fall below a certain volume of water use. This will see benefits for both the state and small-scale users. Administrative requirements would be more proportionate to the volumes used. Kenya adopted this, allowing for more time and finance to be dedicated to other WRM tasks.

Establishing hybrid water use rights systems in sub-Saharan Africa: A practical guide for managers



This guideline sets out practical options for water resources managers for amending existing water use rights systems to better support inclusive rural development and farmer-led irrigation while also ensuring the sustainable and equitable use of limited water resources. It challenges the idea that water permit systems are the only tool for the regulation and control of water use and poses an alternative, hybrid approach that can be adopted and adapted to achieve improved pro-poor and developmental outcomes.

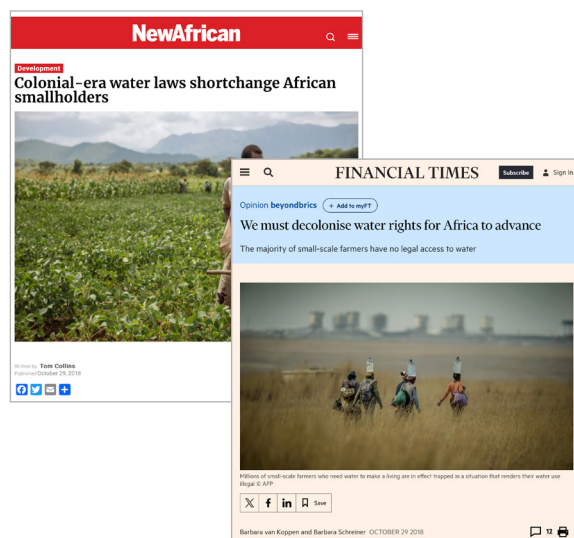
Pathway to impact

- 'Establishing Hybrid Water Use Rights Systems in sub-Saharan Africa: A Practical Guide for Managers' was published jointly by the Pegasys Institute and IWMI.
- Research findings were presented at the 7th Africa Water Week, Libreville, Gabon at the session on "A hybrid approach to water legislation" with Callist Tindimugaya, Commissioner Water Resources Planning and Regulation-Ministry of Water and Environment, Uganda, and Eng. Boniface Mwaniki, Water Resources Authority, Kenya

- Presentations at national and international events (such as Stockholm Water Week, FAO's Water Tenure Mondays, and WaterNet symposium), publications, and further research, also elsewhere in Africa, have continued ever since.

Media attention

This research received significant attention in global media including coverage in The Telegraph, Financial Times, New African and BBC Africa.



Research outputs

Schreiner, B. and van Koppen, B., 2024. Water tenure: integrity at the interface between statutory and customary law in Africa. Chapter 12 in: Hodgson, S., Gillet, V., Espinosa Flor, S., Ramirez Fionda, S., Kiersch, B., Vallée, D., eds. 2024. Water tenure perspectives – Proceedings of the Water Tenure Mondays webinar series. Rome, FAO. doi: [10.4060/cd2941en](https://doi.org/10.4060/cd2941en)

Mukuyu, P., van Koppen, B. and Jacobs-Mata, I. 2022. [Operationalising hybrid water law for historical justice](#). WRC Report No. 3040/1/22. Report to the Water Research Commission by the International Water Management Institute. Pretoria, Water Research Commission.

Schreiner, B. and van Koppen, B., 2020. Hybrid water rights systems for pro-poor water governance in Africa. *Water*, 12(1), 155. doi: [10.3390/w12010155](https://doi.org/10.3390/w12010155)

van Koppen, B. and Schreiner, B. 2019. A hybrid approach to statutory water law to support smallholder farmer-led irrigation development (FLID) in Sub-Saharan Africa. *Water Alternatives*, 12(1): 146-155.

Van Koppen, B., Schreiner, B. and Sithole, P. 2019. Decolonizing peasants' marginalization in African water law. *Journal of Water Law*, 26: 51-61.

Schreiner, B. and van Koppen, B., 2018. Establishing hybrid water use rights systems in Sub-Saharan Africa. Pretoria, South Africa: Pegasys Institute; Pretoria, South Africa: International Water Management Institute (IWMI). 48p. Establishing hybrid water use rights systems in sub-Saharan Africa: a practical guide for managers.

van Koppen, B. and Schreiner, B. 2018. A hybrid approach to decolonize formal water law in Africa. Colombo, Sri Lanka: International Water Management Institute (IWMI). 45p. (IWMI Research Report 173). doi: [10.5337/2018.219](https://doi.org/10.5337/2018.219)

Schreiner B., Maharaj D., Byakika S., Kiggundu, Van Koppen B., et al. Cost efficiency of billing for small scale uses in Africa in the context of a hybrid Water Rights System. In press.

Presentations

Hybrid water law in Africa: the customary commons in the decolonization of water permit systems.

Key contacts



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Story of change themes



Groundwater



Land



Coasts



Gender



Schools



Services



Health



Climate



Cities



Basins

REACH is a global research programme to improve water security for the poor by delivering world-class science that transforms policy and practice. The REACH programme runs from 2015–2024 and is led by Oxford University with international consortium of partners and funded with UK Aid from the UK Government's Foreign, Commonwealth & Development Office. Project code 201880.