

The question of inclusion and representation in rural South Africa: challenging the concept of water user associations as a vehicle for transformation

J. S. Kemerink^{a,*}, L. E. Méndez^b, R. Ahlers^a, P. Wester^c and P. van der Zaag^{a,d}

^aUNESCO-IHE Institute for Water Education, P.O. Box 3015, 2601 DA Delft, The Netherlands

*Corresponding author. E-mail: j.kemerink@unesco-ihe.org

^bEnvironmental Defense Fund, 123 Mission Street, San Francisco, CA 94105, United States of America

^cDepartment of Environmental Sciences, Wageningen University, P.O. Box 47, 6700 AA Wageningen, The Netherlands

^dWater Resources Section, Delft University of Technology, P.O. Box 5048, 2600 GA Delft, The Netherlands

Abstract

The promotion of local governance and the transfer of water management responsibilities to water user associations (WUAs) have been central in water reform processes throughout the world, including in the reforms that took place in post-apartheid South Africa. This paper reflects on the notions of inclusion and representation as put forward by the various actors involved in the establishment of a WUA in a tertiary catchment in the Thukela River Basin. The paper describes how the WUA in the study catchment came to be dominated by commercial farmers, despite the South African government's aim to redress the inequities of the past by the inclusion and representation of historically disadvantaged individuals. The authors argue that the notions of inclusion and representation as embedded in the concept of the WUA are highly contested and more aligned with the institutional settings familiar to the commercial farmers. The paper concludes that, unless the inherently political nature of the participatory process is recognized and the different institutional settings become part of the negotiation process of the 'why' and the 'how' of progressive collaboration at catchment level, the establishment of the WUA in the study catchment will not contribute to achieving the envisioned transformation.

Keywords: Legal pluralism; Participation; South Africa; Water reform; Water user associations

Introduction

The promotion of local governance and the transfer of water management responsibilities to user groups, commonly referred to as water user associations (WUAs), has been central to water reform

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processes throughout the world since a more institutional and integrated approach to water management was introduced in the 1980s (Cleaver, 2002; Meinzen-Dick & Pradhan, 2002; Molle, 2004). Especially within the irrigation sector, the involvement of water users in the management of irrigation systems has become common practice (Uphoff *et al.*, 1999; Mollinga & Bolding, 2004; Rap, 2006; Merrey *et al.*, 2007). The participation of user groups is considered to be the way to operationalize decentralization for democratic transformation and to achieve empowerment (Cornwall, 2003, 2007). As Cleaver (1999: 597) argues: ‘participation has become an act of faith in development; something we believe in and rarely question’. Embracing this paradigm, the post-apartheid South African government defined participation as one of its cornerstones to redress the racist water policies of the past. The National Water Act (1998) recognizes that ‘while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water and use of water resources’ (RSA, 1998: second preamble). Within this specific problem framing, the purpose of the Act is defined as follows:

‘to ensure that the nation’s water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors: (a) meeting the basic human needs of present and future generations; (b) promoting equitable access to water; (c) redressing the results of past racial and gender discrimination; (d)...(k)...’ (RSA, 1998: 2)

The Act continues by expressing the need for participation: ‘and for achieving this purpose, to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation’ (RSA, 1998: 2). However, despite the significant claims, there is little empirical evidence of the long-term effectiveness of participation in materially improving the conditions of the most vulnerable people or as a strategy for achieving social change by giving voice to the previously excluded (Mayoux, 1995; Cleaver, 1999; Cornwall, 2003; Williams, 2004; Goldin, 2010). So what is it that makes WUAs the appropriate vehicles to contribute to the transformation of the water sector as envisioned by the National Water Act?

This paper aims to examine this question and thereby contribute to the ongoing discussion of the water reform process in South Africa (van Koppen & Jha, 2005; Waalewijn *et al.*, 2005; Merrey *et al.*, 2009; Goldin, 2010; Brown, 2011; Kemerink *et al.*, 2011; Movik, 2011; Schreiner & Hassan, 2011; Bourblanc, 2012). The paper presents empirical data on the establishment of a WUA and analyses the impact on the access to and control over water resources for the various groups involved. The catchment used as a case-study for this paper is located in the Thukela River Basin in the south eastern part of South Africa. The actual name and location of the catchment will not be revealed due to ongoing political sensitivities between various actors in the case-study area. The findings presented are based on in-depth semi-structured interviews with 38 residents of the former homelands and 18 commercial farmers within the catchment carried out between June 2008 and July 2011. The interviews addressed amongst other issues such things as personal histories, livelihoods, access to and use of water and land resources, involvement in water management organizations, and perceptions of the water and land reforms. The interviewees were selected by a stratified random selection procedure to guarantee geographical spread and to obtain input from various age, race, class and gender groups. The findings of the interviews were cross checked through focus group discussions, observations, comparison with existing literature and by consultations with resource persons such as representatives of local authorities, government officials and non-governmental organizations (NGOs) active in the region. This paper first explores the theoretical considerations used in the participation paradigm. In the next section the

catchment is described, including an analysis of the historical and institutional context. The process for the establishment of the WUA as set down on paper and as implemented in practice in the case-study catchment is then narrated. This is followed by a critical analysis of the participation process in terms of inclusion and representation. In the concluding section, the general concept of WUAs is discussed in terms of its (potential) role in achieving transformation of the South African water sector.

Theoretical considerations

As pointed out by Cleaver (1999), participation has become a paradigm in managing water resources and WUAs are seen as the platforms for structuring stakeholder involvement. Government and development agencies in charge of establishing WUAs tend to focus on getting the techniques for the participatory process right, while at the same time trying to conceal the political issues at stake. As long as ‘all’ water users are ‘included’ through some form of ‘representation’ it is assumed that participation will automatically lead to ‘better’ water management practices, or even to the improved material conditions of the most vulnerable groups in society (cf. Wester *et al.*, 2003). But what do inclusion and representation mean, and who ought to define these notions? These are inherently political questions and empirical evidence shows that ignoring this contested nature of the participation process may imply that structural change (in terms of equity) will not automatically be achieved (Mayoux, 1995; Cleaver, 1999; Manor, 2004; Ahlers & Zwarteveen, 2009; Goldin, 2010).

As an analytical framework, this paper adopts the view that platforms on which the negotiations over water take place are characterized by plural legal conditions. Legal pluralism refers to the coexistence and interaction between different normative orders in the same socio-political space (Von Benda-Beckmann, 1997; Boelens *et al.*, 2005; Von-Benda-Beckmann & Von-Benda-Beckmann, 2006). A normative order can be defined as any system of rules or shared expectations of what people should or should not think, say or do concerning a particular situation. In legal pluralism the different normative orders may originate from various sources such as political ideologies, economic dogmas, knowledge regimes, religions and cultures at different spatial and temporal scales. Even though legal pluralism seems an abstract concept, in daily life we all deal with legal plural conditions: for instance, we prepare our food according to our religious beliefs, we interact with our families based on cultural traditions and we provide labour conforming to the current economic doctrine. The different normative orders in society can be complementary, overlapping or even contradictory, creating space for bargaining and manipulation by different water users. This generates a plethora of (hybrid) local rules and arrangements (Meinzen-Dick & Pradhan, 2005) which in their very essence are shaped by history and embedded in local realities.

Viewing the introduction of new platforms for interaction, such as WUAs, from a legal plural perspective involves opening up space for bargaining not only over water use per se but also over the institutions that govern these interactions. How to define inclusion and representation becomes an integral part of the negotiation process: who will be included, on what, when and where? Who will represent who, on which basis and how? Moreover, the new platforms will not automatically replace the existing domains of interaction: empirical evidence shows that water resource management can take place almost entirely outside the WUA structures through practices embedded in social networks, daily interactions and the application of cultural norms (Cleaver, 1999). This coexistence of different domains raises questions about which domains are visible and which remain invisible, as well as which domains are formally recognized and which are not. As the state formally recognizes the WUAs as the main

decision-making platforms for water at a local level, they have become important negotiation domains since they constitute bodies that may legitimize contested claims to water. However, the interaction between old and new domains cannot be ignored, as authority and the bureaucratic apparatus required only develop over time. Hence, notions of inclusion and representation need to be analysed in the context of various interlinked and politicized domains of interaction that deal with water and related issues (cf. Warner *et al.*, 2008).

With these theoretical considerations in mind, this paper seeks to understand the impact of the establishment of WUAs on collaborative efforts at catchment level by critically analysing the notions of inclusion and representation as put forward by the different stakeholders involved. On this basis, the paper discusses the potential of the WUA concept as a potential vehicle to contribute to the transformation of the South African water sector.

Setting the scene

The case-study area is a tertiary catchment of about 1,500 km² within the Thukela River Basin located in KwaZulu-Natal province, in the south eastern part of South Africa. The catchment is located in the foothills of the Drakensberg Mountains and has three main tributaries that flow eastward from a steep escarpment across low mountains to the lowlands where they join and flow into the Thukela river. The rainfall varies considerably from up to 1,000 mm/yr in the upstream mountainous areas to 640 mm/yr in the lowlands. The estimated potential evaporation is between 1,600 and 2,000 mm/yr at an elevation of about 1,250 m above sea level. Most of the streams are perennial with extreme low flows in winter (between June and August).

The catchment is primarily inhabited by two distinct groups: commercial farmers of European descent residing in the lower parts of the catchment and communities from the Zulu tribe in the upstream parts of the catchment. The segregation between these two groups is a direct result of the discriminatory policies introduced by the British settlers' colonial authority (1906–1948) and further elaborated and imposed by the Afrikaner-led apartheid government (1948–1994) (Omer-Cooper, 1994; Mamdani, 1996). Under these policies, the black African ethnic groups, including the Zulu tribe, were dispossessed from their access to natural resources and relocated to so-called homelands (Pickles & Weiner, 1991). In the homelands, residents became subjected to chiefs, appointed and paid by the apartheid government, who had personal and financial interests in the preservation of the homelands (Mamdani, 1996). Within the homelands, residents were forced to move into demarcated residential zones and only small plots (0.5–2 hectares) were given to households to ensure basic crop production based on rainfed agriculture. This strict spatial planning facilitated the process of relocating more people into the homelands (McCusker & Ramudzuli, 2007), with the result that the homelands became economically weak as population densities exceeded the carrying capacity of the land (Pickles & Weiner, 1991; Ross, 1999). In this way, the homelands became cheap labour pools for white businesses, with most men commuting to work for the white-owned commercial farms and mines, while women stayed behind nursing children and cultivating the small plots for subsistence (Omer-Cooper, 1994; Penzhorn, 2005).

In the meantime, the white minority enjoyed support from the government to acquire large parts of land and to construct hydraulic infrastructure, such as dams and weirs, in order to establish sophisticated irrigation systems to support commercial agriculture (Chikozho, 2008). In the catchment, the irrigation of wheat, soya beans and maize by commercial farmers formed the major water use throughout the year,

though irrigated fodder crops and pastures for livestock also claimed part of the available water resources. In response to increased competition over water, commercial farmers started to organize themselves around water at the start of the 20th century and irrigation boards were initiated under the Water Act of 1926. Four irrigation boards were formed within the study catchment: one along each tributary and a fourth one downstream along an irrigation channel. Over the years, the irrigation boards' command area increased so that today the four irrigation boards together manage a total of 6,500 hectares of irrigated land belonging to 84 farmers. The irrigation boards own the dams that have collectively been built by their members, though the rights to the stored water depend on the farmers' individual contribution to the construction of the infrastructure. This has created a complex and innovative system of water sharing arrangements supported by refined institutional structures within the irrigation boards (Méndez, 2010).

Political apartheid was dismantled after internal and international pressure in a series of negotiations over the revision of the constitution from 1990 to 1993 (Omer-Cooper, 1994). This culminated in the democratic general elections of 1994, after which the new government took on the transformation of the discriminatory legal systems as its prime objective. As part of the institutional reform, the government structures were redefined and the homelands were dismantled, reincorporating their territory into the republic, and comprehensive land reforms have been initiated (Cousins, 2007). Almost two decades later, the legacy of apartheid is still clearly visible in the study catchment with its large white-owned commercial farms, relatively crowded former homelands and impoverished urban townships. The current land holdings of the commercial farmers in the catchment range between 30 and 1,500 hectares with private dams and sophisticated hydraulic infrastructure for irrigation as well as pastures for livestock (Méndez, 2010). The residents of the former homelands have access to plots with sizes between 0.5 and 4 hectares that mainly depend on rainfall with which to cultivate maize and beans (Méndez, 2010; Kemerink et al., 2011). The limited changes in access to land and water that have taken place since the start of the reform processes in the study catchment are summarized in Table 1.

It is within this context that the water reform process is taking place through the implementation of the National Water Act (RSA, 1998). The Act is widely recognized in policy circles as one of the most comprehensive and progressive water laws in the world (Biggs et al., 2008; Merrey et al., 2009). It defines the state as the custodian of the nation's water resources and only water required to meet basic human needs and to maintain environmental sustainability is guaranteed as a right (RSA, 1998). This fundamentally moves away from the previous water acts which were largely based on riparian water rights. Moreover, the new Water Act gives the state a strong tool to redress race and gender inequities inherited from the past (Van Koppen & Jha, 2005). The Act calls for extensive institutional reforms within the water sector based on the principle of decentralization, with the establishment of WUAs as the prime bodies to facilitate stakeholder participation at a local level.

Table 1. Acquired land resources and water entitlements under reform processes in the study catchment.

| | Acquired land resources | Acquired water entitlements | Beneficiaries |
|-------------------------------|--|--|-----------------------------|
| Commercial farmers | none | Dam storing 4 million m ³ of water Dam storing 3 million m ³ of water | 7 families 41 families |
| Residents of former homelands | 500 hectares residential area + 400 hectares farming land 600 hectares grazing land | Water permit to irrigate 100 hectares None | 200 families 77 families |

Establishment of water user associations

Process on paper

A central part of the National Water Act was the establishment of Catchment Management Agencies (CMAs) to develop strategies for the use and protection of the water resources in each of the 19 identified water management areas in the country. These strategies should include a water allocation plan that defines the principles for allocating water to existing and prospective users, taking into account all matters relevant to the protection, use, development, conservation, management and control of water resources (RSA, 1998). Under the CMA, WUAs are to be established at local level, with the primary role of undertaking water-related activities for the mutual benefit of their members, including supervision and regulation of water distribution and construction, and operation of hydraulic infrastructure. The Water Act indicates that existing water boards, such as the irrigation boards of commercial farmers, are primary points of departure for the establishment of the WUAs: ‘An (irrigation) board continues to exist until it is declared to be a WUA in terms of subsection (6) or until it is disestablished in terms of the law by or under which it was established’ (RSA, 1998: 2).

The policies to implement the decentralization of water resources management indicated that the CMAs would be established in 1999 and the WUAs would follow in 2000 (RSA, 1998). To facilitate the establishment of the WUAs, an ‘Irrigation Board Transformation Guideline’ was written by the Department of Water Affairs (DWA). The guideline emphasized the need for appropriate representation of historically disadvantaged individuals¹ in terms of race and gender in the management committees of the WUAs. The guideline specified that:

‘The transformation process also requires that other imbalances within the area of operation of a WUA be addressed. The process should, amongst other things, aim to: (1) avoid a situation where one group is being dominated by another; (2) ensure representation for minority groups; and (3) assist in resolving conflict by creating balanced representation in terms of the various categories of users’ (DWA, 2000: 18)

Aware of the fact that most historically disadvantaged individuals are currently not relevant water users for agricultural purposes because of their limited access to land, water and infrastructure, the DWA made explicit that ‘domestic water users will in most cases be an interest group of sufficient significance to justify a nominated representative on the management committee’ (DWA, 2000: 17). The guideline also indicates the possibility of enlarging the area under control by the irrigation boards in order to include upstream and downstream communities of historically disadvantaged users (RSA, 1998).

Process in practice

DWA has encountered enormous delays in operationalizing the decentralization of water resource management. So far, eight CMAs have been established of which only two can be considered to be

¹ An ‘historically disadvantaged individual’ is a policy term in the South African context that refers to any person, category of persons or community who is disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa prior to 1993 (Act 200 of 1993) including women and individuals with a disability (DA, 2004).

functional, both with limited success (van Koppen & Jha, 2005; Waalewijn et al., 2005; Merrey et al., 2009; Karar et al., 2011; Bourblanc, 2012); the Thukela Basin continues to be managed under the old centralized system. Nevertheless, DWA decided to go ahead with the establishment of the WUAs by sending the Irrigation Board Transformation Guideline to the four irrigation boards in the case-study area in 2000, which marked the start of the official process.

According to the Water Act, each irrigation board would be restructured into a WUA. However, the four irrigation boards in the case-study area proposed to DWA that they form one WUA instead of four separate WUAs. According to the commercial farmers, this was suggested because the four irrigation boards are located along interconnected tributaries in one tertiary catchment, so together they represent an integrated hydrological unit. Moreover, they share hydraulic infrastructure and associated complex administrative and financial systems (Méndez, 2010). Eventually, after several discussions and negotiations with the commercial farmers, DWA allowed the establishment of a single WUA for the catchment.

The Water Act stipulates that ‘any person holding office with a (irrigation) board when this Act commences continues in office for the term of that person’s appointment’ (RSA, 1998: 3c), which meant that the four chairmen of the irrigation boards became de facto members of the management committee of the WUA. These founding members drafted the constitution of the WUA based on example constitutions: ‘We got the constitution from another WUA I guess, I never read it, it is a thick document and the WUA Secretary just replaced their names with ours’ (Interview CF1, 2011). The constitution details the structure of the WUA, its governing laws, as well as the three objectives of the WUA, which are:

1. to manage and promote efficient, equitable and sustainable use and distribution of water resources and water works;
2. to strive to ensure appropriate community, racial and gender representation and participation in the affairs of the Association; and
3. to control water development within the area of operation.

After drafting the constitution a public awareness campaign was organized jointly by the four irrigation boards, with the placing of advertisements in local newspapers to announce the new WUA and invite community members residing in the municipal area to join the transformation process. On request of DWA, the advertisements were republished to increase the publicity and, in 2009, a first meeting was held with the assistance of DWA officials. About sixty historically disadvantaged individuals² attended the meeting, which was held in English with summarized translations in Zulu. The subsequent meetings were without DWA’s involvement and the attendance of historically disadvantaged individuals dramatically reduced: at the second meeting only 15 of them were present and, by the end of 2009, the number was reduced to eight. Out of the eight people, four did not reside within the hydrological boundaries of the WUA (though within the advertised municipal area). Finally, two of the four remaining eligible historically disadvantaged individuals were elected, together with the re-election of the other members, to become members of the management committee of the WUA by the people attending the meeting. In this way

² It is difficult to estimate the size and composition of the population as no data are available at catchment level. The Community Survey of 2007 estimated the population size of the municipality at approximately 150,000, of which 95% are from previous disadvantaged groups (85% Blacks, 2% Coloureds, 8% Indians) and 5% Whites (STATSA, 2007). The study catchment covers approximately 20% of the municipal area, which brings estimates of the total population in the catchment to 30,000 of whom 28,500 are classified as previously disadvantaged individuals.

one woman from an urban settlement took up the role of gender representative and one member of a community that had recently acquired a commercial farm became the representative of the emerging farmers³. DWA accepted the outcomes of the elections without further scrutinizing the process and arranged multiple training sessions on gender for the WUA management committee. These training sessions aimed to establish a common understanding of how socially-constructed gender relations affect water management practices. Why racial relations (which noticeably influence water management practices in the catchment) were left out remains unclear. While emerging sector representatives regarded this training as positive, as an opportunity to interact with other members and to learn, commercial farmers refused to follow the training sessions (they attended only once) because they regarded them as ‘a useless time consuming activity’ (Interview CF3, 2010). After the training sessions, not much happened. A committee member explained: ‘No more meetings of the WUA took place since over a year now, the secretary is still busy finalizing the constitution or maybe it is somewhere in Pretoria waiting for approval’ (Interview CF3, 2011).

Reflections on inclusion

Taking the existing irrigation boards as a starting point and transforming them into a WUA has given the commercial farmers in the case-study area the opportunity to remain fully in command of the process; they could mobilize, reason and take decisions on how to set up the WUA and how to include historically disadvantaged water users. In this process, the commercial farmers made a number of strategic decisions. First, by choosing to establish one WUA instead of four, based on the hydrological boundaries rationale (cf. Warner *et al.*, 2008), the four irrigation boards could remain the same: they did not have to include historically disadvantaged individuals within their irrigation boards nor did they have to change their governing rules. In this way, the WUA became a rather empty shell under which the four irrigation boards have continued to operate as they have always done: ‘We only formed the WUA because DWA wants us to do so, but in reality the irrigation boards will continue to function as usual, they always managed and will manage the water in this area’ (Interview CF3, 2010).

Second, defining the area under control of the WUA based on the hydrological boundaries of the tertiary catchment and simultaneously stating in the constitution that the objective was to control development in the area gave a powerful tool to protect current water users in the water-stressed catchment. It basically means that initiatives for new water uses, such as for emerging farmers, need to be discussed and agreed upon in the WUA before permit applications can be submitted. Only compulsory licensing as defined in the Water Act can counter this; however, compulsory licensing has not yet taken place anywhere in the country and the instrument is highly contested (van Koppen & Jha, 2005; Movik, 2011). The impact of this strategic decision becomes clear from the responses of the commercial farmers:

- ‘I think the WUA will bring many challenges. It will be a challenge to incorporate black people in the management of the institution. But it is very advantageous for us to be able to control the whole catchment and the protection of existing users’ (Interview CF10, 2010).

³ ‘Emerging farmer’ is a policy term in the South African context that refers to historically disadvantaged individuals who are encouraged and supported by the government to develop their agricultural activities for commercial purposes (DA, 2004). Amongst others, these are individuals and communities who benefitted from land reforms and/or are involved in NGO agricultural projects.

- ‘Users downstream will benefit from the WUA because now the same law applies for everybody and dams to be built upstream or any other activity that may have any repercussion down-stream will be WUA’s business...If traditional communities up there want to build a dam they have to ask for our permission now’ (Interview CF6, 2010).

When the scene was set, historically disadvantaged water users were ‘included’, after which collaborative issues arose such as the language barrier, different comprehension of the role of the WUA and the membership levies that ought to be paid. With English set as the main language, active participation of the Zulu-speaking members was seriously hampered. One of the residents of the former homelands, who is educated as a community development worker, explained: ‘some people were afraid to speak at the meetings, they think that they do not know enough and sometimes they do not understand the difficult words used during the meetings’ (Interview F18, 2011). Further, little attention was paid in the first meetings to discuss the reasons for the establishment of the WUA as well as its (potential) roles and organizational arrangements. This made it difficult for the historically disadvantaged individuals to understand the purpose of the meetings nor could they influence the mandate and the structure of the WUA. According to one commercial farmer ‘the blacks lost their interests as soon as they realized the WUA would only discuss the management of water and not deal with reallocations of water’ (Interview CF1, 2011). Talks about levies to be raised from the members to make the WUA financially sustainable scared off most of the remaining participants. As expressed by one of them: ‘I need good water for drinking and washing...they want me to pay money but they won’t solve my problems’ (Interview F9, 2009). The withdrawal of the historically disadvantaged individuals from the WUA demonstrates their agency in defining what inclusion means to them: they refuse to participate in and invest resources in organizations that do not incorporate their interests and in which, in their view, they are forced to accept a subordinate position (cf. Cleaver, 1999).

Including historically disadvantaged water users only after the strategic decisions were made, after the rules of the game were set, has had far-reaching consequences for the management of the catchment: the existing domains were left untouched while the new domain of interaction has been captured by commercial farmers, hence, the existing inequities in water control have been reinforced rather than redressed (cf. Waalewijn *et al.*, 2005). The success of DWA’s role in facilitating the process can be questioned; in fact, facilitation has mainly been left to the commercial farmers who cannot be expected to be impartial in defining the notion of ‘inclusion’, or indeed be expected to invest considerable amounts of time in facilitating the participatory process required to establish the WUA (cf. Brown, 2011).

Reflection on representation

Reflecting on the composition of the management committee of the WUA (Table 2), it becomes clear that the commercial farmers have the largest number of seats compared to the other water user groups, especially when voting rights are taken into account. DWA prescribe a ‘balanced representation in terms of the various categories of users’ (RSA, 1998) though remain vague about what this means: do they refer to balanced representation of the various water sectors or do the various categories refer to demographic groups? When asked for a response on the imbalanced composition, a regional DWA official responded: ‘There are five and five; the four commercial farmers with the Rate Payers Association

Table 2. Composition of the WUA management committee.

| Emerging sector | Commercial farming sector | Associate members |
|-----------------------|---------------------------------|---------------------------------|
| Emerging farmer | Chairperson, Irrigation Board 1 | Municipality |
| Gender representative | Chairperson, Irrigation Board 2 | KwaZulu-Natal Wildlife Service* |
| | Chairperson, Irrigation Board 3 | Traditional authority* |
| | Chairperson, Irrigation Board 4 | Rate Payers' Association** |

*Associate members who do not enjoy voting rights.

**Lobby group representing citizens who pay municipal taxes.

sum five white members. Then we have two black emerging farmers, plus the Traditional Authority, plus the municipality and KwaZulu-Natal Wildlife Service who are blacks. So that makes five and five' (Interview O12, 2010). None of the involved parties could explain which water sector the Gender Representative represents and what her role is: perhaps simply meeting the DWA criteria of having 'minority groups' such as women represented in the management committee, or perhaps it is assumed that she will represent domestic water users? Clearly, a view of what is 'balanced' with respect to representation which is limited to skin colour and simplistic gender notions carries the danger of reproducing apartheid philosophies rather than redressing the consequences of them.

Securing a seat on a WUA management committee does not automatically mean that the views and interests of historically disadvantaged individuals are represented in the newly established management structures: elements such as authorization, accountability, expertise and resemblance (here defined as the extent to which people feel alike and associated with each other) play a major role in the effectiveness of representation (Brown, 2006). The commercial farmers have a long history of being organized around water; the irrigation boards form platforms which the individual farmers trust to represent their interests at higher levels. Moreover, they have developed a collective identity (Abers, 2007) by framing the problem in terms of biophysical water scarcity and by sharing similar interests, maintaining or preferably increasing their access to and control over water resources to keep their agricultural businesses running. However, in the former homelands located in the study catchment, specific organizations built around water do not exist, since residents there never had the opportunity to use water in large quantities. The existing organizations built around other matters (e.g. land, livestock, crime, marriage) are based on traditional chieftdom structures that have been strongly affected by apartheid and post-apartheid politics (Mamdani, 1996). Consequently, the institutional structures in the former homelands are characterized by fuzziness, with only a limited accountability which has resulted in extensive patronage systems between the traditional leaders, government officials and residents (Kemerink et al., 2011). Authority is primarily based on implicit and competing kinship relations leaving the residents divided. Moreover, as described in detail in Kemerink et al. (2011), the communities are highly diverse in terms of interests, and identifying these residents as farmers merely because they reside in rural areas is a simplistic view of their personal histories and subsequent multiple identities. Resemblance of water-related issues is therefore not straightforward as is reflected in the publicity of the WUA: only three of the 38 interviewees in the former homelands were aware of the existence of the WUA and even the local chiefs did not know who represented them. This shows that the current notion of 'democratic' elected representation applied within the WUA does not make sense from the perspective of historically disadvantaged individuals, since it does not concur with local practices of representation in decision-making

processes nor form a strong new platform for interaction on water-related issues to define a common interest.

At the same time there is little understanding from the other stakeholders of why people who are currently not using water in ‘relevant’ quantities, and who have so far failed to articulate a clear future demand in terms of water use, should be involved (see [Waalewijn et al., 2005](#)). As one of the commercial farmers put it:

‘To be honest I do not understand why the blacks are in the WUA, they do not use water, so what are we supposed to talk about with them? The black woman from the township who sits in the management committee is growing some tomatoes in a little garden or so. I don’t know what she will use more water for, she does not need it’ (Interview CF3, 2011)

This inability (or perhaps unwillingness) to adopt a forward looking view of the future, in which emerging sectors require larger quantities of water, is supported by a local DWA official who stated that ‘representation in the management committee has to be directly related to land ownership’ (Interview O2, 2010); he argued that stakeholders who own more land and water should have a bigger say in decision-making as their stakes are higher. This reasoning implies that inequity in access to land legitimizes inequity in access to decision-making platforms. This is in direct contradiction to the progressive stand on representation that DWA defines in its official policy documents, in which it is realized that transformation of the water sector will not take place if the current possessors dominate the new water organizations. Discrepancy on the interpretation of how representation ought to be defined between the national and local DWA officials carries the risk of jeopardizing the reform process which is aimed at under the Water Act.

Discussion

This paper shows that the establishment of the new institution has been unsuccessful in contributing to transformation in the case-study area. On the contrary, the WUA is currently a sleeping giant, though when it is fully awake it will potentially steer to benefit the haves over the have-nots:

‘WUA is a way for us as commercial farmers to obtain licenses to construct new dams now based on inclusive grounds...I would be happy if we could build a dam up in the tribal lands, we can pay for it and we give them a share...though I can already tell you, they will not use the water, so we will end up using their share as well’ (Interview CF4, 2010)

As argued by [Von-Benda-Beckmann & Von-Benda-Beckmann \(2006\)](#), laws such as the National Water Act get renegotiated, interpreted and rearranged at local level and the outcomes tend to reflect the existing power relations within society. Surely one should question why and by whom the existing structures were chosen as points of departure for the implementation of the Water Act, as they have further reinforced existing inequities. This underpinning of the inequities is not only reflected by the decision to allow the irrigation boards to be in charge of establishing the WUAs, but also in the way that existing water use was recognized as lawful in the study catchment (see [Movik, 2011](#)). Without proper studies being made of the water availability in the catchment and in the absence of enforced

monitoring of actual use, commercial farmers were simply asked to register their water use. This gave them the opportunity to register additional water use in anticipation of future use and/or reallocations (Méndez, 2010). But is what we see happening within the case-study area solely the result of the implementation process, in which negotiation, interpretations and rearrangements have taken place at different spatial levels, or are there more fundamental issues at stake? Are the concepts that have been chosen within the water reform processes, such as WUAs, the right vehicles to achieve the transformation of the water sector as envisaged in the South African Water Act?

The concept of WUAs is a prime product of institutional crafting theory. The idea that institutions can be crafted (Ostrom, 1992) is widely embraced by governments and development agencies who prefer working with institutional blueprints (Roe, 1991; Mosse, 2004; Rap, 2006; Molle, 2008), though widely criticized in academic circles (Giddens, 1984; Long & van der Ploeg, 1989; Cleaver, 2002; Boelens, 2008; Molle, 2008; Ahlers, 2010; Laube, 2010). Policies based on institutional crafting are dominated by rational choice thinking, in which it is assumed that individuals make the appropriate calculations of costs and benefits based on single preferences, leading to an inclination for clearly visible, democratic, legally recognized institutions for participation. Within these kinds of institutions, the notion of inclusion is closely related to those who are visible, for instance through actual use of water, and those who are recognized by the others to hold some kind of authority, for instance on the basis of the possession of (natural) resources or particular knowledge. Representation is often based on clearly delineated stakeholder groups who find resemblance by sharing a collective identity and who democratically elect a representative that they can hold accountable (Brown, 2006). These notions on inclusion and representation originate from a neo-liberal inclined normative order, that propagates particular views on essential issues such as the relationship between the individual and the community as well as independency versus dependency, that does not always match with other normative orders upheld in society (see Wolf, 2008). The analytical framework of legal pluralism that has been adopted in this paper recognizes the various normative orders in society and provides contextualized insight into the diverse notions of inclusion and representation that delineate specific institutional inclinations. This is essential for understanding the dynamics of institutional evolution, including the contested space that has emerged with the introduction of WUAs as new platforms for interactions over water.

The history of apartheid has resulted in two separate worlds in one country (Bond, 2007; Cousins, 2007) with distinctive normative frameworks. The South African commercial farmers have been brought up within a similar neo-liberal normative standpoint as the institutional crafting theorists who developed the concept of WUAs (de Lange, 2004). Hence, the set-up of the WUA with its explicit organizational structure and the focus on functional and managerial issues is socially embedded within the commercial farmers' community. They have extensive experience managing water within similar organizations and have built a strong collective identity. Thus, even though they did not see the need for it, the commercial farmers were easily brought on board, as they knew the rules and they knew how to bend them. However, the WUA set-up is not in line with the normative orders prevailing within the former homelands where different institutions and practices prevail that are more implicit and based on kinship. Democratically elected representation is not fully recognized, water use is considered insignificant and a collective identity around water does not yet exist. This has left stakeholders within the former homelands invisible and without a voice. In other words, it is difficult for the people residing in the former homelands to be effectively included and represented in the way defined by the current set-up of the WUAs. This demonstrates that the notions of inclusion and representation entrenched in the WUA concept are far more biased than is

acknowledged by policy makers. Moreover, by adopting neo-liberal inclined institutional blueprints, existing inequities are legitimized and hence further strengthened within the new water institutions. To evade this, a more profound process which deals with historic inequities needs to take place without victimizing or ignoring the multiple social identities of all the actors, and taking into account the various normative orders that exist in society. For collaboration in water management, this means opening up space for bargaining not only over the content but also over the institutions that govern this collaboration. Unless this inherently political participatory process is initiated and the different institutional preferences become part of the negotiation process for the ‘why’ and the ‘how’ of progressive collaboration at catchment level, the establishment of the WUA in the study catchment will not contribute to achieving the transformation envisioned for rural South Africa.

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