

# LEVERAGING NATIONAL LAND POLICY, LEGISLATION, AND INSTITUTIONAL CAPACITY TOWARDS SUSTAINABLE SOCIO- ECONOMIC DEVELOPMENT

## **Water Rights and Land Tenure Nexus: The Laws on Water Rights and the Effects on Community Access and Control of Water Resources**

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# Outline

- Water Rights – Meaning and Dimensions
- Laws and Practices of Water Rights in Ghana
- Effects on Community Access and Ownership of Water Resources
- Challenges in the Legal and Governance Spaces
- Conclusions and Way forward

# Meaning and Dimensions of Water Rights (1)

- “Water Rights” is not “Right to Water”.
- Right to water concerns drinking water and not water in general.
  - It is to ensure that everyone has a certain quantity of water of a certain quality to meet essential needs and well-being.
- “Water Rights” is a form of property rights
- Defined as ‘the claims, entitlements and related obligations regarding the use and disposition of a water resource’.
- It addresses matters as:
  - who can use the water;
  - the purpose(s) for which water is sought;
  - the source from which it is to be drawn;

## Meaning and Dimensions of Water Rights (2)

- the proposed point of abstraction;
- the volume to be abstracted or diverted, etc.
- Water rights are expressed in either:
  - community-based water systems; or
  - permit systems (also called administrative formal water rights, concessions or leases) – as is now legally practiced in Ghana.
- Dimensions to a permit (or administrative water right) are:
  - an obligation (as the name ‘permit’ conveys). Users’ obligations are conditions attached to the permits;
  - an entitlement (as expressed by the name ‘right’) – exclusive right for a fixed term, renewable.

# Laws and Practices of Water Rights in Ghana (1)

This is looked at in two ways:

## 1. Rights of access and use through:

- Statutes and laws
- Easements and communal rights

## 2. Environmental justice perspectives in the form of access to:

- Information
- Decision making
- Justice

# Laws and Practices of Water Rights in Ghana (2)

## 1. Rights of access and use: Statutes and Laws

- **Constitutional imperatives:**

- The 1992 Constitutional imperatives for natural resources regulation and management require the setting up of commissions vested with the power to regulate the use of the resources and coordinate all policies in relation to them (Article 269).

- **Water Resources Commission Act**

- Emphasis on proprietary ownership was enacted under the Water Resources Commission (WRC) Act 522 of 1996.
- Section 12 of WRC Act 522: water resources are now vested in the President of Ghana for and on behalf of the people.
- The President, or anyone so authorized by him, may grant rights for water use.
- There is no private ownership of water resources.
- Ownership of land does not presume ownership of the water resources on the land.

- **Water Use Regulations**

- The Water Use Regulations, 2001 (LI 1692), sets out regulations for the issuance of permits or the grant of water rights for specified water uses.

# Laws and Practices of Water Rights in Ghana (3)

## 2. Rights of access and use: Easements and Communal rights

- **Easements and rights to water through land**
  - Rights of passage
  - Rights of access (to get a link to, and to use water)
- **Traditional communal rules of access**
  - In practical terms, water rights exist in the traditional economy
  - The roles of traditional authorities and community water user groups are important in the domain of communal water rights – e.g. community-managed irrigation schemes allocate water by specifying who may or may not use the water and in what ways and at what times
- **Strong ties to land ownership and control**
  - Manifested in social relationships and local power structures.
  - Water is perceived as a resource for the community in some communities.
  - The use of water in such areas is strongly aligned to land ownership and control

# Laws and Practices of Water Rights in Ghana (4)

## 2. Environmental justice perspectives

- **Information**

- Public hearings through the EIA process
- Direct access to information – right to information (RTI) and public awareness.
- Consultations should be done in the process of making laws. It is to allow relevant stakeholders to have access to information.

- **Decision Making**

- Representation of chiefs at the community level
- Direct representation on WRC Board and the River Basin Boards
- Involvement of Local Water Committees

- **Access to Justice**

- Complaints and rights to redress under the WRC Act and Water Use Regulations
- Civil Society taking up cases – A Rocha Ghana case, Keta Salt cases, etc.



# Effects on Community Access and Ownership of Water Resources (1)

- The water rights system seems to link water rights and economic responsibility
  - Makes for easy access to water and not aggravating poverty through the *exemptions* and the *non-charge* for water used by small and micro-scale water users.
- There is a prioritization rule in the grant of water permits. Prioritization is guided by:
  - the prevailing water policy,
  - domestic water use, and
  - any other water use which fulfills the goals of national socio-economic development.
- Where the priorities of two applications are the same, the first in time shall be given priority.
- Conditions attached to Water Permits are associated with the issue of beneficial use:
  - The use of water and application of the water should be reasonable and consistent with the community and public interest.

## Effects on Community Access and Ownership of Water Resources (2)

- Generally, conditions for permits relate only to the right and use of water resources and are not tied to the land.
- Water Rights/Permits can be withdrawn/Suspended/Varied where:
  - There is an adverse community/public reaction to the proposed use; and
  - Use of the water involves the dislocation, relocation, and resettlement, or could cause the destruction of the natural water resources used by the community.
- As indicated, the role of traditional authorities is recognized and given priority toward realizing the purpose of the State system:
  - Involving them in public hearings, extensive consultation, and dialogue; and
  - having a position/representation from the national to the basin level on institutional management and coordinating bodies to influence water rights decisions.

# Challenges – Legal space (1)

## Plural legal systems imperatives: The Inherent Contradictions – Statutory and Customary Water Rights

- Apparent inherent contradictions between the customary water rights and statutory water rights systems in the texts.
- Ownership and use rights of water on the one hand and how water use relates with that of other natural resources, particularly land on the other.
- It is important to reconcile the current ownership of water by the State and the practical exercise of ownership and use rights by some traditional authorities.
  - This has been experienced mostly with aquaculture activities on Volta Lake.
- Landowners lease lands to individuals and corporate bodies for the development of industrial and domestic properties.
  - Pressure on lands has led to an uncontrolled situation where, in some cases, wetlands and lands abutting water are often “sold off” by landowners without recourse to appropriate consultations or ignorance of legal provisions such as the WRC Act and Regulations.

## Challenges – Governance space (2)

- Community representation is involved in decision-making and not implementation or enforcement.
  - Structuring of new systems such as Local Water Committees – a new hybrid?
- Enforcement of customary rules on water rights at the community level by the traditional authorities is also generally weak.
- Chiefs have been given decision-making and implementation roles, currently not backed by law. However, they are functional at the local community level.
- State/State e.g. composition of WRC – no Lands Commission representation

## **Conclusions and Way Forward (1)**

- The administration of the state law system of water rights has developed and progressed appreciably.
- In essence water rights are upheld in Ghana and the needs of communities are well recognized.
- In cases of statutory and customary contradictions –
  - Monitor and develop comprehensive information on the current customary water rights practices.
  - Advise on policy direction and take decisions on a case-by-case basis, where need be, regarding water resource regulation.
- Land pressure and rights issues (access, control, and use) and their effects on access to water should be tackled with urgency.

## Conclusions and Way Forward (2)

- In terms of governance:
  - The rights to governance need some re-direction to incorporate non-state actors' imperatives
  - Need to trickle down the governance structure backed with power and authority
  - Acceleration of decentralization process at the basin level and collaboration with other relevant institutions to improve compliance.
- The 'right' of people – compensation and Corporate Social Responsibility Projects (CSRPs).

***Thank you***