



Document from the 7<sup>th</sup> Africa Water Week,  
held in Libreville, Gabon, 29 October – 2  
November 2018

*This material is shared as a learning  
resource to promote awareness and good  
practice in the provision, use and  
management of water resources for  
sustainable social and economic  
development and maintenance of African  
ecosystems.*

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A knowledge asset of the African Ministers'  
Council on Water



**PLENARY SESSION DAILY REPORT**  
**(RAPPORT JOURNALIER DE SESSION PLÉNIÈRE)**  
**‘7<sup>TH</sup> AFRICA WATER WEEK’**  
**« 7<sup>IE</sup>ME SEMAINE AFRICAINE DE L’EAU »**  
**29 OCT. – 02 NOV. 2018**

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| <b>No.</b>   | <b>AWW7-2018SS/03</b>  | <b>Version No.</b>       | V1  |                            |   | <b>Report Date:</b><br>(Date du rapport) | 29-10-2018 |
| <b>Date:</b>   | 29-10-2018   | <b>Time:</b><br>(Heures) | 2:19 pm   | to                         | 3:32 pm   | <b>Language:</b><br>(Langue)             | English    |
| <b>Theme:</b>  | Toward Achieving Water Security and Safely Managed Sanitation for Africa   |                          |   |                            |   |  |            |
| <b>French theme</b>  | “Vers la Sécurité de l’Eau et des Services d’Assainissement gérés en toute sécurité pour l’Afrique”  |                          |   |                            |   |  |            |
| <b>Sub-theme:</b><br>(Sous-thème)                              | A Hybrid approach to water legislation in Africa   |                          |   |                            |   |  |            |
| <b>Session No.</b>   | SS3  | <b>Title:</b><br>(Titre) | Water governance: IWRM reengineering, interconnection in action |                            |   |  |            |
| <b>Country:</b><br>(Pays)                                      | GABON  | <b>City:</b><br>(Ville)  | Libreville  | <b>Location:</b><br>(Lieu) | Stade de l’Amitié Sino-Gabonaise, ANGONDJE          |  |            |
| <b>Rapporteur</b><br>(Rapporteur):                             | Wilde Rosny Ngalekassaga   |                          |   |                            | <b>Technical Partner:</b><br>(Partenaire technique) | SASI GABON                               |            |
| <b>Further details:</b><br>(Informations complémentaires)      | <ul style="list-style-type: none"> <li>• PowerPoint Presentation (YES): A hybrid approach to water legislation in Africa (some images are not displayed because they are linked to files on the presenter’s computer)</li> <li>• Technical Documentation (YES): 1) Establishing Hybrid Water Use Rights Systems in Sub-Saharan Africa ; 2) A Hybrid Approach to Decolonise Formal Water Law in Africa ; 3) A Water Use Rights Hybrid System: Decolonizing Water Legislation in Africa</li> </ul> |                          |   |                            |   |  |            |
| <b>Abbreviations and Acronyms:</b><br>(Sigles et abréviations) | <ul style="list-style-type: none"> <li>• IWMI: International Water Management Institute</li> </ul>   |                          |   |                            |   |  |            |

**IDENTIFICATION OF THE LEAD CONVENER AND CONTACT (IDENTIFICATION DES RESPONSABLES ET CONTACTS)**

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|-------------------------------------|--|
| <b>Lead Convener (Responsable):</b> | International Water Management Institute and Pegasys Institute |
| <b>Co-convener (Coresponsable):</b> | National Water Authorities of Kenya and Uganda                 |
| <b>Contact:</b>                     |  |

**SPEAKER IDENTIFICATION (IDENTIFICATION DES INTERVENANTS)**

|                                 |  |
|---------------------------------|--|
| <b>Moderator (Modérateur):</b>  | Olalekan Williams, Africa Director, IWMI   |
| <b>Speakers (Intervenants):</b> | <ul style="list-style-type: none"> <li>• Dr Barbara Van Koppen, Principal Researcher, IWMI</li> <li>• Barbara Schreiner, Executive Director, Pegasys Institute</li> <li>• Dr Callist Tindimugaya, Commissioner, Water Resources Planning and Regulation, Ministry of Water and Environment of Uganda</li> <li>• Eng. Boniface Mwaniki, Technical Coordination Manager, Water Resources Authority of Kenya</li> </ul> |

**SESSION OBJECTIVES (OBJECTIFS DE LA SESSION)**

The purpose of this session was to present current difficulties in water legislation in African countries and to propose a new approach by sharing the findings of a study by the Pegasys Institute and the International Water Management

Institute.

## **SESSION PLAN (PLAN DE SESSION)**

- Phase I: Presentation of the panellists
- Phase II: Brief presentations by contributors to the study
- Phase III: Discussion based on questions and answers

## **SESSION SUMMARY (RÉSUMÉ DE LA SESSION)**

This session was conducted in three phases: presentation of the organisations that conducted the study, contributors to the study and a Q&A session. Following the moderator's introductory remarks, Ms Barbara Schreiner of the Pegasys Institute and Dr Barbara van Koppen of the International Water Management Institute made a presentation entitled 'A Hybrid approach to Water Legislation in Africa'. This presentation was based on a study conducted in five East African countries, i.e. Malawi, Uganda, Kenya, Zimbabwe and South Africa.

In their presentations, the panellists emphasised that there were issues related to water rights in Africa. These issues can be summarised as follows: people exempted from the licencing requirement have a diminished legal status; millions of households are marginalised when it comes to access to water, and water legislation is inherited from colonial laws, which were designed to deprive indigenous people of resources, inter alia. The solutions proposed by the panellists included establishing hybrid legislative systems and taking into account licencing and customary use rights.

Following the presentation, Dr Callist Tindimugaya of the Uganda Water Commission provided a brief overview of Uganda's experience in licencing. Specifically, he observed that the licencing system made it possible to control the main users of water resources.

Speaking after Dr Tindimugaya, Eng. Boniface Mwaniki in turn presented Kenya's experience in water resources management, stating that the country's water management system classified users into four groups based on the types of rights granted to them. This system makes it possible to identify water users, maintain control and reinforce the authority of the state.

After these presentations, the moderator opened the question-and-answer session, taking four questions to be answered by the panellists.

## **QUESTIONS AND ANSWERS (QUESTIONS ET RÉPONSES)**

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| <b>Question No.</b>  | 1   | <b>Author (Auteur):</b> | Olalekan Williams (Moderator)  |
| <b>Wording (Libellé):</b>  | We have already indicated that the water licencing system in several countries is distorted because it is inherited from colonial laws. We have also said that those who use water resources the most are licence holders. So why continue granting licences? |                         |                                |
| <b>ANSWERS (RÉPONSES)</b>  |   |                         | <b>Speakers (Intervenants)</b> |
| The licencing system allows us to control the use of water resources. We use it to promote order and avoid anarchy in the water sector while also promoting development. However, we recognise that granting licences is easier than monitoring compliance with the law. We are now facing a double tragedy, that is, over-exploitation and over-discharge of polluted water by the major users. |   |                         | Callist Tindimugaya            |

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| <b>Question No.</b>  | 2   | <b>Author (Auteur):</b> | Participant                    |
| <b>Wording (Libellé):</b>  | In Nigeria, the states and the central federal government are engaged in a conflict over water management. The states argue that they should be in charge of their water resources, while the federal government emphasises that some watercourses are located in transboundary areas. Who should manage water resources? |                         |                                |
| <b>ANSWERS (RÉPONSES)</b>  |   |                         | <b>Speakers (Intervenants)</b> |
| In South Africa, there is a similar conflict and it has been made clear that the provinces |   |                         | Barbara Schreiner              |

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|---|-----------------------|
| cannot manage water resources. In Pakistan, the provinces have had to sign mutual agreements on water management. Nevertheless, water management should not be the exclusive preserve of states or provinces. |                       |
| To elaborate on the previous answer, states or provinces should be considered as users rather than managers of water resources.   | Dr Barbara Van Koppen |

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| <b>Question No.</b>  | 3  | <b>Author (Auteur):</b> | Participant                    |
| <b>Wording (Libellé):</b>  | Customary use rights should also be mentioned. Considering that there are traditional kingdoms within some states, and that these kingdoms very often lack the necessary authority to enforce the law, there is a great need to build capacity in customary rights interpretation. On this point, the following question should be asked: What kind of sanctions should be imposed on those who violate the water law? |                         |                                |
| <b>ANSWERS (RÉPONSES)</b>  |  |                         | <b>Speakers (Intervenants)</b> |
| This question is very interesting because it raises the issue of law enforcement. Legislation may well be written but not enforced. Each country should choose the best system for itself when building its water rights licencing system. |  |                         | Dr Barbara Van Koppen          |

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| <b>Question No.</b>   | 4  | <b>Author (Auteur):</b> | Participant                    |
| <b>Wording (Libellé):</b>   | The question pertains to the enforcement and monitoring of licences granted. Sometimes, a licence is issued to an operator so that they can operate at a certain capacity. During field inspections, this operator may be found to have increased their capacity, without informing the authorities. It is therefore very important to improve licence monitoring capabilities to ensure the enforcement of the law. |                         |                                |
| <b>ANSWERS (RÉPONSES)</b>   |  |                         | <b>Speakers (Intervenants)</b> |
| Africa still has sufficient water resources. As yet, the situation is not an emergency. However, it is important to introduce a law-based resource protection system. In this regard, the issue of prioritisation must be addressed in order to develop an agenda for water. Customary laws adequately address prioritisation issues. Every country has its own enforcement system. |  |                         | Dr Barbara Van Koppen          |

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| <b>Question No.</b>       | 5  | <b>Author (Auteur):</b> | Participant                    |
| <b>Wording (Libellé):</b> | My name is Atari Mohamed and I represent the Senegal River Basin Development Organisation. I am not asking a question but would like to share my experience. This organisation includes four countries that have signed a Water Charter that sets out principles for allocating water uses. We have established a Standing Water Commission. The Commission meets five times to examine Member States' needs using model-based approaches (participant input). |                         |                                |
| <b>ANSWERS (RÉPONSES)</b> |  |                         | <b>Speakers (Intervenants)</b> |
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### **CONCLUSIONS OF THE SESSION (CONCLUSIONS DE LA SESSION)**

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| <p>It emerged from these meetings that there is a need to regulate water use in Africa and, in particular, the issuing of water extraction permits. Water legislation in African countries is predominantly guided by colonial laws. When they gained independence, several countries adopted those laws, leading to systems that were not well suited to the African context. There are now licence-based rights allocation systems and systems based on customary use rights and customary law. The issues raised include how customary law fits into the system for allocating water rights. Capacity-building in customary law is considered important as this type of law appears to be of limited influence. Finally, it is important to adapt enforcement capabilities to technological developments in order to address likely changes in licence use.</p> |
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