

FACTSHEET ON WATER RIGHTS

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Introduction

Water rights are any mechanism through which a user can access water for a particular use without jeopardizing another users' right. Water rights can be local or customary; meaning that a way through which users get access to their water and solve their allocation mechanism among themselves without necessarily having a written document to define volumes and time for abstraction. Water rights are however, mostly thought to be statutory where it refers to a blueprint document defining volumetric allocation of water and sometimes, period for that particular allocation and whom it is provided for.

What are the major uses of water in the Great Ruaha River System? When are there more tensions on water?

From January to March in a normal wet year, all sectors get sufficient water and there is no any tension. Long rains end in April. If it was a dry year, concerns over water starts from April to July due to scarcity: for establishing irrigated fields in the middle catchment areas. The crisis period is between August and December where most ephemeral rivers dry up, and even Mkoji River, a key contributor of the Great Ruaha River, which used to be annual, nowadays dries up in this period. In the peak of the dry season, any small flow saved from irrigation or brick-laying sector can make a difference especially for domestic uses downstream. Local water users upstream first allocate water for domestic uses, then for irrigation, livestock, construction and brick-laying. Upstream local water users are not concerned with leaving water to flow downstream for domestic, river flows, H.E.P, wildlife, fisheries and aquatic flora and fauna.

How many water rights are there in the Rufiji basin?

There are about 990 formal water rights in the Rufiji basin alone. The number is expected to rise, as there are several pending applications. At its present capacity, River Basin Water Office may not efficiently administer water charges for all water rights that are sparsely located within the basin. To ensure efficient charging, RBWO would require extra staff; elaborate billing system and efficient institutions for collection of the fees.

Who hold the water rights?

Water right holder	Number of water rights	Percentage
Private individuals	279	28.2
Private companies/estates	192	19.4
Water User entities	98	9.9
Government (DEDs/ Agencies)	401	40.5
Others	20	2.0
Total	990	100

What does this imply?

- More water rights are held by private users (28.2% by private and 19.4% by private companies, making a total of almost a half of all water rights; i.e. 47.6%) despite the policy directions that Water User Associations should hold most water rights.
- Water User Associations (WUAs) on the other hand have the minority share, accounting to less than a tenth of the water rights (9.9%).
- Diffidently, the government still holds a majority of water rights (40.5%) and has been reluctant to let them go.
- This may discourage the formation of Water Users Associations (WUAs).

Are all water rights operational?

- Some water rights were issued under the repealed Water Ordinance, 1959 which had different provision for payment altogether. Although the Water Ordinance 1959 was repealed by the Water Utilization (Control and Regulation) Act No. 42 of 1974.
- Some water right holders are dead and some new users have taken over.
- Some water rights have been abandoned, either by migration, or death of the bearers, or by changing river regime, depth and flow.
- Some water uses have changed, far from the original purpose of the application
- Some water rights have been illegally transferred to new holders or sublet
- Some water right holders have changed their practical abstraction, mostly increased the quantities of water they use.

Water rights are issued irrespective of the season, despite major differences in availability and value of water in the wet and dry seasons. This may limit efficient use of water between May and December when there is scarcity.

No	Nature of ownership	# of water rights	Percent
1	Private individuals	28	28
2	Government (DEDs)	20	20
3	Government (Parastatals)	13	13
4	Association/ user group	29	29
5	Other	10	10
	Total	100	100

What about water rights in the Usangu plains?

Table 1. Nature and number of Water rights in the Usangu Plains

- Government and various government agencies (DEDs and Parastatals) hold a third of all water rights in Usangu (i.e. 33%)

- Private individuals also hold about another third of all water rights (i.e. 28%)
- Water User entities has only about a third of the water rights (i.e. 29%)

Why should the government and private individuals hold so many rights? (i.e. two-third of total rights!). Government would show a way by transferring the one third of water rights to water user entities. The private water rights should also be reviewed and the holders should be advised to admit the other users closer to or at the tail end of their fields so that they form a user entity and share the resource.

Water rights in the Usangu Plains

- There are some 100 water rights in the various rivers in the Usangu plains as at June 2003. There are several applications that have not been issued rights although abstraction is already done. This is already too much abstraction, especially in the dry period. The sectors that do not have rights –like ecological/ minimum river flows, swamps and wetlands and the Ruaha National Park would suffer if all the ‘rights’ were used. Who should be blamed therefore? The legal user or the ‘right’ guarantor?
- More than a half (56%) of the water rights are in the Mkoji sub catchment.
- The most abstracted rivers are Chimala and Mlowo with 20 and 19 water rights respectively.
- Mlowo river alone has some 19 water rights, accounting to about 20% of the total water rights in the Usangu plains.
- The Great Ruaha River is almost the least abstracted. It has only two water rights.
The histogram below shows the rivers and the legal abstractions in the Mkoji sub catchment.

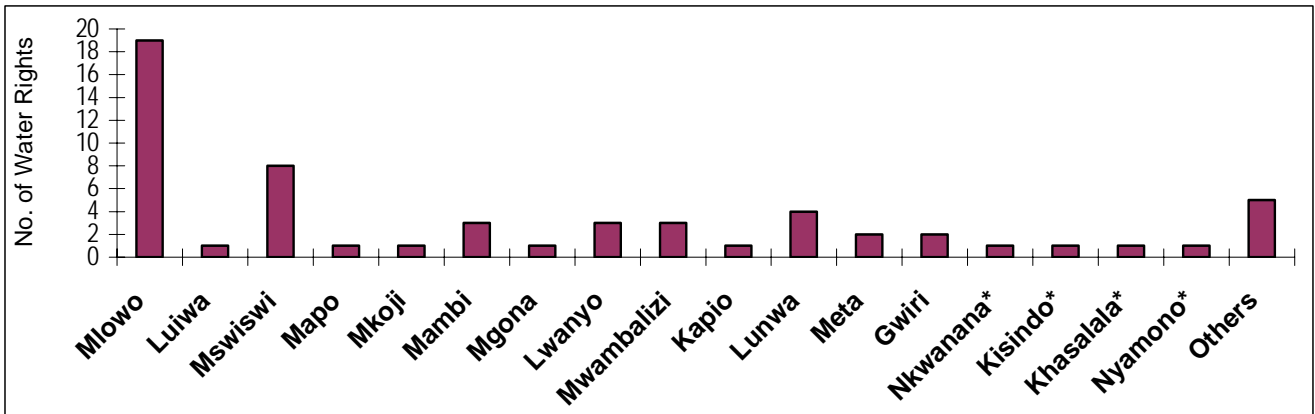


Fig. 1 Legal abstractions in rivers in the Mkoji subcatchment

- The water rights are increasing year after year. At independence (1961), there were only five water rights in the Mlowo river system. By 2001, the number had quadrupled to 19. There are also more than seven pending applications, which are likely to be granted rights. If the trend continues at this pace, by 2011, there will be more than 30 water rights.

Impacts of water rights in the Usangu plains

✘ Most holders of water rights were granted several years back and have not been reviewed to conform to the real water demand of the holders and the available river flows especially during the peak of the dry season. For example, Langwira Seed Farm and the NAFCO ranch at the lower plains of Mkoji subcatchment were granted water rights in 1961 and 1975 respectively, when the former was cultivating the whole land for pasture seed and the latter was keeping a big heard of cattle. To date, both the seed farm and the ranch have retained water rights while less than a quarter of the fields are cultivated, and less than a fifth of the cattle are kept. This is not an equitable management of water resource.

✘ Most ordinary water users and the poor did not acquire water rights in the past, either because they were not sensitized to do so or because of the tedious application procedure. Application procedures for water rights are lengthy, time-consuming and bureaucratic. Why should they not be incorporated in the government and private water rights (that forms 2/3 of the total rights) so that they can equitably benefit from the resource? This is not a pro-poor approach.

✘ Furthermore, the 'right holders' normally abstract water beyond their 'right'. There are no mechanisms to ensure that those who have water rights adhere to the provided abstractions. Users manipulate their gates at their own discretion. River Basin Water Office (RBWO) has no 'street-level' agents to enforce this. Without monitoring of the levels of abstraction, water rights are just another certificate to abstract as much water as one wishes and a potential cause of conflict among the water right holders.

✘ Water rights are not seasonal-sensitive; the provision allows right owners to abstract the same quantities of water in wet as well as in dry season regardless of the available river flow in the peak of the dry period. Once the upstream right holder diverts the whole river, the lower users do not have access, whether they have a right or no. This has brought conflicts in Inyala ward and impacted the downstream.

✘ Once issued, water rights are not transferable or tradable. This arrangement cannot allow a market-based allocation of water to the most economically viable use. If only they were transferable or tradable, Langwira Seed Farm and NARCO would have traded part of their rights to put water in proper productive use.

What could be done about the water rights?

- ✘ Introduce compulsory registration of all abstractions; supported by a detailed GPS survey
- ✘ Match the water rights with the available 'abstractable' river flows
- ✘ Attach seasonality with water rights; up streamers may irrigate during the beginning of dry season (May- August) and depend on the short rainfall thereafter; down-streamers may irrigate in the beginning of rainy season and thereafter (December- April) and a window period of September, October and November may be preserved for ecological flows and domestic users downstream.
- ✘ The whole concept of 'right' is misleading to both holders and non holders, as it reflects to undue advantage of the holder against non holder; Water license, certificate or permit may replace the rights and may increase awareness toward water resource sharing.
- ✘ The water licenses would therefore be short-term, renewable and revocable once a holder fails to meet the conditions of the guarantor

No	Water use	No. of water rights	Percentage
1	Irrigation	43	77
2	Irrigation and domestic	2	3
3	Domestic	7	12
4	Livestock	0	0
5	Domestic and Livestock	1	2
6	Commercial	1	2
7	Irrigation and industry	1	2
8	Domestic and industry	1	2
9	Total Water rights	56	100

- ❑ Irrigators have more than three quarters of all water rights in Usangu plains
- ❑ Water rights are issued sectorally; thus there's a possibility of new conflicts among water right holders!
- ❑ Livestock keepers do not have even a single water right! At the driest of the period, they would NOT 'legally' access water
- ❑ There's no much commercial users in Usangu plains

Are there any local level institutions that influence water management in the Usangu Plains?

Customary arrangements; Most customs, taboos, beliefs and practices have died off with modernity, religion and increasing mixing up of people due to immigration. In the upper catchment, traditional 'rain makers' (*mwangovhe*) are still believed to cause or chase away rainfall. Traditional chiefs (*mwene*) among the *safwa* ethnic group are influential in conserving riparian trees and water sources. *Mwenes* would fine or warn anybody who cuts a riparian tree or natural forests known as '*iganjo*'. In some villages *mwenes* are more influential than the Village Executive Officers (VEOs). In such cases there are some power conflicts between the two. There is also a contradiction in the environment sub committee of the Finance, Economic and Planning Committee of the villages where the VEOs are the secretary and *mwenes* are the chairmen. VEOs are reduced to obeying orders as directed by *mwenes* while at the same time VEOs are the overseer of all other committees.

Local water rights in Usangu plains are attained by:

- ❑ Inheritance: of land, *madindilo* or canals from previous family member(s)
- ❑ Rent: short-time ownership of irrigable land through payment of a rent
- ❑ Status: acquired or non-acquired e.g. *Mwene*, Councilor, widow, poorest of the poor. These people category would access water owing to their special status in the society
- ❑ Voluntary labour: in cleaning canal, digging *dindilo*, etc. Once someone participates in voluntary labour, locally known as *maendeleo*, s/he is entitled to some water.
- ❑ Negotiations: verbal/ monetary-knowledge and information; one may get water through talking to another user who have extra, or who do not need water at that particular time or season, or may compensate for water by money.

Local rights are enforced through:

- ❑ **Water rotations (*zamu*).** *Zamu* are effective in minimizing water conflicts. They are has self-sustainable, as the current irrigator is barred from continuing irrigating by the next person in the shift. Even the formal water rights are operational zed by *zamu*, e.g. in Inyala and Idunda wards
- ❑ **Local bye laws:** local water users sit together and agree on the dos and don'ts and the penalties thereof.
- ❑ **Phobia:** Water users would scare an irrigator who is on the rotation, especially at night. As the latter shies and runs away, the former directs water to his/her field
- ❑ **Customs and traditions;** e.g. permissions for digging and reviving *dindilos* in the upper catchment

Strengths and Weaknesses of Local Water rights

Strengths	Weaknesses
<ul style="list-style-type: none"> • Participatory-all users in the area consent to the right • Self-regulatory-no extra costs, nor external resource • Sensitive to the vulnerable e.g. widows, the poor • Contain conflicts to sub-reactive levels 	<ul style="list-style-type: none"> • Cannot handle conflicts once it is reactive • Not gender sensitive • Does not incorporate catchment/ basin-wide solutions; local indeed • Bla • Bla • Bla