Water Sector Reforms in Kenya: Gender Implications

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Outline

• Introduction
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• Women’s Rights
• Kenya’s Water Law
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Introduction

• Water as life
• As a human right
• Water as public trust
• Women’s rights as human rights
• Access, control and ownership of resources
• Women’s right to water & women’s water rights
• Problematising differentiated access to water for differently situated subjects of law
Context

• Limited access to water for most Kenyans
  – Two thirds of Kenya arid/semi-arid land
  – No access to safe, affordable water of reasonable quality
    • People in Nairobi’s slums pay 5-10 times than people in up-market areas and London & New York
• Paradox of Disjuncture Between Women’s Movement & Environment Movement
  – Development along parallel tracks
  – No cross-fertilisation at national levels
Context (2)

- **Women and water**
  - Gender division of labour
    - Definition of ‘work’ (public-productive) and non-work (private-reproductive)
  - Women’s private/reproductive work
    - **Spend time** (8 hours/day) & cover **long distances** (10-15 kilometres)
    - **Conserve, use and manage** water (household/domestic)
      - Women **fetch** water and **allocate** it to different uses
    - **Decide** on sources (security, cost – time & money)
Context (3)

- Gendered access to water
  - Economic - entitlements predicated on resources people command & are free to use
  - Cultural – patriarchal social ordering
  - Constrained legal context
    - Gender neutral law in gender specific reality
      - *De jure* equality, *De facto* discrimination

- Marginalisation of women-water discourses in feminist argumentation
  - Radicalism of eco-feminism removing it from ordinary women’s experiences
  - Women’s self-help groups to provide water not considered feminist
Women’s Rights Discourse in Law

- **Mainstream human rights** – women’s rights as human rights
  - International instruments: UN Charter; UDHR; ICESCR; ICCPR; CEDAW
  - Regional: African Charter & Optional Protocol
  - National level: Constitutions entrench Bill of Rights; Other laws

- **Envtl rights**
  - International: CBD; Rio Declaration; Agenda 21; WSSD; NFLS & BPFA
  - Regional NEPAD; Optional Protocol on Women’s rights
  - National: Constitutions, framework envtl laws & sectoral statutes
    - Lagging behind since gender neutral
Women’s Rights in Kenyan Law

• Juristic legal pluralism – Several legal orders
  – 1. State Law
    • Coherent, unified, enforced thro’ courts, uniform for all persons
    • Imported European law and customary law interpretation by courts
  – 2. Customary Law
    • Read and narrated and thus removed from source
    • Dominance of male members
    • Women-unfriendly customary law through colonisation and privatisation
      – Struggle for scarce resources & power
      – African males consolidating bastion of authority (customary law)
Women’s Rights in Kenyan Law

– 3. Religious Law
– 4. Intersections

• Section 82 Constitution proscribes discrimination - ‘no law shall make provision that is discriminatory ‘either in itself or in the effects’
  – “affording different treatment to different persons attributable wholly or mainly to their …race, tribe, place of origin or other local connexion, political opinions, colour, creed or sex … are subjected to disabilities or restrictions …”

• Exemption of personal laws from provision on discrimination (Section 82(4))
  – Customary law & religious law govern matters of marriage, divorce, burial and devolution of property on death
Kenya’s Water Sector Reforms

• Law’s handling of water
  – Constitution – Right to life
    • Draft Constitution – Right to water & reasonable standard of sanitation; right to a healthy envt (gender neutral despite normative affirmative action principle in bill of rights)
  – EMCA (Gender neutral)
    • Right to a clean and healthy environment
    • Public participation in environmental decision-making
    • Protection of water resources from pollution
    • EIA

• Sectoral water law
  – Repealed Act – State as custodian; permits requirements
  – New Water Act, 2002
Kenya Water Sector Reforms (2)

- Many institutions:
  - National
    - Ministry of Water
    - Water Resources Management Authority (WRMA)
    - Water Services Trust Fund (WSTF)
    - The Water Appeals Board (WAB)
    - Water Services Regulatory Authority (WSRA)
  - Regional Level
    - Water Catchment Areas Advisory Committee (CAAC)
    - Water Service Boards
  - Local
    - The Water Resource Users Associations (WRUAs)
    - Water Service Providers
- No link to EMCA or consideration of emerging constitutional right to water or equity considerations
Kenya Water Sector Reforms (3)

- No relationship to existing institutions managing water
  - Environmental committees under EMCA
  - CBOs/Women’s groups
    - Of 8 million people with access to water in rural areas, 30% served by community-managed water supply schemes by self help groups
    - Traditional governance institutions
      - Positive & Negative
- No safeguards for vulnerable groups
  - Law gender neutral but applying in very gendered context
  - Linkage of water rights to land marginalises non-owners of land
Kenya Water Sector Reforms (4)

- Minimal representation of women/their interests in institutions especially at decision-making levels
- Vesting of water resources in state
  - History of assault of public trust – ‘land grabbing’
  - Corruption
- Permit system & licensing procedures as gate-keeping in very gendered context
  - Makes performance of day to day tasks difficult for women
- No real change for women from repealed law except additional layers of bureaucracy
  - Normative provisions still gender neutral
Conclusion

• Law has not addressed broad envtl & human rights questions
  – Link of institutions to sustainable water management not clear despite reference to catchment areas

• Right to water must address differently placed subjects of law for it to be meaningful
  – Move from formal equality to equity like in SA
    • “equitable access to water” to redress gender discrimination & ensure “appropriate” gender representation in the competent institutions

• Gender-neutrality/blindness of water law can further marginalise already marginalised groups
  – Criminalising activities that are core to their livelihoods
  – Making their access to resources more tenuous