



Recommendations for Revisions to Inland Fishery Access Rights and Property Rights Regimes



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Introduction

- Deliverable Aims:
- Evaluate and analyse existing property rights and access rights currently governing inland fisheries in South Africa
- Recommend reforms or changes to the existing property rights regimes and access rights
- Findings will form basis for consultations with the key stakeholders for their feedback get buy-in

Total number of Registered dams (public & private) in South Africa

Province	Total Number of Dams
Eastern Cape	697
Free State	404
Gauteng	332
KwaZulu Natal	924
Limpopo	312
Mpumalanga	479
Northern Cape	82
North West	149
Western Cape	1324
Total	4703
Total surface area	1500422

Total number of Public Dams according to size

Province	Size of Dam				Total
	Large	Medium	Small	Non categorised	
Eastern Cape	31	52	41	1	125
Free State	8	33	36		77
Gauteng	12	17	59		88
KZN	12	24	26		62
Limpopo	14	26	12		52
Mpumalanga	16	35	19	2	72
Northern Cape	2	5	9	2	18
North West	7	21	29		57
Western cape	28	59	53	1	141
Total	132	273	293	6	704
Total surface area					791643

METHODOLOGY

- Theoretical framework for analysing property and access rights
- Analysis of relevant national and provincial legislation
- Sample of public dams based on spread and variation – purposeful sampling
- Recommendations

List of dams sample surveyed

	Dam or water body	Province
1	Driekoppies	Mpumalanga
2	Lake Fundudzi	Limpopo
3	Nandoni	
4	Makuleke	
5	Uphongolo (Lake Jozini)	KwaZulu Natal
6	Voëlvlei	Western Province
7	Clanwilliam	
8	Theewaterskloof	
9	Bloemhof	Free State

Property rights

- Property rights assign benefit streams from utilisation of a resource
- define legitimate, enforceable uses and who has the rights.
- entail *rights* for those holding them and *duties* for non-holders to respect the rights.
- Give *entitlements* for resource use and rules under which the entitlements are exercised.
- entitlements entail an organised structure of institutional arrangements.
- institutional arrangements include mechanisms for defining and enforcing rights

Property Rights Regimes

- property rights regimes influence management and governance will be central in restructuring rights in inland fisheries of South Africa.
- important to distinguish between resource and regime; a particular resource can be held under more than one regime
- Four ideal analytic property rights regimes: *non-property (open access)*; *communal property*, *private property*, and *state property*

Types of operational property rights

Five operational property rights are distinguishable:

- **Access right:** right to enter a defined physical property
- **Withdrawal right:** right to harvest (consumptive use) the products of the resource
- **Management right:** right to regulate the use patterns of other harvesters and to transform a resource system by building improvements (e.g. fences
- **Exclusion right:** right to determine who else will have access to a resource and whether that right can be transferred
- **Alienation right:** right to sell or lease any of above rights

Property Rights as 'Bundles of Rights'

- Agents can have and use more than one right - *bundle the rights.*

Type of right	Associated position				
	<i>Viewer</i>	<i>Authorised user</i>	<i>claimant</i>	<i>proprietor</i>	<i>owner</i>
<i>Access</i>	X	X	X	X	X
<i>Withdrawal</i>		X	X	X	X
<i>Management</i>			X	X	X
<i>Exclusion</i>				X	X
<i>Alienation</i>					X

Ownership (custodial) rights – National Water Act

- As legal custodians of public dams govt (DWA, DAFF, Municipalities, etc) has all rights including the rights of alienation
- Ownership (or custodial) right gives govt authority to determine who will have access, withdrawal rights, management rights and who will be excluded.
- Four types of water authorizations under NWA: Schedule One; General Authorisations; Existing Lawful Uses; and Water Use Licences.

Existing Use Right Practices

- Understanding these important for future restructuring of rights. Practices reviewed:
 - Recreational (angling) clubs, water sports clubs and tourism concessions
 - Subsistence and commercial fishing by communities
 - (Co-) Management Rights

Recreational (angling) clubs, water sports clubs and tourism concessions

- Angling, water sports and tourism concessions currently and historically have had dominant presence on public dams.
- Their position strengthened by enabling provincial nature legislation which largely caters for recreational angling and biodiversity conservation.
- Exercise historical rights (through 'existing lawful uses' authorisation)
- Legally, have access and withdrawal rights - enter the dam area, engage in recreation fishing and build infrastructure for use by their members.
- Fencing off areas with developed facilities privatises such areas *de facto* exclusion rights
- confiscating and destroying local fishers' nets (e.g. on uPhongolo and Driekoppies dams) amounts to exercising exclusion rights beyond their authorisations for usage of public dams

Subsistence and commercial fishing by communities

- Legally, communities have access rights that the NWA gives to general public from 6am to 6pm
- Should be able to fish using recreational permits just like recreational anglers - exercise withdrawal fishing rights.
- The main conflict arises where fishers from communities use nets
- Most provincial legislation (e.g. Mpumalanga and Limpopo) bans use of nets
- Ambiguity of legitimacy of community fishing activities results in serious conflict between them and recreational anglers, tourist operators, etc (e.g. Uphongolo Dam)
- legal basis for inland subsistence and commercial fishing remains poorly defined, *de facto* restricting or denying fishing rights for communities.
- Lack of an inland fisheries policy means there has been lack of appropriate institutional arrangements for subsistence and commercial fishing on dams.

(Co-) Management Rights

- NWA provides for co-management on public dams:
- Catchment Management Agencies (CMAs) and Water User Associations vehicles for devolution of management authority and responsibility.
- Involvement of users in management through CMAs and/or WUAs offers to create and extend management rights to users.
- Can such bodies can be used to strengthen and protect fishing property and access rights for communities?
- concern is that most WUAs and CMAs are dominated by organised interests e.g. commercial farmers through their Irrigation Boards
- Purely inland fisheries management organisations could also be equally dominated by established angling clubs and other fishing interests.

Management of Inland Fisheries

- NWA does not specifically mention fisheries as a resource in dams
- Legislation gives authority to management fisheries in dams to provincial departments of the environment and nature conservation.
- these departments have authority to determine access, withdrawal (consumptive), and exclusion rights, making them proprietors
- legal instruments - provincial nature conservation legislations and ordinances, NEMA

Use of NEMA for Inland Fisheries

- NEMA gives legal effect to the environmental rights in the Constitution
- NEMA provides for development and enhancement of inland fisheries based on principles of utilisation of nature for sustainable development.
- Act potentially provides a powerful instrument for inland fisheries - embodies principles of equitable governance, integrated management, sustainable management and social equity in the utilisation.
- could be used to formulate comprehensive inland fishery specific legislation or revision of existing provincial legislations for enhanced utilisation of inland fisheries for sustainable livelihoods.

Use of provincial legislations & ordinances for inland fisheries

- provinces use provincial environmental management and nature conservation legislation for managing fisheries.
- Some have been revised post-1994
- Even those revised, underlying tone remains promotion of recreational fishing rather than socioeconomic objectives and consumptive use fish
- none mention either subsistence fishing or any other form of fishing which could be linked to a form of livelihood.
- All ban or restrict use of nets
- not in line with NEMA principles and objectives, constitutional imperatives and government rural development policy for a livelihood approach to utilization of inland fisheries.
- provincial environmental departments do not see themselves as “development” agencies with a mandate to promote use of fish resources for livelihoods.

Natural Water bodies under Traditional Authority

- For natural lakes, e.g. Lake Fundudzi, custodianship is held by the Traditional Authority even though the NWA does not explicitly recognise customary management.
- legislation are likely to have large bearing on property rights, access rights and natural resource management in such cases - Traditional Leadership and Governance Framework Amendment and Communal Land Rights
- stated intention of legislations - secure property rights especially in the former homelands; facilitate development; extend democracy to rural areas; and ensure sustainable use.
- But both have been hotly contested, resulting in delays and drastic revisions of the original principles.
- In case of Lake Fundudzi - chief has historically controlled access, withdrawal, management and exclusion rights.
- communal tenure gives the opportunity to formalise the communal property rights regime and developing Community Based Management
- where communities are managing fisheries on their own by *default* due to lack of presence by government agencies (e.g. Nandoni and Makuleke dams) – strengthening co-management might be prudent

Need for a Developmental Approach

- NEMA, NEMBA and the Constitution have adequate provisions for a developmental and livelihoods approach to utilisation of inland fisheries.
- If government policy is towards obtaining maximum and equitable socio-economic benefit from utilisation of fishery resources in dams, future interventions would call for a developmental approach to inland fisheries.
- Such an approach will require leadership of the Department of Agriculture, Forestry and Fisheries DAFF
- need for common principles, as provided for by NEMA, NWA and DAFF's strategic plan, to guide development and management of inland fisheries and the legal instruments to underpin these.
- principles should be founded upon a developmental approach, equitable distribution, sustainable use and inclusive/cooperative governance of inland fisheries.
- Key to any future revisions of legislation and principles would be to align these with government developmental policies and strategies, especially those regarding the promotion and enhancement of rural livelihoods.
- review of human capacity (both in terms of numbers and skills complement) and infrastructure for the development of inland fisheries will need to be part of such a review.

Preliminary Recommendations

- Need to develop guiding Principles and Objectives to Inform Property and Access Rights for Inland Fisheries
- An Inland Fisheries Policy
- Leadership and drive for inland fisheries
- Enabling legislation for inland fisheries
- Need for a developmental approach
- Fishing rights
- Institutional arrangements for management