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## Water rights for millions of African farmers threatened by law rooted in colonial times, study finds

*Researchers at Africa Water Week call for efforts to “decolonize” and improve water permit systems, so more farmers are encouraged to invest in much-needed irrigation*

**LIBREVILLE, GABON**, October 29, 2018 – Millions of African farmers still face legal restrictions on water access, dating back to colonial times, according to a study released this week. Researchers with the International Water Management Institute (IWMI) and Pegasys Institute reveal the obstacles that smallholders face, including potential legal penalties, due to laws that originated and led to “water grabbing” in the colonial era.

The solution, the authors argue, is to support African governments in “decolonizing” water law through a “hybrid” approach to water use rights. They recommend that permit systems should be maintained but reoriented to regulate large-scale water users (mainly companies) that have a significant impact on other water users and the environment. The hybrid approach would also give equal standing to customary law, which has guided investment in water infrastructure as well as water sharing for centuries, including the colonial period. Consisting of a wide range of rules and practices negotiated locally, customary law still applies to millions of small-scale water users in Africa’s informal rural economy.

“Exclusive reliance on national permit systems has, at least on paper, “criminalized” up to 100 million people lacking water permits in the five countries studied,” said **Barbara van Koppen**, the lead author of the historical study and a rural sociologist with IWMI, a CGIAR Research Center. “The state cannot reach them because of the logistical burden of granting permits for so many water users.”

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In support of the hybrid approach proposed, the Pegasys Institute and IWMI have published a practical guide for water managers, aimed at helping bring water use rights system more in line with national development goals.

“This is a viable alternative to the blanket permit approach – one that better matches what is already happening on the ground in Africa,” said **Barbara Schreiner**, Executive Director of the Pegasys Institute. “A hybrid water use rights system will lighten the administrative burden on the state, while making formal legal access to water more equitable. This is critical for expanding smallholder irrigation.”

“Smallholder irrigation may be Africa’s best hope for boosting crop production and reducing its vulnerability to worsening drought,” said **Timothy Williams**, IWMI’s director for Africa. “Where the water use of smallholders remains outside the formal legal framework, however, this will lessen incentives to invest in irrigation infrastructure and will undermine Africa’s food security.”

Focusing on Kenya, Malawi, South Africa, Uganda and Zimbabwe, the study details how colonial governments first introduced water permit systems in the early 1900s. By granting permits only to white settlers, these systems established minority ownership of a natural resource that was vital for economies dependent on agriculture. This system also provided governments with a means to extract valuable information and collect revenues. Water uses below certain thresholds (including basic domestic uses and “micro-scale” uses for crop production) were exempt, but had an inferior legal status, as did customary law governing the water use of local populations generally.

Following independence from the colonial powers, water permits and the exemptions from permits continued to be the only legal tool for regulating water use. Moreover, governments extended the permit system beyond surface water to include groundwater (accessed through wells and pumps), thus increasing the administrative burden, while further marginalizing rural smallholders.

Starting in the 1990s, many countries have actively promoted national permit systems, convinced that these were consistent with “global best practice,” the study explains. But given the large numbers of smallholders and the limited budgets of water authorities, these systems turned into what the study terms an “administrative nightmare,” as states proved unable to process smallholders’ applications.

In South Africa, with its well-staffed water authorities, only 5,956 permits have been granted since 1998, when the National Water Act was passed. In other countries covered by the study, the numbers of permits are even lower. Systems are currently biased toward the few large-scale water users, who gain superior entitlements to use water for large-scale irrigation, mining, industry and hydropower generation, because they know how to engage with the government and can afford the high costs of processing permit applications. Other users remain trapped in a situation that regards their water use as illegal. Although legal action is rarely taken, smallholders still need a viable pathway to legality that fosters the spread of irrigation.

According to the study authors, the situation they documented in five countries is widespread across the African continent as a whole. In addition to those countries, the researchers examined permit systems since 2004 in Tanzania, Mozambique, Ethiopia, Swaziland, Namibia, Zambia, Burkina Faso, Ghana and Nigeria, finding them to be remarkably similar, despite important local differences.

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**Notes to editor:**

Access the study – *A Hybrid Approach to Decolonize Formal Water Law in Africa*  
(IWMI Research Report 173)

[http://www.iwmi.cgiar.org/Publications/IWMI\\_Research\\_Reports/PDF/pub173/rr173.pdf](http://www.iwmi.cgiar.org/Publications/IWMI_Research_Reports/PDF/pub173/rr173.pdf)

Access the guide – *Establishing hybrid water use rights systems in Sub-Saharan Africa: A practical guide for managers*

[http://pegasysinstitute.org/wp-content/uploads/2018/10/RECH2\\_Guideline\\_20102018\\_Final.pdf](http://pegasysinstitute.org/wp-content/uploads/2018/10/RECH2_Guideline_20102018_Final.pdf)

The study was conducted with support from REACH, a 7-year global research program, led by Oxford University and funded by the UK's Department of International Development (DFID) to improve water security in Africa and Asia.

The **International Water Management Institute (IWMI)** is a non-profit, scientific research organization focusing on the sustainable use of water and land resources in developing countries. Headquartered in Colombo, Sri Lanka, with regional offices across Asia and Africa, the Institute works with governments, civil society and the private sector to develop scalable agricultural water management solutions that have a real impact on poverty reduction, food security and ecosystem health. IWMI is a CGIAR Research Center and leads the CGIAR Research Program on Water, Land and Ecosystems (WLE). [www.iwmi.org](http://www.iwmi.org)

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The **Pegasys Institute** is a not-for-profit organisation working to find African solutions to African challenges. Our focus is on developing pro-poor solutions in countries with inadequate capacity, limited information and constrained resources. We work with the Pegasys group to answer questions that are yet to be identified, and through them generate ideas; research; advocacy; policy and strategy.

<http://www.pegasys.co.za/pegasys-institute/>