

Tackling the land/water rights interface through a human rights lens
Lessons from a study on the tenure challenges of improving access to water for
agriculture in the Sahel

Lorenzo Cotula

Land and water rights are instrumental to the realisation of fundamental human rights like the right to food and the right to water. Addressing the problematic areas of the land/water rights interface contributes to the progressive realisation of those human rights, which is required by international human rights treaties. Taking a human rights perspective entails bridging the gap between field-level work on land and water rights and international processes to promote enjoyment of human rights.

On the one hand, this requires taking a rights-based approach in policies and programmes aimed at improving access to water for agriculture. A human rights approach is based on the understanding that the realisation of human rights like the right to food and the right to water is not only function of the availability of key livelihood assets - for instance, of water points and irrigation facilities. It is also function of institutions and processes that address power imbalances and ensure access to those assets for the poorest and most vulnerable groups. This has implications both for the content of policies and programmes and for their formulation process.

As for content, a rights-based approach provides benchmarks for evaluating policies and programmes - such as non-discrimination and "non-retrogression". Non-discrimination prohibits arbitrary differentiations of treatment. Non-retrogression entails a presumption that states cannot take "steps back" - measures that would reduce existing enjoyment of protected rights. Therefore, action resulting in loss of access to land/water for some would need to be properly justified in order for it to be lawful. In other words, a human rights approach would not provide normative guidance on the merits of strategic policy choices - such as on whether to favour access to land and water resources for agribusiness or for smallholders. But it requires that certain basic principles must be respected - such as non-discrimination; and that, whatever the policy choice, measures must be taken to ensure that those who lose out have access to reliable, alternative sources of support.

As for process, a rights-based approach requires establishing effective mechanisms for accountability and redress. Freedom of expression, assembly and association are the foundations of a vibrant civil society. Access to justice - courts, human rights institutions, alternative dispute resolution - is key to enforce rights and obtain redress for violations. The recent mobilisation of farmers' organisations in the Office du Niger, Mali, against evictions for failure to pay the water fee would have been more difficult without those democratic guarantees.

On the other hand, field experience with tackling land/water rights issues has invaluable lessons to feed into international human rights processes. Debates on the right to water have focused on access to water for personal and domestic use. They have largely neglected the importance of access to water for agriculture. The implementation of the right to water in agriculture raises very different issues to those raised by water access for personal and domestic use. In agriculture, the implementation of the right to water must take into account the resource tenure

needs of local production systems. In Niger, programmes to ensure free access to water for all had negative impacts on local pastoral land/water tenure systems. In many cases, this fostered resource conflict and degradation. There is a need to mainstream these specificities in international debates on the human right to water. In addition, there is a need to more clearly spell out the implications of applying a rights-based approach to improving water access for agriculture. UN documents like General Comment No. 15 on the right to water embody important statements of principles but tend to remain at a fairly abstract level. Lessons from the implementation of national policies and field programmes can help translate those principles into more operational guidelines.

NB These notes are excerpts from the conclusion of the study:
Lorenzo Cotula (ed), 2006, 'Land and Water Rights in the Sahel - Tenure Challenges of Improving Access to Water for Agriculture', London, IIED, Issue Paper 139.
The study can be downloaded from the IIED web site at <http://www.iied.org/pubs/pdf/full/12526IIED.pdf>.