



Recognizing customary water tenure: Global, African and South African experiences

10 December 2020, 14:00-16:00 hrs

In South Africa, 17 million people govern their lands and related natural resources according to the customary arrangements in former homelands. About two thirds or 2.2 billion hectares of all cultivated land in sub-Saharan Africa is thought to be under customary tenure (Wily, 2011:468). Many invest in own water infrastructure as back-up source when public water services are intermittent or absent, but also to improve service levels and to use water productively. In Limpopo Province's former homelands, for example, remote sensing found at least 70,000 ha of informal irrigation. Population growth, the availability of affordable water technologies and energy and markets drive these investments. Community members' initiatives to invest in infrastructure to improve their wellbeing are found to be widely supported, also by tribal authorities. When competition to access shared water resources arises, conflicts can be escalated to tribal authorities for mediation.

Across sub-Saharan Africa, even larger proportions of citizens govern their customary lands and related natural resources. Constitutions and other legislation often recognize customary land tenure and may define 'land' as including appurtenant water and other natural resources, provided compliance with women's and men's constitutional rights.

This workshop focuses on the recognition of customary water tenure in national water law, the constitution, other legislation, and case law, with the aim to identify implications for transformative hybrid water law in which states continue regulating and mediating in water disputes, but also overcome colonial injustices and comply with constitutional and human rights. The workshop will compare answers to these questions by leading lawyers and water authorities at global/Africa level, Kenya, and South Africa.

PROGRAMME

Session Chair: Inga Jacobs-Mata/Patience Mukuyu

- 14:00 – 14:10 *Welcome and Introductions*
Dhesigen Naidoo (CEO, WRC)
- 14:10 – 14:30 *Innovations in implementing Kenya’s 2016 Water Act; views on customary water tenure*
Boniface Mwaniki (Water Resources Authority Kenya)
- 14:30 – 14:50 *Community-based Water Tenure Regimes in national legislation: comparative findings in 15 countries*
Jessica Troell (Senior Attorney, Environmental Law Institute)
Stephanie Keene (Senior Law and Policy Advisor, Rights and Resources Initiative)
- 14:50 – 15:00 Q & A Session
- 15:00 – 15:20 *Recognizing customary water tenure in South Africa’s legislation*
Tumai Murombo (Professor, School of Law, Wits University)
- 15:20 – 15:50 *Panel Discussion and Q & A*
Sipho Skosana (Director Water Allocation Reform, DWS)
Jennifer Balatedi Molwantwa (Interim CEO, Inkomati-Usuthu Catchment Management Agency)
Barbara Schreiner (CEO, Water Integrity Network)
- 15:50 – 16:00 Closing remarks
John Dini (Research Manager, WRC)

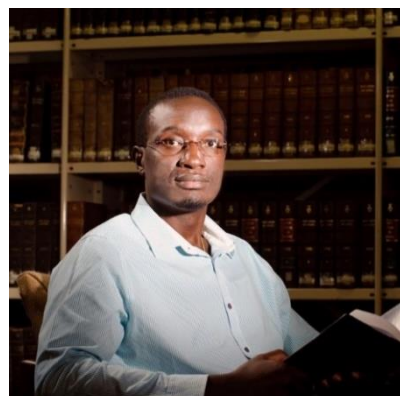
SPEAKERS



Dhesigen Naidoo is a leader, a scientist and an activist for social change. He has, as CEO, led the Water Research Commission (WRC), South Africa’s dedicated national water and sanitation Innovation, Research and Development Agency since 2011. He has previously served in senior positions in the South African national government and South African universities having begun his career as a medical scientist in a specialist paediatric hospital. He is also a Councillor of the National Advisory Council on Innovation and a Fellow of the Mapungubwe Institute for Strategic Reflection.

TUMAI MUROMBO

Dr. Murombo (*PhD Law (Wits), LLM Human Rights Law (UCT), LLM Environmental Law (Pace University, New York), LLB (Hons) (University of Zimbabwe)*) is a Professor of Law at Wits University, and former Director of the Mandela Institute. He is an admitted to practice law in Zimbabwe. He is an expert in environmental law, energy and climate change, sustainability, extractives and the environment, water law and governance, among others. As an NRF rated researcher, he has researched, advised governments and civil society organizations on these areas. Dr Murombo co-founded and is board chair of the Zimbabwe Environmental Law Association (ZELA). He sits on the Editorial Board of the Journal of African Law and is a member of the Water Tribunal (South Africa), the Environmental Law Association (South Africa), the IUCN World Commission on Environmental Law, its Environmental Law Academy and the Working Group on Climate Change and Energy.



BONIFACE M. MWANIKI



Eng. Boniface M. Mwaniki is a well accomplished Water Resources Professional. He currently serves as the Technical Coordination manager, for Kenyan Water Resources Authority, where he oversees the Authority's Technical Services and manages corporate relationships for both internal and external development partners. He has 34 years of professional experience in the field of Land and Water Engineering, Rural Development, River Monitoring and Evaluation and Water Resources Regulation and Management. He is a specialist in Water Catchment Management and a founding member of the Nairobi Water Fund steering committee, where he also serves as the Chairman of the Board of Management and the principal link between the Water Fund and Government of

Kenya. Eng. Mwaniki holds a Master's degree in Project Planning and Management from University of Nairobi. He is a registered engineer and Member of the Kenya Society of Agricultural Engineers (KESAE) and Institute of Engineers of Kenya (IEK). His professional prowess is further enhanced by the many professional training courses he has attended both locally and internationally during his well over three decades of civil service. His professional experience spans different Government Ministries including having worked with Ministry of Agriculture, Rural Development and Water & Sanitation and Irrigation.

JESSICA TROELL

Jessica Troell is a Senior Attorney and Director of the International Water and Africa Programs at the Environmental Law Institute. Ms. Troell has over 15 years of experience in international development and environmental law with a focus on developing and implementing inclusive, equitable and effective legal, policy and institutional tools for sustainable and equitable water resource management. She is a recognized authority on international and comparative water law and governance, gender and water governance, water and resource tenure issues, community-based water rights, public participation in resource management, and the nexus between water governance and peacebuilding. Ms. Troell works closely with governments, civil society, and communities to undertake innovative and applied research, provide technical and legal assistance and legislative drafting support, and build capacity for effective implementation and enforcement. She is the author and editor of two books, over a dozen articles and book chapters, and numerous reports.



STEPHANIE KEENE



Stephanie Keene is a senior attorney whose work focuses on sustainable development challenges related to community-based land and natural resource tenure, gender justice, corporate compliance, and corporate environmental and social responsibility, particularly in Sub-Saharan Africa. She leads the Rights and Resources Initiative’s Tenure Tracking Program, where she designs, authors and oversees global analyses on the legally recognized land, forest, and freshwater rights of Indigenous Peoples, local communities, and rural women. She previously supported rural women’s lawsuits concerning illegal property seizure in Uganda and has significant human rights field experience in Indonesia and Sierra Leone. In addition to working at the UN World Food Program in Senegal, she is a former World Bank consultant and Associate with Covington & Burling LLP’s Anti-Corruption, Africa, and International Trade Controls practices. She is a Yale Law School and Princeton University graduate, and a member of the Washington DC Bar Association.

JOHN DINI

John Dini holds a master’s degree in governance and public policy, and has 20 years’ experience within the South African public sector, working in the water and environment sectors. He is currently a Research Manager at the Water Research Commission, responsible for leadership of the water governance portfolio. This portfolio focuses on research and innovation in priority focal areas that include intergovernmental relations; law reform and institutional arrangements; the science-policy-implementation pathway; and water, social equity and redress. He is responsible for setting a research agenda for the portfolio aligned to national priorities, managing projects within the portfolio, supporting relevant communities of practice and facilitating the uptake of research outcomes into policy and practice.



PANELLISTS



Sipho Skosana
Department of Water and Sanitation Director, Water Allocation Reform



Jennifer Molwantwa
Acting CEO Inkomati-Usuthu Catchment Management Agency



Barbara Schreiner
CEO Water Integrity Network

FACILITATORS AND CO-FACILITATORS



Dr. Barbara van Koppen
*International Water Management
Institute*



Dr. Inga Jacobs-Mata
*International Water Management
Institute*



Ms. Patience Mukuyu
*International Water Management
Institute*

Acknowledgements

Research on the recognition of customary water tenure in Africa is supported by the International Water Management Institute, the Water Research Commission of South Africa, the Policies, Institutions and Market Research Program, led by the International Food Policy Research Institute, the Environmental Law Institute and the Rights and Resources Initiative.