The Reform of Water Rights in South Africa

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REFLECTING

SPARKS

Theory

practice
Introduction

- Water is a contentious subject in South-Africa
- Not only is it a scare commodity, needed for the daily livelihood of all the people of the country - but
- In the preceding political era access to water has been influenced by the political construct of apartheid.
Resulted in 1996: approx. 40% of the population did not have access to clean water for domestic use and
21 million people did not have sufficient water for sanitation.
Need for change was apparent.

Change from what???
Historical overview:

Never an issue over OWNERSHIP of water
State = *dominis fluminis*

Public water
- Water in public streams
  - Riparian owners’ use rights were controlled and regulated by the state
  - Navigable streams - *Res publicae*

Private water
- Spring water / rain water if it flowed over land or had its source on land
  - Landowners had exclusive use-rights
  - Water-use rights were directly linked to landownership

BUT ...
ALTHOUGH NO QUESTION ABOUT THE OWNERSHIP OF WATER ....

- Water-use rights were regarded as

Private property → Monetary value

ENTERS ...
NATIONAL WATER ACT 36 OF 1998

As part of the holistic action of liberating the country from the underlying nature of water rights were changed completely.
Water as a natural resource belongs to all the people of the country
How can any commodity BELONG to all the people of the country?

This did not fit in with the established Roman-Dutch property concept.
employed to overcome the property concept

PUBLIC TRUST DOCTRINE
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- Title of public trust property vests in the State -
- as TRUSTEE
- with the nation as BENEFICIARY
- Thus the STATE holds the property solely as REPRESENTATIVE of the nation
- for the
- BENEFIT of the nation
PUBLIC TRUST DOCTRINE

- IDEAL mechanism for balancing opposing interests in water and water use rights
- because
- flexible tool –
  - Licences / authorisations granted subject to the provisions/objects of the act
  - Public Trust title = pre-existing
- adapt to the pressing needs of society
Future of water resource development and water distribution in S.A. is good PROVIDED: administration is uncorrupted and efficient