Seeking the linkages: integrating community governance of water resources and land tenure reform

DRAFT

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1. Introduction

Effective water resources management requires considering the water resources, the linked land and natural resources, and the people who use or derive benefit from these resources. Here we are concerned with water resources in the communal areas, and the governance of these. Wetlands in communal areas are a relevant reference for our topic: as it here that water and land intersect, and where environmental and social sustainability are entwined.

The integrity of many wetlands in communal areas are at risk – with associated risks of increasingly vulnerability of users of the wetlands and of wetlands services, of land and water resources.

At local level, an intimate relationship exists between certain land use practices, erosion, desiccation, and a reduction in fertility and hence productivity. Significantly, although land use practices are problematic, important underlying drivers include hunger, the erosion of local governance regimes of common property resources (such as wetlands), the ambiguous roles of formal institutions, and the varying degrees of awareness regarding wetland function and role. Additionally new legislation regarding land tenure and commonage and evolving institutional arrangements in the water sector in South Africa all have implications for the way common property resources will be governed and what options exist for local-level involvement.

2. Context of Policy Reform

Legal and policy reform with regard to water and land is apparent all over the African continent. The international development community has committed itself to the Millenium Development Goals, the principle one being to halve poverty by 2015. The protection and better management of the natural environment is seen as part of this. Land and water are two key, and linked, natural resources. Regarding water there have been growing concerns regarding the status of water resources on global and regional scales, and these have brought about considerable changes in orientation to both policy and practice. Land tenure reform is a focus in part because securing rights in land is seen as critical to improving sustainable land management, especially in sub-Saharan Africa, and also as a concern about human rights. However there some very different approaches to tenure reform, underlaid by differing conceptual paradigms and related value systems. Land and water resources come together in a very clear way in wetlands, which have been increasingly recognised as having a key role to play in ecological services. The Ramsar Convention is an intergovernmental treaty to promote national action and international co-

operation for the conservation and wise use of wetlands and their resources, which has led to more focused attention on wetlands all over the world.

Due to its particular political history, new law and policy has been a strong feature of South African life of the past 11 years, with the advent of a new democratic regime and a legacy to redress.

2.1 Water reform

The post-1994 government in South Africa recognised both the scarcity of water countrywide and the need for a more equitable distribution given that it is an essential resource for human survival and development. As a result, water was nationalised and a governance framework developed to redistribute water to poorer sections of the society and to locate control of water regulation and use within catchment areas was set out in new national water policy with associated legislation in the form of the National Water Act (1998) and Water Services Act (1997). A key theme evident in the policy and legislation is an integrated approach to water resource management (Pollard, 2001). The integrating framework takes the form of an ecosystems approach commonly known as Integrated Catchment Management (ICM) that seeks to recognise the interlinkages between land and water resources at the catchment scale.

ICM is a conceptual framework, not a recipe or formula for solving water problems. Fundamental to the success of implementing its principles is that responses must be context specific, locally-driven, and reflect the socio-political, and economic realities of a particular catchment. The nature of water resources management as set out in the new legislation departs considerably from water management practices of the past. This has had a significant impact on the ability of different government departments and institutions (some of them new), to operationalise the new national orientation to Integrated Water Resources Management (IWRM) (Pollard, 2002). In order for the ideals of IWRM, as outlined by the National Water Policy (1997) and National Water Act (1988) to be realized, a range of stakeholders, including government departments, private business, local government, civil society organisations all need to be come together to charter a way forward for a hydrological region, called a Water Management Area (WMA). To achieve this, a considerable amount of learning and subsequent collaboration is demanded.

2.2 Natural resources in communal areas

There is increasingly heavy use of natural resources in crowded communal areas, where many of the poorest people in Southern Africa live. In South Africa the 1996 census data indicates that around 15 million people lived in customary areas, approximately 83% of the rural population. May (2000,) also observes that the majority of the poor are “African, rural and women”. Using 1995 data, he estimates that although 50.4% of the population was classified as rural, 71.6% of the poverty share, based on ‘money-metric indices’, was in rural areas (ibid).

The poor people living in these rural areas rely heavily on natural resources to sustain precarious livelihoods - grazing, subsistence agriculture and the harvesting, consumption and sale of wild or

indigenous resources. In South Africa (Adams et al:1999 cited in Shackleton et al: 1999) estimated that the value of land based livelihoods in communal areas, which had a total of 2,4 million households, was R5 535 per annum, resulting in an aggregate value of R13,28 billion per annum. These natural resource use strategies are often deployed by extremely poor households (Shackleton et al: 1999), often women and children, following a crisis of some kind, such as the death of an employed member or pension recipient, loss of a job, illness etc. Natural resources in these contexts provide opportunities for food and income provisioning that are low in labour and capital requirements.

Wetlands can provide abundant resources to help sustain the livelihoods of the poor (Frenken & Mharapara 2002; Gomes et al. 2002; Kotze et al. 2000). Communal areas are shaped by their history, and in South Africa these are in the former Bantustans that were created by the nationalist government. Thus these wetlands often lie in densely-populated areas, albeit they are dubbed "rural", and at times densities equal those of the European countries such as the Netherlands, reaching up to 300 people km^2 (Pollard et al. 1998). This resulted from the forced relocation of people during 1960s to the 80s. In one wetland studied, the population rose by 1000% in just nine years (Pollard et al 2006). Today, there is increasing concern over the state of wetlands, and a state supported programme, Working for Wetlands, has been established to work for their rehabilitation and management.

The National Environmental Management Act (NEMA, Act 107 of 1998) promotes the sustainable use of resources and co-operative governance in the management of environment, and equitable access to natural resources. The White Paper on Environmental Policy (1999) provides the policy framework for environmental management and sustainable use of natural resources. Research carried out in 2004 found that many researchers and practitioners express confusion over who holds the responsibility for the management (rights of use, boundaries of resource use, sustainable practices, transgressions, enforcement) of natural resources in communal lands. (Pollard and du Toit, 2005). The issue of tenure compounds these uncertainties, including the need to distinguish ownership and governance. Some say that it rests with Local Government, others with Provincial departments, others with Traditional Authorities and others with national government. Some say: "it depends…it is not a sole agency function."

The lack of certainty has left a governance vacuum that means that in certain areas wide-scale abuse is occurring with impunity (*ibid).* Local residents complain that their woodland resources are being harvested, without control, by locals and "outsiders" alike; similarly, uncontrolled sand-mining by entrepreneurs or Public Works is common place. Residents are unsure who to turn to. On the one hand, the village headman expresses the view that he has lost the power to act, whilst on the other local councilors feel overwhelmed by service delivery commitments. Furthermore, environmental officers of provincial government are rarely anywhere to be seen in the rural areas.

Moreover, amongst the plethora of legislation and planning documents there is little evidence of integration. For example, despite the intentions of national legislation local government plans for water or land reflect little reference to national policy or programmes regarding water resources or natural resource management.

2.3 Tenure reform

Tenure reform is of concern through much of Africa, and in South Africa the post-1994 period saw a rapid and intensive process by the State to fulfil constitutional requirements to provide land tenure security to all. There are some conflicting trends of thought regarding reform of communal tenure however, which are ideological and practical, and which lead in very different directions. On the one hand there is the push towards tenure reform as some form titling – privatization of the public resource – linked to the ideology of capitalism and land as a fungible asset. The idea that with exclusive ownership goes improved land and resource management is punted here. On the other hand researchers and practitioners point to the failures of titling, and promote that secure tenure is what needs to be aimed for. African traditional systems are socially embedded in ways that do not translate simply to western concepts of ownership, and it is more effective and has more beneficial social impacts to work with and build on traditional systems of land tenure to increase tenure security and to make linkages with the modern state land management systems (Quan 2003).

South Africa pushed ahead with land reform policy and law soon after the change of government in 1994, but comprehensive tenure reform for communal areas took initially a more careful and considered approach. Extensive research policy development gave birth to a policy proposal for tenure reform in communal areas which then got shelved as political fortunes and priorities turned after the first four years and a new presidency. Then in 2004 a tenure reform law for communal areas was passed amongst much controversy, which took quite a different route to the earlier proposals.

Early on after 2004 there was a stated political commitment to recognizing a wide range of informal land rights which were previously unrecognised in law. However land reform has primarily worked within the paradigm of ownership through title. Thus while the Communal Property Associations (CPA) Act set out to create an appropriate alternative, it remains within the ownership and title model. In effect it reduces costs by creating a single perpetual juristic person that takes transfer of the property; but this has masked the reality of many people struggling to access, secure, use and develop land and the complex land and land rights administration functions associated with mediating these struggles. No support to CPAs has been provided by the state.

There has been a singularly successful legal intervention: the *Interim Protection of Informal Land Rights Act* (IPILRA, Act No 31 of 1996). This law was intended as a short-term measure to arrest dispossession of rights of customary-type occupation on state-owned land in the former homelands. It has also protected existing rights in a manner that recognises and legalises informal land occupation. While IPILRA does not provide for a new land tenure and administration system, the concept of “adverse possession” has helped to shape a new understanding of land rights not covered by the common law concept of ownership. Rights holders cannot be deprived of their land rights without their consent other than by formal expropriation, an action that requires the quantification of their rights and in effect means these rights achieve a value previously unrecognised in law.

In the past two years two new national laws were enacted; the Communal Land Rights Act (ClaRA) addresses tenure reform in communal areas, and is accompanied by the Traditional

Leaders Governance Framework Act (TLGFA). Both will potentially impact on how the rural poor living in communal areas hold land rights and how those rights are administered. These laws are set to fundamentally change the institutional environment, which so impacts on land and resource management. The intention of government is to secure property rights to facilitate development, to extend democracy and to ensure sustainable land use into the future. The concern is that these measures will, at worst, deepen insecurity and poverty and at best, fail to improve the lives of people living in communal areas. This is because ClaRA follows in large measure the CPA group ownership model, while the TLGFA does not recognise the role of deeply embedded traditional practices and paradigms that inform the role of traditional authorities in land and tenure administration.

CLaRA does not appear to address some of the fundamental problems relating to tenure in the country. Instead, it transfers land into group ownership and then further individualises and transfers individual portions of land to particular people or households. These portions may be held in ownership through title or Deeds of Communal Tenure. Within this framework, the Act provides for a process in which "old order" or de facto rights can be identified and, confirmed, converted or transferred into "new order" rights capable of registration. What it does not provide for is either the criteria for determining what evidence counts in identifying an old order right or what processes should be followed for adjudicating multiple old order rights all competing for recognition as a new order right. These types of evidence do not currently exist in the common law leaving the arena wide open to be shaped by consultants and lower ranking officials.

However, there is also a serious tension in ClaRA. While on the one hand it appears to institutionalize a process for individualizing and titling remaining customary-type rights, it also together with the TLGFA appears to consolidate and extend the powers and authorities of Traditional Authorities over land. ClaRA allows for "traditional communities" to appoint their traditional councils as land administration committees, in a move many critics have argued removes democratic choice from communities. In the hands of traditional councils, land administration committees (LAC) could fulfill all the functions of ownership. The precise role of these land administration committees in relation to individual or household rights to own individual portions remains unclear with ClaRA authorising the LAC to allocate and record property rights of members while simultaneously enabling these "member's" rights to be registered in the Deeds Office.

The biggest challenges for South African land policy therefore continue to be how the state reconciles the common law with customary law and individual rights with group rights. The new laws in South Africa do not replace the common law governing property in South Africa. The fact that land tenure reform legislation enables the movement of customary tenures from a legally inferior status to registerable real rights through group or individual registration has missed some important principles of customary law, particularly regarding the negotiability around layers of different use rights for different users which tend to evade codification and exact spatial definition.

These legal interventions makes assumptions about customary systems that will impact on the possibility of their success. For example, ClaRA, assumes that it is possible fairly simply to bring a customary tenure system into the Registration of Deeds system. For such an assumption to hold

true, the conceptions of property, ownership and evidence would need to be congruent between the systems, and yet there are real questions as to whether this the case. The TLGFA, on the other hand, assumes that traditional structures can be democratized by forcing changes to representivity and processes for achieving representivity.

2.4 Land use management

The legal and policy framework for planning, which is tightly aligned to land use management and thus to natural resource management, has been in a state of considerable flux for the better part of the last fifteen years in South Africa. There were attempts in the late eighties and early nineties to reform the planning and land-related laws at both national and provincial levels. However since 1994 the planning system in South Africa has been plagued by an ongoing uncertainty as to what the substantive scope of planning laws should be and which planning powers should be exercised by the different arms of government, at all three spheres. (Berrisford 2004)

During the course of the last few years the national parliament has enacted some important laws with a dramatic effect on planning across the country. A suite of laws flowing from the Local Government White Paper included the Municipal Structures and Municipal Systems Acts. The Local Government Demarcation Act placed land under Traditional Leadership within municipal boundaries, and now falls under the ambit of local government. In July 2001, the national Minister for Land Affairs and Agriculture published a White Paper on Land Use Management and Spatial Planning and a draft national Land Use Management Bill ('the LUMB') was then gradually developed over the course of the two years. The LUMB is still in draft form and it is unclear a) whether it will be enacted and b) if it is, whether it will remain in its current form. (Ibid)

2.5 Linkages - Harmony?

Much of the new law and policy are visionary, and founded on sound principles and theory. Others of it is questioned, and some of it is not yet finalized. Implementation is a major challenge, requiring capacity and systems for cooperative governance, in a context of so much change – new laws, new institutions, fundamentally new requirements of people at every level and in every sector. Much of this policy calls for "integration' and "cooperative governance" – and it is not surprising that for many citizens and public officials it is rather overwhelming. There will inevitably be a long period of institutional transition, but in the meantime political and economic forces play into this situation for short term gain – which works against the large project of transformation.

This creates an environment that is, contradictorily, supportive of finding sustainable and solutions that work for poor people and for environmental health – with sound policy principles in law --- but also with confusion and huge capacity gaps, and with an economic/political pressure that is already showing signs of pressuring the constitutional values enshrined in law and policy.

In the particular situation of seeking to set up governance systems that work to rehabilitate and manage wetlands the surrounding related natural resources in communal areas of South Africa, we turn now some key theory that can inform strategy and practice in the given context described above. It is this grounding in find solutions on the ground, drawing on understanding through sound theory and interacting with the opportunities and constraints that new policy offers, that we will forge through this transition.

3. Theory

Three bodies of theory and practice are drawn on here to use to analyse the issues of integration of ICM and tenure reform needed for setting up effective governance systems for communal wetlands, and to develop recommendations for working on this.

3.1 IWRM and ICM

The increasing pressure on the region's water resources coupled with escalating problems of water resource degradation prompted a new approach to water resource management. One such approach to reconciling water resource protection and use is seen to be through an ecosystems approach such as Integrated Catchment Management (ICM). For South Africa, the concept of ICM is underscored by the adage of "some for all, forever". In keeping with global policy developments, this approach is underwritten by the key themes of sustainability (economic, social and environmental), equity and efficiency.

However whilst ICM may provide the conceptual framework, water crises need to be understood as local or regional issues and consequently, there can be no blue print solutions. In order to have any chance of success these must be, by their very nature, context specific, locally-derived initiatives reflecting the socio-political, economic and environmental realities of the area.

The philosophy of ICM represents a significant departure from the narrowly focussed management of a single resource such as soil and water. Most significantly ICM represents a systems approach that recognises a catchment as a living ecosystem, consisting of an interlinked web of land, water, vegetation, people and biota, and the many chemical and biological processes which link these. This reorientation has led to the philosophy that the efficient and sustainable management of water resources can only be undertaken at the catchment scale, irrespective of political boundaries. Hence, it is inclusive of land-use.

The principles of ICM have received widespread support in South Africa, but actual implementation is still in its infancy. One of the key components of an ICM framework is to examine present conditions in the catchment, their impacts on the water resources and, if change is needed, to develop alternatives. Attempting to incorporate and evaluate the complex variables that constitute the catchments' current state can be a daunting task. Specifically, it deals with sensitive issues where some stand to gain and others to loose, or so-called "trade-offs". Designing a process that not only aims to develop alternative land/water use scenarios in an objective manner, but also attempts to achieve consensus requires a transparent process.

The theoretical framework identifies key preconditions for integration, including an ecosystems approach, together with a supportive and integrated political and policy framework, the development of effective partnerships (stakeholder participation, the development of a common vision, collaborative planning) and the use of adaptive management. Success also relies on continued support not only from the various departments who have a role to play, as well from local-level stakeholders, particularly given the devolution of responsibilities to local government.

Whilst the policy environment may well have changed in South Africa, achieving an integrated approach to water resource management remains a challenge. This is because integration still relies heavily on principles espoused in the Constitution rather than in a truly integrated policy framework. In reality, the Department of Water Affairs and Forestry (DWAF), as the national agency responsible for water resource management has little control over landuse activities

Integration through participatory processes requires behaviour change which, in turn, requires knowledge of and judgements regarding risk-value systems. In other words, in order to effect behaviour changes, not only do participants need to understand the *status quo*, its problems and challenges from multiple perspectives but they also need to develop a common set of objectives through consensus, for the future. This requires that stakeholders are equipped with conceptual capital of why and *how* this should happen, as well as the benefits and costs of change. (*Pollard 2003)*

3.2 CBNRM

Community Based Natural Resource Management (CBRNM) emerged in the 1980s as a 'third way' to sustain common property. This followed the dominance of the previous two options influenced by Hardin's "tragedy of the commons". These were that the state would pay the costs of resource management, using its authority, expertise and resources to shape and enforce decisions about using property in pursuit of economic gains. Hardin's thesis was applied in Africa in a colonial political economy in which the state excluded indigenous people from accessing resources they had traditionally used, while concessions were granted to white colonial entrepreneurs to commercialise resources.

Hardin's thesis was challenged theoretically when a distinction was drawn between common property and open access. This theoretical challenge was accompanied by mounting evidence in the 1980s that effective collective action around resources was possible. It was also becoming evident that the state was failing to "micromanage the environment" and protect biodiversity (Barrow and Murphee: 2001: 25). As the IUCN comments: "CBNRM was advocated as a solution to the persistent failure of the government-led natural resource management." (IUCN SA: 1999:24) General concerns were also being expressed about the performance of the governments of less developed countries as a result of their domestic fiscal crises and responses to internationally driven economic reforms. In this context, notions of decentralisation and devolution of state control and authority over natural resources grew as a potential solution both to resource depletion and to democratic governance. Indeed, some authors have argued that CBNRM by its very nature embraces concerns about both democracy and resource conservation. (Ribot J: 2001: 29). CBNRM thus emerged in a context in which the state was seen as having

failed both as protector of natural resources and as a legitimate vehicle for pursuing the collective will of its citizens.

Community Based Natural Resource Management (CBNRM) envisages that a community-based approach to the wise and sustainable management of natural resources can lead to advancing rural development, improving livelihoods, increasing bio-diversity and conservation and empowering communities through capacity building and good governance. (Jones Cited in Long et al 2004). CBNRM is underpinned by the assumption that if a resource is valuable, and users have exclusive rights to use, benefit form and manage the resource, then sustainable use is likely to ensue. The benefits must exceed the perceived costs and must be secure over time (Steiner and Rihoy 1995, cited in Long 2004).

There are three central concepts here. That there are *economic incentives* for land management – which may go beyond financial benefits and include 'intangible" benefits that may be cultural or historical in nature. Then there is the concept of *devolution* of management to local levels. Thirdly is the concept of *collective proprietorship*, or "sanctioned use rights, including management and use, rights of access and inclusion and the right to benefit fully form use and management" (Murphree 1994, cited in Long 2004) - and this implies a form of secure and collective tenure.

The following are a set of conditions that are proposed as being necessary for achieving sustainable natural resource management (ARD in CDCS, 1995):

- Incentives for users
- A blend of local knowledge and scientific knowledge
- Local institutions and rules backed up by higher authorities of the state
- Accessible mechanisms for conflict resolution
- Takes account of diverse interests
- National and regional policies provide an enabling framework within which local people can work

3.3 Tenure security

Concerns about problems related to tenure security stem from a number of different perspectives: human rights, sustainable livelihoods, legal empowerment, economic development. As one group of tenure practitioners claim: "Tenure related problems are widely experienced but poorly understood, or they are understood in ways which are not leading to the development of affordable, sustainable and appropriate solutions for poor and vulnerable people, and for land administrators and managers" (Cousins et al 2005).

Approaches to securing tenure have been dominated until recently by debates about whether titling advances land tenure in developing countries or whether it is either ineffectual or detrimental to socially more relevant systems. Other approaches to tenure are also emerging, which tend to circumvent direct engagement with the titling debate and examine what may be possible within a different land management structure, using new geographic information tools.

A more recent paradigm shift attempts to lift the tenure debate from national policies that determine the primacy of some tenures over others, towards a universal human rights based approach to tenure.

The rights based lobby, however, recognises that rights on paper are a necessary but insufficient condition for pro-poor policy, and hence rights based approaches are increasingly seeking complementarity with livelihoods based approaches to development, which are informed by a growing body of practical experience. “Secure rights to land underpin secure livelihoods and shelter by reducing households' vulnerability to shocks, guaranteeing a level of self-provisioning and supplementary incomes from basic foodstuffs and enabling easier access to basic infrastructure, employment markets and financial services”. (Julian Quan: 2002).

There is a growing recognition that where there are different sources of authority through which people gain access to resources and their benefits, and which deal with recourse and conflict management, governance becomes increasingly weak. This is detrimental to people’s functional tenure security (how secure they experience themselves to be), and to the resources themselves.

Historically, colonial land law either disregarded customary land management systems or adapted them to benefit rulers. This legacy of legal dualism continues as a current reality that cannot be ignored. Liberation governments also largely dismissed customary rights and systems in favour of land laws geared towards economic objectives, such as nationalisation (that centralised allocation rights in the state), or individual titling (that was intended to facilitate land markets to encourage investment). These stated objectives were rarely achieved and the interventions, combined with the colonial legacy, often resulted in confusion about who had rights and what the legitimate processes were for asserting, justifying and realising rights (Toulmin C and Quan J, 2000).

While tenure security remains a vexed issue in Africa, there is an emerging consensus about the elements that need to be built into any attempt to secure tenure and what the constraints are likely to be. Using this as a framework, we can now attempt to identify what one would need to look for in the legal and administrative processes of establishing common property institutions in order to assess the extent to which these principles are incorporated. The three key areas are:

Firstly, adapting to existing realities rather than attempting to replace them involves giving legal recognition to existing rights and building linkages between local landholding systems and formal law (Bruce, 1994). However, this poses significant challenges and risks. Attempts to codify local rules in Niger resulted in the simplification and fixing of an otherwise complex and flexible body of rules. Instrumental approaches of recording existing rights in Ivory Coast resulted in administrative simplification of different levels of interlocking rights thus resulting in the marginalisation of secondary rights. (Lavigne Delville, 2000: 107-108)

Secondly, bridging or harmonising local (customary) and statutory law is enormously complex. Models of private ownership and registration inform statutory tenure law while customary law is by nature procedural. (Chauveau in Levigny Delville, 2000:98) Statutory law thus defines each person’s rights specifically and substantively, while rights allocated through customary law are the result of negotiations based on known procedures in which local authorities are arbiters.

Thirdly, legal, institutional and technical coherence requires that tenure laws are consistent with one another, that levels of institutional support and control are clear and support the legal objectives, and that the technical components fit the legal objectives and can be implemented from both a state and public perspective. Legal pluralism poses particular challenges to the possibility of this coherence because there are multiple arbitration authorities. The absence of clear links between these authorities leads to uncertainty about who may deliver rulings and at which level, resulting in unpredictable outcomes and the challenging of all forms of arbitration. (Levigny Delville, 2000: 119-121)

A number of lessons have been learned from international attempts at reforming communal tenure in Africa, but key for our purposes are the following:

- customary land management systems do provide secure tenure, and sufficiently so to facilitate investment.
- customary rights and land management systems survive legislated attempts to transform or eliminate them, and indeed often re-emerge as dominant forms in "reformed" areas.
- customary land management systems adapt to the local impact of legal, political, economic and social changes and are therefore flexible and evolutionary.
- failure to clarify the respective roles and responsibilities of multiple land management systems results in overlapping, competing and conflicting rights and adjudicatory mechanisms. These are frequently manipulated and exploited by powerful elites.

An action research project, Leap, drawing on the insights above and its own work in the field, offers the following conceptual approach to tenure security that has implications for practice built into it:

Secure tenure is about:

- Defendable rights and enforceable duties to property and benefits flowing from it.
- Rules, procedures and systems for managing these property rights and duties.

<u>Indicators of secure tenure</u>

- People's rights are becoming clearer, people know better what their rights are and they are more able to defend these rights
- Land rights administration processes such as application, recording, adjudication, transfer, land use regulation and distribution of benefits are becoming clearer, better known and more used
- Authority in these processes is becoming clearer better known and more used
- There are more and increasingly accessible places to go to for recourse in terms of these processes and these are becoming clearer, better known and more used.
- Land rights administration processes are becoming less unfairly discriminatory against any person or group

Bridges are being built that span the gaps between actual practice and legal requirements

Resource tenure is defined as all the ways by which people gain legitimate access to natural resources for the purpose of management, extraction, use, and disposal (IDRC www.). Importantly, this includes unwritten, so-called 'informal' practices through which people gain access to resources. Resource tenure regimes are generally complex and overlapping where for

example, one resource (a field) can be many different resources all at once, that are accessed by different people in different ways at different times of the year. The term "legitimacy" places power ate centre stage, recognizing that it can be based in both control of material resources such as land or trees, and in the more subtle ability to shape legitimacy through social norms and interactions.

At a very broad level, institutions deal with **two issues:**

- The issue of access and exclusion: How to control access to the resource, given that it is difficult or costly to exclude potential users from gaining access to the resource (the exclusion issue),

The issue of subtractability: How to institute rules among users to solve the potential divergence between individual and collective rationality. In other words how to deal with the problem that each person's use of the resource subtracts from the welfare of the others (the subtractability issue).

4. Analysis

4.1 Principles

From the above we can extract the following principles:

ICM
Systems approaches recognises a catchment as a living ecosystem, consisting of an interlinked web of land, water, vegetation, people and biota, and the many chemical and biological processes which link these

In order for ICM to have any chance of success initiatives must be context specific, locally-derived initiatives reflecting the socio-political, economic and environmental realities of the area.

A precondition for integration is the development of effective partnerships (stakeholder participation, the development of a common vision, collaborative planning) and the use of adaptive management.

Success also relies on continued support from various departments who have a role to play and local level stakeholders especially given the devolution of responsibilities to local government.

Integration through participatory processes requires behaviour change which, in turn, requires that participants understand the *status quo*, its problems and challenges from multiple perspectives. This requires that stakeholders are equipped with conceptual capital of why and *how* change should happen, as well as the benefits and costs of change

CBNRM
A key assumption is that if a resource is valuable, and users have exclusive rights to use, benefit from and manage the resource, then sustainable use is likely to ensue. The benefits must exceed the perceived costs and must be secure over time

Sustainable natural resource management requires

- Incentives for users
- A blend of local knowledge and scientific knowledge
- Local institutions and rules backed up by higher authorities of the state
- Accessible mechanisms for conflict resolution
- Takes account of diverse interests
- National and regional policies provide an enabling framework within which local people can work

Tenure security
Secure tenure is about:

- Defendable rights and enforceable duties to property and benefits flowing from it.
- Rules, procedures and systems for managing these property rights and duties.

Thus in order to increase security of tenure the following aspects need to be addressed

- People's rights in land need to be clear to them
- Land rights administration processes need to be clear, known and used
- Authority in these processes clear and accessible
- Recourse in terms of these processes is clear and accessible
- Land rights administration processes are not unfairly discriminatory against any person or group
- The gaps between actual practice and legal requirements decrease

4.2 Aspects

Here we draw from these and develop then a set of aspects that all need to be taken into account when seeking to understand and work with the governance of wetlands and their governance in communal areas.

<u>Law and policy</u>
An enabling legal and institutional environment is one in which rights and responsibilities are clear, known and accessible, and which supports cooperative interaction between sectors, disciplines and levels

Principles need to be clear, but allow space for the locally specific situation – thus allow for diversity of solutions

<u>Processes</u>
Need to understand and build and from on local and existing practices and systems

Need interdisciplinary and cross sectoral inputs, include local knowledge, in order to gain the insight into various aspects of the system, and to understand the situation, problems and

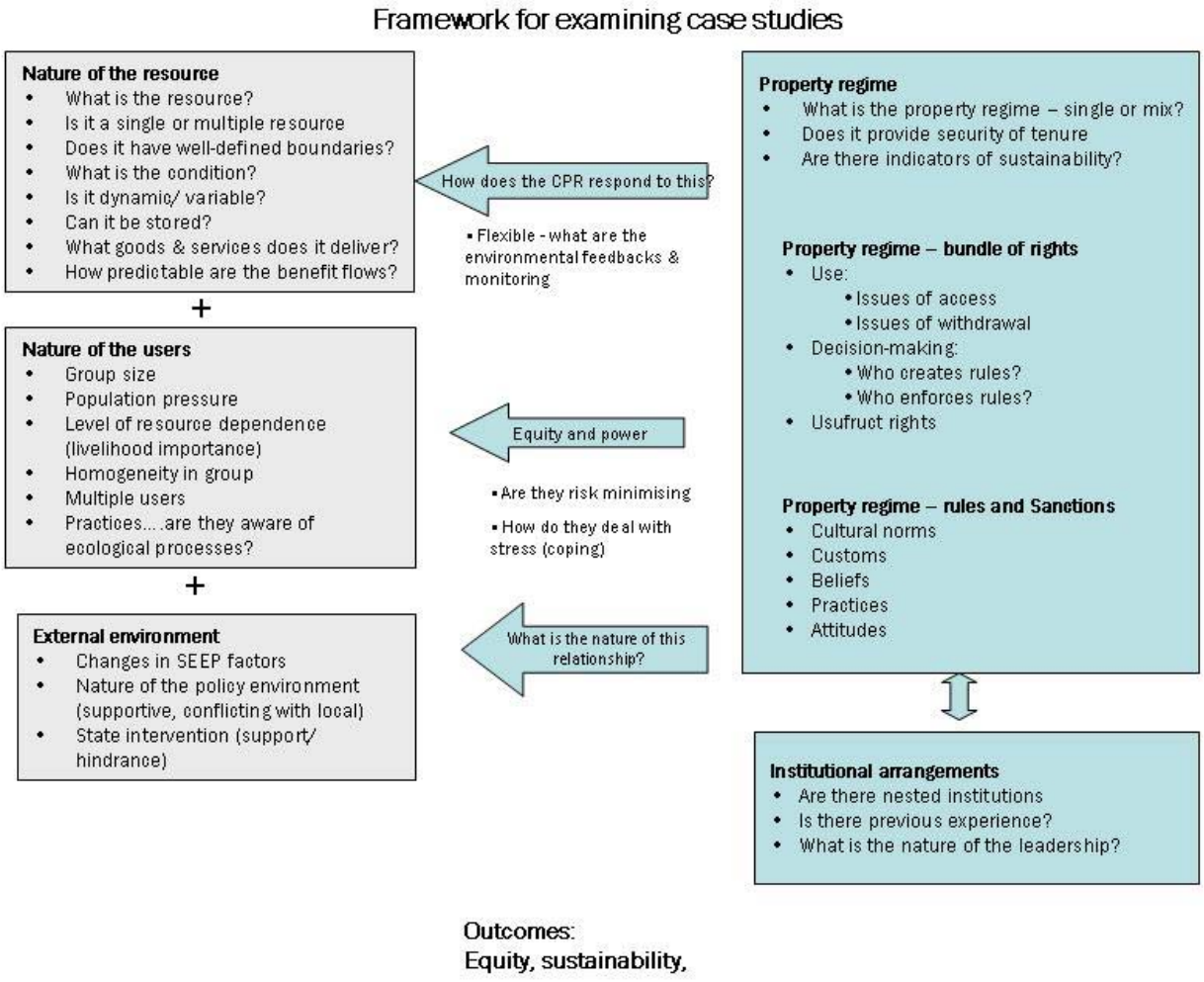
challenges from multiple perspectives to build enable informed interaction, building of an agreed vision, and decision making.

Need to clarify rights and also responsibilities, where these overlap, diverge, intersect or complement, and thus clarify avenues for recourse and conflict resolution

Content
Environmental: land, water, vegetation, biota, and the many chemical and biological processes that link the above
Social: livelihood systems, political context, economic context
Tenure and land administration systems – local and formal
Institutions: local, traditional, local government, sector department of water, agriculture and environment

4.4 A Framework

A framework is proposed that sets factors out for analysis draws on much of this thinking. (Pollard 2005)



Note: SEEP factors = Social, Environmental, Economic, Political factors

5. Conclusions

In South Africa there are new institutions being created by new law and policy. Many of these call for high levels of participation, and for cooperative governance and integration between sectors. This is extremely demanding of people at all levels: officials have their own sectors' policies to get to grips with, as well as other sectors they are supposed to link with. For people on the ground there are new opportunities for asserting and accessing rights. However, amongst the plethora of legislation and planning documents there is little evidence of integration. For example, despite the intentions of national legislation local government plans for water or land reflect little reference to national policy or programmes regarding water resources or natural resource management. Moreover a cautionary approach is needed with regard to tenure reform, which has had unforeseen negative impacts in many instances elsewhere. It has been noted that CLaRA, which in its current form does not meet the challenge posed of integrating, and regulations have not yet been formulated, has not taken up the challenge of reconciling the law with customary law and individual rights with group rights. Therefore establishing local governance for wetlands and related natural resources needs to take careful cognizance of the various new policies and institutions into account, along with working with local history and current practices and understanding.

The extensive range of institutions that govern natural resources – from international law to local rules – are rarely uniquely present. Rather a range of overlapping, and evolving rules gives rise to a nuanced and context-specific natural resource management regime. Whilst the state can set the broad rules based on sound principles, their execution relies on the interaction of a variety of roleplayers. In countries like South Africa where, despite the phenomenal transition to policies based on equity and sustainability, the capacity to implement them is sorely lacking, local-level support and ownership become a key component of their success or failure. Indeed it could be suggested that under these circumstances, de facto natural resources management happens at the local level – lying in the hands of the people living with resource. Many states, and privitised concerns, have taken on far more resource management authority than they can carry out effectively. These localized managers – often marginalized – should therefore play a key role. This situation is characteristic of the water sector in South Africa, currently constrained by capacity. Thus I argue that accepting and embracing this legal pluralism at a strategic level must receive deserved attention if we are to effectively manage natural resource management.

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