



Law, Social Justice & Global Development
(An Electronic Law Journal)

Observations on the Intersections of Human Rights and Local
Practice
A Livelihood Perspective on Water

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Abstract

The “right to water” has been adopted as a human right in General Comment 15 by the Committee on Economic, Social and Cultural Rights. A critical issue in international, national and local water management is how to balance the concerns of the environment and the poor against the quest for a more effective and productive use of land and water. The 'right to water' provides a framework for water policy quite different from the Dublin Principles. In the African context the Dublin Principles have emphasized water as an economic good which has led to the adoption of the user pay principle. In the following we explore if and how local water management practice incorporates water within a broader right to livelihood. Field research findings in Zimbabwe support the existence of a right to water forming part of a broader right to livelihood. This has significant implications for incorporating local norms and practices into water policies and management practices.

This is a **refereed article** published on: 9 October 2008

Citation: Derman, B. & Hellum, A. 'Observations on the Intersections of Human Rights and Local Practice: A Livelihood Perspective on Water', 2008 (1) *Law, Social Justice & Global Development Journal (LGD)*. <http://www.go.warwick.ac.uk/elj/lgd/2008_1/derman_hellum>

Keywords

Right to water; Land Reform; Water Reform; Water Management; Rural Livelihoods; Zimbabwe.

Author's Note:

This research was made possible by the following: Bill Derman was supported by a Fulbright-Hays Research Grant, a Wenner-Gren Foundation Grant for Anthropological Research and the BASIS CRSP for Water and Land Research in Southern Africa. Anne Hellum has been supported by the Ministry of Foreign Affairs/Norwegian Research Council Program Development Grant for the Institute of Women's Law at the Faculty of Law, University of Oslo and the NORAD funded cooperation between the Institute of Women's Law (University of Oslo) and the Women's Law Centre at the University of Zimbabwe. We would like to acknowledge the research assistance of Mr. Pinnie Sithole.

1. Introduction

The right to water has been adopted as a human right in General Comment 15 by the Committee on Economic, Social and Cultural Rights. A critical issue in international, national and local water management is how to balance the concerns of the environment and the poor against the quest for a more effective and productive use of land and water. The 'right to water' provides a new framework for water policy quite different from the Dublin Principles.¹ In the African context the Dublin Principles have emphasized water as an economic good which has required getting the 'right price' for water we explore if and how local water management practice incorporates water within a broader right to livelihood. Field research findings in Zimbabwe support the existence of a right to water forming part of a broader right to livelihood. They suggest the basis for incorporating customary norms and practices into water policies and management practices.

Water forms part of a broad right to life that underlies rural livelihoods in Zimbabwe. It is expressed in the Romwe Catchment in southern Zimbabwe as water is life (*hupenyu*) (Nemarundwe 2003). It is expressed in Shamva District as drinking water should be for everyone (Matondi 2001) and in Mhondoro Communal area as one can't deny water to anyone (Derman and Hellum 2002). The newly enunciated human right to water accords well with the practices and norms within most, if not all, of Zimbabwe's communal and resettlement areas. The idea expressed in Zimbabwe that to deny water is to deny life indicates the profounder truth that there can be no human life without water. The United Nations has determined that the International Covenant on Economic, Social and Cultural Rights (ICESCR) includes a right to water. The previous global consensus around the Dublin principles seems to be receding in face of a growing movement toward recognizing a human right to water combined with the Millennium Development Goal directed toward doubling the number of people with clean drinking water.

Water reform involves changing how a nation's waters are managed and understood. Zimbabwe's water reforms were conducted principally with the four Dublin principles in mind rather than the human rights frameworks also available. We have found that a common feature of local norms and practices described in rural Zimbabwean studies parallels international human rights laws in the emphasis upon right to resources vital for livelihoods (particularly food and water) We have been surprised at the strength of normative frameworks despite a literature which emphasizes contestation and overlapping spheres of authority. In turn, this has led us to examine if and how these normative local frameworks are consonant with some principles of the right to livelihood and right to water now embodied in a range of international instruments. We suggest that the conceptual division made between land and water in southern African land and water reforms does not fit with local conceptions of livelihoods or the growing evidence of the importance of the land-water interface which includes natural wetlands and irrigation systems. We have chosen to probe these issues in Zimbabwe due to the processes of water reform and the range of studies investigating water management along with our own research.² We have not included in any depth the medium and long-term implications of the current fast-track land reform underway for the right to water and the right to livelihood.³

Our studies took place between 1999 and 2003. Since 2004 we have been unable to explore how local management systems have been affected by Fast Track Land Reform and the near collapse of water reform due to the forced removal of most commercial farmers, the politicization of water reform, and the lack of management capacity in the new water management institutions.

This article proceeds as follows: In Section 2 we detail the emergence of the right to livelihood and the right to water in United Nations, African Union and other international and national documents. We then turn in Section 3 to a discussion of Zimbabwe's water reform and water management. In Section 4 we examine local norms and practices with respect to rights to livelihood and water. In the conclusions, we examine how human rights with its obligations to protect, respect, and fulfil set new responsibilities for states to accomplish. We have added a postscript to update the situation in 2007.

2. Water as a part of the human right to livelihood

When Zimbabwe passed its new water acts the human right to water had not been explicitly recognized by the United Nations as a whole although it had been included in some conventions (see below). In Africa, the right to clean drinking water has been incorporated into the South African, Zambian, and Ethiopian constitutions. In more general terms, the human right to water derives from the right to life, the right to livelihood and the right to health. It has evolved through piecemeal international, regional and national law-making. It is recognized in Article 24 of The Convention on the Rights of the Child (CRC)

explicitly stating that the child has a right to clean drinking water.⁴ Article 14.2 h of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that rural women have a right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications on an equal basis with men. Article 15 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa on the right to food⁵ obliges States Parties to "provide women with access to clean drinking water, sources of domestic fuel, land and the means of producing nutritious food;" The human right to water is also recognized in the United Nations Convention on the Law of Non-Navigational Uses of Watercourses.⁶ The SADC Protocol on Shared Water Course Systems of 1995 emphasizes equitable utilization of shared water courses applying existing customary international law and community interest taking into account, among other things, the environmental, social and economic needs and the impact of intended uses of the water course.⁷

2.1. Safe, adequate and available water

A major shift in underlying the significance of a right to water was the General Comment No.15 of July 2002 UN Committee on Economic, Social and Cultural Rights whereby the Committee concluded that there is a human right to water embedded in article 11 in the Convention on Economic, Social and Cultural Rights (CESCR) defining the right to livelihood as including adequate food, clothing and housing. The term including, as understood by the Committee, indicates that the catalogue of rights encompassing the right to livelihood is not exhaustive but must be adapted to changing social and economic concerns such as the global water crisis.⁸ Concluding that water is a human right the Committee emphasizes the interdependence between human rights in general and between access to water and the right to health in article 12.1, the right to food in article 11 and the right to life and human dignity enshrined in the International Bill of Human Rights.

Recognizing that water is required for a range of different purposes that are essential for human life, the Committee on Economic, Social and Cultural rights signalled three elements; water must be adequate for human life, it must be safe and available. Accordingly the water is to be adequate, safe and available physically, economically on a non-discriminatory basis. Adequate water, according to the Committee, encompasses water for personal and domestic uses and the necessary water resources to prevent starvation and disease (6). The scope and extent of the human right to water is defined through its link to the right to life, the right to health and the right to food. In the view of the committee the sustainable access to water resources for agriculture is necessary to realize the right to adequate food.⁹ Disadvantaged and marginalized farmers (women and men) would be entitled to special attention to have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology.

2.2. The state obligation to respect, protect and fulfill

The obligation to respect, protect and fulfil rights cuts across urban and rural water supplies and services. The obligation to respect includes a duty to refrain from interfering arbitrarily with customary or traditional arrangements for water allocation, unlawfully polluting water or destroying water services and infrastructure during armed conflicts.¹⁰ Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that people cannot be deprived of its means of subsistence, State parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples. This aspect of the human right to water is also expressed in the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/15/869 of 11 April 1997), which affirms that in determining vital human needs in the event of conflicts over the use of watercourses special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.

The obligation to protect requires states parties to prevent individuals, groups, corporations or other agents acting under their authority from interfering with the right to water. States parties are under an obligation to prevent private water service operators from compromising the right to equal, safe and affordable water in terms of regulatory systems including independent monitoring, public participation and penalties for non-compliance.¹¹ Taking the human right to water beyond the nation state the Committee on Social and Economic Human Rights in General Recommendation 15 also recommends that United Nations agencies and other international organizations concerned with water including all United Nations organizations (World Health Organization, etc.) should cooperate effectively with States

parties in relations to the implementation of the right to water. The Committee also recommends that the international financial institutions, notably the International Monetary Fund (IMF), the World Bank, the African Development Bank, etc. should take into account the rights to water in their lending policies, credit agreements, structural adjustment programs and other development projects.

As regards the duty to fulfil States parties must, to ensure that water is affordable, adopt measures including: a) use of a range of appropriate low-cost techniques and technologies; b) appropriate pricing policies such as free or low-cost water; and c) income supplements. Any payment for water services has to be based on the principles of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses compared to richer households.¹² This has implications for the implementation of the user pay principle which has become ubiquitous in urban and rural settings. To cut off urban poor who cannot afford paying their water bills does not sit well with the human right to water. As regards rural water users, the division between primary and commercial water uses embedded in the Zimbabwean Water Act remains problematic since poor families use water to produce saleable commodities but for livelihood, educational, clothing and health purposes.

2.3. Non-discrimination

States parties are also obliged to ensure that the right to water is enjoyed without discrimination on the grounds of sex, class, colour religion or political opinion. States parties are to ensure that new laws, policies and programs do not deny this right either *de jure* or *de facto* to selective portions of the population. Inappropriate resource allocation can lead to indirect discrimination. Investment should, according to Comment 15, not disproportionately favour expensive water supply services and facilities that are only available to a small percentage of the population. CEDAW and Protocol to the African Charter on Human and Peoples Rights on the Rights of Women¹³ in Africa substantiates the principle of non-discrimination in relation to water, land and food security. Simply having gender neutral laws in a situation where resources (time, money, land, water, for example) are unevenly distributed between men and women, the CEDAW and the Protocol oblige States parties to take measures to eliminate both direct and indirect discrimination.¹⁴ By indirect discrimination is meant any distinction, exclusion or restriction made on the basis of sex which has the effect that they impair or nullify, on a basis of equality between men and women, human rights in the political, economic, social, cultural, civil or any other field.¹⁵ The concept of indirect discrimination encompasses development policies and programs that on their face value are gender-neutral but in practice are to the effect that large groups of female water users are disfavoured in comparison with male water users (Hellum 2005). Policies, programs and plans for improvements and investments in water, that are based on a division between domestic and productive water use, will often have a discriminatory effect. Female small farmers' water uses, for example irrigation of vegetable gardens by water from shallow wells on dambos or boreholes, by conventional economic standards have been seen as unproductive. Seemingly gender neutral investment policies targeted towards productive water uses have, as a result, often disproportionately favoured expensive water supply services controlled by men. In accordance with Article 26 of the Protocol to the African Charter on the Rights of Women in Africa states parties are obliged to undertake to adopt all necessary measures and in particular shall provide budgetary and all other resources for the full and effective implementation of the rights.

3. Zimbabwe's water laws and water management system

The core of Zimbabwe's water reform rested on increasing access to water while ensuring the productive use of water.¹⁶ New participatory structures were created to achieve equitable access while a new parastatal was established to accomplish productive use under the principle of user pay. In Zimbabwe, prior to the Water Act of 1998, large-scale commercial farmers controlled Zimbabwe's waters through a water rights system - first in time, first in line. This often made it difficult for new appropriations to be made to small-scale farmers who had great difficulty in finding the resources to obtain water rights and to negotiate the bureaucracy to secure those rights.

Zimbabwe's waters are divided into two categories - commercial water and primary water. Primary water is defined as water used for: 1) domestic human needs in or about the area of residential premises, 2) animal life, 3) making bricks for private use and 4) dip tanks.¹⁷ In sum, it is not restricted to drinking but rather to the essentials of livelihood in communal areas. The use of primary water does not require any

permitting or permission from water authorities. Under the new Water Act of 1998, it is only water used for commercial purposes that requires a permit in terms of Section 34. Commercial waters definition depends upon use - water used for purposes including agriculture, mining, livestock, hydroelectric power, etc. In the past with the exception of government irrigation schemes in communal areas, commercial water use was found in the commercial farm and urban sectors while primary water in communal ones. Despite the emphasis upon equality of access in the initial phases of water reform, most attention has been devoted to increasing the number of commercial water users. Zimbabwe attempted not only to keep control of the waters through national ownership but also to manage them economically by creating a new business-oriented, independent parastatal. Thus, it appears to be true to its history as a highly centralized state while appearing to incorporate new water-management global policies (Derman, Ferguson and Gonese 2001). The 1998 water legislation transferred national planning functions to a new parastatal agency, the Zimbabwe National Water Authority (ZINWA) with oversight in the Ministry of Water and Rural Resources that is to be funded primarily through the sale of water behind government dams, the provision of raw water to cities and the levying of water to large-scale users. It follows from the ZINWA Act Section 41 that only permitted water is subject to the user pay principle in terms of the new water levy.¹⁸ Management of Zimbabwe's waters are to be shared with new stakeholder organizations called Catchment Councils and Sub-catchment Councils. These are based upon dividing Zimbabwe into seven hydrological zones each with its own Catchment Council¹⁹ and subdivided into sub-catchments. These hydrological zones and their constituent water management units are quite different than already established administrative and political authorities.

New innovative forms of commercial cropping emerging within the common property regimes in the communal lands, such as gardening for consumption and sale, represent a challenge in how Catchment Councils, when issuing water permits, draw a dividing line between commercial and primary water uses. These uses render problematic the division between commercial and primary water. Under the new Water Act of 1998, it is only water used for commercial purposes that requires a permit in terms of Section 34. The definition of commercial water depends upon use - water used for purposes including agriculture, mining, livestock, hydroelectric power, etc. It follows from the ZINWA Act, Section 41 that only permitted water is subject to the user pays principle in terms of the new water levy.²⁰ Thus rural primary water users do not have to do so.

One Catchment Council, the Mazowe, debated what constitutes the difference between commercial and primary water use. The Council Chairman suggested a technological answer: if the water is moved by hand it is primary water, if it is moved by machine then it will be considered commercial. The Catchment Manager from ZINWA present at the meeting indicated that as yet, ZINWA had not decided what the guidelines should be in deciding whether water use was primary or commercial.²¹ Villagers from Bangira in Mhondoro Communal Lands who argued that they would refuse to pay for water moved by a pump to provide their vegetable gardens with water contested this view. A couple who had worked hard to establish funding for the local dam in order to raise their living standards and those of other families argued that since the surplus from the gardens was used for livelihood essentials, such as clothes, school fees or medicine, the water use should not be seen as commercial. Research investigating different catchment councils demonstrates that the intention of the new Water Act to 'ensure that the availability of water to all citizens for primary purposes' was not realized (Derman, Ferguson and Gonese 2001; Manzungu 2004; Mtisi and Nicol, 2003, Dube and Swatuk, 2002). Indeed, the emphasis was upon catchments and sub-catchments to raise revenue for them and for ZINWA. In the Mzingwane catchment, which had limited commercial water to levy, there was a suggestion to levy a charge for every herd of cattle. In the Save Catchment levies were proposed for any water use where some income was realized.

4. Local Practices and Norms

The new Zimbabwean water policy maintains a single uniform water management system that was put in place over other ideas and concepts of water management in the colonial era. It overlooks that access to water is, like most other natural resources, are regulated by international, national and customary norms. The regulations framing the new water management system are moulded on a large scale commercial farming model without giving much thought to the needs of the new and innovative forms of cropping that gradually are emerging within the common property regimes in the communal lands. In communal areas and resettlement schemes both men's and women's access to water still relies heavily on customary use rights (Pinstrup-Andersen 2000:13). In this section of the paper we explore if there might be an explicit or implicit recognition of a right to livelihood at least with respect to access to water for livelihood purposes.

Towards this end, we have since 1999 been studying water management in three villages of Bangira, Murombedzi and Kaondera in the chieftainship of Mashamayombe in Mhondoro Communal Land (Derman and Hellum 2002, Hellum and Derman 2004a).²² This local qualitative study was part of a wider study of national water reform in Zimbabwe that has been undertaken by the Centre for Applied Social Studies (CASS) at the University of Zimbabwe. It started out in 1999 when water was plentiful and was continued throughout the drought and finally the political and economic crisis in 2002, 2003 and 2004. We chose this area due to a rapid and recent increase in tobacco growing, a relatively high number of private wells and the existence of a dam project. Apart from dry season vegetable gardens located along streams, rivers, seasonally flooded grasslands (*vleis*) and boreholes, agriculture in this area remains primarily rain fed maize and cotton with an expansion of irrigated tobacco. Because of these trends in commercialization, we expected to find decreasing open access to the water resources of the area. We made the assumption that because the deep and open wells were located on homesteads, they were "private".

4.1. The right to safe drinking water

Our study in Mhondoro suggested that at the local level, as in international law, there is a right to clean drinking water. It demonstrated a surprising degree of consistency over time and space in upholding the norm that no one can be denied clean drinking water (Derman and Hellum 2002). The obligation to share drinking water extended to wells which were privately dug and on basically private land. In one village, a private borehole paid for by one household, rapidly became a village source of drinking water. In another village a borehole built by the Zimbabwe Tobacco Association for irrigating tobacco seedlings became an important water drinking source for the entire village. In a second village in the study area, the private well of a widow served as a source of drinking water for almost the entire village. Based on the norm and practice of sharing, access to drinking water extends to boreholes constructed for principally commercial, dedicated or private use. The duty to share increased rather than decreased during drought periods. Such sharing cut across kinship and village borders. It has been upheld during the accelerating economic and political crisis. Water users and well-owners reported that they had never paid or received money or give gifts. To breach the norm of providing drinking water meant risking sanctions or being the target of witchcraft.²³ Universal access to drinking water in Mhondoro points to a morally based duty rather than a negotiable and reciprocity based notion of property often pointed to as a characteristic feature of the fluid and flexible African customary laws (Berry 1993). Applicable to men and women, insiders and outsiders, it also points to a notion of equality and non-discrimination.

These findings are consistent with our readings of a series of Zimbabwean monographs on natural resource management including water, wetlands, forests and land (Matondi 2001, Sithole 1999, Derman 1998, Nemarundwe 2003, Walker n.d. and Cleaver 1998). The empirical record from communal areas in Shamva, Mutoko, Dande, Masvingo, Guruve, and Matabeleland all suggest that water for drinking can and should be made available for all. Nemarundwe in her doctoral thesis reports from the Romwe catchment in Chivi District, South Zimbabwe, that drinking water is made available to all no matter what the source of water. Available water sources include boreholes, riverbed wells, rivers, wells, collector wells and dams. No matter the tenurial status, whether publicly or privately owned the water sources are available for drinking water. In a powerful and clear manner she writes: because water is considered *hupenyu* (life), there has been no case of denying another village access to water during drought, although rules of use are enforced more stringently during drought periods. (2003: 108) The study points to actual incidents where this general ideal was challenged. One example is a well owner who prevented others from accessing his well. Two days after he locked the gate to the well he found a dead dog. In response to this the well owner later unlocked the gate (2003:113) In a similar vein Prosper Matondi who carried out his research in an area of resettlement farmers and two irrigation schemes in Shamva District near Bindura, the Provincial Capital of Central Mashonaland Province, found that drinking water remained available for all despite growing scarcity of both land and water resources. In parallel fashion, Bevyne Sitholes research in Mutoko and Chiduku communal areas in Eastern Mashonaland Manicaland summarizes farmers' views on water as follows: water should be available to all, rich or poor, but the person who impounds the water is the one who makes the river dry (Sithole 1999: 195) Frances Cleavers study in Nkayi communal land in Matabeleland suggests that water user rules that limit poor peoples access to water are invalid. She observed that poor women got away with breaking the rules that limited water resource to certain individual users (1998: 357).

4.2. Water for gardens

Almost every family in the three villages in Mhondoro had gardens when we began our study in 1999. A quantitative survey of water management in the area demonstrated that ninety per cent of households had some form of dry season garden requiring hand irrigation.²⁴ The crops in the gardens include onions, tomatoes, beans, rape, maize, sugar cane and cabbage, etc. There are also fruit trees including bananas, papayas (pawpaw), and mangos. They rely heavily on the open common pool water resources such as rivers, borehole water and shallow wells. Gardens are often situated on land that is either seasonally flooded or holds water from the rainy season long into the dry season. The gardens are as much a source of income as of food for the family. The income is often used for meeting household needs including food, education, clothing and medical needs. As in Eastern Mashonaland and Manicaland gardens are fairly recent. A number of elderly people, such as the headman in Kaondera and the grandmother of our local research assistant, told us that they were the first villagers to start gardening in the 1950s. They were taught to grow vegetables by an agricultural extension officer in the colonial administration, at that time termed CONEX. People expanded their gardens after independence in 1980 as a response to the continuous rise in food prices. Gardening was also facilitated by a government scheme that set out to increase and improve water supplies through inputs like free cement for wells. The Zimbabwean government began withdrawing from rural areas during the 1990s under the combined policies of structural adjustment and decentralization. People in Mhondoro, as local communities elsewhere, have since been left to find alternative economic sources for expanding water supply for drinking water, watering cattle and irrigation. The CASS survey indicated that 70 per cent of the households in the three villages had invested work and money in water including private wells and other water resources.

Our study from Mhondoro suggests that the right to water as part and parcel of rural livelihoods extends beyond the right to clean drinking water (Hellum 2005). Households who needed garden land were allocated appropriate land.²⁵ Women were usually in charge of these seasonal vegetable gardens. They were irrigated by means of open common pool resources such as water from nearby rivers or shallow wells on wetlands. Crops grown in these gardens generated income that paid for children's education, food, clothing and farm equipment and provides vegetables for household consumption and nutrition. In recent years of drought and economic hardship the produce from women's gardens are essential source of livelihood. In one of the villages everyone we interviewed stated they had obtained the headman's (*sabhuku*) explicit or implicit approval to access land for gardens on vleis or close to rivers. The gardens, the *sabhuku* said, were important sources of livelihood and self reliance. For this reason he had not taken action when people allocated themselves gardens without his permission. Another reason was fear of revenge in terms of bad spirits, *ngozi*. A similar pattern was observed in another village where peoples gardens were moved from the wetlands to communal gardens close to a newly constructed dam. Everyone was granted land for gardens in this area. If the land allocated for the communal gardens was insufficient the *sabhuku* saw it as his duty to allocate more land. None of the villagers we talked to had paid for the land. This suggests a wider concern for livelihood that not is limited to clean drinking water but extends to access to garden land with available water sources. While the case of access to gardens with available water resonates a concern for livelihood it is, unlike the right to safe drinking water, not available on a universal and non-discriminatory basis. Outsiders do not have access and the land is as a main rule allocated to the male head of household on behalf of the family.

While the right to water for gardens more often than drinking water is object to contestation local communities make efforts to sanction such breaches. Nemarundwe, in her doctoral thesis, provides a short illustrative case of water conflict at a small dam between richer and poorer, women and men, livestock owners and non livestock owners (Nemarundwe 2003). During a drought year the dam committee chairman sought to stop villagers from planting gardens until it was clear that there was enough water for livestock. Garden project members protested indicating that such a move would disadvantage poor farmers who after all did not own livestock and depended on the irrigated plots for their livelihoods (2003: 166). The dam chairman proceeded to seal off (with the assistance of two other villagers) all outlet valves at the dam so that no water could flow to the garden. As a result he was challenged publicly by villagers. The dam chairman then let out all the water, until it was below the outlets. The disputes resolution required external authorities to help sort out the conflict. The dam chairman was subject to a tribunal organized by the RDC and the NGO supporting the project. He was reprimanded and the villagers called for him to resign from the dam committee. However, he apologized to the project members and promised to cooperate with other farmers in conserving water resources. Unlike sources of drinking water shallow wells for irrigation of gardens may be fenced off to protect the crops. Prosper Matondi's study from Shamva focused on the growing scarcity of arable land near water (Matondi 2001). As is the case throughout Zimbabwe, dambo gardens are located near the streams

dissecting the vleis that also are used as grazing areas. However, over time they are used more for gardens than grazing. With the presence of livestock, gardens have to be fenced to prevent that animals eat the produce and drink from the well. The fencing of vegetable gardens along rivers or on wetland is common practice all over Zimbabwe. This suggests that land once is allocated for gardening, the land and the water available for irrigation becomes family property. Access to both land and water may as such be restricted on the basis of kin.

Dr. Bevlyne Sithole has produced the most detailed social science work on dambos in Zimbabwe (Sithole 1999). Her research was carried out in Mutoko (Mashonaland East Province) and Chiduku (Manicaland Province) communal areas. As in other dambo areas, these are locations for multiple uses including fruit trees, fish ponds, grazing areas, brick making, woodlots, sacred areas, and reed areas. Sithole documents increased desiccation of dambo areas and thus increased difficulties in using the dambos particularly in using water for small-scale irrigation. According to Sithole (and also Matondi 2001) the main mechanism for sharing scarce livelihood resources under these conditions is subdivisions among kin within the household.

While the right to drinking water is afforded to everyone regardless of village belonging, kinship and marital status access to land with available water for gardening is as a main rule allocated to the male head of household on behalf of the family. Yet livelihood concerns crosscut the male status rule so as to make land available to single and childless women, widows and divorcees. While married women, due to these formalities, have been seen as landless Dr. Sithole, observed that women seem to be acknowledged by most men as owners of the garden (1999, p. 80).²⁶ This strongly suggests that ownership within the family is not acquired through rules concerning family representation but by actual use and work on the land.

While accepted within and amongst local communities these norms are frequently overlooked and disregarded in development policies, projects and practices. In one of the largest resettlement projects in a communal area in the Zambezi Valley, Derman (1997) reports that women farmers could no longer maintain their dambo gardens since they were moved away from streams and rivers. Boreholes were provided for drinking water and watering livestock. There was no broader concern for livelihood as people were left to dig their own well gardens for vegetables. Some women continued walking long distances to keep up their gardens while other families invested in private wells. For many women the only solution is to use the scarce borehole water for irrigating vegetables. Despite very dry conditions and growing pressures drinking water remains accessible although there is greater acceptance of watering livestock from boreholes.

4.3. The right to livelihood

As we have seen rural people in Zimbabwe see land and water as closely interconnected in fulfilment of livelihood needs. But livelihoods are no longer just about access and use of land and water in rural areas.²⁷ Access to basic livelihood resources such as health, food and housing also depend on cash. Like many rural southern African residents, Zimbabweans, are dependent upon remittances from kin in cities or abroad, or reliant upon their own engagement with paid jobs or market activities. Households and families are quite different and even in a one rural area there are significant differences between them in terms of reliance upon land and water. Yet, within the context of this mixed rural livelihood structure, *dambo* or wetlands cultivation has particular significance since they have grown in importance due to the unpredictability of Zimbabwe's rains, increased reliance upon cash crops and the possibilities of hand irrigation. *Dambo* garden cultivation is a recent phenomenon. For example, Sithole documents that *dambo* cultivation in Mutoko and Chiduku in Eastern Mashonaland and Manicaland stems from the establishment of mission schools and hospitals in the mid-twentieth century (1999: 140). In general, as found by Derman and Hellum, the major garden crops come first from large-scale commercial farms and then from agricultural extension during and after the colonial period

Both clean drinking water and access to land with available water is shared between and within village households on a day to day basis. The norm of sharing underlie troubleless cases in terms of everyday life practice but it is also confirmed by ideal statements from villagers and more importantly trouble cases both from our own, Namarundwes and Sitholes research. A number of incidents where people who had refused to share their drinking water were subject to revenge in terms of poisoning or death of animals points to the existence of spiritually sanctioned norms.

While there continued to be acknowledgment that *sabhukus* allocated garden land we found that no one was denied land upon request. One *sabhuku* confirmed that he had not denied anyone land for gardens. The gardens, he said, were an important source of livelihood and self reliance. He also stated that he was afraid of bad spirits in case he denied people access. That was why he had not taken action when people allocated themselves gardens without his permission. While *dambo* garden cultivation is a recent phenomenon, the norms for garden access and use are, it seems, extended from other cultural patterns deeply connected to water is life, water comes from God, and everyone should have access to water.

Villagers also took action through local dispute resolution agencies when someone broke the rules concerning water sharing both in relation to drinking water and water for gardens. Our reading of Matondi, Namarundwe, and Sithole, who all focus on communal area water management, suggest that in situations of scarcity of common pool resources the norm of sharing is placed on the kin. This perspective seems highly appropriate and relevant since this scarcity has been created by the unequal divisions between land and water in the commercial farm sector and the communal and resettlement areas. The pattern was that rather than deny some families or households access to dambo land, the gardens were subdivided into smaller areas. In Zimbabwe we found that practices point towards the existence of a set of interrelated norms of sharing of land and water that are essential for livelihood. The widespread acceptance of these norms appears to be vital in local communities' ways of handling poverty and food security. These findings are not necessarily matched by the situation in other Southern African countries. For better or worse, the Zimbabwe water acts make no mention of how to support informal irrigation carried out in Zimbabwes communal areas and increasingly in the former commercial farm lands.

5. Conclusions and Reflections

The division between primary and commercial water, central to Zimbabwes water reform seems inadequate to include the growing emphasis upon a right to water and a right to livelihood. Most importantly, although we will not address it here, is the growing inability of Zimbabwes urban populations to afford paying for water. In addition, the pressures upon the privatized Zimbabwe National Water Authority to collect monies for water usage to support themselves and water management requires greater clarity for how to use water for socially beneficial and development purposes other than simply expanding commercial water use. The law provides for a Water Development Fund but because of requirements for maintaining Zimbabwe's large dams it seems that few resources will be left for small scale irrigators and farmers.

Despite the recent origins of *dambo* cultivation and gardens, they have been utilized under a principle of a right of access to both land and water for livelihood purposes. The concept of livelihood though has responded to a changing social and economic environment by including sale of produce but with the understanding that it is for socially understood purposes including education of children, health expenses, clothing, house repair etc. along with the consumption of garden products. From a livelihoods' perspective, it makes little sense to distinguish the key resources required for household well-being. Once again rural peoples' decision making seems highly responsive and sensible in light of changing survival requirements.

The policy implications are multiple but much depends upon if and how states and their ministries can be responsible to poor peoples' needs and requirements. The sustaining of underlying norms despite changing policies at the state level suggests either resistance to the state or the unimportance of communal and resettlement small scale irrigation to it. Until national governments are willing to recognize alternative water management strategies and principles we suggest that nothing be recommended or done for the time being. In the longer term we suggest that water management in Zimbabwe broaden the idea of primary water to incorporate the right to water and livelihood implied in 'primary water.' We similarly suggest that communal tenure rights be recognized for wetlands and small scale irrigation where appropriate and desired by farmers. Given the complexity but also tenuousness of women's land rights we suggest that a model of one size fits all ('formalization' or registration) may work to disadvantage women even further. We look forward to seeing several models with guiding principles drawn from the right to livelihood, right to water and the CEDAW to be made available for communities to select ones most appropriate for them.

6. Postscript

Our paper has focused on description and analysis through 2003. Beginning in 2000 and now completed, the Fast Track Land Reform has turned the former privately owned farms into A1 and A2 resettlement schemes. A1 are intended to be new villages with a limited size of farm fields while A2 are meant to be commercial size. In one Province, Eastern Mashonaland, A1 settlers (of whom 88% were males) received on average 34.8 hectares while A2 settlers (of whom 90% were men) received 137.1 hectares. Unlike the communal areas analyzed in this paper, Fast Track did not take into account how water resources were being utilized on the commercial farms nor make any plans for maintaining ongoing irrigation systems. The disorganized, violent and unpredictable Fast Track has led to economic decline which has had severe consequences for the right to livelihood in terms of food, water and land in the new resettlement areas and communal lands alike. We will take these briefly up in turn. In the past several years Zimbabwe has fallen from a medium human development nation to a low one (Human Development Report 2003). It was ranked 145th in the world in its human development index and it is this high only because of high rates of schooling. It has one of the highest rates of inflation in the world combined with a shrinking economy - shrinking in the sense of a series of macroeconomic measures including gross domestic product, economic growth, formal sector employment, etc. Indeed its index has fallen from a high in 1985 to 88th of 102 developing countries, almost the very bottom (UNDP 2006: 294). Due to Aids it is projected to have only a .2% annual growth rate - from 12.8 million people in 2001 to 13 million in 2015. 1/3 of the population is reported to be sick with Aids or HIV positive while life expectancy at birth has fallen from 56 to 33.1 and inequality between rich and poor has grown enormously.

Despite the growing importance of the right to livelihood in regional instruments, such as the Protocol to the African Charter on the Rights of Women the Zimbabwe government rejects them as infringements upon its national sovereignty. The growing regional and international importance of the right to water has been completely ignored along with the right to livelihood, and most civil and political freedoms. Farm workers, who made up the largest sector of formal employment, have lost their jobs, health care, schooling for children, and homes. No provisions were made to include them in alternative employment and very few have been included on the resettled farms. In the communal areas where land used to be for free headmen are now "selling" land to former farm workers. The areas under formal irrigation have diminished greatly since the irrigation systems on the former commercial farms have not been sustained and older government sponsored irrigation schemes have been unable to continue in light of the harsh macroeconomic climate. Thus informal, hand irrigated gardens continue to be essential for rural livelihoods both in the resettled areas and in the communal lands. How local notions of the right to livelihood in terms of the right to land with available water is affected by the present economic and political crisis is now critical for the right to life. While fieldwork studies are impossible under the present conditions fragmented evidence, collected during our visit to Harare in August this year suggest that access to resources that are necessary for livelihood under the present conditions are politicized and commercialized. In practice this has meant that the ruling party controls access to critical resources and those accused of membership in oppositional parties risk dispossession. How resilient rural normative systems are in Zimbabwe will certainly be put to the test.

Endnotes:

¹ The four Dublin Principles are: (1) Freshwater is a finite and vulnerable resource, essential to sustain life, development and the environment; (2) water is an economic and social good; (3) Water development and management should be based on a participatory approach involving users, planners and policy-makers at all levels; and (4) Women play a central part in the provision, management and safeguarding of water. The thinking behind these principles has been incorporated into policy documents authored by the World Bank and other donor organizations (World Bank 1993, 2002; FAO 1995, 2000).

² Water reform has been part of the more general process of decentralization. The argument runs that if natural resources are managed at the local level, by communities or local government, then they will be looked after better and more efficiently, resulting in improved opportunities for sustainable livelihoods (SLSA Team 2003a: 3). There was however no discussion of the local practices and norms which can influence or even determine whether decentralization will be successful.

³ We have examined some implications in Hellum and Derman 2003 & 2004.

⁴ The Convention on the Rights of the Child Article 24.

⁵ The Protocol was adopted by the 2nd Ordinary Assembly of the African Union, Maputo, 11 July 2003

⁶ The statement of understanding states that in determining vital human needs in the event of conflicts over the use of water courses special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.

⁷ Article 2

⁸ See also A. Eide "The right to an adequate standard of living including the right to food", in Eide. A et al (2001)

⁹ See General Recommendation No.12 (1999).

¹⁰ G.R.15, 21

¹¹ G.R. 15, 23 and 24

¹² G.R.15, 26 and 27

¹³ The introduction to the Protocol states that Articles 60 and 61 of the African Charter on Human and Peoples Rights recognize regional and international human rights instruments and African practices consistent with international norms on human and people's rights as being important reference points for the application and interpretation of the African Charter.

¹⁴ This obligation is embedded in Article 1 of the CEDAW and in Article 2 in the Protocol to the African Charter on the Rights of Women

¹⁵ CEDAW Article 1.

¹⁶ There is a substantial literature on different dimensions of Zimbabwe's water policies and water reform including Dube and Swatuk 2002, Derman, Ferguson and Gonese 2001, Mtisi and Nicol 2003, Hellum and Derman 2003, Derman and Gonese 2003, Manzungu, Bolding and Zawe 2004, among others.

¹⁷ Water Act 1998 section 32(1)

¹⁸ In accordance with Section 41 in the ZINWA Act The Minister may, in consultation with the approval of the Minister responsible for finance, by statutory instrument, impose a water levy on any person holding a permit issued in terms of the Water Act (Chapter 20:24).

¹⁹ These are the Sanyati, Manyame, Mazowe, Save, Runde, Mzingwane, and Gwayi.

²⁰ In accordance with section 41 in the ZINWA Act, the Minister may, in consultation with the approval of the Minister responsible for finance, by statutory instrument, impose a water levy on any person holding a permit issued in terms of the Water Act (Chapter 20:24).

²¹ Derman Research Notes, February 2000. At a Mazowe Catchment Council meeting there was a discussion whether to ask the Centre for Applied Social Sciences to suggest a definition for commercial water. This discussion ended when the Council's Chair suggested the technological definition.

²² Mhondoro Communal Land is situated in Chegutu District, which is made up of commercial farm, small-scale commercial, communal, resettlement and urban areas 120 kilometres west of Harare. The major river that flows through this high plateau area is known as the Mupfure. It is part of the larger Sanyati River Catchment south east of Harare and flows through communal and commercial land including the city of Chegutu.

²³ The norms of sharing and potential sanctions exist in those areas of the three catchments where the CASS water research team has been working.

²⁴ CASS BASIS survey data, CASS 2000-2001.

²⁵ Informal irrigation land constitutes the vast majority of irrigated lands in Zimbabwe's communal areas. Yet in the Irrigation Strategy of 1994 which was carried out in preparation for water reform focused only

on government sponsored formal irrigation schemes which comprised only 2,000 hectares at that time (Govt of Zimbabwe 1994).

²⁶ This is not straightforward. Sithole writes. It seemed impossible for women and men for that matter to think about ownership in terms of this belong to this one or that one (1999:80).

²⁷ The process of decreasing dependence upon agriculture alone has been called by Deborah Bryceson (1999) de-agrarianisation.

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