



Evolving water rights scenario and economic efficiency

Economic vs. Human Right to water

Dr Philippe Cullet

School of Law, School of Oriental and African Studies
(SOAS)

&

International Environmental Law Research Centre (IELRC)

pcullet@soas.ac.uk, pcullet@ielrc.org

www.ielrc.org

Workshop on Economic Instruments of Water Resource
Management , IGDIR, 9 January 2009

IELRC.ORG



Multiple water rights

- In principle no right to water itself
- Fundamental human right to water
- Right to water for life and livelihood
- Water rights linked to property rights in land
- Economic rights to water (tradable, delinked rights)



Public trust

- No rights over water because substance unlike any other
- Recognition of the multiple functions of water: life on earth, human life, agriculture, industrial etc
- Trustee cannot alienate the resources under public trust



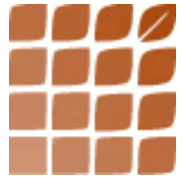
Fundamental human right

- Constitutionally sanctioned and international law protected
- Scope includes vital needs (drinking, cooking), livelihood needs (food) and realisation of human rights dependent on water (eg health)
- Human rights prohibit discrimination (rural/urban policy framework)



Rights linked to land ownership

- Property rights in land as basis for most ‘water rights’
- Different types of rights of access and control over water:
 - Government control (sovereignty and eminent domain)
 - Access to surface water linked to land ownership
 - Control over groundwater linked to land



Evolving rights related to water framework

- On the one hand: progressive strengthening of human right, social and environmental aspects of water law
- On the other hand: strong push for introduction of a system of water rights based on economic principles



Ongoing water law reforms

1. New economic principles influence e.g. setting up regulatory authorities (within which tradable water rights introduced)
2. Old economic principles reinforced: water user association legislation (fostering link land and access to water)



Shortcomings of ongoing reforms

- Reforms fail to contribute to constitutional scheme of decentralisation (e.g. under WUA legislation PRIs sidelined, no reservation apart from exceptions like Chhattisgarh)
- Reforms do not contribute to realisation of recognised principles of water law, in particular the human right to water and public trust



Moving forward

- Rights of access to and control over water must be governed by legal principles first, not economic principles.
- Drinking water and the realisation of the human right to water must get first legislative priority (no legislation and no discussion of Swajaldhara in Parliament)



Moving forward (ctd)

- Environmental law principles must guide reforms (rather be the premise for economic reforms)
- Constitutional principles, such as decentralisation, participation and non-discrimination to be heeded to (case of WUAs, rural/urban drinking water)