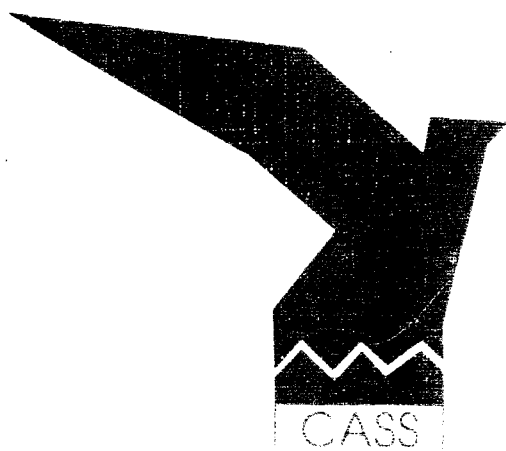


Centre for

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TOWARDS REFORMING

THE INSTITUTIONAL AND LEGAL BASIS OF

THE WATER SECTOR IN ZIMBABWE :

***Current Weaknesses, Recent
Initiatives and Their Operational Problems***

Edited By

Calvin Nhira¹

with Bill Derman²

August 1997

University of Zimbabwe

CENTRE FOR APPLIED SOCIAL SCIENCES *

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INTRODUCTION

Calvin Nhira

This compilation brings together the papers which were presented at a one-day workshop entitled "Sharing the Waters" held on June 3, 1997 and hosted by the Centre for Applied Social Sciences, University of Zimbabwe. The workshop sought to bring together researchers, policy-makers and policy implementers to :

- review past research efforts in the field of water management;
- determine priority issues for research; and
- explore ways in which researchers and policy makers / implementers could collaborate.

The papers contained in this volume speak to the first of the workshop's objectives. They reflect concerns with the need for reform of the legal and institutional basis of the water sector and the processes entailed in bringing the new water policy and water resources management strategy into operation. The Ministry of Lands and Water Resources (now the Ministry of Rural Resources and Water Development) has been engaged in an ambitious process to elaborate the principles to be codified in a new piece of legislation which will govern allocation, management and use of water resources in the country; a new institutional framework for meeting the objectives of this new water resources management strategy. The primary reasons behind the need for reform include :

- to achieve greater equity in water allocation across groups of water users;
- to remove inefficiencies in water use;
- to ensure representation of all water users; and
- to remove administrative inefficiencies in water allocation.
- to more effectively incorporate the environment in catchment management

Government has already established a unit within the DWR to spearhead changes to the legislation and to implement the new policy. Two pilot catchments have been identified in which the proposed reforms will be tried (the Mazowe and the Mupfure). In addition a set of principles which will lie behind the new Water Act and guide its implementation have been published. It may be useful to state these principles here:

- all surface and underground water will belong to the state;
- all Zimbabweans must have access to water for primary use;
- all water must be beneficially used;
- water should be treated as an economic good;
- water tariffs will need to take cognisance of those unable to pay the full price;
- water rights need to be replaced by water permits which will not be issued in perpetuity;
- water management should involve all stakeholders at the lowest possible level; and

- the environment is to be considered as a consumer in its own right (Supplement to the "Business Herald", October 24, 1996).³

All the papers in this volume recognise the need for reform and raise a myriad of problems that need to be confronted in doing so. Alternative perspectives to the ones that have been circulating are articulated which are grounded in local-level realities and empirical studies.

Most of the empirical material for the papers comes from case studies in catchments outside of the current pilot areas. These case studies were initially focusing on small-holder irrigation (see Manzungu and van der Zaag, 1996) but later broadened the unit of analysis to the catchment (see Manzungu; Bolding; van der Zaag; and Bolding this volume). Derman's paper examines downstream issues in the Manyame catchment. Only one paper deals with one of the pilot catchments, the Mazowe (see Dougherty, this volume).

The papers have been arranged in a manner as to build upon one another. The first article in this volume returns to basics and asks whether the current reforms in the water sector have got their priorities right. Kambudzi points to the potential for increasing conflicts over water as it becomes scarcer. He points to the need to develop water resources and argues that a "water democracy" is possible only when there is enough water to share. He also argues for the need to link water and land reforms in terms of allocation and tenure.

The next three papers draw on case study material in order to explore current legislative and organisational weaknesses. They outline policy options that merit consideration in reforming the water sector. The papers by Manzungu and Bolding focus on concrete problems that need to be addressed in the process of an emergent water management system. Substantively, these two papers focus on conflict management and catchment definition. Conflict management in one small catchment interestingly illustrates the potentials for both conflict and co-operation. The subsequent chapter points to operational problems that need consideration in organising catchment-wide management structures. The next article briefly summarises the experiences and organisation of the Mazoe Catchment Pilot Project. This is of particular significance since this is potentially one model for Zimbabwe's water future. The last paper draws on Zimbabwean and international experiences in an attempt to highlight in a more comprehensive way the reforms that are needed.

In his examination of the Nyanyadzi, Bolding uses a case study characterised by an indigenous irrigation tradition to show the weaknesses of both the current legal framework and the water administration system. The context shows that although indigenous furrows were considered illegal, they nonetheless continued to increase. These irrigators are now demanding a greater share of water. There is an absence of a responsible body for catchment water management and an appropriate regulatory framework. The current legal framework is considered illegitimate. State ownership of water is being challenged. Nevertheless, a riparian perspective to water rights is accepted by the users. Bolding argues for the need to take account of variations in water flow and to develop transparent monitoring infrastructure.

Similarly, van der Zaag uses a case study of a small catchment to show the need for reform. He argues that water rights need to be based on proportions of a river's flow

rather than rights being based on absolute volumes. A system based on proportions of a river's flow can either rotate the total flow in turns over time or split the total flow into parts by means of weirs equipped with notches which correspond with the proportion of the flow that various users are entitled to. van der Zaag argues that such a sharing system would correspond to what communal farmers consider to be fair and just. He then goes on to deal with the vexed question of transfer of water rights to the historically disadvantaged. Here, he offers a "water balance" model using proportions as one criterion which is pragmatic. Other criteria are to base redress on subsidies given to commercial farmers in the past for storage facilities, and correcting the judicial rulings of the past that conflicted with the letter and spirit of the Water Act.

Derman raises the issue which bedevils all water management systems, how to have upstream users incorporate the interests of downstream users in their water use and planning. In this case, Zambezi Valley residents no longer receive sufficient water from the Manyame River, during most rainy seasons, to flood their riverine fields and provide essential moisture. In addition, many of the valleys' deep pools dried up during the 1990s with the exception of the floods of 1997. By most accounts, impounding of water in the commercial farms has interrupted its flow into the valley. Derman asks how in such an important catchment as the Manyame will valley farmers interests and the environment be taken into account?

Manzungu focuses on conflict management in water allocation and the problems experienced in the application of current legislation to illuminate what he suggests are needed changes. He points to problems experienced with implementing the priority system. This system, he argues, is a remote, centralised, costly, complex, and alien conflict resolution structure. Moreover the rigidity in legislation does not permit flexible and user-friendly allocation mechanisms. He points to the need for conflict management to be able to deal, most importantly, with situations of scarcity and to reflect the circumstances on the ground. He concluded that farmers in his study placed securing a livelihood first, not concerning themselves with legalistic arguments over water. These farmers deployed their own traditions in contests over prioritisation. In this context arriving at a fair, just and equitable scenario demands greater specification of procedures, greater attention to choice of representatives and democratic practice, and ensuring that procedures are familiar to communities of small farmers.

The next article by Bolding deals with operational problems that have been experienced in organising catchment authorities. The article points to pitfalls that lie ahead particularly for the two pilot catchments which will attempt to implement the new frameworks. These matters need urgent attention and can be grouped around: 1) criteria for setting boundaries, 2) entitlements and 3) representation. Bolding argues that criteria for setting boundaries for a catchment and its sub-units need to be carefully thought through since hydrological units do not equal social units. The criteria that can be used can be multiple such as number of inhabitants, administrative units, available flow, distinct features in the landscape and socially cohesive communities. Any choice among these criteria has to be catchment specific. With regard to entitlements, Bolding argues for a riparian conception of rights which takes account of historically developed arrangements between users. Care needs to be taken to recognise women as important water users. This recognition should be extended into the arena of representation and decision-making. Representation should be expanded to include those who use ground water. Care should also be taken to create win-win situations with regard to upstream and downstream users.

The next article by Dougherty traces the post-independence history of attempts to resolve problems of water scarcity and conflict in the Mazowe catchment starting with the creation of the Mazowe River Board in 1985 which was intended to increase investment in water development. The Mazowe initiative has now been incorporated into the government-initiated reform exercise as one of two pilot catchments and was expanded to include the whole of the Mazowe catchment. This initiative is now attempting to implement the principles to be enshrined in the new legislation. It is noted that diverse interests in terms of land and water uses have been brought together in the formation of new structures and sub-structures to manage and allocate water in the catchment. The criteria used to demarcate boundaries between sub-structures (i.e. sub-catchment and water user boards) were: potential for good communication, community needs and community clustering around watersheds. Current concerns include how institutional evolution can be managed to foster co-operation, how Water User Boards can be made to support environmental management and how transparency can be fostered. In relation to the latter, stakeholders appear anxious to ensure that levies collected in the catchment benefit water users within the catchment.⁴ Stakeholders are also anxious to control and manage change within the catchment without undue interference from outside.

The concluding paper by Bolding, Manzungu and van der Zaag brings together insights from their field research which could inform water reform. They begin with observations on the properties of water that have relevance for the reforms *viz.*:

- variability in discharges hence the need for rights to be defined in proportional rather than absolute volumes (see van der Zaag, this volume);
- the fugitive nature of water hence the need to capture it which leads to a complex web of relationships around the infrastructure. Rights, entitlements and duties therefore need to be clearly defined; and
- water can take a number of forms hence social arrangements need to be reliable.

They then go on to describe the ownership and user rights under the current legislation and the international experience with regard to orchestrating reforms. The review leads to a number of conclusions:

- the need to discard the priority rights system;
- the need for rights to be based on proportions;
- the need for simple technology to measure water flow which can be read by ordinary villagers thus ensuring transparency (see Bolding, this volume); and
- the need to discard attaching rights to land but instead to offer shares in water to individuals and corporate bodies.⁵ They argue that some limited trading of the shares should be permitted.

They then turn to the question of equity and redress of historical imbalances in access to water. Here, echoing van der Zaag (this volume), they offer criteria for redress in terms of colonial law and according to post-independence ideas of justice. In terms of colonial law they propose three criteria:

⁴ This position is contrary to that suggested by Zimconsult (1996) where a centrally administered fund is suggested.

⁵ Note that this position is contrary to that advocated by Bolding (this volume) who argues that the riparian principle is accepted by small farmers

- **return rights to first users if there is historical and continuing evidence of use;**
- **the use of the clause “allow reasonable flow to downstream users” in current legislation; and**
- **re-defining the relative priorities of rights according to the letter and spirit of the colonial laws.**

In terms of post-independence ideas of justice they propose:

- **the use of the doctrine of prescription⁶ to legitimise current users' rights; and**
- **surrender by commercial farmers of storage rights equal to the percentage of subsidies they received for storage capacity to the disadvantaged.**

Bolding, Manzungu and van der Zaag endorse the suggestion made by Zimconsult (1996) for a levy on all water users for development purposes and suggest that it should go along with a limited market in water rights. They also endorse the need for a correct pricing regime for water (Muir-Leresche, 1996) but add that there is need for a system of graduated penalties and inducements for bad/good conservation practices.

Running through all the papers in this volume is the need to move away from a rigid and centralised government water allocation and control regime to one where users exercise greater control over water use and management. In this sense the papers in this volume endorse the general direction being taken under the current reforms. The papers also argue for a practical approach to reform which is grounded in catchment-specific (local) realities. Within this scenario questions of efficiency, equity, representation, transparency and legitimacy come to the fore. These are the questions that will have to be addressed to the satisfaction of the diverse range of stakeholders and water users in the implementation of the new water policy.

⁶ The doctrine of prescription is found in American law where a second party acquires the rights of the first party through continuous use which is peaceful, open and invades the rights of the first party (Teerink, 1993: 17).



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