

Empowering Local Water Governance

Recommendation. The draft bylaws to the water law should include language clearly and explicitly stating the legal power of WUAs, within their area of jurisdiction, to make and enforce rules, including fees and penalties, along the lines of the following.

- a. WUAs have authority to establish mandatory fees and contributions, for construction and for management.
- b. WUAs have authority to establish rules concerning proper utilization of water resources, with penalties for violations that may include fines and restrictions on water use.
- c. WUA decisions to establish or modify rules, fees, penalties, and other matters must be approved by a majority in a general assembly meeting held with proper notice, or must be approved by a majority in a referendum among beneficiaries.
- d. WUA actions in accordance with this bylaw derive their authority from the Water Law, including authority for enforcement.

Explanation. WUGs and WUAs are currently organized as voluntary associations and lack the power to impose mandatory fees or impose sanctions, such as fines or cutting off water, to those who violate rules, and to have such enforcement backed up by local authorities, police, prosecutors, and courts. This leaves them vulnerable to the problem of "free riders" who enjoy benefits without sharing costs, especially in areas which are socially heterogeneous and lack local institutions that can provide alternative means of enforcement. A legal framework for effective governance of a common resource, such as surface water, groundwater, and irrigation systems, needs to ensure authority over all those using the resource, in other words, to empower WUAs as a specialized form of local governance.

Since development of a formal legal framework is an important objective for NWSSIP, a way should be found to ensure that WUAs have such powers. The draft WUA Bylaws include some statements which could be read as providing some authority to make binding decisions, but do not clearly and specifically empower WUAs to set mandatory fees, and enforce rules against violators. The current language is not certain to be understood, by communities or courts, as clearly and specifically providing WUAs with such authority. One approach would be to have this authority come from local councils, based on their authority to manage local resources. A broader approach, recommended here, would be to add language to the draft Bylaws to the Water Law to provide such powers to WUAs. This should include WUAs of groundwater users (including representation of all users, not just irrigators,) which would function as aquifer management organizations (AMORs). For large WUAs, having two thirds of members attend a general assembly meeting may be difficult or impossible, so it would be more workable to allow decision by a majority in a properly held general assembly, and to enable a referendum to be used as an alternative.

The recommendation above is intended to identify the key points to be covered, with the precise legal language to be formulated in Arabic, and in accordance with the structure of the revised draft bylaws.

Draft bylaws. The draft Bylaws to the Water Law are currently being revised. The current draft was not available to the Mission as of June 4, 2010. Chapter Three of the previous draft included the following provisions [emphasis added, comments in brackets]:

B. General Objectives

....

3. If membership percentage within the general assembly reached two thirds of beneficiaries from a common water source, decisions and procedures of the general assembly shall be considered **binding** for all beneficiaries of that source including the basin or the water area.

[The proposed clauses could be added here.]

4. Without prejudice to the above paragraph, membership, in any group or association of direct beneficiaries from water projects or facilities or wells dedicated for collective use, is mandatory and members **shall contribute** in planning, financing, operating, and maintaining these facilities and to manage them after completion. Besides, members should preserve this facilities and water provided and to monitor fair utilization. The **concerned agencies may exclude** non-members from the services and benefits provided to members.

[Does not appear to include multiple wells drawing on the same aquifer, or indirect beneficiaries of recharge. Does not specify that WUAs are a “concerned agency.”]

B. Duties and responsibilities of water users groups and associations

... Organizing member contribution regarding finance and management of irrigation projects, sanitation services including water wells, serving the group of the association.

...

C. Joint duties for the group, association, society and the union (Council):

...

15. **Defining financial subscriptions** for members to pay, whether as contribution to finance or manage water/irrigation projects and facilities, monthly subscriptions or any other financial obligations in accordance with the financial bylaw for the group, society, association or the uniform bylaw for the union (council), without prejudice to applicable laws.

...

Fourth: Duties and responsibilities by users/beneficiaries’ groups, committees, societies, associations and unions:

... **Sticking to financial and material contributions as well as human efforts, imposed on beneficiaries** from water/irrigation projects and facilities including M & O- when necessary- and within their reach.

... Neither individual beneficiaries nor the general assembly or the elected management committees have no [sic] right- according to this article- to effect usufruct rights over existing water projects or to grant new water licenses or usufruct rights.