



Water Sector Reforms in Kenya: Gender Implications

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Outline

- Introduction
- Context
- Women's Rights
- Kenya's Water Law
- Conclusion



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
- Env'tl rights
 - International: CBD; Rio Declaration; Agenda 21; WSSD; NFLS & BPFA
 - Regional NEPAD; Optional Protocol on Women's rights
 - National: Constitutions, framework env'tl 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