CUSTOMARY WATER LAWS AND PRACTICES: NIGERIA

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WATER RESOURCES OF NIGERIA

With a population of close to 138 million people, Nigeria lies in the West African region bounded by the nations of Benin, Niger, Chad and Cameroon. The climate is tropical, characterized by high temperatures and humidity as well as marked wet and dry seasons, though there are variations between South and North. Total rainfall decreases from the coast northwards. The South has an annual rainfall ranging between 1, 500 and 4,000 mm and the extreme North between 500 and 1000 mm.

The hydrology of Nigeria is dominated by two great river systems, the Niger-Benue and the Chad systems. With the exception of a few rivers that empty directly into the Atlantic Ocean, all other flowing waters ultimately find their way into the Chad basin or down the lower Niger to the sea. The two river systems are separated by a primary watershed extending north-east and north-west from the Bauchi Plateau which is the main source of their principal tributaries. North-west of the plateau lie the elevated, drift-covered plains of central Hausa-land which is drained by numerous streams all flowing outwards to join the major tributaries.

Nigeria is blessed with a vast expanse of inland freshwater and brackish ecosystems. Their full extent cannot be accurately stated as it varies with season and from year to year depending on rainfall. However, the water resources are spread all over the country from the coastal region to the arid zone of the Lake Chad Basin. The country's extensive mangrove ecosystem, a great proportion of which lies within the Niger Delta and found mainly in the Rivers, Delta, Cross River, Akwa lbom, Lagos and Ondo States, is estimated to cover between 500,000 and 885,000 hectares. Freshwaters start at the northern limit of the mangrove ecosystems and extend to the Sahelian region.

The major rivers are the Anambra, Benue, Cross, Imo, Kwa Iboe, Niger Ogun and Oshun rivers. Estimated at about 10,812,400 hectares, these rivers make up about 11.5% of the total surface area of Nigeria which is estimated to be approximately 94,185,000 hectares. The inland water system includes thirteen lakes and reservoirs with a surface area of between 4000 hectares and 550,000 hectares have a total surface area of 853,600 hectares which represents about one percent of the total area of Nigeria. They include lakes Chad, Kainji, Jebba, Shiroro, Goronyo, Tiga, Chalawa Gorge, Dadin Kowa, Kiri, Bakolori, Lower Anambra, Zobe and Oyan. With the exception of Lake Chad, all the lakes are man-made.

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Deltas and estuaries, with their saline wetlands have a total surface area of 858,000 hectares, while freshwaters cover about 3,221,500 hectares. Other water bodies, including small reservoirs, fish ponds and miscellaneous wetlands suitable for rice cultivation cover about 4,108,000 hectares. Thus the total surface area of water bodies in Nigeria, excluding deltas, estuaries and miscellaneous wetlands suitable for rice cultivation-but not necessarily suitable for fish cultivation, is estimated to be about 14,991,900 hectares or 149,919 km2 and constitutes about 15.9% of the total area of Nigeria.

CUSTOMARY WATER RIGHTS

a. Nature of Customary Law

Water is used in traditional settings mainly for domestic purposes, fishing, farming and irrigation and livestock raising. Because customary rights in water resources are based on customary law it, it is useful to precede the description of customary water rights in this section with a general overview of customary law which is recognized as a major source of law in modern Nigeria along with Islamic law and laws passed by the legislature. [1]

Customary law consists of the customs accepted by members of indigenous groups in Nigeria as binding upon them. For the most part, the rules are unwritten and their devolution can be traced to the social organization of Nigerian societies which is based on a strong pattern of kinship groups. The lineage, as the basic unit, forms the foundation of a wide social group called the clan. A system of interclan linkages in turn constitutes the tribe made up of people belonging to different lineages but speaking the same language with the same traditions. Group relations are normative, and give rise to a series of well-defined rights and obligations, belonging to and owing to members of the group. Kinship rights and obligations are specific when the individual is interacting with members of his lineage, but they become more general as the degree of kinship widens. Observance of all traditional norms, is secured through a system of sanctions that may vary according to the degree of kinship ranging from censure, to fines, to ostracism or even expulsion from the group.

Customary laws are not uniform across ethnic groups. Differences in the customary laws of ethnic groups can be traced to various factors such as language, proximity, origin, history, social structure and economy. For example, the customary law system of an ethnic group in one town may be different from the customary law system of the ethnic group in a neighboring town even though the two ethnic groups speak the same language. Thus, among the Yoruba language group, it is possible to identify several component ethnic groups each with its separate customary law system. Generally, the customary law rules among ethnic groups speaking a common language tend to be similar, but the rather significant differences that can sometimes exist make it misleading to talk of a uniform customary law rule applicable to all members of the language group.

b. Customary Water Rights

(i) Land Rights

To the extent water resources are found on land, access to such resources would be affected to a large degree by rules governing possession of land. Therefore, for a better understanding of the nature of customary water law rights, it is necessary to provide a brief description of the basic customary land tenure rules in Nigeria.

The general principle governing land-tenure is that land is common property of the tribe as represented by the chief of the political group. Thus, village land would be held in trust and apportioned by the chief. Such administrative control of the land by the chief is referred to by the people as "ownership" a term also used to refer to the direct utilization and control of land by a family head or individual. The term also denotes collective rights of the people in the land as where one talks about the territory belonging to a village. In the broadest sense, village land embraces a territory surrounding the village in a rough circle and comprises three kinds of land: (1) occupied land fallow or actually worked, in the hands of families or individuals; (2) vacant land which has once been occupied but has fallen back to the common fund of land held in trust by the chief for future allotment; and (3) a fringe of virgin land claimed by the village community as a land reserve. There are no precise demarcation marks separating the fringe of virgin land from the stretch of no-man's land that connects to the next village. However, village land rarely stretches more than three miles from the village.

> Nadel describes the land acquisition rules among the Nupe as follows:
> "For a Nupe man who comes from farming stock, that is, whose family is holding land already, the usual way to acquire land is to exercise his claim to a parcel of the land that is held jointly by the family group, and which is administered and apportioned by the family head. This would be the procedure, for example, in the case of a young member of the family who had founded a family himself and now requests land for a farm of his own. More or less the same situation would arise in the case of a stranger, a native of Nupe though not of the particular village, or even a native of Nigeria (a Hausa or Yoruba) though an alien in Nupe, who, having been adopted into a household, may request land on which to settle. There is, however, the possibility that the family land available at the time is insufficient; or there might be a man desiring land whose family had not held land previously or had lost the claim to the land, e.g. through overlong absence. Here two main methods offer themselves: first, the man desiring land can exercise his right as a member, native or adopted, of the village community to request land (possibly additional land) from the chief, which may be either land that has been under cultivation previously but has fallen vacant, or virgin land within the village territory. Second, he can acquire new land through an arrangement with an individual landlord (using the term here in the widest sense); in other words, he can lease land temporarily for a rent in kind-a method known in Nupe as *aro*, 'borrowing'. In both these methods the land thus acquired is inalienable. ' A third

> method closely related to borrowing is a lease for life or for an indefinite period, in most cases against a single payment in money to which is added a fixed rent in kind. This arrangement, which definitely recognizes the money value of land, may be tantamount to real purchase. Fourth, there exists hereditary tenantship, which gives the tenant absolute right over his land, including the right to dispose of it again or sublet it. This tenantship ... implies not a fixed rent but a share in the produce-a form of metayer system. Finally, there exists a primary tenantship, in which a landlord who himself owns the land by the right of conquest or appropriation may cede complete and absolute rights over land to another person, Nupe or stranger, in recognition of (political) services rendered; here again a share in the produce is implied.[2]

In summary, an individual acquires rights to land by virtue of membership in a kinship group holding rights to land, or under contracts between individual landowners such as a short-term contract viewed as the 'borrowing' of land, or a long-term, or indefinite, contract such as is embodied in tenantship and in the granting of land for services rendered. A customary grant of land generally confers rights on all products of the soil granted, including water resources. The following sections elaborate on the nature of water rights that have developed in favor of persons having control over land where the water resources are found.

(ii) Domestic Uses

The principal domestic uses of water include drinking, washing and bathing. Water for domestic use may be obtained from dams, rivers, streams, wells, bore-holes. In general, there are no customary restrictions to access water from large bodies of water. However, with respect to smaller bodies of water, particularly in the more arid areas, non-family members would need permission to access resources owned by family groups. Accordingly, one writer notes the following regarding water rights among the Tiv people:

> When asked about rights to trees, water holes, fishing sites, or mineral deposits, Tiv say that such things belong to no one and are for the use of all. Their practice, however, does not follow their doctrine.... They claim that water does not belong to anyone. However, each compound has a pool in a stream (wagh) from which its women normally take water. In those parts of northern and central Tivland where only a few watercourses do not dry up in the dry season, many compounds share a single pool; usually it is said to be that of one compound, the others having asked and been given permission to take water from it. Such permission is said never to be refused.
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> Anyone may improve any spring that nobody else claims, and thereafter it is his. Before anyone else can regularly draw water from it, his permission must be requested, and he sometimes refuses. Springs are occasionally protected by akombo, especially in the dry season. The akombo is not intended to stop people from taking water from. . the spring, but only to stop anyone's stepping in or

bathing in the spring when seepage is slow and several hours may be required for it to settle and clear.[3]

(iii) Fishing

The existence of customary law rights to water resources in fishing is well documented. While fishing rights appear to be unrestricted in many communities, there is nevertheless an obligation to offer part of the catch to local leaders. For example, among the Yoruba, "the head fisherman in some districts is called "Baba Olodu" meaning father or owner of the river. ..All fishermen under him are supposed to give him part of their catch, and he in turn, is supposed to give the Alake of Abeokuta .... a certain quantity or equivalent every year....Anyone may fish, but if a stranger fishes he is supposed to give the Baba of the district part of his catch."[4] Similarly, in the Jukun community "the pools are normally open to all to fish; but, when drives are carried out in pools which had been cleared for fishing purposes at the instance of the king or chief, part of the catch is regarded as a royal perquisite. If the pool had originally been cleared by some former king a proportion of the fish is given to his successor, the gift being regarded as the fulfilment of the promise made by the fishermen's forefathers to those of the king."[5]

In other communities, fishing rights appear to be more clearly delineated and carefully controlled as the following excerpt illustrates:

> Tenure of fishing pools is important among riverain groups. Among the Batachi every pool has a name and a specific owner. A pool may be owned by the collective or by an individual or it may be attached to a title and change ownership ship with it. Pools owned by individuals can be inherited. Rents are fixed custom and do not vary from year to year; yearly fishing rights may be bought individuals. Strangers in Kede district seek formal permission to fish from Kuta, through the village head in whose area they settle. The period of settlement varies from a few months to about three years, but there is no permanent settlement. Presents of fish may be made to the village head and the Kuta, or strangers tax paid to the Bida Treasury."[6]

In the case of the Tiv people, "in Ityoshin, every compound has one, sometimes two, fish dams, usually near the pool where water is drawn by the women of that compound. These dams and traps are constructed by men for their own, use and the use of those to whom they give permission."[7] In some communities, an elaborate system of fees and dues exist for fishing rights as noted with reference to the northern tribes of Nigeria.

> The fishing rights over the backwaters are jealously guarded by communities, or families, or the holders of certain offices. Generally the rights are vested in families. Strangers may be allowed to fish on certain conditions, but the use by strangers of seine-nets would always be forbidden. In some districts, e.g. Yola, owners of rights commonly let their fishing grounds on consideration of receiving fifty per cent of the catch. In the pre-Fulani days, the Kuta of Mureggi, head of

> the Kede tribe, controlled all the fishermen on the Niger from Busa to Ida, a proportion of all the fish caught in the pools near the banks of the river being payable to him. He even levied taxes on all passing freight-canoes... The Fulani did not interfere to any great extent with existing fishing rights. Nominally in the Fulani Emirates the fishing rights were vested in the Emir, and in some of the Emirates there were regular taxes on fish known as *kurdin rua* (i.e. water dues) or *kurdin su* (i.e. hand-net dues). Local village headmen or elders also commonly imposed a tax on fish. Thus in some districts of Yola the village elders claimed ten per cent of all fish caught, p1w the catch on one day in each year...In Sokoto the fishing rights were generally free to the entire community, who at certain appointed times turned out en masse to catch the fish. It was customary for each man to present the chief of the village with a portion of his catch.[8]

In quite a few communities, where fish are considered to be sacred, fishing is prohibited.[9]

(iv) Livestock Raising

Nigeria has a large number of pastoral communities, including the Fulani who depend on herds of cattle for their living. The main concern of such communities is to find suitable grazing land, which forces them into nomadic life, their movements being dictated largely by where they can expect to find water and grass for the cattle. In general, water for livestock can be obtained from wells, streams, rivers and lakes. However, permission is usually required prior to watering by non-family members in areas where access to the relevant resources are controlled by the family or other community groups. Grazing rights obtained by the Fulani in northern communities of Nigeria are usually of a temporary character and not governed by the ordinary rules of land-tenure. Often, they are obtained by gifts of sheep or cows to the head of the family that has control over the land.

(v) Farming and Irrigation

Rights to farm plots may be acquired under the normal land-tenure rules described above. Thus, one's membership in a group or community would entitle him to a portion of land owned by the group which could then be used for farming. Water used for farming comes from rainfall, although rudimentary irrigation techniques have been developed to improve land farming in the arid areas. For the most part, traditional irrigation involves the use of residual flood waters and moisture in the low lands called fadama (flash flood plains), and supplemented with traditional water lifting devices such as the shaduf. Under the shaduf technique, water is raised from streams or shallow wells by means of a bucket attached to the end of a pole, which is levered on a cross-beam of wood. The other end of the pole is then weighted with a slab of dried mud, causing the pole in its rest position to stand erect. For raising water from the stream the bucket is drawn down by hand. The weight of the mudslab causes the pole to raise automatically the bucket filled with water, which is distributed over the farm by means of rectangular channels. For example, the Niger islanders of the Yauri district tend to scoop holes in the banks and fill

them with water when the river is at its height. This water is then transferred to holes higher up the bank, until finally it reaches the farms which overlook the river.

Access to water in wells or streams for irrigation purposes is regulated by families or community groups with rights over the underlying land in accordance with the normal land tenure rules. Thus, permission from the heads of such families or heads would generally be required by non-landowners who require water for irrigation.

c. Dispute Settlement Mechanisms

There are two basic mechanisms for the enforcement of customary law in Nigeria and they are relevant to the settlement of disputes that might arise regarding customary water rights. The first involves the institution of judicial proceedings in customary courts that have been created by statute and authorized to ascertain and apply customary law in relevant cases while the second consists of the non-statutory adjudication systems of chiefs and elders left intact but not officially recognized by the colonial and post-independence Nigerian governments.

(i) Customary Courts

Customary courts have been established in the different states for the administration of customary law, although their jurisdiction varies by state. In some states, customary courts have unlimited civil jurisdiction in certain types of cases while in other states they are restricted to civil cases meeting a threshold value. Significantly, the Land Use Act grants customary courts jurisdiction under over proceedings in respect of a "customary right of occupancy" which is defined to include the right of a person or community lawfully using or occupying land in accordance with customary law. In addition the Nigerian Constitution authorizes the creation by each state of a customary Court of Appeal to exercise appellate and supervisory jurisdiction in civil proceedings which involve customary law. However, no person is to be appointed as a judge in the state Customary Court of Appeal unless shown to have "considerable knowledge of, and experience in the practice of customary law."[10] Appeals from a state Customary Court of Appeal lie as a matter of right to a Federal Customary Court of Appeal created under the Constitution. At least three of the fifteen member Federal Customary Court of Appeal are to be learned in customary law.

With respect to the ascertainment of customary law, the judges of customary courts are presumed to know the customary law and can apply it on the basis of their own knowledge, although a party relying on a particular custom is also free to call witnesses to prove it. [11] Customary law can be proved in the first instance by calling witnesses acquainted with the native customs, including chiefs, linguists, assessors or others who could be qualified as experts on customary law. Proof may also be made with reference to books or manuscripts recognized as legal authority, or to reports from statutory customary courts on questions referred to them, or even from statutes, declarations or case law. In appropriate cases, judicial notice may be taken of well established rules of customary law. Once ascertained, customary law is to be applied by the courts if the customary law rule is not repugnant to natural justice, equity and good

conscience or is not incompatible with any statute.[12]

(ii) Non-Statutory Adjudication Systems

In general, the non-statutory adjudication procedures under customary law vary depending on whether the ethnic group is centralized or not. In centralized groups, an elaborate administrative machinery exists and the constituent units of the society tend to be bound together by common interests and loyalty to a political superior, usually the chief or king.[13] The uncentralized societies on the other hand, have no one single authority enjoying a concentration of political, judicial or military power capable of controlling by direct decrees the activities of members of the group and the judicial system tends to depend mainly on the authority of lineage elders derived from their seniority in the group.

At any hearing that is part of the non-statutory adjudication process,[14] the principal method of obtaining evidence is to call human witnesses.[15] After listening to the parties and witnesses, the elders or chief would render their verdict. The losing party could be censured or fined. Where compensation is ordered, the amounts assessed are generally flexible and take into account factors including the capacity of the guilty party to pay as well as the victim's willingness to accept a lower or substituted assessment. In serious cases, the offender may be ostracized or expelled from the society. Pressure to comply with a judgement can come from family members, friends and other members of the community concerned about the effects of non-enforcement on the family and the community itself. The forms of pressure that could be applied against a recalcitrant offender have been explained as follows.

> The breach of a tradition could be punished by the head of the family, or clan, or by members of an age group. Erring members could be disciplined by the head of the larger family, who might order a fine of items like local gin, goats, etc., or a sacrifice. Pressure would be brought to bear on any offender who failed to pay his fine or who repeated the offence. His wife would plead with him to avoid the long-term repercussions (bad luck) which would ensue for his immediate family. The offender's wife would be coerced by members of her original larger family to press her husband to conform. Other members of the larger family might also coerce an offender into paying his fines, to avoid repercussions on their family. Further disobedience could lead to the family being ostracized by the larger family, or by the entire community. This was often the worst kind of punishment. The community would not buy from him or sell to him or members of his immediate family. If he was still obdurate (depending on the offence), he could either be banished from the community or he would leave of his own accord because he would not be able to bear the shame. Such exit usually must be for a distant community. Neighboring communities would probably know that the newcomer was an offender from another community. He would then be seen either as bringing ill luck, or as a danger to the new community since he might be disobedient and cause an upset in the new community.[16]

STATUTORY WATER RIGHTS

a. Use of Land

The Land Use Act of 1978 vests all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold such land in trust for the people and be responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments. Under Article 5 of the Act, the Governor has power to grant statutory rights of occupancy to any person for all purposes in respect of land, whether or not in an urban area. Upon the grant of such a statutory right of occupancy, all existing rights to the use and occupation of the land subject to the statutory right of occupancy are extinguished.

Regarding the powers of the Local Government in relation to land not in urban areas, the Local Government can grant customary rights of occupancy to any person or organisation for the use of land in the Local Government Area for agricultural, residential and other purposes; or for grazing purposes or other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned. However, except with the consent of the Governor, no single customary right of occupancy is to be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes. In addition, the Act prohibits the alienation of any customary right of occupancy without the consent of the Governor where the property is to be sold by court order or in other cases, without the consent of the appropriate Local Government. Any right of occupancy may be revoked for overriding public interest.

For purposes of the Act, the term “customary right of occupancy" means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under the Act; while the term “occupier" means any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-lessee or sub-underlessee of a holder.

b. Rights to Water Resources

The Water Resources Decree of 1993 vests in the Federal Government the right to the use and control of all surface and groundwater and all water in any water-course affecting more than one State, for the purpose of promoting the planning, development and use of the country’s water resources; coordinating the distribution, use and management of water resources; and ensuring the application of appropriate standards for the investigation, use, control, protection, management kind administration of water resources.

Under section 2 of the Water Resources Decree, any person may (i) take water without

charge for his domestic purpose or for watering his livestock from any water course to which the public has free access; or (ii) may use water for the purpose of fishing or for navigation to the extent that such use is not inconsistent with any other law for the time being in force; or (iii) who, has a statutory or customary right of occupancy to any land, may take and use water from the underground water source or if abutting on the bank of any water course, from that water course, without charge for domestic purposes, for watering livestock and for personal irrigation schemes.

The authority of the Minister for Water Resources to control groundwater use includes the power to define the time, places and manner in which water may be taken or used; to fix the amount that may be taken in times of shortage; to prohibit the taking or use of water for health reasons; to regulate the construction and operation of boreholes; and finally to revoke a right to use or take water in the public interest. In the discharge of his statutory duties, the Ministry is required to make proper provision for adequate supplies of suitable water for domestic, and non domestic use; the watering of animals, irrigation, agricultural purposes as well as the generation of hydro-electric energy for navigation, fisheries and recreation. As defined in the Water Resources Decree, the term "domestic use" means the use of water for drinking, washing, bathing, cooling, gardening, or for any other domestic purpose in any residential premises utilized for non-profit motives; the term "non-domestic use" means the use of water from any waterworks for profit or gain.; while the term "public use" refers to any domestic or agricultural use from any waterworks provided through any fountain, standpipe, valve, tap or appliance used by the public.

c. Rights in Navigable Waterways

Certain rivers, creeks, lakes, lagoons and intra-coastal water waterways identified in a schedule to the Navigable Waterways Act have been declared navigable waterways and placed under the management direction and control of the government. The statute grants the Inland Waterways Department the right to all lands within the right of way of a declared water way to use such lands in the interest of navigation. In addition, it prohibits any person, firm, State or corporation from obstructing a declared waterway, taking sand, gravel or stone from any declared waterway, or erecting permanent structures within the right of way or divert water from a declared waterway, without the consent of the Inland Waterways Department and the approval of the Minister for Water Resources.

In 1997, the Federal Government created the National Inland Waterways Authority to improve and develop inland waterways for navigation; provide an alternative mode of transportation for the evacuation of economic goods and persons; and execute the objectives of the national transport policy as they concern inland waterways. The general functions of the Authority are to provide regulations for inland navigation; ensure the development of infrastructural facilities for a national inland waterways network connecting the creeks and the rivers with the economic centres using the river-ports as nodal points for intermodel 'exchange; and ensure the development of indigenous technical and managerial skill to meet the challenges

of modern inland waterways transportation. Other functions and powers of the Authority include operating ferry services within the inland waterways system, issuing and controlling licences for inland navigation, piers, jetties, dockyards; collecting river tolls, and advising the government on all border matters that relate to die inland waters.

MANAGEMENT OF WATER RESOURCES

a. Federal Ministry of Water Resources

The Federal Ministry of Water Resources (Federal Ministry) is the main government agency responsible for the management and control of water resources in Nigeria. It is supported by an institutional framework comprising the River Basin Authorities and the National Water Resources Institute. The general mission of the Federal Ministry is to harness underground and surface water resources for irrigation, recreation, navigation, hydropower generation, and water supply for domestic and industrial use. Its specific duties include the formulation of national water resources policies, the implementation of a water resources masterplan for the development of dams, irrigation and drainage, water supply, soil erosion and flood control as well as hydrological and hydrogeological activities. In addition, the Federal Ministry is required to develop and support irrigated agriculture and reduce the nation's dependence on rainfed agriculture, and promote and sustain national water security by minimising unexpected and undesirable shortfalls in domestic food production and agro-based raw materials caused by the vagaries of weather.

As part of its responsibilities, the Federal Ministry is expected to co-ordinate the development and utilization of water resources for irrigation and water supply; develop a centralised water supply and sanitation monitoring and evaluation programme for the country; develop programmes and policy towards surface water storage schemes; and develop guiding principles for dam construction nation-wide. Special attention is to be paid to water resource development in the rural areas in connection with which the Federal Ministry is directed to formulate and support a national rural water supply programme with a national on-farm storage programme emphasising the involvement of local communities.

b. River Basins and Rural Development Authorities

The Federal Ministry of Water Resources is assisted by twelve River Basin Authorities established under the River Basins Development Authorities Act of 1986. Under section 4 of the Act, the authorities are authorized: “(a) to undertake comprehensive development of both surface and underground water resources for multi purpose use with particular emphasis on the provision of irrigation infrastructure and the control of floods and erosion and for water-shed management; (b) to construct, operate and maintain dams, dykes, polders, wells, boreholes, irrigation and drainage systems, and other works necessary for the achievement of the Authority's functions and hand over all lands to be cultivated under the irrigation scheme to the farmers; (c) to supply water from the Authority's completed storage schemes to all users for a fee to be determined by

the Authority concerned, with the approval of the Minister; (d) to construct, operate and maintain infrastructural services such as roads and bridges linking project sites; provided that such infrastructural services are included and form an integral part of the list of approved projects; (e) to develop and keep up-to-date comprehensive water resources master plan, identifying all water resources requirements in the Authority's area of operation, through adequate collection and collation of water resources, water use, socio-economic and environmental data of the River Basin."

However, the authorities are prohibited from acquiring or leasing land or taking on acquisition of any existing project without the knowledge and consent of the State Governments in their area of operation. Although the authorities are authorized to make bye-laws for the management of irrigation schemes and regulating the use of water, such bye-laws are unenforceable unless confirmed by the National Council of Ministers.

c. National Water Resources Institute

The government also created the National Water Resources Institute to promote and develop training programmes and courses in water resources and to advise the Government on water resources needs and priorities. Under section 2 of the National Water Resources Institute Act (C.A.P 2841), the Institute is authorized to: "(b) perform engineering research functions related to such major water resources projects as may be required for flood control, river regulation, reclamation, drainage, irrigation, domestic and industrial water supply, sewage and sewage treatment; (c) perform such ancillary services on planning of water resources management and river basin development and produce necessary codes of practice in water resources engineering related to and suitable for Nigerian conditions; (d) promote the establishment of a uniform national data collection system relating to surface and sub-surface water resources; (e) provide for the training of engineers and technicians on short courses and formulate programmes of work in the field of water resources; establish and maintain a water resources library, documentation and conference centre; (g) publish or sponsor publication of water resources journals; and (h) promote co-operation in water resources development management with similar bodies in other countries and with international bodies connected with water resources management and operations."

LEGAL STATUS OF CUSTOMARY WATER RIGHTS AND INTERFACE WITH STATUTORY RIGHTS

a. Conflicts Between Customary Rights and Statutory Rights

As described in Section Two, customary law is recognized as a major source of law and would be enforced as such if not found to be repugnant to equity natural justice and good conscience or incompatible with any statute. Therefore, as a general matter, to the extent there is a conflict between statutory law and customary law, the former would take precedence. In the context of water rights, this means that statutory rights would generally supercede customary

water rights where there is a conflict.

The regulatory framework on water resources appears to confirm this subordinate position of customary water rights in some cases. For example, under section 2(iii) of the Water Resources Decree, any person who "has a statutory or customary right of occupancy to any land, may take and use water from the underground water source or if abutting on the bank of any water course, from that water course, without charge for domestic purposes, for watering livestock and for personal irrigation schemes." Earlier discussion on the Land Use Act identified the authority of local governments to grant customary rights of occupancy in land to any person for grazing or ancillary agricultural purposes. However, such customary rights of occupancy are made subject to the statutory rights of occupancy which State Governors are empowered to grant. As provided unambiguously in section 5 of the Land Use Statute, "Upon the grant of such a statutory right of occupancy, all existing rights to the use and occupation of the land subject to the statutory right of occupancy are extinguished."

The broad regulatory power of the government in connection with land and groundwater use may adversely affect customary rights. The Water Resources Decree enables the government to define the times and manner at which water may be taken, prohibit the taking of water for health reasons or even revoke customary rights in the public interest. Similarly, under section 28 of the Land Use Act, any right of occupancy, including customary rights of occupancy, is subject to revocation for overriding public interest which is defined to include "the requirement of land for mining purposes or oil pipelines" or the requirement of land for public purposes by the Federal, state or local governments.

However, it would be a mistake to assume in all cases that customary rights would always be subordinate to statutory rights. Significantly, under section 2 of the Water Resources Decree, "any person may (i) take water without charge for his domestic purpose or for watering his livestock from any water course to which the public has free access; or (ii) may use water for the purpose of fishing or for navigation to the extent that such use is not inconsistent with any other law for the time being in force..." Because the term free access has not been defined, it is an open question whether the issue of access to water for domestic purposes should also be determined by taking into account customary law rights. To the extent customary law rules are relevant, potentially there could be a conflict between a user who claims a right to use water for domestic purposes under the Water Resources Decree but which is resisted by a community group that claims to restrict access under their customary rules. It is unclear in this case how the issue will ultimately be resolved. As for the use of water for fishing or navigation, any conflicts that arise are likely to be resolved in favor of customary law. As the language of the statute makes clear, fishing and navigation are permitted only to the extent they are not inconsistent with any other law for the time being in force. To the extent customary law constitutes a source of valid law, a customary rule that restricts fishing and navigation rights could be used to bar parties claiming such rights with reference solely to the general provisions of the statute.

b. Conflicts Between Pastoralists and Agriculturists

Many of the major conflicts over water resources have arisen not so much as a conflict between statutory and customary rights as they have been between users asserting rights under customary law, particularly between traditional pastoralists and agriculturists. Immediate causes of critical shortages in the supply of water resources that have often precipitated such conflicts can be traced to natural factors such as drought and erratic rainfall. Additional pressure has come from a rapidly growing population which brought new users and led to increased demand and competition for the already limited water resources. Further aggravating these problems was the inability of the government to implement an efficient water resource management policy.

Developments in the Komadugu - Yobe River Basin illustrate the role of these factors in conflicts over water resources between traditional users. The Komadugu-Yobe is a network of rivers and wetlands located in northern-eastern Nigeria where the inhabitants are engaged mainly in recession agriculture, pastoralism, forest use, fishing and tourism. The economic activities of its fast-growing population whose have led to an increase in demand for a share of the water resources estimated at about 2.5 times higher than the available water. To make matters worse, the area has been hit by a significant decrease in rainfall. Furthermore, the water resource management in the area has been characterized as fragmented, with ill-defined and often conflicting responsibilities between government agencies and stakeholders as evidenced by the lack of coordination between the two River Basin Development Authorities in the area. The situation has been made worse by lack of reliable hydro-meteorological information on the basin for an effective monitoring of the network. This resulted in inadequate monitoring and release of water from the dams without consideration for the needs of the pastoralists and agriculturists - practices which altered the traditional rotation of usage of the wetlands between the two groups and subsequently led to clashes between them. Therefore, these conflicts were in large measure the result of serious planning lapses as the rapid changes in irrigation techniques and subsequent expansion of dry season cultivation areas had not been accompanied by any form of integrated management planning and development in the basin.

As part of the effort to defuse these conflicts in the area between water users and regions, the government has developed the Komadugu-Yobe Integrated Management Project tasked with creating the institutional environment that would enable participatory and informed decision-making regarding equitable use and sustainable management of the Komadugu Yobe Basin. The specific objectives of the project are to (a) build the decision-support knowledge base so that water management options and other resources management decisions are taken on the basis of up to date information on water audit, socio-economic and ecological conditions, (b) pilot-test improved water management field interventions so that efficient and sustainable water utilisation techniques and approaches are demonstrated in downstream areas, (c) help establish a legal and policy enabling environment through the adoption and implementation of a water charter and supporting basin-level consultation and coordination mechanisms, (d) update and finalise existing draft a catchment management plan for the Komadugu Yobe Basin using participatory approaches and on the basis of the results of knowledge, policy and pilot activity components of the project.

CONCLUSION

Nigerian water resources legislation provides for customary water rights in connection with domestic use, watering of livestock, fishing, navigation and irrigation. However, the statutory provisions are rather perfunctory and do not elaborate on the scope of those rights, no doubt leaving this to be determined in accordance with the customary practices of traditional communities. Discussion in the paper has revealed that community groups are fairly liberal in granting rights of access to water rights where the resources are plentiful, but tend to be more restrictive in the arid areas and in times of scarcity. Although field trips carried out in the country would likely have shed more light on the nature of customary water rights, funding constraints precluded the use of this basic information gathering process in the preparation of this report. To be more comprehensive, however, any further work on customary water practices in Nigeria should seriously consider incorporating research visits to selected parts of the country.

The existing regulatory regime could be improved significantly through the adoption of regulations providing guidance on the customary water practices of the different ethnic groups. Compilation of such information will go a long way to reducing conflicts among traditional users which stem from simple ignorance of the access rules. To the extent these conflicts, particularly between the pastoralists and the agriculturists, have been exacerbated by inefficient management of water resources, these managerial lapses must also be addressed. The Komadugu-Yobe Integrated Management Project is currently grappling with many of these issues and lessons learnt from that project should be evaluated for their application in other parts of the country.

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