

A BOOK REVIEW BY LAURA TEJADA<sup>1</sup>

## **Water security, justice and the politics of water rights in Peru and Bolivia**<sup>2</sup>

The overall goal of *Water Security, Justice and the Politics of Water Rights in Peru and Bolivia* is to scrutinize the claim by legislators, policymakers and development institutes that legal recognition of local water rights reduces water conflict and increases water security and equality for peasants and indigenous communities. This is indeed an ambitious goal of the author Miriam Seemann, given the fact that nearly no studies have looked at the actual impacts of water rights formalization policies on the ground so far. Nonetheless, the book touches a subject of major importance in view of the trend towards the adoption of new water legislations in the last decades, resulting in the formalization of water rights and entitlements, not only in Latin-American countries such as Chile, Brazil, Mexico, Peru and Bolivia, but on a global scale (Baillat 2010). Well aware of the shortcomings of mainstream approaches to property rights formalization, like de Soto's (2000) theoretical presupposition that formal property rights are the most important institution for economic growth and development, the book demonstrates that uncritical formalization of local water rights may lead to weakening, instead of strengthening, local water security.

As the author notes in chapter two – following a brief introduction in chapter one – most theoretical approaches within academic and policy debates, regard property rights in water resource management as a “unitary and static economic good” whose formalization is required in order to diminish water conflict and ensure water security for the poor. What follows is a detailed description of the main theoretical currents

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of property rights reflected in Andean water formalization policies, which comprises “new-institutionalist”, “political economy”, “rights-based” and “common-property-based” approaches. Challenging these dominant theoretical approaches for missing out on the issues of power, inequality and legal complexity of water rights is in itself nothing new, as scholars have done so for decades. This is also reflected in the book’s comprehensive literature review. Yet, with the legal pluralism and political ecology lens applied in this book and described in chapter three, the author manages successfully to frame an own theoretical approach, which does justice to the study of “formalization” conflicts, equity and power issues at local level. By tying together a legal pluralistic perspective of water rights, formalization and water securities with a conceptualization of water conflicts, power and equity, Miriam Seemann convincingly engages with the contradiction between formal recognition of rights and alternative conceptions of water security and equity at local level, a topic which is at the core of this book. The author draws especially on Fraser’s work (2003) by bringing in the three justice dimensions “redistribution”, “recognition” and “representation” as well as on the theory of legal pluralism. This gives her the tools for a detailed understanding of how formalization policies relate to issues of water equity, water conflict and water security.

Having constructed this theoretical lens, Miriam Seemann continues in the following chapters with the presentation of the Peruvian and the Bolivian case studies. Each country case study begins with a very detailed analysis of the different water regulation and recognition policies towards the indigenous population from the 20<sup>th</sup> century onwards. It is followed by a chapter on water formalization policies and concludes with empirical material collected in two communities of the Andean highlands. The empirical material was collected in two countries with very different water formalization practices, based on two divergent policy frameworks: While Peru is following a top-down formalization process, focusing on individual rights within a neoliberal governance framework, Bolivia is implementing a bottom-up approach to water formalization, based on the recognition of customary water rights assigned to communities and families in the context of an indigenist-socialist governance model. This comparison of two countries with opposed institutional frameworks is one of

the main strengths of the book. Miriam Seemann shows that even though the Peruvian and Bolivian institutional setting diverge in terms of the degree of civil society involvement in the development of the new water legislation and the recognition of local water use rights, both systems fail to take into account power differentials in communal and indigenous territories. As a result both policy frameworks remain exclusionary, by benefitting those peasant and indigenous users who have their affairs in consistence with property or customary rights and thus formalizing local power structures containing unequal norms around water access and control rights. This is a quite surprising result of the study, given the fact that in Bolivia national policy opted for subtle participatory and inclusive power strategies in order to integrate the local into the formal property rights system and renounced to implementation of private and individual-based water rights. Yet, far from solving the problems, both the Peruvian and the Bolivian formalization policies simply cemented the status quo of the water use rights already at place, creating an outcome that in both cases sustains the ideology of modern water policies.

Miriam Seemann's research raises serious concerns regarding the application of water formalization politics in a one-size fits all way, which is ignorant to diversities of agro-ecological systems as well as cultural and social relations. The question is well justified: What are the impacts of official formalization policies in contexts of functioning local water distribution systems in terms of water conflict? While in the case of Peru the interaction between the two normative systems constitutes a form of legal pluralism, which among the local population has led to forms of "legal shopping" and acceptance without necessarily implementing formal rights, in Bolivia water formalization is fostering conflicts between neighbouring communities. The author not only offers a detailed analysis of the existing water conflicts at different "echelons of rights" (Boelens 2008), but also points to the exclusionary nature of the land formalization policies in the longer term and the high probability of water conflicts in the future. Since no mechanisms and procedures to revoke or cancel a registration or license have been established in Bolivia, inequity and inequality among farmers is likely to increase, since new users can hardly be integrated retroactively into the system. Non-recognized rightholders in Peru are in a particularly vulnerable

position, since several authorities have confirmed that in order to tackle scarcity and contribute to an “efficient” resource use, only users in possession of an official license will be granted access in the future (Urteaga Crovetto 2010). This augurs badly in a policy context such as the Peruvian, where agribusiness companies and mining enterprises which can afford modern irrigation technology, are given priority when soliciting new water rights. Thus, even though local water use and control rights are perfectly able to “respond to ecological environments and local principles of equity and security” (Seemann 2016: 163), they are being altered and frozen in the context of ongoing formalization policies, with uncertain outcomes for Andean peasants in the future.

While reading the book, some readers may ask themselves why Miriam Seemann decided to study the impacts of water rights formalization policies in the Andean highlands, where the application level of concrete formalization policies among local water users is considerably low, compared to coastal areas of Peru. This book stands out by revealing the underlying causes for this discrepancy between the issuing of new formalization policies and the lacking implementation on the ground. Yet, it is over-promising to state that this book evaluates “the actual impacts of water rights formalization policies in the field” (Seemann 2016: ix), particularly in terms of water security. While we find out in more depth about the exclusion of certain peasants and indigenous community members in the course of the formalization process and emerging conflicts, little is being said regarding the actual impact of the policies on water security for the local population. A context where water is not allocated according to licenses yet, due to the persistence and higher legitimacy of the traditional water distribution institutions at local level, as reflected in the Peruvian case study, poses a major obstacle to the realization of an impact-oriented study. The confusion around the term 'water security' might stem from the absence of a proper definition of the term in the book, which leads the author to employing the word sometimes in the sense of “formalized” water rights security and sometimes in an “informal” sense.

It is Miriam Seemann’s concluding chapter 'The Politics of Water Rights Formalization and the Missing Ingredient of Water Security', which is

simultaneously the least satisfying and most enriching one. While the reader might expect a comparison between the Peruvian and the Bolivian case studies regarding similarities and differences in terms of social equality, water conflicts and security, the author starts with a summary and comparison of the historical background and the water policies of the two countries, which appears repetitive at this advanced stage of the book. The subsequent presentation of the main findings of the book in terms of 'impacts on the ground' is kept short, but provides a good overview over the main results of Seemann's empirical data, namely that (a) the two countries' formalization policies miss out on questions of redistribution and thus benefit some while excluding other, a fact which is leading to water conflicts; (b) recognizing legal pluralism per se does not automatically guarantee more equity in water distribution; and (c) theoretical presuppositions inherent in property rights discourses, ignore the complexity of power struggles over resources as well as the social and cultural exclusion within society, which is not in line with their theoretical assumptions and their promise of delivering 'win-win' situations. After presenting the main findings of the presented research inquiry in terms of water equity, conflict and water security, the concluding chapter dedicates itself to the difficult question of what such an analysis suggests of 'what to do about it'. Yet, given the high practical relevance of the research, this causes no difficulty to Seemann and the result is an elaborated list of valuable recommendations for policy-makers aiming to implement water formalization policies.

This book makes an important contribution to the under-researched topic of water formalization policies and how they relate to issues of water security, water conflict and equity in the field. Readers interested in the engagement between formal and alternative notions of water security and equity as well as the tensions resulting at local level as a result of the dominant water discourse favouring formalization policies, will find it inspiring.

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