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Customary water rights and contemporary water legislation

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Description / Abstract

This Legal Paper (No. 76) seeks to deal with the range of issues relating to the customary and statutory rights interface.

Many questions about customary legal developments go unexplained if no recourse is made to the connection between legal and economic systems. Since time immemorial they interact, justify and fertilise each other. Most of all, if we believe that customary laws and justice develop and transform themselves, the question is: how much does economic development influence legal institutions and rules? An historical, inter-sectoral juridical (and economic) approach is necessary to define differences between customary and modern systems, because these systems were born as a result of specific historical circumstances and will eventually die out or be replaced. A historical and anthropological dimension has been incorporated in this paper, as a sound understanding of current customary laws and practice is incomplete without reference to colonial and pre-colonial water use and management practices.

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